

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SANDY HANSELL & ASSOCIATES, INC.,

Plaintiff-Appellant,

v

JAMES L. GOERGEN, JAMES GOERGEN  
BOWLING COMPANY, INC., a Michigan  
corporation, PARK BOWL, INC., a foreign  
corporation, MICHAEL KOSELANSKY, and  
CHERYL KOSELANSKY,

Defendants-Appellees.

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UNPUBLISHED

December 13, 1996

No. 183381

Midland County

LC No. 93-002626-CK

Before: White, P.J., and Griffin and D. C. Kolenda,\* JJ.

PER CURIAM.

In this action alleging the breach of an oral contract to pay plaintiff, Sandy Hansell & Associates, Inc., a commission on the sale of a bowling alley called Northern Lanes, plaintiff appeals as of right an order granting summary disposition in defendant's favor pursuant to MCR 2.116(C)(7) and (8). We affirm.

Plaintiff alleges that defendant James Goergen, on behalf of two corporations he owns and controls (defendant James Goergen Bowling Company and defendant Park Bowl, Inc.), orally agreed to pay plaintiff six percent of the purchase price if plaintiff found a purchaser for Northern Lanes. Plaintiff further avers that it referred to Goergen the eventual purchasers of Northern Lanes, defendants Michael and Cheryl Koselansky, but that defendants breached the alleged oral listing agreement by refusing to pay plaintiff a commission on the sale.

On appeal, plaintiff first contends that the trial court erroneously granted summary disposition for defendants on the basis that the Michigan statute of frauds, MCL 566.132; MSA 26.922, bars enforcement of the alleged oral brokerage contract. We disagree. In reviewing a motion for summary

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

disposition pursuant to MCR 2.116(C)(7), we accept plaintiff's well-pleaded allegations as true, *Shawl v Dhital*, 209 Mich App 321, 323; 529 NW2d 661 (1995); *Simmons v Apex Drug Stores, Inc*, 201 Mich App 250, 252; 506 NW2d 562 (1993), and examine any pleadings, affidavits, depositions, admissions, and documentary evidence submitted by the parties in a light most favorable to the nonmovant. MCR 2.116(G)(5); *Skotak v Vic Tanny Int'l, Inc*, 203 Mich App 616, 617; 513 NW2d 428 (1994). If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the trial court must enter judgment without delay. MCR 2.116(I)(1); *Skotak, supra* at 617; *Nationwide Mutual Ins Co v Quality Builders, Inc*, 192 Mich App 643, 647-648; 482 NW2d 474 (1992).

The Michigan statute of frauds, MCL 566.132(1)(c); MSA 26.922(1)(c), "requires that every contract to pay a commission for or upon the sale of *any interest in real estate* must be in writing and signed by the party to be charged. . . ." *Craib v Committee on National Missions of the Presbyterian Church*, 62 Mich App 617, 621; 233 NW2d 674 (1975) (emphasis added); see also *Ekelman v Freeman*, 350 Mich 665, 667; 87 NW2d 157 (1957); *Krause v Boraks*, 341 Mich 149, 155-157; 67 NW2d 202 (1954); *Smith v Starke*, 196 Mich 311, 313-314; 162 NW 998 (1917); *Aetna Mortgage Co v Dembs*, 13 Mich App 686, 691; 164 NW2d 771 (1968). The legislative purpose behind the statute is "to protect real estate owners against unfounded claims based on alleged oral agreements for the payment of commissions for services in procuring sales." *Ekelman, supra* at 667. Consistent with this purpose, our Supreme Court has "repeatedly denied the right to recover on the quantum meruit theory for services rendered in procuring a purchaser of real estate, the express agreement being oral and, hence, void under the statute." *Id.*; see also *Krause, supra* at 156-157; *Smith, supra* at 311; *Paul v Graham*, 193 Mich 447, 451; 160 NW 616 (1916); *Judy v Lentz*, 6 Mich App 511, 513; 149 NW2d 478 (1967).

In the present case, plaintiff concedes that the parties executed no written agreement to evidence defendants' alleged oral promise to pay plaintiff a commission on the sale of Northern Lanes. Therefore, so long as the sale of the bowling alley involved an interest in land, the trial court correctly ruled that the statute of frauds bars plaintiff from enforcing the alleged oral contract or recovering in quantum meruit. MCL 566.132(1)(c); MSA 26.922(1)(c); *Ekelman, supra* at 667; *Paul, supra* at 451; *Craib, supra* at 621. Plaintiff attempts to avoid the statute of frauds, however, by arguing that the sale of Northern Lanes involved personalty, not real estate. Even assuming the transaction pertained principally to the transfer of the bowling alley business, the sale involved more than the transfer of stock or franchise rights. Compare *Mellios v Dines*, 341 Mich 175; 67 NW2d 68 (1954); *Mitchell-Morris & Co, Inc v Samaras*, 325 Mich 425; 38 NW2d 904 (1949); *City Ice & Fuel Co v Bright*, 73 F2d 461 (CA 6, 1934); *Lakeshore Financial Corp v Comstock*, 587 F Supp 426 (WD Mich, 1984). Instead, the transaction included the building, fixtures, and all the land utilized by and essential to Northern Lanes' business. Under these circumstances, we conclude that the transaction involved an interest in real estate. We reject plaintiff's unsupported proposition that the statute of frauds becomes inapplicable where real estate is transferred as part of a transaction involving the business that utilizes the involved real property. Accordingly, the trial court correctly ruled that the statute of frauds applies to bar plaintiff against enforcing the alleged oral brokerage contract. MCL 566.132(1)(c); MSA 26.922(1)(c); *Ekelman, supra* at 667; *Paul, supra* at 451; *Craib, supra* at 621

In light of our holding that plaintiff cannot establish an enforceable contract, we also conclude that the trial court correctly dismissed plaintiff's tortious interference with a contractual relationship claim pursuant to MCR 2.116(C)(8). See *Winiemko v Valenti*, 203 Mich App 411, 416; 513 NW2d 181 (1994); see generally MCR 2.116(G)(5); *Simko v Blake*, 448 Mich 648, 654; 532 NW2d 842 (1995); *Monroe Beverage Co, Inc v Stroh Brewery Co*, 211 Mich App 286, 292; 535 NW2d 253 (1995).

Affirmed.

/s/ Richard Allen Griffin

/s/ Dennis C. Kolenda