

STATE OF MICHIGAN
COURT OF APPEALS

DAVID CACIOPPO,

Plaintiff-Appellant,

v

ARCHANGELO TUCCI
and SANTA TUCCI,

Defendants-Appellees.

UNPUBLISHED

October 2, 2001

No. 218284

Wayne Circuit Court

LC No. 96-691365-CZ

Before: Gage, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

In this breach of contract action, plaintiff appeals as of right from a judgment directing a verdict in favor of defendant Santa Tucci. We reverse and remand.

In 1990, plaintiff sold his gas pump servicing company to Francisco Tucci, defendants' son. By 1993, more than \$400,000 of the purchase price remained unpaid. In December 1993, plaintiff, defendants and Francisco Tucci entered an agreement amending the initial 1990 contract of sale. The 1993 agreement provided that in satisfaction of Francisco Tucci's debt, Santa Tucci would transfer to plaintiff a parcel of property. According to plaintiff, defendants represented that the property was valued at \$275,000, and that it would be transferred free of all liens and encumbrances, including existing 1992 and 1993 real estate tax debts, outstanding mortgage obligations, and underground storage tanks that required removal. The amending agreement and the warranty deed transferring the property from Santa Tucci to plaintiff both were executed on December 29, 1993. In December 1996, plaintiff sued defendants alleging breach of contract, fraud and misrepresentation on the basis of defendants' failure to pay the overdue real estate taxes and mortgage debts, and failure to otherwise comply with the December 1993 agreement.¹

Plaintiff contends that the trial court erred in granting Santa Tucci a directed verdict regarding plaintiff's breach of contract claim. We review de novo a trial court's ruling on a

¹ At trial, plaintiff stipulated the dismissal of the fraud and misrepresentation claims against Santa Tucci.

motion for a directed verdict. *Meagher v Wayne State Univ*, 222 Mich App 700, 708; 565 NW2d 401 (1997). In reviewing the trial court's ruling, we view the evidence presented up to the time of the motion in the light most favorable to the nonmoving party, grant that party every reasonable inference, and resolve any conflict in the evidence in that party's favor to decide whether a question of fact existed. *Hatfield v St. Mary's Med Ctr*, 211 Mich App 321, 325; 535 NW2d 272 (1995). A directed verdict is appropriate only when no factual question exists on which reasonable minds may differ. *Meagher, supra*.

The initial question whether the language of a contract or deed is ambiguous constitutes a question of law that we review de novo. *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996). Contractual language qualifies as ambiguous if it reasonably may be understood in different ways. *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 491; 597 NW2d 411 (1998). A court generally construes a contract or deed according to its plain and ordinary meaning, as a question of law. If the terms are ambiguous or fail to express clearly the parties' intentions, however, the trier of fact must determine the parties' intentions. *Id.* at 491-492.

Viewing in the light most favorable to plaintiff the evidence presented up to the time of defendant's motion, we conclude that the trial court erred in finding as a matter of law that the 1993 agreement, which required transfer of the property by warranty deed, merely obligated Santa Tucci to execute the deed, but not actually warrant the property. It is undisputed that the 1993 agreement expressly required that Santa Tucci convey the property to plaintiff by warranty deed, and that at the time of the conveyance the property had encumbrances and liens, which the agreement described. Under MCL 565.151, a warranty deed grantor guarantees that "he is lawfully seized of the premises, has good right to convey the same, and guarantees the quiet possession thereof; that *the same are free from all incumbrances, and that he will warrant and defend the title to the same against all lawful claims.*" (Emphasis added.) Although the 1993 agreement plainly placed on Santa Tucci's son an obligation to ensure the removal of the property's encumbrances, as the grantor Santa Tucci also warranted through her execution of the deed that plaintiff would receive the property free from all encumbrances. *Id.* We therefore conclude that defendant Santa Tucci was not entitled to a directed verdict with respect to plaintiff's breach of contract claim.

We note that Santa Tucci has not provided any persuasive authority to support her suggestion that as a matter of law the typical warranties accompanying a warranty deed were nullified in this case by the contemporaneous execution of the 1993 agreement and the warranty deed.² We further note that, as plaintiff points out, the trial court erred in seeking guidance from the Uniform Commercial Code (UCC), MCL 440.1101 *et seq.*, to decide this issue. The trial court stated that "[t]he UCC is applicable to actions involving the sale of land," and went on to use the UCC as a "corollary" authority. Contrary to the trial court's statement, however, the UCC governs relationships between parties involved in "transactions in goods." MCL 440.2102;

² At best, the 1993 agreement, providing both that Santa Tucci give plaintiff a warranty deed and that Francisco Tucci would satisfy all of the property's outstanding real estate taxes, contains an ambiguity.

Home Ins Co v Detroit Fire Extinguisher Co, Inc, 212 Mich App 522, 526; 538 NW2d 424 (1995).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey