STATE OF MICHIGAN

COURT OF APPEALS

ELECTRO-WIRE PRODUCTS, INC.,

Plaintiff-Appellant/
Cross-Appellee,

v

GENERAL INSTRUMENT CORPORATION and
BOWLES HOLLOWELL CONNER AND CO.,

Defendants-Appellees/
Cross-Appellants.

UNPUBLISHED
July 26, 1996

No. 175594
LC No. 92-211098

Before: Murphy, P.J., and Reilly and C.W. Simon, Jr.,* JJ.

PER CURIAM.

Plaintiff appeals as of right a trial court order granting defendants' motions for summary disposition pursuant to MCR 2.116(C)(10) [no genuine issue as to any material fact]. Defendants cross-appeal. We affirm.

This case involves the sale of a division of defendant General Instrument Corporation (General Instrument) known as the Transportation Electronics Division (TED). Defendant Bowles Hollowell Conner & Co. (BHC) is an investment banking firm which acted as General Instrument's agent for purposes of selling TED.

Plaintiff and BHC negotiated regarding the sale of TED to plaintiff. According to plaintiff, during the course of a January 31, 1992, telephone conversation between plaintiff's president and an agent of BHC, the parties agreed that General Instrument would sell TED to plaintiff. A letter written to plaintiff's president by the BHC agent dated January 31, 1992, indicated that the parties had "shaken hands on a transaction to sell the Transportation Electronics Division" to a company to be formed by plaintiff but that the "orally accepted proposal is subject to your satisfactory due diligence and a signed Purchase and Sale Agreement."

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* Circuit judge, sitting on the Court of Appeals by assignment.

After General Instrument sold TED to a third party, plaintiff filed a complaint against defendants. The complaint contained multiple claims, but the relevant claim on appeal is plaintiff's claim for breach of contract. The trial court granted defendants' motion for summary disposition on plaintiff's breach of contract claim, holding that there was no genuine issue of material fact that the parties did not intend to be bound by the January 31, 1992 letter. Plaintiff appeals as of right, and defendants cross-appeal.

This Court reviews de novo the granting or denial of a motion for summary disposition pursuant to MCR 2.116(C)(10). *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 650; 513 NW2d 441 (1994). A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim. *Id*. The trial court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence available to it. *Smith v General Motors Corp*, 192 Mich App 652, 654; 481 NW2d 819 (1992). Then, giving the benefit of any reasonable doubt to the nonmoving party, the trial court must determine whether a record might be developed which would leave open an issue upon which reasonable minds might differ. *Id*.

Plaintiff argues that the trial court erred in granting summary disposition of plaintiff's breach of contract claim. After carefully reviewing the lower court record and the trial court's thorough and well reasoned opinion, we conclude that the trial court did not err in granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We therefore adopt as our own the portion of the trial court's opinion granting summary disposition of plaintiff's breach of contract claim.

Plaintiffs also argue that the trial court erred in applying New York substantive law to the breach of contract claim. We disagree. In *Chrysler Corp v Skyline Industrial Services, Inc*, 448 Mich 113; 528 NW2d 698 (1995), the Supreme Court relied, in part, on 1 Restatement Conflict of Laws, 2d, § 187 in resolving a conflicts of law question. Section 187(1) permits the application of the parties' choice of law if the issue is one the parties could have resolved by an express contractual provision. There is uncontradicted documentary evidence that the proposed purchase and sale agreements contained clauses which contemplated that New York law would apply to any agreement to sell TED to plaintiff. Furthermore, the exceptions contained in § 187(2)(a) and (b) do not preclude application of New York law. Accordingly, we conclude that the trial court properly ruled that New York law applied to plaintiff's breach of contract claim.

Although we need not address most of defendants' arguments on cross-appeal in light of our decision to affirm the trial court's order granting summary disposition in favor of defendants, we will briefly address defendants' arguments relating to this Court's jurisdiction over this matter. Defendants contend that this Court is without jurisdiction to hear this appeal because plaintiff did not file a claim of appeal from a final order. We disagree.

This Court has jurisdiction to hear appeals as of right only from final orders. MCR 7.203(A)(1). Plaintiff's claim of appeal states that the appeal is from the trial court's May 16, 1994, order denying plaintiff's motion for reconsideration. However, an order denying reconsideration is not a final order from which one may appeal as of right. *Nye v Gable, Nelson & Murphy*, 169 Mich App

411, 415; 425 NW2d 797 (1988). Here, the final order is the order granting summary disposition. *Id.*; see MCR 7.203(A).

Notwithstanding the fact that plaintiff listed the wrong order appealed from in its claim of appeal, we conclude that this Court has jurisdiction. Despite the technical defect in the claim of appeal, this Court accepted the appeal as if it had been claimed from the order granting summary disposition and docketed the case as an appeal as of right from the trial court's March 7, 1994 order granting defendant's motion for summary disposition. Moreover, plaintiff complied with MCR 7.204(A)(1)(b) by filing the claim of appeal within twenty-one days after the entry of the order denying the motion for reconsideration. In sum, we conclude that, although plaintiff erroneously listed the order denying reconsideration as the order appealed from in the claim of appeal, this defect was merely technical and does not deprive this Court of jurisdiction.

Affirmed.

/s/ William B. Murphy
/s/ Maureen Pulte Reilly
/s/ Charles W. Simon, Jr.