

STATE OF MICHIGAN
COURT OF APPEALS

JAMES I. CROTHERS,

Plaintiff-Appellant,

v

DUANE WILLIAMSON,

Defendant-Appellee,

and

DARYL WILLIAMSON,

Defendant.

UNPUBLISHED

March 14, 1997

No. 187933

Sanilac Circuit Court

LC No. 92-021364-CK

Before: Sawyer, P.J., and Markman and H.A. Koselka,* JJ.

PER CURIAM.

Plaintiff appeals from a judgment of the circuit court in favor of defendant following a bench trial on plaintiff's claim to compel the conveyance of certain real property. We affirm.

Plaintiff originally owned a 100-acre parcel. That parcel was pledged as security for a loan upon which plaintiff defaulted. The property was sold at a foreclosure auction and purchased by defendants. Later, defendant Daryl Williamson assigned his interest to defendant Duane Williamson ("defendant"). Plaintiff claims that defendant made a promise that if he obtained the property at the foreclosure sale, he would convey 10 acres of the parcel, including a house, to plaintiff for \$20,000. Defendant (and his brother) did obtain the parcel at the foreclosure sale, but thereafter refused to sell the 10 acres to plaintiff. Plaintiff instituted the instant action, raising promissory estoppel theories to obtain specific performance of the alleged promise to convey the property.

On appeal, plaintiff raises a number of arguments. However, we need only address one. Plaintiff argues that the trial court erred in holding that enforcement of defendant's oral promise, even if

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

made, was barred by the statute of frauds. We disagree. The trial court correctly concluded that enforcement of any oral agreement to convey the property is barred by the statute of frauds and plaintiff's promissory estoppel theory does not provide an exception.

MCL 566.106; MSA 26.906 provides in pertinent part that no "interest in lands . . . shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing . . ." Furthermore, our Supreme Court has clearly held that "title to real estate may not be created by estoppel . . ." *Stevens v DeBar*, 229 Mich 251, 253; 200 NW 978 (1924); see also *Colonial Theatrical Enterprises v Sage*, 255 Mich 160, 171; 237 NW 529 (1931). Rather, estoppel may only be applied to prevent a person from denying the acts he has performed to create the appearance of a valid title.¹ *Colonial Theatrical Enterprises, supra*; *Stevens, supra*; see also *Daniels v Daniel*, 362 Mich 176, 184-185; 106 NW2d 818 (1961).

Plaintiff has provided us with no authority for the proposition that the Supreme Court has changed this rule. Accordingly, plaintiff's claim for specific performance under a promissory estoppel theory is barred by the statute of frauds and the trial court correctly ruled for defendant. Furthermore, we are not persuaded by plaintiff's argument that any oral agreement is enforceable because of part performance. Plaintiff is correct that part performance is an exception to the statute of frauds. MCL 566.110; MSA 26.910. However, plaintiff points to nothing that can be said to be part performance of a contract to convey the property. Rather, plaintiff merely points to conduct, such as requesting defendant to execute a purchase agreement in order to arrange financing, ancillary to the completion of a transaction.

For the above reasons, we conclude that plaintiff has not established an exception to the statute of frauds. In light of this conclusion, we need not address the other arguments raised by plaintiff because they will not avoid the fact that plaintiff's claim is barred.

Affirmed. Defendant being the prevailing party, he may tax costs pursuant to MCR 7.219.

/s/ David H. Sawyer

/s/ Stephen J. Markman

/s/ Harvey A. Koselka

¹ E.g., the person being estopped cannot contradict the validity or existence of a deed given by him to another person.