STATE OF MICHIGAN

COURT OF APPEALS

BRYAN MAZEY, JR.,

Plaintiff-Appellant,

v

STEVEN CUBBA and MICHIGAN REALTY,

Defendants-Appellees.

UNPUBLISHED
February 15, 2000

No. 210978
Wayne Circuit Court
LC No. 97-707191-CK

Before: Hood, P.J. and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Defendant Cubba, an employee of defendant Michigan Realty, owned a house on a double lot in Grosse Pointe Woods. He sold the house to plaintiff with the intent to split the lot and retain and build a house on the vacant lot. Plaintiff claimed that Cubba told him there was a six-foot side yard between the western end of his garage and the eastern proposed property line of the vacant lot when, in fact, the side yard was only approximately three feet wide. He also claimed that Cubba told him he planned to build a 3,100 square foot house on the vacant lot, but later submitted building plans for a 5,000 square foot house. He filed this suit seeking damages for fraud and misrepresentation (counts I and II) or, in the alternative, equitable relief in the form of reformation of the property line (count III) and violation of the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.*; MSA 19.418(1) *et seq.*, (count IV). The trial court dismissed plaintiff's claims on the ground that the parol evidence rule barred the admission of Cubba's alleged oral statements. Plaintiff appeals the court's ruling as to count I of his complaint.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. *Id.*

Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Id.* at 455.

The parol evidence rule provides that "[p]arol evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary the written contract, is not admissible to vary the terms of a contract which is clear and unambiguous." *Schmude Oil Co v Omar Operating Co,* 184 Mich App 574, 580; 458 NW2d 659 (1990). The rule is not without its exceptions. Parol evidence "is admissible on the threshold question whether a written contract is an integrated instrument that is a complete expression of the parties' agreement." *UAW-GM Human Resource Ctr v KSL Recreation Corp,* 228 Mich App 486, 492; 579 NW2d 411 (1998). Parol evidence is also admissible to show that the contract is void because of fraud. *Id.* at 493.

Here, however, the parties' purchase agreement contains a merger or integration clause limiting the agreements between them to those made in writing and nullifying any oral agreements. Therefore, parol evidence is not admissible on the threshold question of integration. *Id*. at 496-497. When a contract contains a valid merger or integration clause, "the only fraud that could vitiate the contract is fraud that would invalidate the merger clause itself, i.e., fraud relating to the merger clause or fraud that invalidates the entire contract including the merger clause." *Id*. at 503. Fraud, silent fraud, and innocent misrepresentation all require reliance on a misrepresentation. *Id.* at 504. However, the existence of a valid merger clause made it unreasonable for plaintiff to rely on any representation not included in the purchase agreement, i.e., any representation regarding a six-foot side yard. Consequently, we conclude that the allegations in plaintiff's fraud counts are not the type of fraud claims that could invalidate a contract with a valid merger clause. *Id*. at 504-505. Therefore, the trial court did not err in granting defendants' motion for summary disposition. [1]

Affirmed.

/s/ Harold Hood
/s/ Michael R. Smolenski
/s/ Michael J. Talbot

[1] While the result would be the same as to plaintiff's claim regarding the representation that the lot split had already been approved, which was contrary to the provision in the agreement that the sale was subject to the city's approval of the lot split, plaintiff was limited to recovery on the claims alleged in the complaint, *Hartley v A.I. Rodd Lumber Co,* 282 Mich 652, 658; 276 NW 712 (1937), and that claim was not included therein.