STATE OF MICHIGAN

COURT OF APPEALS

RONALD O. MUNSON and JANE A. MUNSON,

Plaintiffs/Counter-Defendants-Appellees,

v

MYRON MONTIE,

Defendant/Counter-Plaintiff-Appellant.

UNPUBLISHED
June 22, 2004

No. 247476
Eaton Circuit Court
LC No. 01-001632-CK

Before: Fitzgerald, P.J., and Bandstra and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right a trial court judgment in favor of plaintiffs in the amount of $53,781.34. We affirm.

This case arises out of two purchase agreements executed between plaintiffs and defendant regarding the attempted purchase of defendant's building where plaintiffs sought to relocate their Dairy Queen franchise. The first purchase agreement provided for a purchase price of $275,000, including a $50,000 deposit. The agreement was also contingent on plaintiffs receiving Dairy Queen approval and on obtaining adequate financing. After plaintiffs paid defendant the $50,000 deposit, the parties signed a second purchase agreement which provided for a purchase price of $225,000, and did not contain any contingency clauses. After being unable to obtain adequate financing, plaintiffs requested their $50,000 deposit back from defendant. Defendant refused to refund the deposit, and plaintiffs sued alleging fraudulent misrepresentation and seeking exemplary damages. Defendant counter-sued, alleging breach of contract, detrimental reliance, and seeking specific performance; however, defendant withdrew his counter-claims at trial. The trial court determined that the second purchase agreement was unenforceable for lack of consideration, and ordered defendant to return the $50,000 deposit to plaintiffs, plus interest and costs. Defendant appeals as of right.

Defendant first argues that the trial court erred by ruling that there was no consideration for the second purchase agreement, because MCL 566.1 does not require consideration to modify an agreement if the subsequent agreement modifying the prior agreement is in writing and signed by the party against whom it is enforced. We agree. Although this issue is unpreserved because defendant failed to raise it below, we may still consider it because it involves a question of law and the facts necessary for its resolution have been presented. *Poch v Anderson*, 229 Mich App

40, 52; 580 NW2d 456 (1998). This case involves issues concerning the proper interpretation of contracts, which are questions of law that are subject to de novo review by this Court. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002).

The trial court ruled there was no consideration for the second purchase agreement because plaintiffs were required to forfeit their deposit, remove the contingencies from the first agreement, and received nothing in return. However, modifications of agreements involving real property are governed by MCL 566.1, which provides that additional consideration is not required to modify an existing agreement if the modified agreement is in writing and signed by the party against whom it is being enforced.[1] *Omega Constr Co, Inc v Murray*, 129 Mich App 509, 515; 341 NW2d 535 (1983). Statutory construction requires courts to enforce a clear and unambiguous statute as written. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). Both plaintiffs and defendant signed the second purchase agreement that modified the first purchase agreement. Therefore, the trial court erred in its determination that the second purchase agreement was unenforceable due to lack of consideration, because the second purchase agreement constituted a properly modified, and thus enforceable, agreement under MCL 566.1.

Defendant next argues that the two purchase agreements should have been construed together even though they have inconsistent terms. We disagree. The second purchase agreement contained an integration clause stating, "[t]his offer constitutes the sole and entire agreement between the parties hereto." An integration clause in a subsequent agreement nullifies all antecedent agreements between the parties. *Archambo*, *supra*, 466 Mich at 413. Here, the second purchase agreement contained an integration clause, which nullified the first purchase agreement. *Id*. When a subsequent agreement supersedes a prior agreement, the prior agreement is abrogated. *Id*. at 413-414. When parties abrogate or rescind an agreement by substituting a new agreement, it is implied that there is a restoration of the status quo and a mutual discharge from any obligations under the original agreement. *Joseph v Rottschafer*, 248 Mich 606, 610-611; 227 NW 784 (1929). The second purchase agreement did not require a deposit. Rescission of the first purchase agreement required that the $50,000 deposit be returned to plaintiffs to restore the parties to their positions before the first purchase agreement was executed.

Consequently, even though we conclude that the trial court erred in finding the second agreement unenforceable, reversal is not required. The judgment in this case resulted in the return of plaintiffs' $50,000 deposit, plus statutory interest and costs amounting to $53,781.34. We will not reverse a trial court's decision when the right result was reached for the wrong reason. *Gray v Pann*, 203 Mich App 461, 464; 513 NW2d 154 (1994).

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[1] MCL 566.1 states, "An agreement hereafter made to change or modify, or to discharge in whole or in part, any contract, obligation, or lease, or any mortgage or other security interest in personal or real property, shall not be invalid because of the absence of consideration: Provided, that the agreement changing, modifying, or discharging such contract, obligation, lease, mortgage or security interest shall not be valid or binding unless it shall be in writing and signed by the party against whom it is sought to enforce the change, modification, or discharge."

Defendant next argues that the trial court erred when it failed to grant his motion for a directed verdict to dismiss plaintiffs' claims. We disagree. We treat defendant's motion for a "directed verdict" as a motion for an involuntary dismissal when made during a bench trial. *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 235-236 n 2; 615 NW2d 241 (2000); *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). We review a decision to grant or deny a motion for involuntary dismissal under the clearly erroneous standard, and "[t]he trial court's decision will not be overturned unless the evidence manifestly preponderates against the decision." *Phillips v Deihm*, 213 Mich App 389, 397; 541 NW2d 566 (1995).

MCR 2.504(B)(2) allows a defendant to move for dismissal on the ground that the plaintiffs have shown no right to relief on the basis of the facts and law presented. *Sands, supra* at 236 n 2. "The court may then determine the facts and render judgment against the plaintiff, or may decline to render judgment until the close of all the evidence." MCR 2.504(B)(2). In this case, the trial court did not err when it took the motion under advisement and waited to render judgment until the close of all the evidence, because this procedure is expressly permitted under MCR 2.504(B)(2).

Finally, defendant argues that plaintiffs acted in bad faith in their efforts to satisfy the contingencies in the first purchase agreement. Because we find that the second purchase agreement superseded the first purchase agreement, we need not reach this issue.

We affirm.

/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra
/s/ Bill Schuette