

STATE OF MICHIGAN
COURT OF APPEALS

WALTER KLOC,

Plaintiff-Appellee,

v

STANLEY KLOC and NURSIE KLOC,

Defendants-Appellants.

UNPUBLISHED

June 25, 1996

No. 176876

LC No. 91-010711-CK

Before: Hoekstra, P.J., and M.J. Kelly and J.M. Graves, Jr.,* JJ.

PER CURIAM.

In a dispute concerning the ownership of real property, defendants appeal as of right from a judgment in favor of plaintiff entered by the Tuscola Circuit Court following a three-day bench trial. Defendants claim that the trial court erred in finding that the statute of frauds was inapplicable and that the property was part of a joint venture. Although the trial court erred in finding the statute of frauds inapplicable, it correctly found that plaintiff and defendants were joint venturers. Therefore, we affirm.

Walter and Stanley Kloc are brothers who own farms separated by a railroad easement. When the railroad ceased operations on the line between the farms, both brothers claimed to have contacted the railroad about purchasing the property. Stanley ultimately purchased the property in his name and that of his wife, Nursie Kloc. Walter gave Stanley a check made out for half the money needed to purchase the property. Defendants initially argue that the trial court erred in finding that the check written by Walter to Stanley was a sufficient memorandum to take the transaction out of the statute of frauds and in denying their motion for a directed verdict on this issue. We agree. The statute of frauds requires that a document transferring an interest in land must be certain and definite with regard to the parties, property, consideration, premises and time of performance. *McFadden v Imus*, 192 Mich App 629, 633; 481 NW2d 812 (1992). A document that does not include the state, county, city or village in which the property was located cannot satisfy the statute of frauds. *Cooper v Pierson*, 212 Mich 657, 660; 180 NW2d 351 (1920). If a property is owned by both husband and wife, both parties must sign the writing to satisfy the statute of frauds. *McFadden, supra*, at 633.

In this case, the trial court found that since the check contained the words "RR property" on the memo line and was endorsed by Stanley Kloc it satisfied the statute of frauds. However, the check did not include the location of the property to be transferred and was not co-endorsed by Nursie Kloc. Therefore, we conclude that the trial court erred in finding that the check satisfied the statute of frauds and in denying the directed verdict as to this issue.

Next, defendants argue that plaintiff failed to prove that a joint venture existed. Defendants contend that the evidence was insufficient to establish that an agreement existed between the parties to become joint venturers, that there was a "for profit" motive concerning the purchase, and that the parties shared a community of interest and control over the subject property. We disagree. Two or more persons, who through their contribution of property or labor, carry on a single business transaction are joint venturers. *Hathaway v Porter Royalty Pool, Inc.*, 296 Mich 90, 101-102; 295 NW2d 591, modified on other grounds, 296 Mich 733 (1941). In a joint venture, each party must share profits and losses, contribute to the enterprise and have a community of interest as well as some control over the subject matter or property right of contract. *Id.* at 103. A joint adventure is undertaken only when the parties intend to associate themselves in this manner and this intention is governed by the same law as that of contracts. *Id.*

Here, plaintiff's testimony, supported by that of his brother Frank and son Gerald, supports the trial court's finding that the brothers entered into an agreement to purchase the railroad property. Both brothers obtained a benefit from the transaction in that they gained ingress and egress to their farms. Furthermore, plaintiff had control of the property in that the gate erected on the property was only intended to keep recreational vehicles off the property, and defendants never stopped plaintiff from using the property. The trial court did not err in granting plaintiff recovery based on the theory of joint venturers.

Finally, we find without merit defendants' argument that they were surprised by plaintiff amending the pleadings mid-trial to include a claim for joint venture. A trial court's decision to amend the pleadings will only be reversed when it is shown that the trial court abused its discretion. *Froede v Holland Ladder & Mfg Co.*, 207 Mich App 127, 137; 523 NW2d 849 (1994). Defendants' claim of surprise at plaintiff's amendment is negated by plaintiff's introduction of the joint venture issue in a brief opposing defendants' motion for summary disposition. This brief was filed almost one month prior to trial and defendants' had adequate notice of plaintiff's additional theory of recovery. The trial court did not abuse its discretion in granting the amendment at trial.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Michael J. Kelly

/s/ James M. Graves, Jr.

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