

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT**

**MRG LAKE VILLA, LLC,
Plaintiff,**

v.

**Case No. 14-142084-CK
Hon. James M. Alexander**

**ARROWWOOD HOME RENTALS, LLC,
and KENNETH BURNHAM,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on motions for summary disposition filed by all parties.

Plaintiff brought this suit to determine rightful ownership of four mobile homes located on its property. On October 21, 2013, non-party Equity First Michigan II, LLC purchased the underlying mortgage loan. Equity First then sold the mortgage and assigned the Mobile Home Purchase and Settlement Agreement to Plaintiff on December 12, 2013. Plaintiff took possession of the mobile home park on or around December 27, 2013. Plaintiff then foreclosed on the mortgage on the real estate comprising the mobile home park on April 1, 2014.

The parties now dispute the ownership of four mobile homes that were located on Plaintiff's property at the time of the Settlement Agreement, but were not specifically identified by VIN, address, or serial number in said Agreement. As a result, this case revolves around the interpretation of the Mobile Home Purchase and Settlement Agreement.

The parties now move for summary disposition under MCR 2.116(C)(9) or (C)(10). MCR 2.116(C)(9) tests whether the defendant's defenses are so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery. *Lepp v Cheboygan Area*

Schools, 190 Mich App 726 (1991). MCR 2.116(C)(10) tests the factual support for Plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

As stated, all parties cite to the November 15, 2013 Settlement Agreement in support of their claims regarding the rightful ownership of the disputed mobile homes.

Michigan law is well-established that “a court must construe and apply unambiguous contract provisions as written.” *Rory v Cont'l Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). Further, “[a] contract must be interpreted according to its plain and ordinary meaning.” *Holmes v Holmes*, 281 Mich App 575, 593; 760 NW2d 300 (2008), citing *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 107; 577 NW2d 188 (1998). “Under ordinary contract principles, if contractual language is clear, construction of the contract is a question of law for the court.” *Holmes v Holmes*, supra at 594; quoting *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997).

The parties do not dispute that Plaintiff stands in the shoes of Equity First under the November 15, 2013 Mobile Home Purchase and Settlement Agreement. Because non-party Lake Villa Oxford Associates defaulted on its payment obligations, this Agreement was entered “to sell and transfer to [Plaintiff]” certain Mobile Homes located on Plaintiff's property. “Mobile Homes” is a specifically defined term in the Agreement, which the Court will address later.

The Court has previously ruled on this issue, but not dispositively. Following a preliminary injunction hearing and subsequent summary motion filed by Defendant Burnham, this Court held:

Under [the Settlement Agreement], Mr. Burnham was the “Guarantor,” and as such, is included in the definition of “Borrower Parties” or “Borrower Party.” [Article 1 Definitions]. Under the “Borrower Parties’ Representations” section, Mr. Burnham [as Borrower’s Manager] represented and warranted that “no Affiliate of Borrower

owns any mobile or manufactured homes located on the Property.” [Section 5.1(g)].¹

At a September 3, 2014 Preliminary Injunction hearing, Mr. Burnham testified that he was a member of Arrowood Home Rentals, LLC – which owned the four mobile homes. Under the Agreement, “Affiliate” includes the term “Person” – which is defined as “any individual, . . . limited liability company or partnership, . . . or any other form of entity.” [Article 1 Definitions].

Read together, Mr. Burnham warranted that neither he, nor any related “Affiliate” – including any “individual” or LLC – owned any mobile or manufactured homes located on the Property. But this wasn’t the case. Mr. Burnham was a member of Arrowood, which owned the four mobile homes. As a result, just as it did at the September 3 hearing, the Court finds that “these four mobile homes are owned by an affiliate of the borrower or an affiliate organization, and the Court does find that they are properly owned by the Plaintiff, MRG.”

The Court still agrees with its prior interpretation. The definition of “Affiliate” is broad. It includes any person or entity in which a person owns “**an interest in** any class of stock” or is a member of – without regard to level of ownership or control of said entity. In other words, **any membership or stock interest is enough** – no matter the percentage.

As a result, Mr. Burnham warranted that neither he, nor Arrowood (as his “Affiliate”), owned any of the manufactured homes located on Plaintiff’s property. This, as it turns out, was not true.

Further, the Settlement Agreement purported to sell to Plaintiff’s predecessor certain “Mobile Homes.” The definition of “Mobile Homes” is the “mobile or manufactured homes listed on **Schedule 1**, attached.” (emphasis in original). Schedule 1 specifically lists 114 mobile homes by VIN, property address and/or serial number.

Schedule 1 also includes a “catch-all” provision that necessarily implicates the four disputed

¹ Despite Defendants’ apparent suggestions otherwise, “Affiliate of Borrower” is not the same term as “Borrower Affiliate Party [or Parties].” The latter is specifically defined in the introduction of the Settlement Agreement as specific entities. The former, “Affiliate of Borrower,” is not specifically defined, but the included term “Affiliate” is. As a result, “Affiliate of Borrower” necessarily implicates the definition of “Affiliate” as applied to the identified “Borrower” (Lake Villa Oxford Associates, LLC and Kenneth Burnham). This interpretation is consistent with separate use of the terms “Borrower Affiliate Party,” “Affiliate of Borrower,” and “Affiliate of . . . any Borrower

homes. It provides that the Mobile Homes sold to Plaintiff's predecessor in interest also included: "all other mobile or manufactured homes owned by Borrower or any Borrower Affiliate Party (or any Affiliate of Borrower or any Borrower Affiliate Party) located on the Property as of the date of this Agreement."

It is undisputed that the four disputed homes were located on the Property on the date of the Agreement. It is also undisputed that Arrowood owned the homes. Because Arrowood was an Affiliate of a Borrower under the Agreement's terms, the Settlement Agreement transferred ownership of said homes to Plaintiff's predecessor in interest under the catch-all provision. Under the Agreement's terms, it does not matter if these homes were specifically identified in Schedule 1. It only matters that they were owned by Arrowood and on the Property on the date of the Settlement Agreement.

Defendants' flawed interpretations and suggestions cannot change the broad and unambiguous language contained in the Settlement Agreement. And they cannot create ambiguity where there is none.

The Settlement Agreement is clear. The four disputed Mobile Homes are included in the catch-all provision contained on Schedule 1, and were, therefore, sold to and rightfully owned by Plaintiff.

For all of the foregoing reasons, Plaintiff's motion for summary disposition is GRANTED. For the same reasons, Defendants' motions are DENIED.

Affiliate Party" in Schedule 1 of the Settlement Agreement. These terms would not be separately identified if they meant the same thing.

Because the Court has ruled that Plaintiff is the rightful owner of the disputed homes and every claim alleged in Defendant's Counterclaim is premised on its rightful ownership, Defendant Arrowood's claims fail as a matter of law, and said Counterclaim is DISMISSED.

This Order is a Final Order that resolves the last pending claim and closes the case.

IT IS SO ORDERED.

August 19, 2015
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge