

STATE OF MICHIGAN
COURT OF APPEALS

HARRY G. DRINKWINE,

Plaintiff-Appellant,

v

ROYAL OAKLAND COMMUNITY CREDIT
UNION,

Defendant-Appellee.

UNPUBLISHED

September 28, 2006

No. 269113

Oakland Circuit Court

LC No. 05-065748-CZ

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's decision to grant summary disposition to defendant. We affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

Plaintiff leased an automobile from Leasing Professionals, Inc., in 2001. The term of the lease was 60 months, but a separate provision allowed for termination on 30 days' notice, after eight monthly lease payments and payment of \$250, plus any monthly payment then due, and "the amount, if any, by which the Lease Balance exceeds the realized value," along with official fees and taxes. Plaintiff asserts that he had oral assurances that he could terminate the lease after eight months of payments simply by tendering an additional \$250, and that he exercised that option.

Plaintiff then leased a second vehicle from Leasing Professionals, the new lease replicating the earlier one, including the provision for early termination. But, according to plaintiff, he again received oral assurances that he could terminate the sixty-month lease after eight months of payments simply by paying a \$250 termination fee. Shortly after the new lease went into effect, however, Leasing Professionals went out of business, and defendant acquired the latter's interest in the lease. When plaintiff sought to exercise the option for early termination in accordance with his oral understanding of how he might do so, defendant refused.

Plaintiff brought suit for specific performance of the alleged oral promise or, alternatively, damages. Defendant moved for summary disposition. In granting the motion, the trial court stated as follows:

[T]his Court finds that the parties intended the written instrument to be a complete expression of their agreement as to the matters covered. The contract . . . contains . . . an expressed integration clause. Therefore, parol evidence on this threshold question is not admissible. Since no ambiguity exists in the contract, no fraud has been alleged and the agreement is not obviously incomplete on its face parol evidence of contract negotiations or of prior or contemporaneous agreements that contradict or vary the written contract will not be admissible to vary the terms of the contract.

We review a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). Contract interpretation likewise presents a question of law, calling for review de novo. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002).

"Parol evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary the written contract, is not admissible to vary the terms of a contract which is clear and unambiguous." *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 492; 579 NW2d 411 (1998) (internal quotation marks and citation omitted). "[W]hen the parties include an integration clause in their written contract, it is conclusive and parol evidence is not admissible to show that the agreement is not integrated except in cases of fraud that invalidate the integration clause or where an agreement is obviously incomplete 'on its face' and, therefore, parol evidence is necessary for the 'filling of gaps.'" *Id.* at 502.

In this case, the parties' agreement includes the statement that "this lease contains your and my entire agreement regarding the leasing of the vehicle and may be amended only in writing signed by the party to be bound." Hoping to avoid the plain terms of this provision, plaintiff relies on a bankruptcy case that held that such clauses are not conclusive in all cases, "particularly when the contract is a pre-printed form drawn by a sophisticated seller, and presented to the buyer without any negotiations as to that particular term." *Eberhardt v Comerica Bank*, 171 BR 239, 243 (Bankr ED Mich, 1994). That federal case thus suggests that an integration provision within what may be characterized as an adhesion contract may for that reason be disregarded. But the Michigan Supreme Court is not so accommodating: "The term 'adhesion contract' may . . . be used to describe a contract for goods or services offered on a take-it-or-leave-it basis. But it may not be used as a justification for creating any adverse presumptions or for failing to enforce a contract as written." *Rory v Continental Ins Co*, 473 Mich 457, 480; 703 NW2d 23 (2005). Accordingly, the pre-printed nature of the lease does not bear on the question of the enforceability of its plain terms.

Plaintiff does not assert that the integration clause is ambiguous, or that the contract as a whole is otherwise lacking in necessary detail. Plaintiff does, however, allege innocent misrepresentation, as a species of fraud. He argues that his "entire reason" for entering into the contract was the oral promise that he could terminate the lease early on the same terms upon which he did so before.

Even assuming that plaintiff received oral assurances of a more generous provision for early termination of the earlier lease than what that lease specified, we nonetheless conclude that the existence of the integration clause rendered any reliance on plaintiff's part on defendant's predecessor's oral representations unreasonable. *UAW-GM, supra* at 504.

Plaintiff additionally argues that he is entitled to relief under the doctrine of promissory estoppel. However, "[p]romissory estoppel is not a doctrine designed to give a party to a negotiated commercial bargain a second bite at the apple in the event it fails to prove breach of contract." *General Aviation, Inc v Cessna Aircraft Co*, 915 F 2d 1038, 1042 (CA 6, 1990) (internal quotation marks and citation omitted). Because a written contract underlies this case, plaintiff's promissory estoppel theory is inapplicable.

For these reasons, we conclude that the trial court correctly enforced the integration clause, and the rest of the contract, as written.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Jessica R. Cooper