

STATE OF MICHIGAN  
COURT OF APPEALS

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NAUTICA CONSTRUCTION COMPANY, INC.,

Plaintiff-Counterdefendant-  
Appellee,

v

DEBORAH SERRA,

Defendant-Counterplaintiff-  
Appellant.

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UNPUBLISHED

October 26, 2004

No. 248673

LC No. 2001-004718-CK

Before: Wilder, P.J., and Hoekstra and Owens, JJ.

PER CURIAM.

Defendant-counterplaintiff (Serra) appeals as of right from the trial court's order granting plaintiff-counterdefendant's (Nautica) motion for summary disposition pursuant to MCR 2.116(C)(8). We affirm.

Serra, a licensed real estate salesperson employed by licensed real estate broker Century 21 Associates/Town and Country (Century 21),<sup>1</sup> alleges that Nautica refused to pay commissions to Serra in violation of the contract in which Nautica agreed that Serra would be its exclusive real estate seller's agent. The trial court, in granting Nautica's motion for summary disposition, held that under the real estate brokers and salesperson act (REBSA), MCL 339.2501 *et seq.*, a real estate salesperson did not have a cause of action against a seller of real estate for commissions. Serra now claims that the trial court's holding was in error. We disagree.

A grant of summary disposition is reviewed "de novo to determine if the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are 'so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.'" *Id.* at 119, quoting *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). "A motion under MCR 2.116(C)(8) tests the legal sufficiency of the

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<sup>1</sup> While Century 21 was an original defendant to Nautica's original complaint, that complaint was settled, and Century 21 is not a party to Serra's countercomplaint.

complaint,” and “when deciding a motion under this section, a court considers only the pleadings.” *Id.* at 119-120, citing MCR 2.116(G)(5).

This case presents the question whether a real estate salesperson<sup>2</sup> can maintain a cause of action for commissions owed to her under a contract in light of MCL 339.2501 *et seq.* Particularly important are MCL 339.2510 and MCL 339.2512a. MCL 339.2510 provides:

A real estate salesperson shall not accept from a person other than the real estate salesperson's employer a commission or valuable consideration for the performance of an act specified in this article.

MCL 339.2512a provides:

A person engaged in the business of, or acting in the capacity of, a person required to be licensed under this article, shall not maintain an action in a court of this state for the collection of compensation for the performance of an act or contract for which a license is required by this article without alleging and proving that the person was licensed under this article at the time of the performance of the act or contract.

The trial court concluded that these sections required a plaintiff to plead and prove that he or she is a licensed real estate broker. We agree.

This issue presents a question of statutory interpretation. The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *Gladych v New Family Homes, Inc.*, 468 Mich 594, 597; 664 NW2d 705 (2003). When a statute is unambiguous, judicial construction is not permitted. *People v McIntire*, 461 Mich 147, 152-153; 599 NW2d 102 (1999).

After reviewing the statutory provisions, we find the plain language of MCL 339.2510 dispositive. In no uncertain terms, that section clearly prohibits a salesperson from accepting consideration for the performance of real estate transactions from anyone other than her broker employer. Further, the definition of “employment” under the act is the relationship between a real estate broker and a real estate salesperson. MCL 339.2501(f). This Court has held that under this provision “a real estate salesperson may be paid only by the entity for which he or she works.” *Edwards v Verploegh*, 153 Mich App 753, 755; 396 NW2d 521 (1986). And a salesperson’s right to a commission is governed by the employment agreement, not the listing agreement. *Abraham v Walter Neller Co*, 19 Mich App 488, 493; 172 NW2d 817 (1969). Accordingly, Serra only has a right to receive commissions from Century 21. Thus, Serra may

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<sup>2</sup> REBSA provides for two types of real estate professionals. A real estate broker is person who performs certain real estate sales functions, while a real estate salesperson is employed by a licensed real estate broker. See MCL 339.2501(d) and (e). Both types of professionals are required to be licensed under the act; however, each license is subject to different requirements. MCL 339.2504, MCL 339.2505.

not seek commissions directly from the seller, and the trial court properly granted summary disposition to defendant.<sup>3</sup>

Affirmed.

/s/ Kurt T. Wilder  
/s/ Joel P. Hoekstra  
/s/ Donald S. Owens

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<sup>3</sup> Serra has attempted to argue around this provision by suggesting that if the trial court awarded her a judgment, she would require that it be paid to Century 21. However, MCR 2.201(B) requires that an action must be prosecuted in the name of the real party in interest. This rule requires that a “claim be prosecuted by the party who by the substantive law in question owns the claim asserted against the defendant.” *Hofmann v Auto Club Ins Ass’n*, 211 Mich App 55, 95; 535 NW2d 529 (1995). Quite simply, under substantive law, MCL 339.2510, plaintiff has no right of action against defendant. Rather, she has a beneficial interest through her broker, Century 21, who is the real party in interest here.