STATE OF MICHIGAN

COURT OF APPEALS

BARBARA WALDORF, Plaintiff/Counter-Defendant-Appellant,	UNPUBLISHED August 16, 2007
v	No. 268345 Kalkaska Circuit Court
CAROL WADDELL and TIMOTHY WADDELL, Defendants/Counter-Plaintiffs-Appellees.	LC No. 04-008678-CK

Before: Whitbeck, C.J., and Talbot and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion to enforce a settlement agreement for the sale of property, and ordering plaintiff to share proceeds from the sale with a third party. We reverse and remand for further proceedings.

Plaintiff asserts that the trial court erred when it granted defendants' motion to enforce the settlement agreement because the agreement contained a condition precedent that required plaintiff to obtain a quitclaim deed from a third party and the quitclaim deed could not be procured. We agree.

Contract interpretation is reviewed de novo, *Clark v DaimlerChrysler Corp*, 268 Mich App 138, 141; 706 NW2d 471 (2005), including a trial court's determination whether a contract term is ambiguous. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003).

The primary goal in contract interpretation is to honor the intent of the parties. *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). The intent of the parties is found in the words of the contract, and a court may not use extrinsic evidence to determine intent if the words are clear and unambiguous. *Id*. "A contract is ambiguous if 'its words may reasonably be understood in different ways.'" *Id*. (citation omitted). However, courts may not find ambiguity where it does not exist. *Id*. Words are to be construed in accordance with their plain and ordinary meaning, avoiding technical or constrained constructions. *Id*. at 491-492.

Section F of the settlement agreement provides, in relevant part, "[p]laintiff shall commence to procure a quit claim deed to cure title on or before May 16, 2005; *if* said quit claim deed is procured, plaintiff shall notify defendants' counsel and provide defendants' counsel with a copy of the same." (Emphasis added.) Use of the word "if" recognizes that it might not be possible to secure the quitclaim deed. Without the deed, plaintiff would be unable to convey the land because she would not be the sole owner. Thus, the agreement to sell the property is contingent on plaintiff obtaining sole title to the property and specifically requires that plaintiff "cure title" through the acquisition of a quitclaim deed.

The trial court stated it was irrelevant that plaintiff did not obtain a quitclaim deed because "the substance of it is exactly the same," which was "full conveyance to the seller's [sic]." The trial court determined that there was no difference between plaintiff obtaining a quitclaim deed and conveying the property to defendants from having plaintiff and the third-party sell the property to defendants, with the proceeds of the sale placed in escrow pending further litigation regarding distribution of the escrowed funds as necessary. Contrary to the trial court's ruling, the contract was clear and unambiguous regarding the method required for plaintiff to obtain clear title. The contract states, "[I]f a quit claim deed is procured." The contract does not identify alternatives such as "if title is cleared" or "if the third-party owner agrees to the sale" as preconditions to fulfillment of the contractual obligation.

"A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be *enforced as written*." *Rory v Continental Ins Co*, 473 Mich 457, 468; 703 NW2d 23 (2005) (emphasis in original). The trial court failed to enforce the contract as written. Plaintiff did not obtain a quitclaim deed from the third party after apparently making a good-faith effort to procure one. Because the condition precedent was not fulfilled, plaintiff did not incur an obligation to convey the land pursuant to the plain language of the agreement. See *Real Estate One v Heller*, 272 Mich App 174, 179; 724 NW2d 738 (2006). Therefore, we reverse the trial court's grant of defendants' motion to enforce the settlement agreement and remand this matter to the trial court for return of the land to plaintiff and refund of the escrowed money to defendants.

Because we have resolved this issue in favor of plaintiff, we need not address plaintiff's remaining arguments concerning defendants' alleged breach of the settlement agreement by refusing to return to mediation.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Michael J. Talbot
/s/ Brian K. Zahra