

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE ESHO and AZHAR ESHO,

Plaintiffs-Appellants,

v

IRENE GILBERT SICHERMAN,

Defendant-Appellee.

UNPUBLISHED

February 19, 1999

No. 203777

Oakland Circuit Court

LC No. 96-531183 CH

Before: Gribbs, P.J., and Saad and P. H. Chamberlain,* JJ.

MEMORANDUM.

Plaintiffs George Esho and Azhar Esho appeal by right the circuit court order granting defendant Irene Gilbert Sicherman's motion for summary disposition and dismissing their complaint. We affirm.

On July 18, 1996 the parties entered into an agreement pursuant to which plaintiffs agreed to purchase and defendant agreed to sell a residential home. The agreement was contingent upon plaintiffs securing a mortgage. Plaintiffs were to apply for a mortgage within ten days of the date of the agreement. If a "firm commitment" for a mortgage could not be obtained within fifty days of the date of the agreement, defendant could declare the agreement null and void. Closing was scheduled for September 20, 1996, or another mutually agreeable date.

By letter dated September 3, 1996 Worldwide Financial Corporation notified plaintiffs that their application for a mortgage had been approved. The letter indicated that four conditions had to be met prior to closing. Defendant was not informed that plaintiffs' application had been approved. By letter dated September 6, 1996, fifty days after acceptance of the agreement, defendant informed plaintiff that the agreement was null and void.

Plaintiffs filed a complaint seeking specific performance and/or damages. Both parties moved for summary disposition pursuant to MCR 2.116(C)(10). The trial court denied plaintiffs' motion, granted defendant's motion, and dismissed plaintiff's complaint.

* Circuit judge, sitting on the Court of Appeals by assignment.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 202; 544 NW2d 727 (1996).

On appeal plaintiffs argue that because they obtained a mortgage within fifty days they avoided the voidability clause, notwithstanding the fact that they did not notify defendant that the mortgage existed. Plaintiffs assert that any ambiguity in the agreement must be construed against defendant because she drafted the document. *Brauer v Hobbs*, 151 Mich App 769, 774; 391 NW2d 482 (1986). Moreover, plaintiffs contend that the mortgage agreement was a firm commitment notwithstanding the stated conditions. Those conditions were to be satisfied by the date of closing, and did not affect Worldwide's decision to lend the funds.

We disagree, and affirm the trial court's decision. Plaintiffs' assertion that the agreement did not require them to inform defendant that they had obtained a mortgage is without merit. Reasonable and fair construction of contractual terms is preferred. *Schroeder v Terra Energy, Ltd*, 223 Mich App 176, 188; 565 NW2d 887 (1997). The agreement can be interpreted in no way other than that plaintiffs were required to inform defendant when they obtained a mortgage. If plaintiffs had no such obligation, defendant's option of declaring the agreement null and void upon plaintiffs' failure to fulfill its terms would be rendered meaningless. Furthermore, in support of her motion for summary disposition defendant submitted affidavits that established that in the real estate industry, the term "firm commitment" meant that the commitment was unconditional. The evidence showed that the mortgage obtained by plaintiffs was conditional in several respects. Plaintiffs did not produce evidence in support of their construction of the agreement in opposition to defendant's motion for summary disposition. *Schroeder, supra*, 223 Mich App at 186. Because plaintiffs did not obtain a firm mortgage commitment within fifty days after July 18, 1996 as required, defendant was entitled to declare the agreement null and void.

Affirmed.

/s/ Roman S. Gribbs
/s/ Henry William Saad
/s/ Paul H. Chamberlain