STATE OF MICHIGAN

COURT OF APPEALS

MARY LOU CROSBY,

Plaintiff-Appellee,

v

MABLE LOUISE BOWERS CROSBY,

Defendant-Appellant.

UNPUBLISHED
February 11, 2000

No. 216305
Sanilac Circuit Court
LC No. 97-025480-CH

Before: O'Connell, P.J., and Meter and T. G. Hicks*, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's entry of judgment in favor of plaintiff. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff entered into a contract with defendant, her daughter-in-law, for the purchase of certain property. Defendant agreed to work in the family greenhouse business in exchange for credit on the interest due on the land contract payment. In addition, defendant agreed to pay one-half of the property taxes due on the land she was purchasing. The land contract contained an acceleration clause.

Eventually, plaintiff sent defendant a notice of forfeiture which indicated that defendant was in default due to non-payment of both principal and interest on the land contract and property taxes. Thereafter, plaintiff notified defendant that she was exercising the acceleration clause in the land contract and that no further payments would be accepted. Nevertheless, defendant continued to tender payments. Plaintiff eventually returned all the payments and filed a complaint for foreclosure. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10).

The matter was submitted on briefs, and the trial court entered judgment in favor of plaintiff. The trial court rejected defendant's assertion that acceleration of the entire amount due under the land contract was precluded because a good-faith dispute existed as to the amount due under the contract. The court concluded that plaintiff was entitled to accelerate the entire amount due because defendant

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

was in default on the payment of taxes and the default continued for a period of forty-five days or more prior to the commencement of the action.

We review an equitable decision de novo, and review the findings of fact in support of such a decision for clear error. *Mitchell v Dahlberg*, 215 Mich App 718, 727; 547 NW2d 74 (1996).

Defendant argues that the trial court erred by granting judgment in favor of plaintiff. We disagree and affirm. An acceleration clause in a land contract is enforceable, *Windorf v Ferris*, 154 Mich App 201, 206; 397 NW2d 268 (1986), and can be exercised based on a default in payment of taxes. *Bishop v Brown*, 118 Mich App 819, 828-829; 325 NW2d 594 (1982). The taxes for which defendant was liable became due on March 11, 1997. Pursuant to the terms of the land contract, acceleration could occur if defendant remained in default for forty-five days thereafter. Defendant did not cure the default within forty-five days. Defendant received notice of plaintiff's intention to accelerate payment of the entire amount due under the land contract and was informed that no further payments would be accepted. Defendant's default had continued longer than forty-five days when she received the notice of forfeiture, and plaintiff accelerated payment due under the land contract prior to defendant's attempt to cure the default. Cf. *Kent v Pipia*, 185 Mich App 599; 462 NW2d 800 (1990). Acceleration of the land contract was not precluded under the circumstances. *Sindlinger v Paul*, 428 Mich 161, 164-165; 404 NW2d 212 (1987).

Defendant's argument that a good-faith dispute regarding the amount of taxes owed precluded enforcement of the acceleration clause is without merit, since defendant did not raise this dispute until after she had been in default for more than forty-five days. See *State-William P'ship v Gale*, 169 Mich App 170, 177; 425 NW2d 756 (1988). Similarly without merit is defendant's argument that plaintiff should have been estopped from enforcing the acceleration clause because she accepted defendant's payments by failing to return them in a timely fashion. While it is *possible* that plaintiff essentially accepted defendant's money order payments by failing to promptly return them, defendant did not allege below, nor does she allege on appeal, that she was prejudiced by plaintiff's failure to promptly return the payments. Accordingly, defendant's estoppel argument must fail. See *Larson v Van Horn*, 110 Mich App 369, 379-380; 313 NW2d 288 (1981) (prejudice a necessary element for estoppel). Finally, we reject defendant's argument that plaintiff's offer to settle somehow precluded her from enforcing the acceleration clause. This offer was not, contrary to defendant's implication, tantamount to an admission that acceleration was unwarranted or abandoned, since plaintiff may have simply been trying to avoid the expense, delay, and uncertainty of litigation.

Affirmed.

/s/ Peter D. O'Connell
/s/ Patrick M. Meter
/s/ Timothy G. Hicks