

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PETER GRUPPUSO and NANCY GRUPPUSO,

Plaintiffs-Appellees,

v

ANGELO FARACI and MILLIE FARACI,

Defendants-Appellants.

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UNPUBLISHED

March 27, 2001

No. 220993

Macomb Circuit Court

LC No. 97-000234-CK

Before: Doctoroff, P.J., and Holbrook, Jr., and Hoekstra, JJ.

PER CURIAM.

Defendants appeal as of right from an order entering a final judgment for plaintiffs following a favorable jury verdict on plaintiffs' breach of contract claim. We affirm.

Defendants argue, in essence, that the trial court erred in denying their motions for directed verdict and for judgment notwithstanding the verdict (JNOV) because the statute of frauds barred plaintiffs' contract claim for two reasons: (1) there was no required writing regarding an interest in land and (2) there was no required writing regarding a promise to answer for the debt of another.

Whether the statute of frauds bars enforcement of a purported contract is a question of law that this Court reviews de novo. *Zander v Ogihara Corp*, 213 Mich App 438, 441; 540 NW2d 702 (1995). In reviewing whether the trial court erred in denying a motion for a directed verdict or JNOV on the basis of the statute of frauds defense, we must view the evidence and any legitimate inferences arising therefrom in the light most favorable to the nonmoving party to decide if the evidence failed to establish a claim as a matter of law. *Id.*; *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 260; 617 NW2d 777 (2000). When jurors could have honestly drawn different conclusions from the evidence presented, neither this Court nor the trial court may substitute its judgment for that of the jury. *Morinelli, supra* at 260-261; *Zander, supra*.

First, defendants claim that the statute of frauds barred plaintiffs' contract claim because the oral loan agreement constituted an interest in real estate because the agreement gave plaintiffs the right to keep the proceeds from the rental of defendants' parcel of land. Therefore, defendants argue that the agreement had to be in writing pursuant to the statute of frauds provisions dealing with interests in land, MCL 566.106; MSA 26.906 and MCL 566.108; MSA

26.908. However, defendants cite no authority, nor are we aware of any authority, for the proposition that a right to rent land and keep the rental proceeds as a condition of an oral loan agreement constitutes an interest in land within the statute of frauds. We believe that rather than being an interest in land, the right to retain the proceeds from renting out defendants' property is more aptly characterized as an interest in rental proceeds. See *Carr v Leavitt*, 54 Mich 540, 541; 20 NW 576 (1884) (oral agreements to share profits arising from the purchase and sale of real estate are not contracts involving interests in land required to be in writing); see also *Summers v Hoffman*, 341 Mich 686, 697; 69 NW2d 198 (1955) (an agreement to share in profits derived from the sale of realty is not within the statute of frauds). We are satisfied that the trial court did not err in denying defendants' motions for directed verdict and JNOV because the oral loan agreement permitting plaintiffs to retain the rental proceeds did not constitute an interest in land, and thus no writing was required.

Next, defendants maintain that the statute of frauds barred the oral loan agreement because it constituted a promise to answer for the debt of another that required a writing pursuant to MCL 566.132(1)(b); MSA 26.922(1)(b). We disagree. Although an oral promise by a third party to the creditor to pay the debt of another is within the statute of frauds and must be in writing, an oral promise by a third party to the debtor is not within in the statute of frauds and is not required to be in writing. *Pratt v Bates*, 40 Mich 37, 39-40 (1879); *BRB Printing, Inc v Buchanan*, 878 F Supp 1049, 1051 (ED MI, 1995); *Barbour v Thomas*, 7 F Supp 271, 279 (ED MI, 1933).

Here, defendants do not contend that plaintiffs promised the bank holding the mortgage on the parcel of property that they would make the monthly payments. Rather, it is undisputed that the promise to pay defendants' monthly payments on the parcel was made to defendants, not to a creditor. We are satisfied that the trial court did not err in denying defendants' motions for directed verdict and JNOV because plaintiffs' oral promise to defendants to make their monthly payments on the parcel did not constitute a promise to answer for the debt of another, and thus no writing was required.

Finally, defendants argue that the trial court abused its discretion when it denied defendants' motion for new trial after finding that the jury's verdict was not against the great weight of evidence. We disagree. In deciding a motion for new trial on the basis of the great weight of the evidence, a trial court must determine whether the "overwhelming weight of the evidence favors the losing party." *Morinelli, supra* at 261. This Court gives substantial deference to a trial court's conclusion that a verdict was not against the great weight of the evidence and its conclusion is reviewed for an abuse of discretion. *Id.*

In the present case, the jury was confronted with two conflicting versions of events and resolved the conflict in plaintiffs' favor, finding that the parties had a contract for the repayment of a loan and that defendants breached that contract. Although arguably there was evidence offered to support both parties' version of events, the evidence created a question of fact and the jury was in the best position to judge the credibility of the witnesses. *Snell v UACC Midwest, Inc*, 194 Mich App 511, 517; 487 NW2d 772 (1992). The trial court did not abuse its discretion in denying defendants' motion for new trial because the overwhelming weight of the evidence did not favor defendants.

Affirmed.

/s/ Martin M. Doctoroff  
/s/ Donald E. Holbrook, Jr.  
/s/ Joel P. Hoekstra