

STATE OF MICHIGAN
COURT OF APPEALS

JOHN G. MULARONI,

Plaintiff-Appellee,

v

GERMANO MULARONI, GERMANO
MANAGEMENT COMPANY, FRENCHMAN'S
LANDING, LLC, and GERMANO MULARONI
FAMILY TRUST,

Defendants-Appellants.

UNPUBLISHED

January 11, 2005

No. 251282

Wayne Circuit Court

LC No. 01-124007-CK

Before: Talbot, P.J., and Griffin and Wilder, JJ.

PER CURIAM.

In this breach of contract action involving a father and son, defendants appeal as of right the \$2,125,000 jury verdict in favor of plaintiff. We reverse.

Defendants argue on appeal that the trial court erred in denying defendants' motion for summary disposition on plaintiff's breach of contract claim, and in admitting parol evidence to expand the written agreement. We agree. Defendants moved for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support of a claim. The motion should be granted if the evidence demonstrates that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001), citations omitted. A motion under MCR 2.116(C)(8) tests the "legal sufficiency of the complaint on the basis of the pleadings alone." *Mack v Detroit*, 467 Mich 186, 193; 649 NW2d 47 (2002). The admission of evidence is reviewed for an abuse of discretion. *People v Jones*, 240 Mich App 704, 706; 613 NW2d 411 (2000).

Here, the agreement at issue provided that, if the parties "desire[d] to pursue the purchase of [a particular] property and exercise the option, [they] agree[d] to form a limited liability company or other entity to be mutually agreed upon . . . which shall govern their respective right[s], title, interest, duties[,] responsibilities and liabilities with respect to the . . . property and any future development thereof." In short, as defendants argue, the clear language of the agreement presented "an agreement to agree." The agreement also provided that it "contains the entire understanding among the parties hereto concerning the subject matter hereof; it supersedes any and all prior agreements or negotiations of the parties with respect to the subject matter."

The trial court denied defendants' motion for summary disposition, and allowed parol evidence at trial concerning conversations between the parties prior to execution of the agreement. In those previous conversations, plaintiff recollected that his father had promised him 50% of the profit from the eventual development of the subject property, while defendant recalled promising his son 50% of the development and rezoning fees.

A contract must be interpreted and enforced according to its plain and ordinary meaning. *Meagher v Wayne State Univ*, 222 Mich App 700, 722; 565 NW2d 401 (1997). "Parol evidence is not admissible to vary a contract that is clear and unambiguous." *Id.*

An agreement to make a subsequent contract is not per se unenforceable. *Opdyke Investment v Norris Grain*, 413 Mich 354, 359; 320 NW2d 836 (1982).

Like any other contract, a contract to make a contract can fail for indefiniteness if the trier of fact finds that it does not include an essential term to be incorporated into the final contract. Similarly, if the agreement is conditioned on the happening of a future event that, through no fault of the parties, never happens, liability does not attach. [*Id.*]

Clear and unambiguous language may not be rewritten under the guise of interpretation. *SMDA v American Ins (On Remand)*, 225 Mich App 635, 653; 572 NW2d 686 (1997).

Here, although defendants exercised the option on the subject property and proposed the terms of a limited liability agreement, plaintiff rejected the proposal and, rather than negotiate its terms to a point of mutual agreement, filed this action. Thus, the LLC that would have governed the parties' "respective right[s], title, interest, duties[,] responsibilities and liabilities" was never created. Further, as in *Opdyke, supra*, "[t]he fact that the parties in this case expressly left certain matters to be negotiated in the future is some evidence" that the agreement was "not intended to be a binding contract." Here, the unambiguous language of the agreement left virtually all "right[s], title, interest, duties[,] responsibilities and liabilities" to future negotiations. In addition, because the agreement was not ambiguous, and because it specifically superceded any previous agreements between the parties, it was an abuse of discretion to admit evidence of their previous oral agreements. *Meagher, supra*.

In light of our decision, we need not address defendants' remaining issues.

Reversed.

/s/ Michael J. Talbot
/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder