STATE OF MICHIGAN

COURT OF APPEALS

BRIGID F. GODVIN,

Plaintiff-Appellant,

V

NORTH COMMERCE FINANCIAL, INC.,

Defendant-Appellee.

UNPUBLISHED
November 27, 2001

No. 223074
Wayne Circuit Court
LC No. 99-909394-CH

Before: Zahra, P.J., and Hood and Murphy, JJ.

PER CURIAM.

In this action to quiet title to certain real property, plaintiff appeals from the trial court's grant of summary disposition pursuant to MCR 2.116(C)(10) in favor of defendant. We affirm.

This case arises out of a real estate transaction between the parties that occurred on July 12, 1994. Plaintiff claims an equitable mortgage arose from that transaction. Plaintiff asserts the transaction was a loan of $250,000 from defendant to plaintiff, with her Grosse Ile home serving as security for the loan. Defendant maintains that the transaction was, in fact, the sale of the home for $250,000 with a two-year lease back to plaintiff along with an option to repurchase for $276,500. Plaintiff contends that the trial court erred when it refused to consider any parol evidence, which she claims supports her claim of an equitable mortgage on the property. We disagree.

The trial court determined that an integration clause contained in the leases executed between the parties precluded the introduction of parol evidence.[1] These leases provided, in relevant part:

> This document contains a full and complete presentation of the agreement between the parties there being no other oral or written agreements existing

[1] After the two-year term of the original lease terminated, plaintiff continued to make the $4,125 monthly payment. A second two-year lease was executed between the parties in October 1996, which was made retroactive from July 12, 1996.

> between the parties. Any changes in the lease or option must be in writing signed by both parties to be effective and enforceable.

Whether an integration clause will preclude the introduction of parol evidence is essentially a question of law, which this Court reviews de novo. See *Bennett v Weitz*, 220 Mich App 295, 299; 559 NW2d 354 (1996).

"[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." *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 492; 579 NW2d 411 (1998). Plaintiff maintains, however, that parol evidence of prior or contemporaneous agreements or negotiations should have been admissible in this case to address the threshold question whether the written contract is an integrated instrument. While courts in the past have been given wide latitude to consider parol evidence on the question of integration, this Court has recently held that:

> when the parties include an integration clause in their written contract, it is conclusive and parol evidence is not admissible to show that the agreement is not integrated except in cases of fraud that invalidate the integration clause or where an agreement is obviously incomplete "on its face" and, therefore, parol evidence is necessary for the "filling of gaps." [*Id*. at 502, citing 3 Corbin, Contracts, § 578, p 411.]

Neither of the exceptions to this rule exists in the present case. Plaintiff has not presented any argument or evidence that defendant committed fraud in this transaction, nor are the writings incomplete on their face. Therefore, the trial court correctly enforced the integration clause to preclude the admission of parol evidence.

Plaintiff also contends that the trial court erred when it refused to examine parol evidence because the transaction between the parties amounted to a usurious loan. We again disagree.

Plaintiff's contention that the rate of interest is usurious is based upon the criminal usury statute, MCL 438.41. However, reliance upon the criminal usury statute to maintain a civil cause of action has been rejected by this Court. *Wilkerson v Seder*, 81 Mich App 726, 728; 265 NW2d 807 (1978). In *Wilkerson*, the plaintiff asserted that a promissory note it had signed violated the criminal usury statute, MCL 438.41, and sought damages against the attorney who drafted the note. *Id*. at 727. This Court concluded that summary disposition in favor of the attorney was proper, holding that "no civil action may be based upon the criminal usury statute." *Id*. at 728. We conclude that plaintiff has failed to support her claim of usury. Therefore, the trial court did not err when it refused to examine parol evidence.

Affirmed.

/s/ Brian K. Zahra
/s/ Harold Hood
/s/ William B. Murphy