

STATE OF MICHIGAN
COURT OF APPEALS

PETER HANNI and GONELLAS FOODS, INC.,
Plaintiffs-Intervening Defendants-
Appellees,

UNPUBLISHED
January 29, 2013

and

HANA HANNI,
Plaintiff-Appellee,

v

YPSILANTI SHOPPING CENTER, L.L.C., and
JONATHAN YONO,

Defendants,

No. 305771
Wayne Circuit Court
LC No. 09-022159-CK

and

GEORGE YONO,
Intervening Plaintiff-Appellant.

Before: O'CONNELL, P.J., and DONOFRIO and BECKERING, JJ.

PER CURIAM.

This convoluted action requires us to determine the enforceability of an integrated stock purchase agreement. Plaintiff/intervening defendant Peter Hanni ("Hanni") and intervening plaintiff George Yono ("Yono") executed the agreement to transfer ownership of stock in plaintiff/intervening defendant Gonellas Foods, Inc. ("Gonellas"). The trial court found the agreement enforceable and granted summary disposition in favor of Hanni. Yono appeals by right. Because the record confirms that Yono transferred all of his Gonellas stock when he signed the integrated agreement, we affirm.

From approximately 1994 to 2001, Hanni and Yono each owned 1000 of the 2000 total shares of Gonellas stock. In 2001, Gonellas attempted to obtain a bank loan. A loan broker informed Hanni that the loan would not be approved if Yono was "involved." Similarly, an

accountant who performed bookkeeping and accounting activities for Gonellas indicated that Yono's name was "mud" with all of the banks, and that Yono would have to transfer his stock in order for Gonellas to obtain the loan. An attorney drafted a stock purchase agreement for Yono, Hanni, and Gonellas. On March 9, 2001, Hanni (both as a shareholder and on behalf of Gonellas as president) and Yono (as a shareholder) signed the agreement, which the attorney notarized. The agreement provided that the authorized capital stock of Gonellas consisted of 2,000 shares, and that Yono sold, transferred, and delivered to Hanni 1,000 shares of Gonellas stock for the price of \$1,000. The agreement further provided that, upon completion of the sale, Hanni would "own full legal and equitable title to the common stock of Gonella's [sic] Foods, Inc. currently held by [Yono] and transferred hereunder, free and clear of all liens, charges, pledges, encumbrances, options, rights of first refusal and other claims of any nature whatsoever."

The stock purchase agreement contained an integration clause, which stated: "This Agreement and the Schedules hereto and the other documents delivered pursuant hereto constitute the entire agreement of the parties in respect of the subject matter hereof and supersede all prior statements or agreements among the parties in respect of such subject matter." In addition, Yono, as the seller, represented and warrantied that the agreement was "a valid and binding obligation of Seller" and was "enforceable in accordance with its terms." These provisions rendered the stock purchase agreement an integrated agreement.¹

Yono now attempts to set aside the trial court's ruling enforcing the integrated agreement. Yono claims the agreement was a sham executed for the sole purpose of defrauding the bank into lending money to Gonellas. We review de novo the trial court's ruling.² *Dancey v Travelers Prop Cas Co*, 288 Mich App 1, 7; 792 NW2d 372 (2010). "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). This Court considers the pleadings and the other relevant record evidence in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial. *Dancey*, 288 Mich App at 7.

In this case, the parol-evidence rule precludes Yono from presenting the extrinsic evidence that he contends would invalidate the agreement. This Court has summarized the parol-evidence rule as follows: "[p]arol evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary the written contract, is not admissible to

¹ An "integrated agreement" is a "writing or writings constituting a final expression of one or more terms of an agreement." Restatement Contracts, 2d, § 209, p 115.

² The trial court did not specify the court rule under which it granted summary disposition. However, the parties and the trial court relied on evidence outside of the pleadings; therefore, we review this case under MCR 2.116(C)(10). See *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 457; 750 NW2d 615 (2008) ("Where a motion for summary disposition is brought under both MCR 2.116(C)(8) and (C)(10), but the parties and the trial court relied on matters outside the pleadings, as is the case here, MCR 2.116(C)(10) is the appropriate basis for review.").

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), quoting *Schmude Oil Co v Omar Operating Co*, 184 Mich App 574, 580; 458 NW2d 659 (1990). In its holding, the *UAW-GM* Court explained the effect of an integration clause on the application of the parol evidence rule, “[W]hen 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, quoting 3 Corbin, Contracts, § 578, p 411.

Yono maintains that the trial court should have given credence to the parol evidence Yono offered. According to Yono, a court must consider parol evidence offered to prove a written agreement was a sham. We disagree. Parol evidence may, in certain circumstances, be admissible to show that a writing was a sham. *UAW-GM*, 492 Mich App 493, citing *NAG Enterprises, Inc v All State Indus, Inc*, 407 Mich 407, 410-411; 285 NW2d 770 (1979). In this case, however, the integration clause and the accompanying representation and warranty preclude consideration of parol evidence. See *UAW-GM*, 492 Mich App at 493 (distinguishing cases that lacked explicit integration clauses).

Relying on a line of cases that allowed consideration of parol evidence, Yono insists that his proffered parol evidence must be considered in this case. The line of cases is unpersuasive, however, because none of the written agreements in those cases presented integration clauses. For example, in one of the earliest cases, *Church v Case*, 110 Mich 621; 68 NW 424 (1896), the parties executed a mortgage and made a separate oral agreement to forgive the mortgage. Our Supreme Court allowed consideration of parol evidence to show that the mortgage was void. *Id.* at 624. Nothing in the Court’s decision, however, indicated that the mortgage had an integration clause. Similarly, in *Woodard v Walker*, 192 Mich 188; 158 NW 846 (1916), a successor creditor sought to enforce a mortgage against a debtor, even though the original creditor had not sought a mortgage payment for 23 years. *Id.* at 191. Our Supreme Court allowed consideration of parol evidence against the creditor. *Id.* at 191-192. The Court’s decision made no mention of any integration clause. Likewise, there was no mention of integration clauses in three subsequent land contract cases in which our Supreme Court allowed parol evidence: *Roosevelt Park Protestant Reformed Church v London*, 293 Mich 547, 554-555; 292 NW 486 (1940) (upholding consideration of parol evidence but holding that plaintiff failed to meet burden of showing a sham); *Mardon v Ferris*, 328 Mich 398, 401-402; 43 NW2d 904 (1950) (no injustice in binding the defendant to a prior oral agreement); and *Tepsich v Howe Constr Co*, 377 Mich 18, 23-25; 138 NW2d 376 (1965) (trial court could consider parol evidence to the effect that a quit claim deed was never intended to extinguish a reconveyance option). Lastly, in *Harwood v Randolph Harwood, Inc*, 124 Mich App 137, 142-143; 333 NW2d 609 (1983), this Court allowed consideration of parol evidence to establish that an employment contract was merely an instrument to hide taxable income. The Court made no reference to an integration clause.³

³ In addition, many of the cases that allowed parol evidence presented equitable considerations that arose from a substantial change in position by one of the parties. For example, in *Church*,

In sum, Michigan case law indicates that the integrated agreement in this case precludes consideration of parol evidence. Yono's attempt to introduce parol evidence at this juncture appears to be a matter of convenience. In other words, Yono was willing to appear to be bound by the agreement when it was convenient for him to do so, but he is unwilling to continue to be bound now that it is inconvenient for him. To allow the consideration of Yono's proffered parol evidence would be to ignore the plain terms of the integrated stock purchase agreement and would disrupt the reliability of the written contract in this business transaction. Consequently, the trial court was correct to enforce the agreement as written.

Affirmed.

/s/ Peter D. O'Connell

/s/ Pat M. Donofrio

110 Mich 621, parol evidence established that one of the parties had moved his family from Illinois to Michigan to take over a farm in reliance on an oral agreement. *Id.* at 622. In *Woodard*, 192 Mich 188, parol evidence showed that one party sold his farm and moved to another farm at the other party's request, and then worked the farm for two decades in reliance on an oral agreement. *Id.* at 189-191. And, in *Mardon*, 328 Mich 398, parol evidence indicated that the plaintiffs constructed a house at twice the cost listed in the purchase agreement, in reliance on the defendant's oral promise to pay for additional labor and materials. *Id.* at 399-400.