

Court of Appeals, State of Michigan

ORDER

Roderica James v City of Detroit

Docket No. 334168

LC No. 16-008844-CK

Michael J. Talbot
Presiding Judge

Kirsten Frank Kelly

Cynthia Diane Stephens
Judges

The Court orders that the motion for immediate consideration is GRANTED.

Pursuant to MCR 7.205(E)(2), the trial court's August 4, 2016 order is VACATED. Plaintiff cannot prevail on the merits of her case because the Offer to Purchase (OTP) is not a valid contract. See *Davis v City of Detroit Fin Review Team*, 296 Mich App 568, 612; 821 NW2d 896 (2012) (an injunction may not issue unless it is likely the party seeking it will prevail on the merits). The OTP clearly provides throughout that it is only an offer and expressly conditions acceptance on formal approval from the City Council. It is undisputed that the City Council never approved the OTP, which, by its own terms, expired February 5, 2014. "A contract is made when both parties have executed or accepted it, and not before. . . . Mere discussion and negotiation, *including unaccepted offers*, cannot be a substitute for the formal requirements of a contract." *Kamalnath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 549; 487 NW2d 499 (1992) (citations omitted, emphasis added). Further, nothing in the OTP or 1945 PA 344 mandates that plaintiff's submission of the OTP triggers a City Council meeting. Thus, regardless of plaintiff's submission of the OTP and a deposit, plaintiff cannot show the breach of any duty. Last, it appears plaintiff otherwise had the opportunity to lease a different area for parking, and, consequently, she cannot demonstrate the irreparable harm also necessary for a preliminary injunction to issue. *Davis*, 296 Mich App at 612. For these reasons, the trial court abused its discretion by entering the preliminary injunction. *Gay v Select Specialty Hosp*, 295 Mich App 284, 292; 813 NW2d 354, 358 (2012) (citation omitted) ("a trial court necessarily abuses its discretion when it premises its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence."). We therefore VACATE the trial court's August 4, 2016 order. Further, because plaintiff cannot prevail on her suit as a matter of law, we REMAND the matter to the trial court for DISMISSAL of this action.

This order is to have immediate effect. MCR 7.215(F)(2).

This Court retains no further jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

AUG 15 2016

Date


Chief Clerk