STATE OF MICHIGAN

COURT OF APPEALS

TERESA J. MOONEY

Plaintiff-Appellee,

v

HARRY SALEH and MALAKE SALEH,

Defendants-Appellants.

UNPUBLISHED
April 25, 1997

No. 189338
Wayne Circuit Court
LC No. 94-412294

Before: Sawyer, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment granting plaintiff specific performance of a contract for the sale of real property. We affirm.

Defendants first argue that the trial court erred in admitting evidence, other than the purchase agreement between plaintiff and defendants, in violation of the parol evidence rule. Defendants argue that the agreement was unambiguous in providing that Lot 62, known as 6024 Yinger, Dearborn, was to be sold. The decision of whether there is an ambiguity in a contract that would allow the admission of parol evidence is a question of law. *Glenwood Shopping Center Ltd Partnership v K mart Corp*, 136 Mich App 90, 99; 356 NW2d 281 (1984). Questions of law are reviewed de novo on appeal. *McCaw v T & L Operations, Inc*, 217 Mich App 181, 185; 550 NW2d 852 (1996).

If a contract is clear and unambiguous, parol evidence cannot be admitted to vary its terms. *In re Skotzke Estate*, 216 Mich App 247, 251; 548 NW2d 695 (1996). However, parol evidence may be admitted whenever the terms of a written contract or other instrument are susceptible of more than one interpretation, or an ambiguity arises, or the intent and object of the instrument cannot be ascertained from the language employed therein. While parol evidence will not be allowed to change a "plain meaning," it may be used to eliminate a doubtful one. *Glenwood, supra*.

In the present case, there is a latent ambiguity in the purchase agreement between plaintiff and defendants. A latent ambiguity exists where the language and meaning is clear on its face, but some

extrinsic fact creates the possibility of more than one meaning. *In re Woodworth Trust*, 196 Mich App 326, 328; 492 NW2d 818 (1992).

Plaintiff presented evidence that established that when plaintiff and defendants agreed to the sale of 6024 Yinger, they intended the transaction to include both Lot 61 and Lot 62, despite the fact that the purchase agreement only listed Lot 62. 6024 Yinger was commonly known to include Lots 61 and 62. The City of Dearborn assessed the property under a single tax bill. In the Certificate of Occupancy Inspection Report for 6024 Yinger, the city required a permit for the basketball court on Lot 61. When defendants purchased the property, it was listed as 6024 Yinger, with the legal description of merely Lot 62, yet they took title to both Lots 61 and 62. Finally, a fence surrounded the two lots, but there was no fence separating the two lots. In light of these facts, we find that the trial court properly admitted parol evidence to determine the intent of the parties when they signed the purchase agreement.

Defendants next claim that the statute of frauds was violated and the trial court erred in ordering defendants to sell Lot 61 to plaintiff, when the purchase agreement only listed Lot 62 as the property to be sold. We disagree. Whether the statute of frauds bars enforcement of a purported contract is a question of law that we review de novo. *Zander v Ogihara Corp*, 213 Mich App 438, 441; 540 NW2d 702 (1995).

Michigan's statute of frauds provides:

> No estate or interest in lands, other than leases for a term not exceeding 1 year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing. [MCL 566.106; MSA 26.906.]

In general, a writing may not leave an essential element to be supplied by parol evidence. *Marina Bay Condominiums v Schlegel*, 167 Mich App 602, 606; 423 NW2d 284 (1988). However, extrinsic evidence is permitted in order to supplement, but not contradict, a description in a contract for the sale of real estate for the purpose of identifying the property, *Farah v Nickola*, 352 Mich 513, 518; 90 NW2d 464 (1958), or to determine the understanding of the parties, *Stanton v Dachille*, 186 Mich App 247, 259; 463 NW2d 479 (1990). In this case, as stated above, the description of the property to be sold in the purchase agreement between plaintiff and defendants was ambiguous. Therefore, the trial court properly admitted extrinsic evidence to identify the property the parties agreed to transfer. The profile sheet indicating that a double lot was for sale and the testimony of plaintiff and the real estate agents established that plaintiff and defendants agreed to the sale of both Lots 61 and 62. Hence, the purchase agreement, which stated that 6024 Yinger was to be sold, supplemented by the extrinsic evidence which established that 6024 Yinger was composed of Lots 61 and 62, satisfied the statute of frauds.

Finally, defendants contend that the trial court erred in not granting separate consideration to defendant Malake Saleh's rights. A husband's contract is binding upon the wife where it is shown that the husband has been invested with the power of a general agent with regard to the management of property or the subject matter of the contract. *Wentworth v Process Installations, Inc*, 122 Mich App 452, 462; 333 NW2d 78 (1983). In *Wentworth*, the wife generally left the operation of the property in question to her husband. The wife knew nothing about the business and acquiesced in all of her husband's business decisions. Because of this, even though the wife never signed the contract, she was bound by the terms of the contract that the husband executed. *Id*.

The present case is slightly distinguishable from *Wentworth* in that Malake Saleh signed the purchase agreement. Nevertheless, the rationale in *Wentworth* applies. Henry Saleh was the general agent of Malake Saleh. The evidence established that she left all decisions regarding the sale of the house to Henry Saleh. Therefore, Malake Saleh is bound to the terms of the contract.

Affirmed. Plaintiff being the prevailing party, she may tax costs pursuant to MCR 7.219.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Mark J. Cavanagh