STATE OF MICHIGAN

COURT OF APPEALS

LAWRENCE BROOKS,

Plaintiff-Appellant,

v

WILLIAM TEMPLEMAN and LOIS TEMPLEMAN,

Defendants-Appellees.

UNPUBLISHED
December 5, 2000

No. 213890
Oakland Circuit Court
LC No. 98-003596-CK

Before: Jansen, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm.

On November 17, 1992, plaintiff (the tenant) and defendants (the landlords) entered into a five-year lease with an option to purchase a house in the city of Troy, for which plaintiff paid $5,000 for the option. The option provided that plaintiff could purchase the property for $83,000 at any time during the term of the lease by providing written notice to defendants through certified mail or overnight courier and a $5,000 earnest money deposit. The closing also had to occur within three months of plaintiff exercising the option. Before the lease expired, defendant William Templeman asked plaintiff if he intended to purchase the house and plaintiff indicated that he did. Mr. Templeman reminded plaintiff that the terms of the lease required that they close before February 17, 1998. Plaintiff then contacted a mortgage company; however, defendants never received written notice of plaintiff's exercise of the option to purchase and never received the $5,000 deposit. In November 1997, plaintiff received a notice to quit. However, in December 1997, defendants cooperated with plaintiff's attempt to obtain financing by providing a final payoff letter and verification of rent to plaintiff's mortgage company. However, when plaintiff contacted a second mortgage company, defendants did not provide a final payoff letter or verification of rent.

On January 19, 1998, defendants made a settlement offer to plaintiff that would have allowed plaintiff to exercise the option to purchase if they closed by January 30, 1998. Plaintiff

rejected this offer and, shortly thereafter, filed a complaint alleging breach of contract, misrepresentation and fraud[1], and unjust enrichment.[2]

In the trial court, and on appeal, plaintiff argues that there was a genuine issue of material fact regarding whether the option contract was orally modified such that he did exercise the option and whether equitable estoppel prevents defendants from refusing to honor plaintiff's option.

We review de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek, supra*. The court must consider the pleadings, affidavits, admissions, depositions, and any other documentary evidence submitted or filed in the action to determine whether a genuine issue of any material fact exists to warrant a trial. *Id.* The facts must be reviewed in a light most favorable to plaintiff, as the nonmoving party. *Ritchie-Gamester v Berkley*, 461 Mich 73, 75; 597 NW2d 517 (1999).

An option to purchase is defined in the following way:

> An option is not a contract for purchase, it is simply a contract by which the owner of the property agrees with another that he shall have a right to buy the property at a fixed price within a specified time. An option is but an offer, strict compliance with the terms of which is required; acceptance must be in compliance with the terms proposed by the option both as to the exact thing offered and within the time specified; otherwise the right is lost. [*LeBaron Homes, Inc v Pontiac Housing Fund, Inc*, 319 Mich 310, 313; 29 NW2d 704 (1947), quoting *Bailey v Grover*, 237 Mich 548, 554; 213 NW 137 (1927), and *Olson v Sash*, 217 Mich 604; 187 NW 346 (1922).]

Plaintiff did not exercise the option to purchase by complying with the exact thing offered or by complying within the time specified. *LeBaron, supra.* The trial court agreed with defendants that the right was lost. We, too, agree.

Plaintiff argues that the option was orally modified by his conversation with defendants, in which he was told to "get going" on financing. Because the statute of frauds requires that the option contract be in writing, any modification would also have to be in writing or supported by consideration to be enforceable. *Zurcher v Herveat*, 238 Mich App 267, 299-300; 605 NW2d 329 (1999). Plaintiff does not allege that any consideration was given for the oral modification of the contract. Therefore, any oral modification would not be enforceable. *Id.*

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[1] Plaintiff does not contest the trial court's grant of summary disposition with respect to the fraud and misrepresentation claim on appeal.

[2] With respect to this claim, plaintiff invested $70,000 in improvements to the house while he resided there.

Plaintiff also argues that he exercised his option by orally notifying defendants. Options can be exercised with oral notification, but oral notification is only acceptable where the terms of the option do not specify that written notification is required. *Hunt v State Hwy Comm'r*, 350 Mich 309, 317-318; 86 NW2d 345 (1957), overruled in part on other grounds *Greenfield Construction Co, Inc v Dep't of State Hwys*, 402 Mich 172, 176; 261 NW2d 718 (1978); *Pleger v Bouwman*, 61 Mich App 558, 560; 233 NW2d 82 (1975). In *Pleger*, the plaintiffs orally notified the defendants of their intent to exercise their option and the defendants proceeded to obtain title insurance, have their attorney prepare closing papers, and arrange a closing meeting. The defendants did not appear at the closing meeting and, at that point, complained that the plaintiffs had not exercised their option in writing. Under those circumstances, this Court applied equitable estoppel and enforced the option, but did not find that oral notification was acceptable on its own. *Id.*, pp 560-561.

The present case is distinguishable from *Pleger*. Plaintiff was not simply required to notify defendants in writing of his intent to exercise the option. Plaintiff was also required to pay $5,000 earnest money. Plaintiff alleges only that defendants told him to "get going" on financing and does not allege that defendants did anything else before the close of the lease term upon which he relied. The elements of equitable estoppel are: "(1) a party, by representation, admissions, or silence intentionally or negligently induces another party to believe facts, (2) the other party justifiably relies and acts on that belief, and (3) the other party is prejudiced if the first party is allowed to deny the existence of those facts." *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 141; 602 NW2d 390 (1999). We do not believe that defendants' statement that plaintiff should "get going" on financing could have induced plaintiff to believe that it was not necessary for him to send written notification, nor could it have reasonably induced plaintiff to believe that defendants had waived the requirement that plaintiff pay earnest money. This is especially true where plaintiff does not allege that defendants did anything else before the end of the option term which would have induced reliance.

Consequently, the trial court did not err in granting summary disposition in favor of defendants on the breach of contract and unjust enrichment claims.

Affirmed.

/s/ Kathleen Jansen
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell