STATE OF MICHIGAN

COURT OF APPEALS

BRIAN H. HERSCHFUS,

Plaintiff-Appellee,

v

SOUTHFIELD HOUSING COMMISSION,

Defendant-Appellant.

UNPUBLISHED
August 7, 2003

No. 232316
Oakland Circuit Court
LC No. 97-537605-CK

BRIAN H. HERSCHFUS,

Plaintiff-Appellee,

v

SOUTHFIELD HOUSING COMMISSION,

Defendant-Appellant.

No. 234464
Oakland Circuit Court
LC No. 97-537605-CK

Before: Hoekstra, P.J., and Bandstra and Saad, JJ.

PER CURIAM.

I. Nature of the Case

The Southfield Housing Commission (SHC) asks this Court to reverse a jury award. Though the trial court made numerous rulings that the SHC challenges on appeal, the one dispositive error by the trial court that would have disposed of plaintiff's claim as a matter of law boils down to this: Plaintiff's alleged contract with SHC is illegal and void as a matter of public policy. Put simply, plaintiff, who, as a lawyer, as a Southfield Planning Commissioner, and as an experienced landlord should have known better, intentionally violated, and intentionally refused to comply with, the Southfield Housing Ordinance § 1291. Therefore, plaintiff could not have legally leased the property in question, the Midway house, under the applicable Southfield ordinance or under the requirements of the U.S. Department of Housing and Urban Development (HUD). Accordingly, plaintiff's breach of implied contract claim against the SHC (that SHC wrongfully refused to certify his property as qualified under HUD for rental payments), fails as a matter of law. The trial court should have dismissed plaintiff's claim because the agreement was

illegal and void as a matter of public policy. Thus, we reverse the jury award and dismiss plaintiff's claim against the Southfield Housing Commission.

II. Facts and Procedural History

As stated above, the illegality of this agreement stems from plaintiff's failure to obtain a rental registration certificate from the City of Southfield because the Midway house did not pass the City of Southfield's electrical and building inspection. Southfield Ordinance 1291, § 8.502 provides:

> It shall be unlawful for an owner to rent or lease a dwelling unless a registration certificate has been issued and maintained for the dwelling in the manner required by this Chapter.

The record reflects that the City of Southfield Building Department inspected the Midway house on *April 8, 1991*. The SHC submitted a Building Inspection Check List that says that the house required screens, certain exterior lights, several "grounding type duplex receptacle outlets," a new garbage disposal circuit, stairwell lighting, and replacement "service/entrance (S/E/) cable & meter." The document further provides that the "noted items are expected to be corrected by 5-8-91" and that a re-inspection would be scheduled around that time.

The SHC also submitted a May 14, 1991 letter from Southfield employee Kathy Pogue to plaintiff. The letter states that the Midway house must be registered and inspected every two years to comply with Southfield Ordinance 1291 and that failure to comply with the rule constitutes a misdemeanor. Pogue further stated that plaintiff did not perform the work required to pass the inspection and, therefore, the home could not be registered unless plaintiff performed the work and scheduled a follow-up inspection. Further, Assistant Building Official Kerry Comerford wrote to plaintiff again on October 21, 1991 and stated that plaintiff's application for a registration certificate for Midway was denied because the building was not in compliance with the City Housing Code.

Despite these repeated requests and warnings, plaintiff intentionally refused to comply with the law and, instead, unilaterally told the City he intended to ignore the City of Southfield's Housing Code. The record contains a letter from plaintiff to Kerry Comerford, dated October 29, 1991: Plaintiff's letter states, in part:

> I have decided not to perform such change as the cost would be prohibitive and would not increase the sanitation nor safety of the houses as to habitability. Your requests of me to make the electrical modifications is unconstitutional as you have selected a class of citizens, to wit, Landlords, and have only elected to require them to modify their homes.

Further, plaintiff's letter states that he would not appeal the decision to deny him a Registration Certificate for the house because an "appeal would be worthless as the panel has no ability to derogate from the Ordinance." Thereafter, plaintiff arrogantly concluded:

> Therefore, based on the foregoing I will gladly make any change or modification in the best interest of preserving my investments in these homes and

> in insuring that my tenants live in a safe, and aesthetically pleasing environment. But, I shall not improve my properties to goals set with caprice and at whim.

To obtain Section 8 HUD subsidies, the parties enter into a Lease Addendum which sets forth the rules and terms for obtaining HUD assistance. Also, the SHC and the landlord enter into a Housing Voucher Contract. These agreements provide, in essence, that the rental unit must meet HUD requirements and become the primary contract between the tenant and the landlord. Indeed, plaintiff testified that after reviewing the HUD agreements, he understood that his original lease with the prospective tenant was void because the HUD agreements superceded his "private agreement" with the prospective tenant. Because plaintiff failed to make the improvements on the Midway house, plaintiff never obtained a rental registration certificate as required by section 8.502 of Ordinance 1291 and therefore, could not have entered into a contract to lease the Midway house.

III. Analysis

The essence of defendant's claim is that the trial court should have ruled that any implied contract is void as a matter of law because the Midway house failed the City of Southfield building inspections and plaintiff violated a Southfield ordinance by failing to obtain a Rental Registration Certificate as required by § 8.502 of Ordinance 1291 of the Southfield City Code. It is undisputed that the Midway house passed the HUD housing quality standards inspection, but failed the Southfield building inspection. Again, Southfield Ordinance 1291 requires landlords to obtain a Rental Registration Certificate to lease the property and the purpose of the ordinance is set forth in Section 2, which provides:

> The Southfield City Council specifically finds and determines that rented or leased single-family dwellings militate, unjustly and disparately, the deterioration of neighborhoods in the City of Southfield, as compared with owner-occupied dwellings. The Council further finds that code enforcement efforts under the housing law of Michigan [1917 PA 176, as amended (MCLA 125.401,et seq.)] and City ordinances relating to zoning, building, construction, existing structures, and other topics, are not sufficiently effective in stablizing [sic] the physical deterioration of these neighborhoods. The Council further determines that this rental dwelling registration ordinance is necessary to arrest the potential decline in the quality of housing stock within this community, and to preserve the health, safety and welfare of its residents, present and future.

Southfield Ordinance 1291 also provides a penalty for violating the ordinance in Section 5, as follows:

> Any person who violates this Ordinance shall be guilty of a minor offense, as defined in Section 1(k) of 1927 P.A. 175, as amended [761.1, et seq.] and shall be punished by a fine not exceeding Five Hundred ($500.00) Dollars or by imprisonment for a period not exceeding ninety (90) days, or both such find and imprisonment in the discretion of the court.

The evidence attached to defendant's motions and presented at trial clearly shows that, by entering agreements to rent the Midway house to Johnson, plaintiff violated Ordinance 1291

because (1) the Midway house failed the building inspection, (2) plaintiff failed to obtain a rental Registration Certificate, (3) plaintiff refused to make the improvements required to obtain a Certificate, and (4) plaintiff allowed Johnson to rent the property notwithstanding these failures. The record also reflects that plaintiff knew about the Ordinance and deliberately ignored it by entering a contract with Johnson and attempting to contract with defendant for rental subsidies. While plaintiff asserted to the City of Southfield that he believes the failure to grant him a Rental Registration Certificate was "unconstitutional," plaintiff chose not to appeal the decision as provided in the ordinance and attempted to rent the house in clear violation of applicable law.

As the landlord, it was plaintiff's duty to comply with the applicable federal, state and local laws for maintaining and leasing his house. Thus, plaintiff's assertion before the trial court that defendant "never told him that other inspections were required" rings hollow for two reasons: (1) plaintiff was clearly an experienced landlord dealing both with the Southfield Housing Commission and the City of Southfield (he was a Southfield Planning Commissioner) and (2) it was not the duty of the Southfield Housing Commission to advise plaintiff of other applicable laws beyond the HUD regulations.

"Contracts founded on acts prohibited by a statute, or contracts in violation of public policy, are void." *Michelson v Voison*, 254 Mich App 691, 694; 658 NW2d 188 (2003). This Court has held that, if a "statute precludes entering into an agreement providing exactly what the [disputed] clause states . . . the clause is void and unenforceable as a matter of law." *Mino v Clio School Dist*, 255 Mich App 60, 71; 661 NW2d 586 (2003). In certain cases, a void or illegal provision in a contract may be severed from the agreement so that the remainder of the contract may be enforced. See *Stokes v Millen Roofing Co*, 466 Mich 660, 666; 649 NW2d 371 (2002). The issue, therefore, is whether the illegal provision is "central to the parties' agreement." *Id*.[1]

[1] While the SHC raised this issue at various points during the litigation, we need not base our decision on any particular ruling by the trial court. Indeed, it is the duty of this Court to take notice of illegality *sua sponte* and defendant was not required to plead or amend its affirmative defenses to preserve its claim that the contract is illegal or void as against public policy. See *Meek v Wilson*, 283 Mich 679, 688-689; 278 NW 731 (1938), in which our Supreme Court observed:

> It would be anomalous, indeed, if this court were required to enforce a contract which the record discloses to be against public policy and in contravention of the purposes and provisions of a statute. The rule that a contract against public policy is unenforceable is for the protection of the public at large, and this protection should not be lost because of the lack of diligence of a party to the suit. [Citations omitted.]

See also *Gibson v Martin*, 308 Mich 178, 180-181; 13 NW2d 252 (1944); *Hoekzema v Van Haften*, 313 Mich 417, 423-425; 21 NW2d 183 (1946); *Harwood v Harwood*, 124 Mich App 137, 142-143; 333 NW2d 609 (1983); *Lansing-Lewis Services, Inc v Schmitt*, 188 Mich App 647, 654; 470 NW2d 405 (1991); *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 239; 615 NW2d 241 (2000).

Here, the subject of the contract was the rental of the Midway house to Johnson. Because plaintiff would violate the ordinance by renting the Midway house without a Rental Registration Certificate, any agreement in furtherance of that rental would be a violation of the ordinance. In other words, an implied contract for rental subsidies for the Midway house is entirely dependant on the underlying rental to Johnson which, in itself violates the ordinance. Thus, this Court concludes that the essence of the contract is void for violation of the ordinance.[2]

Plaintiff clearly knew that he could not rent the house to anyone until the house passed inspection and until he obtained a Rental Registration Certificate. Plaintiff nonetheless deliberately entered agreements to rent the house. The onus was on plaintiff to comply with the laws regarding local health, safety and habitability requirements. Also, the local ordinance serves an important public purpose to ensure the health and safety of the tenants as well as to ensure good quality housing and to avoid deterioration. Any implied contract with defendant for subsidies to rent the Midway house to Johnson fails for illegality and is void as against public policy.[3] Again, the subject of the agreement was a direct violation of the Southfield Ordinance - the rental of the Midway house. By local statute, the house was not rentable because it did not pass inspection and plaintiff failed to obtain a Rental Registration Certificate. Furthermore, to enforce the contract would, as in this case, encourage landlords to knowingly flaunt housing code ordinances by purposely violating them.

Therefore, the illegality of any agreement between plaintiff and the SHC to rent the Midway house precludes plaintiff's claim to recover damages based on that alleged agreement.[4] We reverse the jury's award and dismiss plaintiff's claim as void, illegal and contrary to public policy.

/s/ Joel P. Hoekstra
/s/ Richard A. Bandstra
/s/ Henry William Saad

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[2] Here, Ordinance 1291 does not specifically state that contracts entered in violation of the Ordinance are void and unenforceable. However, the essence of the Ordinance and its very terms suggest that a rental agreement without a Rental Registration Certificate is prohibited.

[3] Moreover, under 2 Restatement Contracts, § 178 and the factors set forth in *Kuebler v Equitable Life Assur Soc of the US*, 219 Mich App 1, 11; 555 NW2d 496 (1996), the facts clearly militate against enforcement because of plaintiff's own wrongful conduct.

[4] Because of this conclusion, we need not address the SHC's other arguments on appeal. However, we specifically reverse the trial court's imposition of sanctions on the SHC for filing allegedly frivolous post-trial motions.