

STATE OF MICHIGAN
COURT OF APPEALS

TIMOTHY J. MEAGHER,

Plaintiff-Appellant,

v

PAUL A. LAFONTAINE, SR.,

Defendant-Appellee.

UNPUBLISHED

January 31, 2006

No. 256138

Macomb Circuit Court

LC No. 2003-004321-CK

Before: Murray, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting summary disposition to defendant. We reverse and remand for further proceedings.

This case involves an agreement between the parties in which plaintiff agreed to form a limited liability company (LLC) and enter into a purchase agreement with a third party on behalf of the LLC for the purchase of a car dealership and then transfer his rights in the LLC and purchase agreement to defendant in exchange for \$200,000 to be paid at the closing of the purchase; however, the parties never closed on the purchase of the dealership. Plaintiff brought the present breach of contract action against defendant seeking payment of the \$200,000. The trial court granted defendant's motion for summary disposition upon its conclusion that the occurrence of the closing on the dealership purchase was a condition precedent to defendant's obligation to pay plaintiff the \$200,000.

Plaintiff asserts that the trial court misinterpreted the December 16, 1999 agreement between the parties by finding that a closing on the dealership purchase was a condition precedent to defendant's obligation to pay plaintiff. We agree.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Furthermore, issues of contract interpretation are questions of law that are also reviewed de novo. *Archambo v Lawyers Title Ins Corp (After Remand)*, 466 Mich 402, 408; 646 NW2d 170 (2002). In reviewing de novo a decision on a motion for summary disposition based on the lack of a material factual dispute, an appellate court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted in the light most favorable to the party opposing the motion. MCR 2.116(C)(10), (G)(5); *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

Summary disposition was appropriately granted if there was no genuine issue as to any material fact and the moving party was entitled to judgment as a matter of law. *Id.*

In interpreting a contract, a court's obligation is to determine the intent of the parties and, where the language of a contract is unambiguous, a court will construe and enforce the contract as written. *Quality Products and Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003) (citations omitted). "A 'condition precedent' is a fact or event that the parties intend must take place before there is a right to performance. A condition precedent is distinguished from a promise in that it creates no right or duty in itself, but is merely a limiting or modifying factor. Courts are not inclined to construe stipulations of a contract as conditions precedent unless compelled by the language in the contract." *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 350; 605 NW2d 360 (1999), citing *Reed v Citizens Ins Co of America*, 198 Mich App 443, 447; 499 NW2d 22 (1993), overruled on other grounds by *Griffith v State Farm Mutual Automobile Ins Co*, 472 Mich 521, 540; 697 NW2d 895 (2005).

In the present case, the specific language from the agreement quoted by the trial court in its determination that a closing on the dealership purchase was a condition precedent is as follows:

Prior to the closing of the purchase of the Dealership, Meagher agrees to execute in escrow such documents as are necessary to convey any and all interest, right and title in the established L.L.C. and its assets to LaFontaine. For and in consideration of the conveyance of this interest LaFontaine agrees to make payment to Meagher the sum of Two Hundred Thousand Dollars (\$ 200,000.00) in cash *at the closing of the purchase of the Dealership*. [Emphasis added by trial court.]

We disagree with the trial court's determination and its emphasis on the language "at the closing of the purchase of the Dealership" because the determination ignores the clear language from the beginning of that same sentence that specifically conditions payment on plaintiff's *conveyance of his interest* and not on a closing of the purchase. Had the parties' intention been to condition payment on a successful closing of the purchase, they could easily have done so with the same specificity used in conditioning the payment on plaintiff's conveyance; however, they did not. In light of the specific language used by the parties to condition payment on plaintiff's conveyance, we find that the language noting that payment would take place at the closing simply states the parties' intent regarding the timing and location of payment; it is not a condition precedent to defendant's obligation to make the payment. Therefore, on review de novo, we reverse the trial court's grant of summary disposition.

Because the trial court granted defendant's motion for summary disposition based on its erroneous finding that the occurrence of the closing on the dealership purchase was a condition precedent to defendant's obligation to pay, it declined to address whether the agreement was rescinded pursuant to an agreement in a separate lawsuit to rescind the underlying transaction. During separate litigation against the dealership owners for specific performance of the purchase agreement, both plaintiff and defendant agreed to rescind the "entire agreement" if they or the dealership owners rejected a determination by an independent CPA of the tangible net worth of the dealership. The parties do not dispute that the purchase agreement was ultimately rescinded. We note that the 1999 agreement between plaintiff and defendant was not rescinded by the

parties within this separate litigation; therefore, we remand to the trial court to review the releases executed in the separate litigation to determine the potential affect on the present case and to determine what, if any, affect the rescission of the purchase agreement had on the 1999 agreement between plaintiff and defendant.

We reverse and remand for further proceeding consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Kathleen Jansen

/s/ Kirsten Frank Kelly