

STATE OF MICHIGAN
COURT OF APPEALS

RAYMOND C. SHINNEY and KAREN M.
SHINNEY,

UNPUBLISHED
February 22, 2005

Plaintiffs/Counter-Defendants-
Appellees/Cross-Appellants,

v

CAMBRIDGE HOMES, INC. and NOVI
INVESTMENT COMPANY II, LLC,

No. 250123
Oakland Circuit Court
LC No. 2002-039457-CH

Defendants/Counter-Plaintiffs-
Appellants/Cross-Appellees.

Before: Kelly, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Defendants Cambridge Homes, Inc. (“Cambridge”) and Novi Investment Company II, LLC (“NIC”) appeal the trial court’s order that granted summary disposition in favor of plaintiffs and ordered defendants to return plaintiffs’ deposit because defendants violated the Michigan Condominium Act.¹ Plaintiffs cross-appeal the trial court’s order that denied their motion for attorney fees under the Michigan Consumer Protection Act (MCPA).² We affirm in part and reverse in part.

I

A

Defendants argue that the trial court erroneously granted plaintiffs’ motion for summary disposition. A grant or denial of summary disposition is reviewed de novo on the basis of the

¹ MCL 559.101 *et seq.*

² MCL 445.901 *et seq.*

entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).³

Defendants maintained that the trial court erred when it ruled that NIC's failure to provide information about Cambridge in the relevant disclosure statement rendered the condominium purchase agreement at issue unenforceable. Plaintiffs' claim that they have the right to withdraw from their contracts with defendants under MCL 559.184a, which provides in relevant part:

(1) The developer shall provide copies of all of the following documents to a prospective purchaser of a condominium unit, other than a business condominium unit:

* * *

(d) A disclosure statement relating to the project containing all of the following:

* * *

(ii) The names, addresses, and previous experience with condominium projects of each developer and any management agency, real estate broker, residential builder, and residential maintenance and alteration contractor.

Defendants admit that Cambridge was a residential builder and that the disclosure statement NIC gave to plaintiffs did not contain Cambridge's address and previous experience. However, defendants argue that Cambridge was not a residential builder associated with the condominium project.

The relevant documents here are a condominium purchase agreement and a home construction agreement. Michigan has long held that multiple, simultaneously-executed instruments should be construed as a single transaction if they involve the same parties and subject matter. *Disbrow v Jones*, Harrington's Chancery Reports 48, 55 (Mich, 1842); *Culver v Castro*, 126 Mich App 824, 826; 338 NW2d 232 (1983). Writings should also be read together if one references another for additional terms. *Forge v Smith*, 458 Mich 198, 207; 580 NW2d 876 (1998). The documents here do not explicitly name Cambridge as the residential builder for the

³ When reviewing a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, this Court considers all evidence submitted by the parties in the light most favorable to the non-moving party and grants summary disposition only where the evidence fails to establish a genuine issue regarding any material fact. *Id.* at 120. A trial court's decision whether to impose attorney fees is generally reviewed for an abuse of discretion, but interpretation of a statute authorizing those fees is reviewed de novo. *46th Circuit Trial Court v Crawford Co*, 261 Mich App 477, 527; 682 NW2d 519 (2004). This Court reviews de novo questions of statutory construction with the fundamental goal of giving effect to the intent of the Legislature. *Weakland v Toledo Engineering Co, Inc*, 467 Mich 344, 347; 656 NW2d 175 (2003).

condominium project, but the documents interlock sufficiently that no other conclusion can reasonably be reached. Each contract effectively states that a default under one is a default under the other. Both reference the transaction in the other, including naming the other defendant. The condominium purchase agreement is premised on construction of a residence by Cambridge. Therefore, because Cambridge was the condominium project's residential builder, MCL 559.184a(1)(d)(ii) required Cambridge's address and prior condominium experience to be included in the disclosure statement.

Defendants' disclosure agreement failed to comply with MCL 559.184a(1)(d)(ii). MI Admin Code R 559.901(1) states that "[a] disclosure statement shall not be used unless it meets the requirements set forth in the act and these rules." Therefore, R 559.901(1) precludes the use of defendants' disclosure agreement, so plaintiffs did not receive all of the documents required in MCL 559.184a. Under MCL 559.184(2), the purchase agreement does not become binding until nine days after receipt of the required documents. Because plaintiffs did not receive those documents, the nine-day period in which to withdraw from the purchase agreement did not begin to run. Thus, plaintiffs were allowed to withdraw from the purchase agreement under the Condominium Act and are entitled to the return of their deposit.

B

Defendants say that NIC should not be liable to repay the deposit because plaintiffs paid it to Cambridge alone. Plaintiffs correctly admit that the contract with NIC required no down payment. Although the two contracts should be read as one, Cambridge and NIC are separate corporations, and separate corporate entities are generally respected unless they are used to subvert justice. *Wells v Firestone Tire and Rubber Co*, 421 Mich 641, 650; 364 NW2d 670 (1984). Plaintiffs argue that defendants do not deal with each other at arm's length and attempted to avoid a statutory escrow requirement. However, plaintiffs do not seek \$100,000 in damages, but rather the *return* of their \$100,000 deposit. The deposit was paid to Cambridge; logically, Cambridge must return it. NIC and Cambridge worked together, but plaintiffs have not shown that they were a single entity.

II

Finally, plaintiffs argue that the trial court erroneously denied their motion for attorney fees. Plaintiffs claim they are entitled to attorney fees under the MCPA. This Court has held that the MCPA "allows a person who suffers a loss as a result of a violation of the act to bring an action to recover reasonable attorney fees." *Smolen v Dahlmann Apartments, Ltd*, 186 Mich App 292, 295; 463 NW2d 261 (1990), citing MCL 445.911(2). However, MCL 445.904(1)(a) exempts "[a] transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States." Our Supreme Court has explained that this exemption applies generally to any transaction authorized by law, even "conduct the legality of which is in dispute." *Smith v Globe Life Ins Co*, 460 Mich 446, 462-465; 597 NW2d 28 (1999). Cambridge is a residential builder licensed pursuant to the Michigan Occupational Code, MCL 339.101 *et seq.*

This Court has held that "residential builders are subject to claims of unfair or deceptive trade practices under the MCPA" because "the definition of 'trade or commerce' [in MCL 445.903(1)] includes residential builders who construct and sell homes for personal family use."

Forton v Laszar, 239 Mich App 711, 715; 609 NW2d 850 (2000). However, this Court did not address the application of MCL 445.904(1)(a) to a residential builder.

Cambridge is authorized to build residential structures for payment from another. MCL 339.2401(a). The home purchase agreement explains that Cambridge agreed to do so. Because Cambridge engaged in a “general transaction [] specifically authorized by law,” *Smith, supra* at 465, the transaction was exempt from the MCPA under MCL 445.904(1)(a). Accordingly, we hold that the trial court correctly ruled that Cambridge is immune to the imposition of attorney fees. NIC enjoys no similar exemption, but, because plaintiffs’ attorney fee claim is based on the failure to return their deposit, and because we have held that NIC is not liable for the return of the deposit, accordingly, we conclude that there is no basis for finding that NIC violated the MCPA. Furthermore, because NIC and Cambridge are independent entities, NIC is not liable for Cambridge’s actions. Therefore, NIC is also not subject to attorney fees.

III

We reverse that part of the trial court’s judgment that holds that NIC is liable to return plaintiffs’ deposit, and we remand for entry of an appropriate order to that effect. We affirm the trial court’s judgment in all other respects. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Henry William Saad
/s/ Michael R. Smolenski