

STATE OF MICHIGAN
COURT OF APPEALS

BRENDA G. BELL,

Plaintiff-Appellant,

v

JUDITH A. BEANUM and EARL R. BEANUM,

Defendants-Appellees.

UNPUBLISHED

March 16, 2004

No. 241833

Wayne Circuit Court

LC No. 02-208611-CZ

Before: Fitzgerald, P.J., and Neff and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition. We reverse.

Plaintiff claimed an equitable mortgage in defendants' property after loaning money to Judith Beanum to pay the existing mortgage. Plaintiff asserts that she became subrogated to the mortgagee's interest to the extent she paid the mortgage debt. The circuit court ruled that plaintiff's claim was barred by the statute of frauds. Whether the statute of frauds bars enforcement of a purported contract is a question of law that is reviewed de novo on appeal. *Zander v Ogihara Corp*, 213 Mich App 438, 441; 540 NW2d 702 (1995).

The general rule is that every contract for any interest in lands is void unless it is in writing and signed by the party against whom it is to be enforced. MCL 566.108. "A mortgage is an interest in land within the meaning of the statute of frauds." *Schultz v Schultz*, 117 Mich App 454, 457; 324 NW2d 48 (1982). However, under the equitable doctrine of subrogation,¹ one who loans money to pay off a mortgage is subrogated to the rights of the mortgagee, even in

¹ Plaintiff asserted subrogation rights below, in her complaint, although she incorrectly referred to the "mortgagor" rather than the "mortgagee." Plaintiff's complaint asserted that defendant fell behind in her mortgage payments and requested that defendant loan money to make those payments, that plaintiff loaned the money, and "that as such, Plaintiff, Brenda G. Bell, became the subrogee [sic] of the mortgagor's [sic] interest." Further, on appeal, plaintiff cites *Smith v Sprague*, 244 Mich 577; 222 NW 207 (1928), which clearly supports her claim. We do not agree that the subrogation issue is not properly before the Court.

the absence of a written agreement to grant a mortgage. *Smith v Sprague*, 244 Mich 577; 222 NW 207 (1928).² See also *Schram v Burt*, 111 F2d 557, 561-562 (CA 6, 1940), holding that an oral agreement to grant a mortgage to one advancing money does not run afoul of the statute of frauds where there has been performance by the promisee.

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

/s/ Janet T. Neff

/s/ Helene N. White

² The case relied on by the dissent in support of the conclusion that the statute of frauds bars plaintiff's claim addresses the specific question under what circumstances a court may declare that a conveyance absolute on its face is, in reality, an equitable mortgage based on an oral agreement, notwithstanding the statute of frauds. We do not agree that the case supports the application of the statute of frauds to bar plaintiff's claim.