STATE OF MICHIGAN

COURT OF APPEALS

AUDREY HARVEY,

Plaintiff-Appellee,

v

PATRICK MENDOLA and LAURA MENDOLA,

Defendants-Appellants.

UNPUBLISHED
March 22, 2002

No. 227126
Macomb Circuit Court
LC No. 99-001255-CH

Before: O'Connell, P.J., and White and Cooper, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's May 1, 2000, default judgment that followed the trial court's January 31, 2000, grant of summary disposition in favor of plaintiff. This dispute centers on a mortgage entered into between plaintiff Audrey Harvey and her spouse David Harvey, and defendant Patrick Mendola. We affirm and remand for further proceedings.

On appeal, defendants argue that the trial court erred in granting plaintiff's motion for summary disposition under MCR 2.116(C)(10) in this foreclosure action. We review de novo a trial court's grant of summary disposition. *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 202; 544 NW2d 727 (1996). Likewise, the interpretation of contractual language is a question of law reviewed de novo on appeal. *McKusick v Travelers Indemnity Co*, 246 Mich App 329, 332; 632 NW2d 525 (2001).

> "It is axiomatic that if a word or phrase [of a contract] is unambiguous and no reasonable person could differ with respect to application of the term or phrase to undisputed material facts, then the court should grant summary disposition to the proper party pursuant to MCR 2.116(C)(10). *Moll v Abbott Laboratories*, 444 Mich 1, 28, n 36; 506 NW2d 816 (1993). Conversely, if reasonable minds could disagree about the conclusion to be drawn from the facts, a question for the factfinder exists." [*Old Kent Bank v Sobczak*, 243 Mich App 57, 63-64; 620 NW2d 663 (2000), quoting *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).]

In the present case, defendants argue that plaintiff's "unsworn and conclusory allegations" were insufficient to support the trial court's grant of plaintiff's motion for summary disposition. Although the predecessor rule, GCR 1963, 117.3 required the submission of an

affidavit in support of the motion, MCR 2.116(C)(10) is satisfied by submission of any form of documentary evidence. *Michigan Nat'l Bank-Oakland v Wheeling*, 165 Mich App 738, 742-743; 419 NW2d 746 (1988). In support of her December 13, 1999, motion for summary disposition, plaintiff submitted a copy of the April 15, 1986, mortgage, the quitclaim deed by which defendant Patrick Mendola conveyed the Campground Road property to his wife, and a copy of the interrogatories in which Patrick Mendola admitted selling the Campground Road property and the business known as Pat Squire's House. Because plaintiff submitted "other documentary evidence," in support of her motion, she properly adhered to the requirements of MCR 2.116(G)(3)(b).[1]

Defendants do not contest that Patrick Mendola entered into a mortgage with plaintiff and her spouse on April 15, 1986. Instead, defendants argue that the mortgage must be read in conjunction with a previous agreement[2] created by Patrick Mendola and David Harvey, and even if the mortgage is due, the full principal amount of $77,000 is not owed. A review of the January 1, 1986, agreement between Patrick Mendola and David Harvey reveals that defendants were obliged to pay David Harvey $77,000, the agreed amount of the "Campground debt," upon the sale of the business known as "Pat's Squire House." The agreement separately provided that the Campground debt of $77,000 was to be secured by a second mortgage, payable when the property is sold or when the business and/or property of Pat's Squire House is sold, whichever occurs first. It is undisputed that Pat's Squire House was sold.

Indeed, the mortgage's language is also very clear. The mortgage describes the Campground Road property, establishes a principal amount of $77,000, and an interest rate of six percent to be paid on the principal from the date of the mortgage forward. The mortgage further provides that the principal amount owing becomes due on the sale of either the Campground Road property or the business known as Pat's Squire House. Likewise, contrary to defendants' contention on appeal, there is no indication in the January 1986 agreement or the clear language of the mortgage that the principle amount of $77,000 was only a maximum amount, and therefore not necessarily the amount due when the mortgage became collectible.[3]

Defendants also challenge the trial court's calculation of the amount of interest owed on the mortgage. Defendants argue that, even accepting that the triggering events took place in the

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[1] Similarly, we reject defendants' contention that the unsigned and unsworn affidavit of Patrick Mendola included with defendants' brief in opposition to plaintiff's motion for summary disposition created factual disputes sufficient to withstand summary disposition. See MCR 2.113(A) (providing that all affidavits filed must be verified by oath or affirmation).

[2] At oral argument, the issue whether a mortgage without a promissory note may be foreclosed on was raised. However, defendants did not properly raise and argue this issue in their brief on appeal. Therefore, we are not required to address this issue. See *People v Kevorkian*, 248 Mich App 373, 428, 429; 639 NW2d 291 (2001).

[3] Although defendants fleetingly claim in their brief on appeal that the mortgage was void for lack of present consideration, they have failed to sufficiently develop this argument, develop this argument, except to assert that the mortgage was executed 2 ½ months after the January 1 agreement, an argument we reject in light of the agreement's specific reference to a second mortgage to be placed on the property.

1990s, interest should not have been awarded starting from the creation of the mortgage, but at the point of the triggering events. However, as the trial court stated in its March 13, 2000, order denying reconsideration, the mortgage is clear that the six percent interest was to be paid from the date of the creation of the mortgage until the principal is fully paid. The mortgage must be enforced as its clear language dictates. *G&A Inc, supra,* at 330-331. Accordingly, we share the trial court's view that genuine factual disputes regarding defendant Patrick Mendola's liability under the terms of the mortgage did not exist.

At oral argument, defendants claimed that a pending second lawsuit, Case No. 95-2155-CZ in the Macomb Circuit Court, has resolved the issues in this case. From the present record, we are unable to determine whether plaintiff has obtained two judgments arising from the same underlying $77,000 debt. Therefore, we remand for further proceedings to allow the trial court the opportunity to determine if plaintiff has in fact obtained two judgments arising from the same cause of action. On remand, the trial court may consolidate the two actions.

Affirmed, but remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Helene N. White
/s/ Jessica R. Cooper