

STATE OF MICHIGAN
COURT OF APPEALS

INTERNATIONAL CHRISTIAN
MUSIC MINISTRY, INC,

UNPUBLISHED
December 23, 1997

Plaintiff-Appellant,

v

No. 196885
Oakland Circuit Court
LC No. 96-514491 CK

CLAUSEN BUILDINGS, INC,

Defendant-Appellee.

Before: MacKenzie, P.J., and Hood and Hoekstra, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the summary dismissal of its contract action. MCR 2.116(C)(10). We affirm.

Where a contract is performable on the occurrence of a future event, there is an implied agreement that the promisor will place no obstacle in the way of the happening of such event, particularly where it is dependent in whole or in part on his own act. Where the promisor prevents the fulfillment of a condition precedent or its performance by the adverse party, he cannot rely on such condition to defeat his liability. *Mehling v Evening News Ass'n*, 374 Mich 349, 352; 132 NW2d 25 (1965); *Hayes v Beyer*, 284 Mich 60, 64-65; 278 NW 764 (1938). Accordingly, the performance of a condition precedent is discharged or excused, and the conditional promise made an absolute one, where the promisor himself waives the performance. *Mehling, supra*; *Hayes, supra*.

In the instant case, the purchase agreement contains no term that imposes any contractual obligation on defendant to furnish any documents to First Fidelity. Because the terms of the contract imposed no duty on defendant to furnish the documents, defendant's failure to cooperate by providing the documents to First Fidelity did not constitute a breach of any term of the purchase agreement. *Landa v Schmidt*, 362 Mich 561, 568; 107 NW2d 816 (1961); Restatement Contracts 2d (1981), § 245, comment a, p 258. Absent a breach of defendant's contractual obligation, the duty of good faith and fair dealing owed by defendant did not impose upon defendant an obligation to cooperate by taking affirmative steps to assist plaintiff in securing financing for the purchase. *Landa, supra*; Restatement

Contracts 2d (1981), § 245, comment a, p 258. Moreover, because the contract imposes a contractual obligation on plaintiff to secure financing, the duty of good faith only bars defendant from positive interference with plaintiff's efforts to obtain financing. See, generally, *Mehling, supra*, 351-352. The record contains no documentation demonstrating that defendant took affirmative steps to prevent plaintiff from securing the necessary financing.

In light of the foregoing, defendant acted within its contractual rights when it terminated the purchase agreement after plaintiff failed to satisfy the condition precedent set forth in paragraph 3 of the agreement. Summary disposition was properly granted.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Harold Hood

/s/ Joel P. Hoekstra