STATE OF MICHIGAN

COURT OF APPEALS

ERNESTINE DOROTHY MICHELSON,

Plaintiff-Appellee,

v

GLENN A. VOISON and VOISON AGENCY, INC.,

Defendants,

and

FUTURE FIRST FINANCIAL GROUP, INC., RANDY STELK, FIDELITY GROUP, INC., and CHARLES R. SUSSMAN,

Defendant-Appellants.

FOR PUBLICATION
January 10, 2003
9:10 a.m.

No. 233114
Saginaw Circuit Court
LC No. 00-035186-CK

Updated Copy
March 14, 2003

Before: Neff, P.J., and Hoekstra and O'Connell, JJ.

HOEKSTRA, J. *(dissenting).*

I respectfully dissent. At issue in this case is whether plaintiff must submit to arbitration of her dispute with defendants regarding an agreement to purchase a viatical settlement. The trial court held, and the majority agrees, that the arbitration provision of the agreement to purchase a viatical settlement is unenforceable because the agreement itself is void. I conclude that the agreement to purchase a viatical settlement is not void and that plaintiff therefore is obligated to submit to arbitration.

Whether the parties' agreement for the purchase of a viatical settlement is void and unenforceable is controlled by this Court's decision in *Maids Int'l, Inc v Saunders, Inc*, 224 Mich App 508; 569 NW2d 857 (1997). There, the plaintiff sold franchises to the defendants and brought an action to recover fees and royalties allegedly owed under the terms of the franchise agreements. *Id.* at 509. The trial court, relying on the well-established principle that contracts founded on acts that are prohibited by statute, or contracts in violation of public policy, are void, held that the franchise agreements between the parties were void and unenforceable because the agreements were entered into at a time when the plaintiff was in violation of Michigan's Franchise Investment Law (FIL), MCL 445.1501 *et seq*. *Maids, supra* at 510-512. This Court reversed, determining that the franchise contracts between the parties were not void because "[e]ntering into a franchisee-franchisor relationship violates neither public policy nor any statute of which we are aware." *Id*. at 511. This Court explained that the Legislature, by enacting the FIL, recognized the validity of franchise agreements. Further, this Court noted that the FIL sets forth the various requirements a franchisor must meet for selling franchises in this state and sets forth the penalties for violating those requirements. Thus, this Court concluded: "There is no support for the trial court's conclusion plaintiff's violation rendered the contract void and unenforceable. Defendants' attempt to use a general public policy argument must fail where the Legislature has clearly addressed the public policy of the matter at issue." *Id*. at 512.

I believe that this Court's analysis in *Maids* applies to the resolution of whether the agreement to purchase a viatical settlement in the present case is void and unenforceable. The majority here holds that a viatical settlement is a security that is subject to the Michigan Uniform Securities Act (MUSA), MCL 451.501 *et seq*., and that the agreement to purchase a viatical settlement, including the provision to arbitrate disputes arising from the agreement, is void because defendants were not licensed or registered to sell securities in Michigan as required by the MUSA. The majority, however, engages in the same reasoning that this Court rejected in *Maids*. Selling a viatical settlement in violation of the requirements of the MUSA does not void the agreement to purchase a viatical settlement for the same reason that selling a franchise in violation of the FIL does not void a franchise agreement. The *Maids* Court recognized that there is a difference between doing an act in violation of the requirements of statutes that regulate that act, and the doing of an act that a statute specifically prohibits. The latter can result in a contract being voided because it is contrary to the statute and public policy; however, the former is merely subject to the penalties provided in the statute. Here, defendants' alleged violation of the MUSA is failing to register or to be licensed to sell securities in violation of the requirements of MUSA. That being the case, plaintiff's remedies lie within the penalties provided in the MUSA, but do not include having the purchase agreement declared void for being in violation of a statute or being contrary to public policy.

Consequently, I disagree with the majority's holding that the agreement to purchase a viatical settlement is void. Because the agreement is not void, the arbitration provisions of the agreement are valid and enforceable.[1] I would reverse and remand with instructions to grant defendant's motion for summary disposition and to compel arbitration.

/s/ Joel P. Hoekstra

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[1] I would also find without merit plaintiff's other claim that the arbitration agreement is unenforceable because the contract does not implicate interstate commerce. The agreement that plaintiff signed is with a Florida company and presumably the viator also is not a Michigan resident.