

STATE OF MICHIGAN
COURT OF APPEALS

LOT 13 COMMERCE ROAD, L.L.C., MICHAEL
A. CONN, and MAX CARPENTER,

UNPUBLISHED
April 25, 2000

Plaintiffs-Appellants,

v

No. 209760
Genesee Circuit Court
LC No. 96-052814-CZ

R.L. WHITE DEVELOPMENT CORPORATION,

Defendant-Appellee.

Before: Hood, P.J., and Gage and Whitbeck, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting partial summary disposition in favor of defendant pursuant to MCR 2.116(C)(8).¹ We affirm.

Plaintiffs owned Lot 14, a parcel of land located in Flint Township. Defendant owned Lot 13, a contiguous parcel, and other parcels of land contiguous to plaintiffs' Lot 14. Although plaintiffs began to develop Lot 14, the parties agreed to exchange Lots 14 and 13. The parties executed a written real estate exchange agreement, which provided, in pertinent part:

The parties have agreed that the two lots are of approximately equal value and for valid mutual business purposes the parties have agreed to exchange the lots so that Carpenter/Conn [plaintiffs], together with their wives, will convey Lot 14 to White [defendant] and White [defendant] will convey Lot 13 to Carpenter/Conn [plaintiffs]. Lot 14 is presently encumbered by a mortgage . . . Carpenter/Conn [plaintiffs] have agreed to pay the Mortgage indebtedness and cause the same to be discharged of record on or before September 20, 1996.

* * *

5. No other payments are to be paid by one party to the other in consideration of the exchange of the lots. . . .

Plaintiffs subsequently filed this action for breach of contract, alleging that the parties had entered into a prior oral agreement that obligated defendant to pay certain sums of money in exchange for plaintiffs' agreement to relocate their development efforts to Lot 13. Plaintiffs alleged that the monetary exchange included "a sum of money . . . in the amount of the then outstanding mortgage on Lot 14." Defendant moved for summary disposition pursuant to MCR 2.116(C)(8), arguing that the parol evidence rule operated to preclude any alleged prior oral agreement from varying the terms of the written real estate exchange agreement. The trial court granted partial summary disposition based on the parol evidence rule.

Plaintiff argues that the alleged prior oral agreement was entirely separate from the written real estate exchange agreement because the oral contract addressed the inducement to relocate the development projects, while the written contract governed the actual transfer of property between the parties. We disagree. A trial court may grant summary disposition of a claim on the ground that the opposing party has failed to state a claim upon which relief can be granted. MCR 2.116(C)(8); *Horace v Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. MCR 2.116(G)(5); *Simko v Blake*, 448 Mich 648, 654; 532 NW2d 842 (1995). However, in an action alleging breach of contract, the court may examine the contract in conjunction with a motion for summary disposition for failure to state a claim. *Woody v Tamer*, 158 Mich App 764, 770; 405 NW2d 213 (1987). Our review of a summary disposition decision is de novo. *Horace, supra*.

Parol evidence of contract negotiations, addressing prior or contemporaneous agreements that contradict or vary the terms of a written contract, is not admissible to vary the terms of a contract which is clear and unambiguous. *UAW-GM Human Resource Center v KSL Recreational Corp*, 228 Mich App 486, 492; 579 NW2d 411 (1998), quoting *Schmude Oil Co v Omar Operating Co*, 184 Mich App 574, 480; 458 NW2d 659 (1990). The purpose of the rule is to give stability to written contracts; otherwise, either party may seek to avoid contractual obligations by testifying that a contemporaneous oral agreement released him from his written obligations. *UAW, supra*, citing 4 Williston, Contracts, § 631.

The trial court properly granted partial summary disposition in favor of defendant pursuant to MCR 2.116(C)(8) based on the parol evidence rule. The parties' written contract provides that plaintiffs, not defendant, were to pay the mortgage encumbering Lot 14. Furthermore, the contract expressly provides that "No other payments are to be paid by one party to the other in consideration of the exchange of lots." Although plaintiffs have taken great pains to characterize the alleged oral agreement as addressing a subject entirely separate from the actual exchange of lots contemplated in the parties' written contract, the agreement to relocate plaintiffs' development can only be considered, logically, as an intrinsic part of the real estate exchange agreement as a whole. An exercise in semantics will not operate to preclude summary disposition. *Macomb Co Prosecutor v Murphy*, 233 Mich App 372, 383-384; 592 NW2d 745 (1999). The parties' failure to incorporate the substance of any alleged oral agreement into the real estate exchange contract is fatal to plaintiff's breach of contract claim seeking payment of the mortgage

when any alleged oral agreement contradicts the written contract. Therefore, the trial court did not err in granting partial summary disposition in favor of defendant.

Affirmed.

/s/ Harold Hood

/s/ Hilda R. Gage

/s/ William C. Whitbeck

¹ The trial court held that plaintiffs' claim regarding the mortgage was superseded by the written contract. However, to the extent that plaintiff also claimed entitlement to fees for additional services that were not encompassed in the original contract, summary disposition was improper, and those claims remained. The parties stipulated to dismiss those claims to raise the issue of dismissal of the mortgage claim before this Court. The parties do not dispute that various claims for damages encompass the one count of breach of contract raised in plaintiff's amended complaint.