STATE OF MICHIGAN

COURT OF APPEALS

TIMOTHY E. REARDON,

Plaintiff-Appellant,

v

GERALD B. LAUTNER and MARY G. LAUTNER,

Defendants-Appellees.

UNPUBLISHED
September 2, 1997

No. 194793
Grand Traverse Circuit
LC No. 95-013095-CH

Before: Young, P.J., and Doctoroff and Cavanagh, JJ.

PER CURIAM.

In this breach of contract action, plaintiff appeals as of right from the trial court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse and remand for further proceedings.

Plaintiff was a member of a partnership that entered into an agreement to purchase a parcel of real property from defendants. The partnership defaulted in payment on the land contract, and defendants demanded that the partnership execute a release of the contract, threatening litigation for forfeiture or foreclosure if the release were not executed. On the same day that the partnership executed a release of the contract, plaintiff and defendants signed a memorandum agreement providing that plaintiff would have a six-week exclusive option for the purchase of the land. Defendants later withdrew their consent to the agreement, and plaintiff filed a complaint alleging breach of contract.

On appeal, an order granting or denying summary disposition is reviewed de novo. A motion for summary disposition may be granted pursuant to MCR 2.116(C)(10) when, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Giving the benefit of reasonable doubt to the nonmovant, the trial court must determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Plieth v St Raymond Church*, 210 Mich App 568, 571; 534 NW2d 164 (1995).

On appeal, plaintiff argues that the trial court erred in finding both that the memorandum agreement did not constitute an enforceable contract and that there was no genuine issue of material fact regarding the consideration to defendants for execution of the memorandum agreement. We agree.

Where contractual language is clear, its construction is a question of law and is therefore reviewed de novo. *Pakideh v Franklin Commercial Mortgage Group, Inc*, 213 Mich App 636, 640; 540 NW2d 777 (1995). Where the contract language is unclear or susceptible to multiple meanings, interpretation becomes a question of fact. *Port Huron Education Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996).

Options for purchasing land, if based on valid consideration, are contracts which may be specifically enforced. *Bd of Control of Eastern Michigan University v Burgess*, 45 Mich App 183, 185; 206 NW2d 256 (1973). The trial court held that the consideration to defendants for the memorandum agreement was the payment of $500. The trial court then ruled that because the $500 was not tendered until after plaintiff was notified that any offer was withdrawn, there was no legally enforceable agreement.[1]

The memorandum is entitled "PROPOSED OPTION AGREEMENT COMPONENTS." The relevant provision of the memorandum agreement states:

1. Grant of Exclusive Option	$500 for a six-week option to purchase property with amount paid credited against the purchase price in the event option is exercised; any amounts paid in option extension(s) will also be credited.

The trial court found that the text of the document contained sufficient terms such that it could be construed as the option contract itself. However, we conclude that the conflict between the title and the text of the document render it ambiguous as to whether the memorandum agreement is the option for which $500 is to be paid, or whether the memorandum agreement is referring to a future option contract for which $500 is to be paid. Because the contract is susceptible to multiple constructions, interpretation is a question for the trier of fact. See *Port Huron Education Ass'n*, *supra*.

We further conclude that the trial court erred in finding plaintiff's execution of the release and surrender of the land contract, dated the same day as the memorandum agreement, could not constitute the consideration for defendants' assent to the memorandum agreement. Settlement of litigation is ordinarily sufficient to serve as consideration for a new promise, as the other party would therefore be spared the time and expense of litigating a claim of foreclosure or forfeiture. *Smilansky v Mandel Brothers*, 254 Mich 575, 579; 236 NW 866 (1931). Thus, the trial court erred as a matter of law in holding that plaintiff's execution of the release and surrender of the land contract was inadequate consideration for defendants' consent to the memorandum agreement. Whether there was consideration for a promise is a question for the trier of fact. *Koenig v South Haven*, 221 Mich App 711, 722; 562 NW2d 509 (1997). Because the parties dispute whether they intended avoidance of litigation to be consideration for the alleged agreement, the identification of the consideration for the agreement is an issue for the factfinder.

Defendants argue that if plaintiff had intended the settlement of the prior litigation to be the consideration for the memorandum, he could have specifically stated that in the memorandum. However, pursuant to MCL 566.109; MSA 26.909, plaintiff was not required to set forth the consideration in the document itself. See *In re Skotzke Estate*, 216 Mich App 247, 250; 548 NW2d 695 (1996). Defendants also contend that plaintiff's agreement with Gel, Inc., establishes that plaintiff intended and understood the memorandum agreement to be a six-week option agreement and not simply an agreement to enter into a future contract. However, this is an argument that must be made to the trier of fact.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiff being the prevailing party, he may tax costs pursuant to MCR 7.219.

/s/ Robert P. Young
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh

[1] We note that the trial court erred in finding that until plaintiff tendered the $500, defendants were free to revoke the "offer." Viewing the facts in the light most favorable to plaintiff, the memorandum was not an offer (and certainly not an offer by *defendants*), but rather an agreement that was initialed by all parties. Defendants rely on *Burgess*, *supra*; however, *Burgess* is distinguishable because in that case the plaintiff never tendered the agreed-upon consideration. The memorandum agreement contains no time period for the submission of the $500, and plaintiff never indicated that he did not intend to perform. Thus, if the memorandum is a valid contract, it appears that defendants' attorney's letter to plaintiff and the subsequent refusal of the $500 constituted a repudiation of the contract for which plaintiff is entitled to bring suit for damages, including specific performance. See 2 Farnsworth on Contracts, § 8.22, p 480 & n 1.