

STATE OF MICHIGAN
COURT OF APPEALS

RIVER BEND ESTATES, INC., a Michigan
Corporation,

UNPUBLISHED
January 17, 1997

Plaintiff-Appellant,

v

No. 183992
Grand Traverse County
LC No. 92-010677-CK

CASZ, INC., a Michigan Corporation, CASIMER A.
ZAREMBA, as President and in his individual capacity,
WALTER ZAREMBA and RONALD WILLMES,
jointly and severally,

Defendants-Appellees.

Before: Doctoroff, C.J., and Wahls and Smolenski, JJ.

PER CURIAM.

In this breach of contract case, plaintiff River Bend Estates, Inc., appeals as of right a judgment entered on a jury verdict of no cause of action. We affirm.

Plaintiff argues that the trial court erred in denying plaintiff's motion in limine. The motion contended that where defendants filed an affidavit of interest with the county register of deeds concerning the subject real property, no question of fact remained for the jury's determination that defendants waived their right to withdraw their offer to purchase the property. The trial court denied plaintiff's motion before the parties' opening statements on the ground that factual development was necessary concerning what the parties had agreed to or intended with respect to the affidavit. During trial, some evidence was presented that plaintiff's president, Eugene Kraus, knew about and acquiesced in the filing of the affidavit. In denying plaintiff's renewal of the motion after the parties had rested their cases, the trial court concluded that in light of this evidence it could not take the issue of waiver from the jury. Where the existence of a waiver is generally a jury question, we conclude that the trial court did not err in denying plaintiff's motion. *Cascade Electric Co v Rice*, 70 Mich App 420, 424; 245 NW2d 774 (1976).

Plaintiff also argues that the affidavit constituted a constructive option contract and that the terms of the purchase agreement prevented an oral modification of the agreement. However, we decline to address these issues where plaintiff failed to raise them before the trial court. *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992).

Finally, we conclude that the trial court did not abuse its discretion in failing to give plaintiff's nonstandard jury instruction 4A. *Bordeaux v The Celotex Corp*, 203 Mich App 158, 169; 511 NW2d 899 (1993).

Affirmed.

/s/ Myron H. Wahls

/s/ Michael R. Smolenski

I concur in result only.

/s/ Martin M. Doctoroff