

STATE OF MICHIGAN
COURT OF APPEALS

SANDY HANSELL & ASSOCIATES, INC.,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 183381

LC No. 93-002626-CK

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

Defendants-Appellees.

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

WHITE, J. (concurring in part and dissenting in part).

I agree with the majority that to the extent the statute of frauds is applicable to the transaction, the trial court correctly dismissed claims based on estoppel, unjust enrichment and quantum meruit. I do not agree, however, with the conclusion that because the transaction involved an interest in land, and more than the transfer of stock or franchise rights, the statute of frauds bars plaintiff's claim for any commission arising from the transaction, even assuming the transaction pertained principally to the transfer of the bowling alley business, and the sale of real estate was a separate component of the overall transaction. I do not read the cases as precluding the recovery of any commission under these circumstances. I conclude that the record before us is insufficient to establish that the statute of frauds bars any commission on the transaction as a matter of law. Viewed in a light most favorable to plaintiff, the documents reveal that the sale involved substantial personalty and intangible assets, and that at least part of the total price may have been apportioned by the parties. I would remand for further proceedings.

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

/s/ Helene N. White