STATE OF MICHIGAN

COURT OF APPEALS

RONALD VETTESE,

Plaintiff-Appellant,

v

DALE E. ZEHR and CATHERINE ZEHR, d/b/a ZEHR FARMS, STEVE L. RUSSELL, d/b/a STEVE L. RUSSELL CUSTOM BUILDERS, and CENTURY 21 QUAKER, INC., a/k/a QUAKER, INC.,

Defendants-Appellees.

UNPUBLISHED
December 15, 2005

No. 255919
Lapeer Circuit Court
LC No. 01-030169-CK

Before: Hoekstra, P.J., and Neff and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition pursuant to MCR 2.116(C)(10) to defendants Dale and Catherine Zehr as to plaintiff's claims of negligent construction, breach of the implied warranty of habitability, and violation of the Seller Disclosure Act (SDA).[1] This dispute arises out of the sale of a newly built residence. We affirm in part, reverse in part, and remand.

The Zehrs owned a parcel of undeveloped real property in Lapeer, Michigan, on which they wanted to build two houses. They informally agreed with defendant Steven Russell[2] to supply their land and finance the project if Russell would construct the houses for later sale. Plaintiff eventually purchased one of the homes from the Zehrs. After plaintiff discovered serious problems with the foundation, he commenced this multi-count lawsuit. Plaintiff argues that his claims against the Zehrs of negligent construction and breach of the implied warranty of habitability were improperly dismissed because the circumstances establish that the relationship between the Zehrs and Russell was a partnership. We review a trial court decision on a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion brought pursuant to MCR 2.116(C)(10) entitles the movant to summary

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[1] MCL 656.951 *et seq.*

[2] Catherine Zehr and Steven Russell are cousins.

disposition where there is no genuine issue of material fact. *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001). In reviewing a (C)(10) motion, we consider the pleadings, depositions, admissions, and documentary evidence submitted by the parties, in the light most favorable to the non-moving party. MCR 2.116(G)(5); *Miller, supra.*

The Uniform Partnership Act (UPA), MCL 449.1 *et seq.*, defines a partnership as "an association of 2 or more persons . . . to carry on as co-owners a business for profit." MCL 449.6. When determining the intent of the parties on the question of the existence of a partnership, in the absence of an express partnership agreement, the focus is on "whether the parties intentionally *acted* as co-owners of a business for profit, and not on whether they consciously intended to create the legal relationship of 'partnership.'" *Byker v Mannes*, 465 Mich 637, 652; 641 NW2d 210 (2002); accord *Van Stee v Ransford*, 346 Mich 116, 133; 77 NW2d 346 (1956), quoting *Western Shoe Co v Neumeister*, 258 Mich 662, 667; 242 NW 802 (1932) ("'[I]n the absence of an express agreement, [the parties'] acts and conduct in relation to the business are the test to be used in determining if a partnership exist[s].'"). "The determination of whether a partnership exists is a question of fact . . . ." *Miller v City Bank & Trust Co*, 82 Mich App 120, 123; 266 NW2d 687 (1978).

Viewing the record in the light most favorable to plaintiff, it cannot be said that he has failed to establish a genuine issue of material fact concerning the existence of a partnership between the Zehrs and Russell. There is no evidence in the record of an express partnership agreement. However, the record discloses that the Zehrs and Russell entered into this venture to improve their respective financial situations. Each contributed to the enterprise: the Zehrs' capital and land, Russell's labor and expertise. Indeed, even these distinctions sometimes blurred. For example, Dale Zehr undertook acts of labor and contacted a subcontractor and other employees directly. The Zehrs and Russell also made joint decisions concerning the project development. Additionally, rather than being compensated upon the completion of his work, Russell was compensated, at a reduced sum, upon the sale of the home. Similarly, Dale Zehr indicated that he lost money in the deal. We have previously held that the sharing of losses, like profit sharing, "constitute[s] evidence of partnership." *Grosberg v Michigan Nat'l Bank Oakland*, 113 Mich App 610, 615; 318 NW2d 490 (1982). On these facts, we hold that reasonable minds could conclude that a partnership existed between the Zehrs and Russell. Summary disposition under (C)(10) was therefore improper. See *Barker v Kraft*, 259 Mich 70; 242 NW 841 (1932).

Plaintiff also alleges error in the trial court's grant of summary disposition on his claim that the Zehrs violated the SDA. We disagree.

The SDA mandates that, prior to the execution of a contract for the sale of residential real property, a vendor must disclose to the purchaser, via a disclosure statement, certain information concerning the condition of the premises. MCL 565.957. Liability for errors and omissions in a seller's disclosure statement is limited by the terms of the SDA. The SDA permits a purchaser to terminate a "binding purchase agreement" where a disclosure statement is not timely delivered, though this power of termination expires upon the conveyance of the property at issue. MCL 565.954. By its terms, the SDA provides no other remedies. MCL 565.954; .MCL 565.961.

Plaintiff argues that the trial court erred in finding that the Zehrs had complied with the SDA because their disclosure statement was substantially blank. We find it unnecessary to review the merits of plaintiff's position. By the SDA's plain terms, any remedy available under it is extinguished upon the consummation of the property transfer at issue. MCL 565.954. Because the property has already been transferred, plaintiff has failed to state a claim under the SDA upon which relief can be granted. MCR 2.116(C)(8); see *Computer Network, Inc v AM Gen Corp*, 265 Mich App 309, 313; 696 NW2d 49 (2005) (noting that "where a trial court errs in granting summary disposition under the wrong subrule, [we] may review the issue under the correct subrule"). "[I]t is axiomatic that [we] will not reverse a trial court's decision if the correct result is reached for the wrong reason." *Id.*

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Janet T. Neff
/s/ Alton T. Davis