

STATE OF MICHIGAN
COURT OF APPEALS

MFC FIRST NATIONAL BANK,

Plaintiff-Appellee,

v

GITCHE GUMEE OIL COMPANY,

Defendant-Appellant.

UNPUBLISHED

November 24, 1998

No. 204673

Houghton Circuit Court

LC No. 96-009843 CK

Before: Saad, P.J., and Hood and Gribbs, JJ.

PER CURIAM.

In this land contract action, defendant appeals as of right from a declaratory judgment and order requiring defendant to deliver a warranty deed to plaintiff in return for payment of the outstanding balance on the land contract. We affirm.

First, defendant argues that it was entitled to a jury trial. We do not agree. In its initial complaint, plaintiff sought declaratory relief and to quiet title -- in essence, it brought an action for specific performance of a land contract. An action for specific performance of a contract involving real property is an equitable action, particularly where the balance owing is in dispute and must be determined before ordering specific performance. *Johnson v Douglas*, 281 Mich 247, 260; 274 NW 780 (1937). Similarly, plaintiff's particular requests for declaratory relief and to quiet title are actions in equity. *Universal Am-Can Ltd v Attorney General*, 197 Mich App 34, 37; 494 NW2d 787 (1992); *Michigan National Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992). Where the relief sought is equitable in nature, a defendant has no right to a jury trial. *McDonald Ford v Ford Motor Co*, 165 Mich App 321, 324; 418 NW2d 716 (1987).

Defendant's reliance on *Goldblum v Ford Local No 50*, 319 Mich 30; 29 NW2d 310 (1947), and *Oakley v Duluth Superior Dredging Co*, 223 Mich 478; 194 NW 123 (1923), is misplaced. Defendant has attempted to merge the distinctions between legal and equitable *actions*, and legal and factual *questions*. In *Goldblum*, we determined that whether a party was justified in abandoning a contract was a matter for the jury to determine. *Goldblum, supra* at 39. However, in *Goldblum* the underlying suit was an action for damages for breach of contract -- a legal action, not an equitable action. The case had been tried in the lower court, appropriately, before a jury. *Id.* at 36.

We held that the trial court erred in directing a verdict for defendant. Rather, the lower court should have let the jury determine whether the plaintiff was justified in abandoning the contract. *Id.* at 39. Thus, contract abandonment is a factual issue, properly left to the *trier of fact*, but the mere existence of this factual issue does not transform an otherwise equitable action into an action at law.

Defendant's reliance on *Oakley* is similarly misplaced. *Oakley*, again, was a suit for damages for breach of contract, and was properly before a jury. *Id.* at 480-481. We indicated that abandonment was "a question of fact for the jury." *Id.* at 482. This, again, was an instruction to the lower court to not treat abandonment as a legal issue, but rather, to leave it to the trier of fact -- in that case, the jury. In a legal action, the trier of fact will often be a jury. However, in an equitable action, as is present here, the court is the trier of fact.

Defendant is correct in noting that the summary proceedings act provides a right to a jury trial. MCL 600.5738; MSA 27A.5738. However, although defendant may have had the right to utilize the summary proceedings act as one method of accomplishing a forfeiture, this was never done. In fact, defendant's primary argument on this issue has been that, because the property was abandoned, defendant was not required to use the statutory forfeiture procedures. Consequently, defendant has never raised a claim under the provisions of the summary proceedings act. Moreover, plaintiff's complaint did not base the claim on the summary proceedings act. Therefore, the jury provision within that act is inapplicable.

Defendant next claims that plaintiff forfeited the property, and therefore had no legal interest in the land when this suit was filed. There are a number of ways in which a vendor may reclaim property subject to a land contract. One such method is a statutory foreclosure action. MCL 600.3101 *et seq.*; MSA 27A.3101 *et seq.* A second method is to utilize the summary proceedings act, asking that the court deem a vendee's property interest forfeited. MCL 600.5741; MSA 27A.5741. Defendant did not initiate either a foreclosure action or a forfeiture action against plaintiff. We have held, however, that a vendor need not make use of the judicial foreclosure or forfeiture proceedings when a vendee has defaulted on a land contract and has abandoned the property. *Day v Lacchia*, 175 Mich App 363, 374; 437 NW2d 400 (1989). Defendant relies on this common-law theory of self-help forfeiture.

Plaintiff and its predecessors were in default on the land contract a number of times between 1992 and 1997. Defendant clearly had grounds to exercise its contractual default rights throughout those years, and now claims that forfeiture was accomplished through self-help; defendant claims that the original vendee (and later, plaintiff) abandoned the property and that therefore defendant took possession. Defendant interpreted a number plaintiff's and its predecessor's actions as abandonment of the property. We note that there is ample evidence on the record to support a conclusion that the property was not abandoned. But because we find that defendant did not take possession of the property, as required to accomplish common-law forfeiture, *Day, supra* at 374, we need not examine each alleged act of abandonment. From August 1991 until November 1995, the property was under the jurisdiction of the bankruptcy court, and provisions of the bankruptcy act precluded foreclosure or forfeiture absent the court's approval. 11 USC 362. Thus, defendant could not have taken legal possession during that time period. During the spring and summer of 1996, plaintiff and defendant

attempted to informally negotiate a final payoff amount on the land contract. Only when those negotiations failed did defendant threaten to exercise the contractual forfeiture provisions. Defendant's act of leasing the property to a third party may have been interpreted as an act of possession, but plaintiff immediately filed a notice to quit, and this suit was filed thereafter. Therefore, we find that defendant did not take possession of the property. Regardless, we have stated that "a court of equity has the power to relieve the defaulting purchaser from the forfeiture and to compel specific performance by the seller when in the court's judgment to do otherwise would result in an unreasonable forfeiture." *Rothenberg v Follman*, 19 Mich App 383, 388-389; 172 NW2d 845 (1969). Consequently, the trial court had the power to enforce the contract in *equity*, despite the alleged forfeiture.

Affirmed.

/s/ Henry William Saad

/s/ Harold Hood

/s/ Roman S. Gribbs