

STATE OF MICHIGAN  
COURT OF APPEALS

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RONDA MASTEN,

Plaintiff-Appellant,

v

ABN AMRO MORTGAGE GROUP and  
STANDARD FEDERAL BANK,

Defendants-Appellees.

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UNPUBLISHED

March 10, 2009

No. 282534

Macomb Circuit Court

LC No. 2004-001824-CK

Before: Donofrio, P.J. and K.F. Kelly and Beckering, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's order granting summary disposition on the basis that plaintiff's claim of an oral forbearance agreement was barred by MCL 566.132(2). Plaintiff also challenges the trial court's finding that an erroneous representation by defense counsel concerning plaintiff's acceptance of the case evaluation was unintentional. We affirm.

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

We agree with the trial court that plaintiff's action is barred by MCL 566.132(2). Although plaintiff asserts that equitable estoppel is a basis for avoiding this statute of frauds defense, as explained in *Crown Technology Park v D&N Bank, FSB*, 242 Mich App 538, 550-551; 619 NW2d 66 (2000), the bar prescribed in MCL 566.132 applies to "an action," and is "an unqualified and broad ban," "eliminating the possibility of creative pleading to avoid [it]." Plaintiff has not provided any basis for concluding that the trial court erred in determining that MCL 566.132(2) barred her action.

In addition, the trial court's determination that defense counsel's erroneous representation concerning plaintiff's acceptance of the case evaluation was unintentional is not clearly erroneous. *Contel Systems Corp v Gores*, 183 Mich App 706, 711; 455 NW2d 398 (1990). Plaintiff asserts that defense counsel's assertion of an unintentional mistake is not credible because defense counsel did not take other actions that would be consistent with a belief that the case had settled. However, defense counsel did not claim to have such a belief, and did not represent to the court that the case as a whole had settled. There was evidence that defense

counsel tendered payment of the monetary portion of the case evaluation award, consistent with a belief that it had been accepted by plaintiff, but the face of the case evaluation award indicated that it did not dispose of plaintiff's equitable claims. Under the circumstances, defense counsel's failure to take actions consistent with settlement of the case comport with her claimed misperception that plaintiff had accepted the monetary case evaluation award and does not show that the trial court clearly erred in accepting counsel's explanation as credible.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Kirsten Frank Kelly  
/s/ Jane M. Beckering