STATE OF MICHIGAN

COURT OF APPEALS

ADRIAN & BLISSFIELD RAILROAD COMPANY, Plaintiff-Appellant,	UNPUBLISHED June 16, 2009
v	No. 282710 Ingham Circuit Court
DEPARTMENT OF TRANSPORTATION, Defendant-Appellee.	LC No. 07-000015-MK

Before: Fort Hood, P.J., and Cavanagh and K.F. Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the trial court's orders granting defendant's summary disposition motions and dismissing plaintiff's claims. We affirm.

Plaintiff is a railroad company that provides rail service in Lenawee County. In 1991, the parties executed an agreement whereby defendant gave plaintiff a limited right to operate on the Lenawee County rail system, which defendant owned. In 1999, after a section of the rail system had been dormant for several years, defendant removed certain railroad grade crossings. Plaintiff later purchased the rail system from defendant pursuant to a contract dated November 22, 2000 (hereafter referred to as the "2000 contract"). In 2004, plaintiff requested that defendant reinstall the previously removed crossings pursuant to an alleged 1999 agreement. Defendant refused to do so. In February 2007, plaintiff filed this action, alleging several different claims arising from defendant's failure to reinstall the crossings. Defendant filed two separate motions for summary disposition. The trial court dismissed some of plaintiff's claims following a hearing in May 2007, and dismissed the remaining claims following a hearing in December 2007.

I. Standards of Review

Defendant's first motion for summary disposition was brought pursuant to MCR 2.116(C)(7), and its second motion was brought pursuant to MCR 2.116(C)(8). We review de novo a trial court's decision on a motion for summary disposition. *Kuznar v Raksha Corp*, 481 Mich 169, 175; 750 NW2d 121 (2008). This Court also reviews de novo both a trial court's interpretation of a contract and questions of statutory interpretation. *Id.* at 176; *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005).

Summary disposition may be granted under MCR 2.116(C)(7) if a claim is barred by a statute of limitations. *Kuznar, supra* at 175. "In reviewing whether a motion under MCR 2.116(C)(7) was properly decided, we consider all documentary evidence and accept the complaint as factually accurate unless affidavits or other appropriate documents specifically contradict it." *Id*. at 175-176. Summary disposition may be granted under MCR 2.116(C)(8) if a party fails to state a claim on which relief can be granted. *Id.* at 176. A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Id*. All factual allegations in support of the claim are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts, and are construed in the light most favorable to the nonmoving party. *Id*.; *Detroit Int'l Bridge Co v Commodities Export Co*, 279 Mich App 662, 670; 760 NW2d 565 (2008).

"The fundamental goal of contract interpretation is to determine and enforce the parties' intent by reading the agreement as a whole and applying the plain language used by the parties to reach their agreement." *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 529; 740 NW2d 503 (2007). "[W]ords used in the contract [are given] their plain and ordinary meaning that would be apparent to a reader of the instrument." *Rory, supra* at 464. The language used "must be read and understood in its grammatical context, unless it is clear that something different was intended." *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999).

II. Statutory Claims

The trial court dismissed plaintiff's claims alleging that defendant violated the Interstate Commerce Commission Termination Act (ICCTA), 49 UCS 10101 *et seq*., and the State Transportation Preservation Act (STPA), MCL 474.51 *et seq*., because they were not filed within the applicable limitations period.

As an initial matter, we note that plaintiff failed to demonstrate that a private cause of action may be premised on a violation of 49 USC 10903. A federal statutory violation and harm to a person does not automatically give rise to a private cause of action in favor of the injured person. *Office Planning Group, Inc v Baraga-Houghton-Keweenaw Child Dev Bd*, 472 Mich 479, 496; 697 NW2d 871 (2005). Rather, the enforcement of federal law as a private right of action must be created by Congress. *Id*. When there is no evidence of an intent to create a private remedy for a federal statutory violation, a plaintiff's action must be dismissed. *Id*.

Plaintiff alleged that defendant did not comply with federal statutory law when it failed to file an application for discontinuance of the dormant rail lines. However, 49 USC 10903(a)(1)(B) provides that a "rail carrier" must file an application with the Surface Transportation Board. A rail carrier is defined as "a person providing common carrier railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation[.]" 49 USC 10102(5). There is no indication that defendant provided common carrier railroad transportation and that Congress provided for a private cause of action for the failure to comply with 42 USC 10903. Therefore, the trial court did not err in dismissing this count of the complaint.

With regard to the statute of limitations argument as briefed by the parties, we also conclude that summary disposition was proper. The parties do not dispute that plaintiff's ICCTA and STPA claims are subject to the three-year limitations period in MCL 600.6452. Plaintiff

argues that the trial court erred in finding that these claims accrued in 1999. Under the ICCTA, "[a] rail carrier providing transportation subject to the jurisdiction of the [Surface Transportation] Board . . . who intends to abandon any part of its railroad lines . . . must file an application relating thereto with the Board. An abandonment or discontinuance may be carried out only as authorized under this chapter." 49 USC 10903(a)(1)(A).

Section 10 of the STPA, MCL 474.60, provides in pertinent part:

> (11) Upon acquisition of a right-of-way, the department may preserve the right-of-way for future use as a railroad line and, if preserving it for that use, shall not permit any action which would render it unsuitable for future rail use.

The trial court did not err in determining that plaintiff's ICCTA and STPA claims accrued, if at all, in 1999 when the crossings were removed. They could not have accrued in 2004, when defendant refused to reinstall the crossings, because defendant no longer owned the rail system at that time. Both statutes require operation of the rail line. Because plaintiff filed its complaint in 2007, well beyond the three-year limitations period, its ICCTA and STPA claims are time barred. Therefore, the trial court did not err in dismissing these claims pursuant to MCR 2.116(C)(7).

III. Breach of Contract and Promissory Estoppel Claims

Plaintiff argues that the trial court erred in finding that an integration clause in the parties' 2000 contract, pursuant to which plaintiff purchased the Lenawee County railroad system from defendant, nullified the alleged 1999 agreement that purportedly obligates defendant to replace the crossings at a future date. We disagree. The integration clause provides:

> PURCHASER and SELLER agree, with respect to the sale of the PROPERTIES, that this CONTRACT constitutes the entire agreement between them, that there are no other agreements or understandings between them, implied or express, except as set forth specifically in this CONTRACT and that all prior understandings between them are superceded by this CONTRACT.

The trial court rejected plaintiff's argument that this integration clause in the 2000 contract did not affect the 1999 agreement because the two agreements involved different subject matters. The trial court reasoned that the subject matter of the 1999 agreement was irrelevant because the phrase "with respect to the sale of the properties" only modified the phrase that immediately follows, beginning with "this contract," and did not modify the last phrase that "all prior understandings between them are superceded by this contract."

Generally, "a modifying word or clause is confined solely to the last antecedent, unless a contrary intention appears." *Sun Valley Foods, supra* at 237. Considering the purpose of an integration clause, we cannot agree with the trial court's reasoning. The purpose of an integration clause is to give effect to the intent of contracting parties "to establish a written agreement as the exclusive basis for determining their intentions concerning the subject matter of the contract." *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 497; 579 NW2d 411 (1998). Reading the clause as a whole, it is apparent that the intent plainly

expressed is that the 2000 contract supersedes all prior agreements between the parties that pertain to the subject matter of the contract, the sale of the properties.

We disagree with plaintiff's argument that the 2000 contract does not affect the 1999 agreement because it relates to a different subject matter. The crossings were part of the properties that were subject to the 2000 contract. The contract provides that plaintiff was purchasing the properties "as is," meaning that plaintiff was taking the crossings in their then-existing condition. Reading the "as is" provision in conjunction with the integration clause, the 2000 contract plainly expresses that it supersedes the 1999 agreement. Therefore, assuming without deciding that plaintiff was a party to a valid 1999 agreement, the integration clause precludes plaintiff's breach of contract claim. Plaintiff's promissory estoppel claim likewise cannot be sustained because any reliance on defendant's promise in the 1999 agreement was unreasonable as a matter of law in light of the integration clause in the 2000 contract. *UAW-GM Human Resource Ctr, supra* at 504-505. Because the trial court reached the right result in dismissing plaintiff's breach of contract and promissory estoppel claims, we affirm the dismissal of those claims. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 508-509; 741 NW2d 539 (2007).[1]

III. Takings Claim

Plaintiff argues that the trial court erred in dismissing its takings claim based on the 2000 contract's integration clause because such a ruling amounted to a finding of waiver and plaintiff did not waive its right to just compensation. "A de facto taking occurs when a governmental agency effectively takes private property without a formal condemnation proceeding." *Merkur Steel Supply, Inc v Detroit*, 261 Mich App 116, 125; 680 NW2d 485 (2004). "Any injury to the property of an individual which deprives the owner of the ordinary use of it is equivalent to a taking, and entitles him to compensation." *Id*. at 132-133 (citation omitted).

Plaintiff's takings claim arises from the alleged 1999 agreement. However, any obligation by defendant to reinstall the crossings no longer existed after the 2000 contract was executed. A finding that the 2000 contract supersedes the 1999 agreement extinguishes the basis for plaintiff's claim. It is a misnomer to characterize such a finding as a waiver, as plaintiff suggests. Plaintiff had no right to compensation at the time the 2000 contract was executed because its claim had yet to accrue. Therefore, the trial court did not err in dismissing plaintiff's takings claim based on the effect of the 2000 contract.

[1] In light of this conclusion, we need not address plaintiff's claim that reversal is required where the trial court rendered an inconsistent decision.

In light of our decision, it is unnecessary to address defendant's alternative arguments for affirmance.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly