

STATE OF MICHIGAN
COURT OF APPEALS

ARMEN BOLADIAN, BRIDGEPORT MUSIC,
INC., SOUTHFIELD MUSIC, INC., and
WESTBOUND RECORDS, INC.,

UNPUBLISHED
August 19, 2008

Plaintiffs/Counter-Defendants/
Appellees/Cross-Appellants,

v

GEORGE CLINTON,

No. 277314
Lenawee Circuit Court
LC No. 96-007197-CK

Defendant/Counter-Plaintiff/
Appellant/Cross-Appellee,

and

MALBIZ MUSIC,

Defendant/Counter-Plaintiff/Cross-
Appellee,

and

OCCUPANTS OF 839 KNAPP HIGHWAY,

Defendant.

Before: Markey, P.J., and White and Wilder, JJ.

PER CURIAM.

Defendant/counter-plaintiff, George Clinton, appeals as of right an order dismissing his claims against plaintiffs/counter-defendants on the basis of laches and the statute of limitations. Plaintiffs cross-appeal this same order, which also dismissed their claims on the basis of laches. At issue is whether a lease and an alleged oral agreement, both from the distant mid-1980s, can be enforced. This case is before us for a third time. We hold that the trial court correctly held that the defense of laches applies to both sides' claims.

Clinton has been in the music business since 1962. He has known Armen Boladian since 1966. Clinton's business relationship with Boladian extends back to the late 1960s or early

1970s. In 1971 there was an agreement among Clinton, Malbiz Music (a corporation controlled by Clinton), and Bridgeport Music (a corporation controlled by Boladian), in which, according to Boladian, Clinton assigned or promised to assign songwriter's rights to Boladian and/or Bridgeport.

In October 1980, Clinton purchased a land contract interest in the farm at 839 Knapp Highway from Rose Marie Sinacola. In 1982, Clinton missed payments, and the Sinacolas threatened to foreclose. At Clinton's request, Boladian made payments for Clinton, to bring the land contract current.

Between 1982 and 1985, there were six written agreements between Clinton, Boladian, and their entities. These agreements related to royalties from songs written by Clinton.

In 1983, Sinacola began foreclosure proceedings against Clinton. This led to a Lenawee circuit court order of confirmation of sale.

In December 1983, there was a songwriter's agreement between Clinton and Bridgeport, and an addendum. There was also a preliminary joint venture agreement between Clinton and Boladian.

In May 1984, the Lenawee county clerk entered a foreclosure deed. The deed reflected that Sinacola repurchased the property.

In July 1984, Clinton filed for chapter 7 (liquidation) bankruptcy. On his schedule of assets, Clinton listed the farm and its foreclosure.

In March 1985, Boladian and Sinacola entered into a land contract. Under this contract, Boladian agreed to purchase the farm.

On April 4, 1985, Clinton executed a lease of the farm from Boladian. The lease term was from April 1, 1985 to April 1, 1989. In the lease, Clinton agreed to pay Boladian \$8,500 per month in rent. After the lease term expired, Clinton had the option to remain on the property on a month-to-month basis.

Also on April 4, 1985, Clinton and Bridgeport Music (by Boladian) signed an exclusive songwriter's agreement and addendum. On the same date, Clinton and Nine Records (by Boladian) executed an exclusive executive production agreement.

On July 30, 1985, Clinton received a discharge in bankruptcy. Sometime in 1985, Nine Records, Clinton, and Egmitt, Inc. (another of Clinton's entities) executed an exclusive executive production agreement.

In December 1985, pursuant to the April 1985 lease, Clinton paid Boladian \$5,000 in rent for the farm.

Clinton asserts that sometime between 1982 and 1985,¹ Boladian and Clinton allegedly entered into an oral agreement that was never subsequently reduced to writing. According to Clinton, Boladian agreed to save the farm for Clinton, and Clinton agreed to pay Boladian part of Clinton's songwriter's royalties.

On or about March 24, 1986, an agreement was reached regarding publisher's and songwriter's royalties. Also in the mid-1980s, other agreements and revisions were reached.

In June 1986, Boladian sent a letter directly to Clinton at the property. Boladian said he had given Clinton copies of the tax bills totaling \$4,300. Boladian also said: "George, I'm in a real bind with the farm. You had agreed to pay \$8,000 per month as rent. The only money I have received is \$5,000 in December 1985. . . . The pressure had been particularly troublesome since I haven't even received the \$25,000 on the Warner Bros. Music publishing deal."

Also in June 1986, David Shein of ATI Video Enterprises, Inc., and ATI Equities, Inc. (entities that helped manage Clinton's music business), sent a letter to Boladian's attorney Howard Hertz. This letter dealt with various issues that had come up respecting the various agreements, and the lease, among Clinton, Boladian and their entities. In July 1986, Hertz sent a letter to Shein asking, among other things, for "payments on the farm as taxes are now overdue." The letter also states: "Armen purchased the farm at George's insistence and also paid consideration for a Judgment against George in the amount of \$64,676.76 to be dismissed. Although George was to make monthly payments on the farm to Armen, the only payment that has been made was in December 1985 in the amount of \$5,000."

In August 1986, there was a meeting among Boladian, Shein, Clinton and Hertz. Clinton agreed to pay \$6,500 per month rent on the farm, which was Boladian's current monthly out-of-pocket cost.

In October 1986, Hertz asked a Clinton representative to get back to him about the payments due Boladian on the farm lease. On November 26, 1986, Clinton paid taxes on the farm in the amount of approximately \$4,300.

In December 1986, Herz sent Shein a letter summarizing the amounts owed by Clinton to Boladian regarding the farm. The total was approximately \$169,000.

In January 1987, Shein sent a letter to Hertz indicating that he had not been aware of the lease, and asking for a copy. Shein also proposed that Boladian sell the farm to Clinton, and hold a mortgage on it, since Clinton would not be able to obtain a mortgage. In February 1987, Hertz sent a letter to Shein, forwarding a copy of the lease. Hertz again pleaded for rent payments from Clinton.

In March 1987, Hertz sent a letter directly to Clinton at the property advising that while Boladian had bent over backwards to help Clinton over the last several years, Boladian could no

¹ Clinton alleges that the oral agreement occurred in 1985.

longer afford to support the farm and the debt service on the various loans. Hertz also expressed frustration at Clinton's failure to make payments, and at Clinton's failure to inform Boladian of the status of pending and consummated deals (i.e., music deals).

In April 1987, Hertz sent a letter to Jeff Franklin (a Clinton representative or partner). Hertz discussed an appraisal of the farm, payments that needed to be made on a Subaru motor vehicle, 1986 taxes (asking that they be paid immediately), etc. Hertz asked that payment in as large an amount as possible be made on amounts due, stating that he would discuss the real estate and other contracts with him soon.

In October 1987, Hertz sent a letter to Franklin, stating Boladian had continued to make the land contract payments but received no rent from Clinton. Hertz expressed frustration that Clinton failed to pay a percentage of his gross, as well as rent payments.

In June 1989, Hertz sent a letter to Clinton, at the property, indicating that Boladian was distraught over Clinton's failure to make payments and to properly honor the agreements with him. Hertz indicated that a balloon payment was approaching on the land contract.

In October 1990, a warranty deed conveyed legal title to the farm from Sinacola to Boladian, pursuant to their 1985 land contract. This deed was recorded.

Also in 1990, according to Andrew Munro, an attorney for Clinton, Boladian offered to purchase Clinton's interest in the Malbiz catalog/compositions. The Malbiz catalog consisted of songs for which Clinton had intellectual property rights.

In June 1991, an attorney for Hertz's firm sent a letter to Clinton asking for payment of the outstanding balance of the law firm's bill, of about \$19,000 (Clinton had agreed in earlier discussions to pay Boladian's legal bill).

By 1996, Clinton continued to reside on the farm, despite having made only the one rent payment of \$5,000, according to Boladian.

In May 1996, Boladian commenced a summary possession action in Lenawee district court, against Clinton and all other occupants. Boladian argued that he owned the farm, and that defendant occupied it but had not paid rent since 1985. According to Boladian, Clinton owed rent totaling over \$1.1 million, and had ignored repeated notices to quit. Boladian requested that the district court evict Clinton, and enter judgment against him for the unpaid rent. Clinton answered, denied Boladian's allegations, and asserted affirmative defenses.

In July 1996, Boladian filed a motion to strike Clinton's affirmative defenses, on several bases. Boladian argued that Clinton disregarded the court rule requirement that he provide an affidavit supporting his denial of the execution of the lease; that, irrespective of the lease, MCL 554.131 obligates a land possessor to pay the landowner rent; that Clinton's allegations; that there was an oral contract and that Boladian inequitably profited through the various transactions between Clinton and Boladian, were neither a legal nor an equitable defense to summary proceedings regarding a written lease which focus solely on who has the right to possess property; that Clinton failed to allege with particularity any fraud, and that fraud does not qualify

as a defense to summary proceedings for possession; and that the statute of frauds barred enforcement of any oral agreement alleged by Clinton regarding an interest in land.

In September 1996, the district court struck all of Clinton's affirmative defenses, and held a bench trial. The district court then made the following findings:

I do find . . . that the lease was signed by George Clinton. I do find that . . . there was a purchase of the property in question on a land contract from Rose Marie Sinacola by the Plaintiff. . . .

I then further find, that the Plaintiff then paid off this land contract and received a Warranty Deed to this property that is in issue here, dated October 16, 1990, . . . and was so recorded. I know that . . . MCL 600.5701 et cetera entitles the owner of—the registered owner of the real estate has the right to terminate any lease, or any rental arrangement. All proper services [were] made. There was 30 day notice given to terminate this property. [Emphasis added.]

In November 1996, the district court entered a judgment finding that Boladian had a right to possession, and ordering Clinton and any cotenants of his off the farm. The district court had transferred Boladian's damages (unpaid rent) claims to circuit court by stipulation.

In February 1997, Clinton appealed the district court judgment of possession to circuit court. In May 1997, the circuit court affirmed, and Clinton did not further appeal.

In July 1997, Boladian filed in circuit court a motion for summary disposition on the issue of unpaid rent. The motion was premised on collateral estoppel (issue preclusion). In September 1997, Boladian filed a motion for summary disposition under MCR 2.116(C)(10), arguing that the district court already had found that he owned the property, that Clinton entered an agreement to lease the farm from plaintiff for \$8,500 a month, and that Clinton never paid any rent. Given the circuit court's affirmance of the district court's final order, Boladian argued that Clinton could not pose valid defenses to the claims for unpaid rent.

Clinton opposed both motions. The circuit court ruled as follows:

I've reach[ed] a conclusion here. It's a matter of fairness, but unfortunately for your client [defendant], it's not a matter of legality. It should have been pled as a counter-claim or an offset in the alternative in the original case.

You can still turn around and sue for the royalties. You haven't lost that right. So you . . . haven't been prejudiced other than you[']ve got [to] go through another lawsuit, . . . and you got the expenses of filing the papers and filing costs.

For the reasons that have been outlined by the Plaintiff's attorney, I have to agree that there really [aren't] any issues here to be determined . . . you know, I found the lease was valid, I found that there was no oral contract, and that that was his signature on the lease, and that the Plaintiff was the owner of the property and gave possession for—there was [sic] two—now, wait a minute. There is a

question I had in my mind. I just thought of it. I gave possession because they gave the proper 30-day notice requirement. So it's still a question of rent.

* * *

Well, I know in my own mind I did do that [defer consideration of the royalty issue], but that doesn't mean that the issue shouldn't have been raised and answered at the first pleadings in the affirmative defense[s]. . . .

* * *

We do now have the appeal file, and it says on it with the judgment . . . a hearing was held, and that was signed on November 26[, 1996], you know, the standard form, landlord tenant judgment. And then the further order and findings of the Court, . . . down to B. It says:

"The Court further finds that the Plaintiff is entitled to possession from both the Defendant's failure to pay rent and also for the termination of his tenancy by giving a valid notice pursuant to the statute."

So I did order it, and I signed that. . . .

So I have to, because of the reasons that have outlined [sic] here by the Plaintiff's attorney, I'm finding that there is no material issue here and am granting the Plaintiff's motion for summary disposition.

In November 1997, the circuit court entered an order granting plaintiff summary disposition with respect to the unpaid rent issue pursuant to MCR 2.116(C)(7) and (10). Also in November 1997, the circuit court entered a judgment for plaintiff in the amount of approximately \$1.2 million. After denying an appeal of right, this Court granted Clinton's application for leave to appeal.

In February 2001, this Court held that the circuit court had incorrectly granted plaintiff summary disposition concerning monetary damages (unpaid rent):

Prior to bifurcation, defendant filed affirmative defenses, including one that stated that there was an oral agreement under which plaintiff advanced money to pay the land contract vendor on behalf of defendant and plaintiff was to be paid from royalties. Plaintiff moved to strike this affirmative defense, along with the others, arguing that it was outside the scope of the district court's jurisdiction. The district court granted the motion and the affirmative defenses were stricken.

The issue that appears to have been argued in the district court was that the royalty payments were intended to serve as a purchase price for the property. Plaintiff argued alternate grounds for rejecting defendant's purchase argument, both that the oral agreement did not exist and that a written agreement was necessary to meet the statute of frauds. The district court did not necessarily determine that the oral agreement did not exist. Where the affirmative defenses were stricken in the district court action, plaintiff failed to establish that the issue

of rent was actually presented. The trial court erred in granting summary disposition where there was no showing that the issue was actually and necessarily litigated. [*Boladian v Clinton*, unpublished opinion per curiam of the Court of Appeals, issued February 23, 2001 (docket no. 216153), slip op at 2.]

This Court reversed the summary disposition, and remanded to the circuit court. *Id.*

On remand, in July 2001, Boladian filed an amended complaint that added plaintiffs and claims. In July 2001, Clinton filed an amended answer, and a counterclaim containing six counts. Later, plaintiffs filed a second amended complaint, adding defendants and claims.

In May 2004, Clinton moved under MCR 2.116(C)(7) for partial summary disposition concerning all breach of contract, fraud, and tortious interference claims in plaintiffs' amended complaint. Also in May 2004, Clinton filed a separate motion for partial summary disposition of the claims added by the second amended complaint, and of the claims for defamation and related causes of action stemming from release of a song, styled 'Speed Dreamin'', in which Clinton allegedly defamed Boladian. Also in May 2004, plaintiffs moved for summary disposition of the counterclaim under subrules (C)(7) and (10). Each side filed responses in opposition to the other side's dispositive motions.

In December 2004, the circuit court concluded that both sides had delayed pursuit of their claims, such that laches was a defense to both sides' claims. In March 2005, the circuit court entered an order dismissing both sides' claims because of the defense of laches. The order also dismissed Clinton's challenges to the pre-1984 contracts, because those contracts were adjudicated (i.e., discharged) in Clinton's bankruptcy.

Clinton appealed, and Boladian cross-appealed. In November 2005, this Court held (*Boladian II*) that in applying the doctrine of laches, the trial court failed to consider whether the parties' lack of due diligence in asserting their claims resulted in prejudice. Regarding Boladian's claims, this Court held that: Boladian was precluded from recovering unpaid rent from alleged breaches of the 1985 lease, and the post-lease period of month-to-month tenancies, due more than six years before he filed the original complaint in May 1996, but that the circuit court should address Boladian's remaining unpaid rent claims (i.e., counts II and IV) not barred by laches. This Court also held that Boladian's claims in his first amended complaint were untimely, under the applicable limitations periods, and that collateral estoppel barred Boladian's claims in his second amended complaint. *Boladian v Clinton (Boladian II)*, unpublished opinion of the Court of Appeals, issued November 22, 2005 (docket no. 261746), slip op at 1-12.

With respect to Clinton's counterclaims, this Court found that counts I, II, and V were barred by the statute of limitations, and count II was also barred by collateral estoppel (given that the district court had found that Clinton signed the 1985 lease). This Court also held that because counts III and IV (breach of oral contract and promissory estoppel) were dependent on whether there was an oral agreement, and no determination was made on this issue below, the circuit court should consider this factual issue on remand, and resolve the remaining issues involving the statute of frauds or the statute of limitations. The Court added that fact-finding regarding the oral agreement will be unnecessary if the trial court is able to substantiate a dismissal based on laches. Additionally, the Court noted that it was unnecessary to consider

Clinton's setoff claim (count VI), because its viability rested on the existence of the alleged oral agreement. *Boladian II, supra*, slip op at 12-13, nn 34 and 35.

Accordingly, *Boladian II* reversed the circuit court's March 10, 2005, order, and remanded for:

(1) the circuit court to make further findings regarding the potential applicability of laches, or (2) further proceedings to address (a) the amounts of unpaid rent that Boladian may be entitled to recover from Clinton under Count II and Count IV of the original complaint, taking into account the applicable period of limitation, and (b) with respect to Clinton's Count III and Count IV, (i) whether an April 1985 oral agreement exists, (ii) the terms of the oral agreement, (iii) whether the period of limitation bars Count III and Count IV, and (iv) whether Boladian should be estopped from asserting the statute of frauds as a defense to the oral agreement. We affirm the circuit court's dismissal of Boladian's Counts V - XVIII and Clinton's countercomplaint Counts I - II and V - VI, albeit pursuant to MCR 2.116(C)(7) (periods of limitation and collateral estoppel). [*Boladian II, supra*, slip op at 14.]

On second remand, in June 2006, defendants filed an MSD arguing that laches barred plaintiffs' claims. Concurrently, plaintiffs filed an MSD regarding their remaining claims, and defendants' remaining counterclaims. Plaintiffs contended that the doctrine of laches barred defendants' counterclaims, because Boladian suffered prejudice by acting in reliance on his ownership of the farm.

In August 2006, the circuit court ruled that both parties suffered substantial prejudice from laches. Specifically, the court found:

The prejudice that occurs here is that it's virtually impossible to separate the complex business relationship that the parties have had to determine if there was an oral agreement or whether there were just simply discussions. What the agreement in effect was, what the terms of the agreement are, the witnesses who may have been involved at the time in these discussions and their faded memories makes it difficult for either of the parties to prove their claims in this particular case.

That prejudices Mr. Boladian, who had a – who has provided, to the Court, a written lease agreement. It prejudices Mr. Clinton, who made payments or who has made improvements to the farm. And whether that was done in reliance on whether that was rental payments or payments to purchase the property, which, in his mind, he may have believed, there is no proof that there was a meeting of the minds, what you have to have to show a contract.

Mr. Clinton certainly has one idea of what the agreement is; Mr. Boladian certainly had a whole different idea of what the agreement was. But there really isn't enough evidence on either side to show there was an agreement for the purchase of this real estate. And even if there had been, the Court believes that

the statute of limitations would have run, the six-year statute of limitations, certainly at some point during the 1985 to 1989 period.

The issue of estoppel, the Court does not believe applies in this case for the reasons set forth by [plaintiffs' attorney].

The Court will again dismiss the claims of both parties on the basis of laches. The Court believes that both parties have been prejudiced in the enormous delay that took place in this particular case. I'm not sure that Mr. Clinton would have continued to occupy the farm had Mr. Boladian filed his claim to have Mr. Clinton evicted at an earlier date, nor made the improvements to the farm. And for that reason, I believe that Mr. Clinton was also prejudiced.

On March 19, 2007, the circuit court entered an order reflecting this ruling. The court entered an amended order on March 27, 2007, indicating that the statute of frauds applied to the alleged oral agreement, and that there was no meeting of the minds, so as to establish an oral contract.

Clinton and company appealed, and Boladian and his cohort cross-appealed. We now affirm.

Clinton's first argument on appeal is that the trial court erred in granting summary disposition of his counterclaims on the basis of laches. Summary dispositions are reviewed de novo. *Willett v Waterford Charter Twp*, 271 Mich App 38; 718 NW2d 386 (2006). Also, this Court reviews the applicability of the doctrine of laches de novo. *Shelby Twp v Papesh*, 267 Mich App 92, 108; 704 NW2d 92 (2005).

Laches is an equitable doctrine that applies where a party sits on her rights, and fails to exercise due diligence. *Gallagher v Keefe*, 232 Mich App 363, 369-370; 591 NW2d 297 (1998). The delay must be long enough to cause some change in circumstances, or some reliance by another party, which results in prejudice to that other party. *Id.*

When the alleged oral agreement allegedly occurred is not clear. Clinton argues that the oral agreement occurred in or around 1985.

The alleged terms of the alleged oral agreement were that Clinton promised to pay Boladian a premium from Clinton's songwriter's royalties. In consideration of that promise, Boladian promised to save the farm for Clinton. Thus, the alleged agreement was, allegedly, a bilateral contract (promise for a promise).

More specifically, Clinton argues that Boladian promised to save Clinton's ownership of the land. In consideration of that promise, Clinton allegedly promised to give Boladian his songwriter's royalties, which would be applied, in part, to pay-off what Clinton owed Sinacola, and in part as payment to Boladian for saving the farm.

On second remand, the trial court specifically found that both it (the court) *and* Boladian suffered prejudice from Clinton's delay in bringing his breach of oral contract and promissory estoppel claims:

a) As a consequence of an enormous delay, it is virtually impossible to separate the parties' long and complex business relationship, to determine if there was an oral agreement regarding the property, as Clinton alleges, and, if so, what its terms might have been.

b) As a further consequence of the enormous delay, the faded memory of relevant witnesses makes it difficult for either party to prove their respective claims.

We agree. Had Clinton not delayed bringing his breach of oral agreement claim, memories would have been fresher regarding any conversation or conversations in which the alleged oral agreement may have been expressed. Because one witness (Tony Sinacola, wife of Rose Marie) is dead, and other witnesses' memories have surely faded since 1985, Boladian is prejudiced in defending against Clinton's claims of breach of oral contract and promissory estoppel. Accordingly, the trial court did not err in granting summary disposition of Clinton's claims, because of the defense of laches.

Clinton argues that he did not know that he lacked ownership of the farm, or that ownership was an issue until Boladian sued, and that, therefore, he did not unreasonably delay bringing his claims of breach of oral agreement and promissory estoppel. We disagree. First, Clinton cites no authority to the effect that, for the application of laches, the person who delayed bringing his claim must have known of a competing claim.

Second, the facts, outlined again below, suggest that Clinton did know, or at least should have known, of Boladian's ownership (and resulting claim of ownership). On April 4, 1985, Clinton executed a lease of the farm from Boladian. The lease term was April 1, 1985 to April 1, 1989. In the lease, Clinton agreed to pay Boladian \$8,500 per month in rent. After the lease term expired, Clinton had the option to remain on the property on a month-to-month basis. In December 1985, Clinton paid Boladian \$5,000 in rent for the farm. In June 1986, Boladian sent a letter directly to Clinton at the property. Boladian said he had given Clinton copies of the tax bills totaling \$4,300. Boladian also said: "George, I'm in a real bind with the farm. You had agreed to pay \$8,000 per month as rent. The only money I have received is \$5,000 in December 1985. . . . The pressure had been particularly troublesome since I haven't even received the \$25,000 on the Warner Bros. Music publishing deal."

Also in June 1986, Shein sent a letter to Boladian's attorney, Hertz. This letter dealt with various issues that had come up respecting the various agreements, and the lease, among Clinton, Boladian and their entities. In July 1986, Hertz sent a letter to Shein asking, among other things, for "payments on the farm as taxes are now overdue." The letter also states: "Armen purchased the farm at George's insistence and also paid consideration for a Judgment against George in the amount of \$64,676.76 to be dismissed. Although George was to make monthly payments on the farm to Armen, the only payment that has been made was in December 1985 in the amount of \$5,000."

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payments due Boladian on the farm lease. In December 1986, Herz sent Shein a letter summarizing the amounts owed by Clinton to Boladian regarding the farm.

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In April 1987, Hertz sent a letter to Franklin. Hertz discussed an appraisal of the farm, payments that needed to be made on a Subaru motor vehicle, 1986 taxes (asking that they be paid immediately), etc. Hertz asked that payment in as large an amount as possible be made on amounts due, stating that he would discuss the real estate and other contracts with him soon. In October 1987, Hertz sent a letter to Franklin, stating Boladian had continued to make the land contract payments but received no rent from Clinton. Hertz expressed frustration that Clinton failed to pay a percentage of his gross, as well as rent payments.

In June 1989, Hertz sent a letter to Clinton, at the property, indicating that Boladian was distraught over Clinton's failure to make payments and to properly honor the agreements with him. Hertz indicated that a balloon payment was approaching on the land contract.

Judging from these events, we find that Clinton knew or should have known of Boladian's ownership of the farm (and resulting claim of ownership). Therefore, Clinton's delay in bringing his claim of breach of oral contract (and promissory estoppel), for many years, was unreasonable. The trial court correctly applied laches.

Third, according to a finding of fact by the district court, Boladian's 1990 deed was recorded. Therefore, Clinton was on *record notice* of Boladian's ownership of the farm. MCL 565.25(4). MCL 565.25(4) provides: "*The instrument shall be considered as recorded at the time so noted and shall be notice to all persons, except the recorded landowner subject to subsection (2), of the liens, rights, and interests acquired by or involved in the proceedings. . . .*" (Emphases added.)

Fourth, Michigan is a race-notice state under the Michigan real property recording act, MCL 565.1 *et seq.* MCL 565.25(4) provides: "*The instrument shall be considered as recorded at the time so noted All subsequent owners or encumbrances shall be subject to the perfected liens, rights or interests.*" (Emphasis added.) Thus, a recorded instrument serves as notice, and all subsequent interests or encumbrances take subject to previously-perfected liens and interests. MCL 565.25(4); *Piech v Beaty*, 298 Mich 535, 538; 299 NW 705 (1941). MCL 565.29 provides, in pertinent part: "Every conveyance of real estate within the state hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser in good faith and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded." Thus, a *subsequent* interest holder (such as Clinton)

may take priority over a *previously*-conveyed interest (such as Boladian's), only where the subsequent interest holder takes "in good faith" *and* records first.² This is the meaning of "race-notice." Here, Clinton did not record first. (Indeed, he *never* recorded a memorandum of the alleged oral agreement.) Therefore, he loses under race-notice.

Because Clinton clearly knew of Boladian's ownership of the farm (and resulting claim of ownership), yet Clinton failed, for many years, to bring an action on the alleged oral contract, (or, for that matter, to record a memorandum of the alleged oral agreement), Clinton unreasonably delayed bringing his claim, and the defense of laches applies. The trial court did not err in so holding.

Next, defendants argue that the circuit court erred in granting summary disposition of the breach of oral contract claim, and the promissory estoppel claim, under (1) the applicable limitations periods, and (2) the applicable statutes of frauds. Because the trial court correctly held that the doctrine of laches barred these claims, these arguments are moot. *In re Duane Baldwin Trust*, 274 Mich App 387, 404; 733 NW2d 419, 429 (2007).

Next, defendants argue that the circuit court erroneously granted summary disposition of the breach of oral contract claim, and the promissory estoppel claim, because the circuit court resolved disputed issues of material fact, and made credibility determinations. Defendants' argument relates to the circuit court's conclusion that there was no "meeting of the minds" so as to form the alleged oral agreement. We disagree with defendant's argument.

The phrase "meeting of the minds" is misleading. The court need not get into the minds of the allegedly-contracting parties. Instead, an *objective* standard is applied, under which, all that matters are the *express words and visible acts* of the parties, not their subjective states of mind. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 454; 733 NW2d 766, 773 (2006).

Contract formation requires an offer and an unambiguous acceptance that is in strict conformance with the offer. *Kloian, supra* at 452. "[A] contract requires mutual assent . . . on all the essential terms." *Id.* at 453.

Viewing the evidence in a light most favorable to defendants, defendants presented insufficient evidence of express words by which an oral agreement, with the terms they claim, was formed. Indeed, even if there were words spoken indicating mutual assent to some terms, there was no evidence that the parties agreed on the *amount* of the premiums to be paid to Boladian, and taken from Clinton's songwriter's royalties. Clinton admitted in his deposition that his royalties ranged from \$200,000 to \$1 million.

² A "conveyance" is "every instrument in writing, by which any estate or interest in real estate is created, aliened, mortgaged or assigned." MCL 565.35. "A good faith purchaser is one who purchases without notice of a defect in the vendor's title." *Michigan National Bank v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992).

At common law (which applies where real estate and/or services are at issue, as opposed to goods [tangible personal property], for which the uniform commercial code applies), an acceptance must be the mirror image of the offer. *Challenge Machinery Co v Mattison Machine Works*, 138 Mich App 15, 22; 359 NW2d 232, 235 (1984). And price is an essential term. See *Zurcher v Herveat*, 238 Mich App 267, 291; 605 NW2d 329 (1999).

A valid contract requires mutual assent to all essential terms. *Kamalnath v Mercy Mem Hosp Corp*, 194 Mich App 543, 548; 487 NW2d 499 (1992). A court may only supply details of performance by construction *if* the parties defined the essential terms. See *Nichols v Seaks*, 296 Mich 154, 159; 295 NW 596 (1941). Here, the parties did not do so. There was no evidence of the amount of royalties Boladian would receive from Clinton (i.e., price).

“A valid contract requires mutual assent on all essential terms. *Mere discussions and negotiation cannot substitute for the formal requirements of a contract.*” *Eerdmans v Maki*, 226 Mich App 360, 364; 573 NW2d 329 (1997) (citation omitted). Moreover, an expression of intention does not create a binding contract. *Kamalnath, supra* at 549. The claimant bears the burden of proving the existence of the contract. *Id.* Indeed, there can be no presumption in favor of the creation of a contract, regardless of the equities in a case, because the trial court is unauthorized to make a contract for the parties when none exists. *Id.*

While Clinton may have had a subjective belief that an agreement existed, that is not enough. *Kloian, supra* at 454. Defendants presented insufficient evidence of an oral agreement, concerning all essential terms (including price), to survive summary disposition. The trial court did not resolve disputed issues of material fact, nor make credibility determinations; rather, it correctly applied the summary disposition standards and reached the correct conclusion.

On cross-appeal, plaintiffs argue that the circuit court erred in granting summary disposition of their claims for rent on the basis of laches. We disagree.

Regarding prejudice, the circuit court stated:

The Court believes that both parties have been prejudiced in the enormous delay that took place in this particular case. *I'm not sure that Mr. Clinton would have continued to occupy the farm had Mr. Boladian filed his claim to have Mr. Clinton evicted at an earlier date, nor made the improvements to the farm. And for that reason, I believe that Mr. Clinton was also prejudiced.* [Emphasis added.]

We agree with the circuit court. Clinton was prejudiced by Boladian's delay. Had Boladian brought his claims for rent to court earlier, Clinton (1) would have asserted his claims of breach of oral agreement, and promissory estoppel, earlier, and (2) would not have made improvements on the farm. Accordingly, the circuit court did not err in granting summary disposition of plaintiffs' claims because of the defense of laches.

Affirmed.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder