

STATE OF MICHIGAN
COURT OF APPEALS

CADIEUX CORPORATION,

Plaintiff-Appellant,

v

KAREN RUDZINSKI and SUSAN MUER,
acting trustees of the BETTY JANE MUER
REVOCABLE TRUST AGREEMENT,
WILLIAM M. McPHEDRAIN, FRANCES
L. McPHEDRAIN, W.A. STEINER, JR.,
SINE REALTY COMPANY, THOMAS D.
SINE, and LINDA J. BAILEY,

Defendants-Appellees.

UNPUBLISHED

November 15, 1996

No. 185567

LC No. 95-314

Before: O'Connell, P.J., and Smolenski and T.G. Power,* JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's decision granting summary disposition in favor of defendants Sine, Sine Realty, Bailey, Rudzinski, Muer and Steiner. In addition, plaintiff appeals as of right the court's order denying its motion for a preliminary injunction. We affirm.

Defendants Rudzinski and Muer (the "trustees") were the acting trustees of the Betty Jane Muer Revocable Living Trust. The trust owned a parcel of real property located in St. Clair County. The trustees decided to sell the property and began negotiating with plaintiff. According to plaintiff, the parties reached an agreement under which plaintiff was to lease the property from the trustees for two years, with an option to purchase during the term of the lease. After the trustees sold the property to the McPhedrain defendants for \$475,000, plaintiff filed suit. In its complaint, plaintiff set forth claims for breach of contract and fraud. In addition, plaintiff sought to have the conveyance to the McPhedrains declared void.

* Circuit judge, sitting on the Court of Appeals by assignment.

Although all of the defendants involved in this case are listed as appellees, plaintiff makes no meaningful argument with regard to Steiner, Sine, Sine Realty and Bailey. In fact, these defendants are not even mentioned by name in the argument section of plaintiff's brief. Therefore, we will treat as waived any issues relative to those defendants. Furthermore, this Court will consider only those issues which are given more than a cursory discussion in plaintiff's brief. See *Froling v Carpenter*, 203 Mich App 368, 373; 512 NW2d 6 (1994).

Plaintiff contends that the trial court abused its discretion in denying its motion for a preliminary injunction. At trial, plaintiff alleged that the injunction was necessary to prevent the McPhedrain defendants from altering the status of the property. It is undisputed that the McPhedrains razed the house and cleared the land following the trial court's decision denying the injunction. Therefore, the relief sought by plaintiff is no longer available and any question concerning the propriety of the court's decision has been rendered moot.

Next, plaintiff argues that the trial court erred in granting summary disposition in favor of the trustees. Because the trial court considered documentary evidence submitted by the parties, we review this issue under MCR 2.116(C)(10). This Court reviews a motion for summary disposition pursuant to MCR 2.116(C)(10) de novo, using the same standard required of the trial court. *Jackhill Oil Co v Powell Production Inc*, 210 Mich App 114, 117; 532 NW2d 866 (1995). A motion under MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). MCR 2.116(C)(10) permits summary disposition when, except as to the amount of damages, there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. A court reviewing such a motion must consider the affidavits, depositions, admissions, pleadings, and any other evidence in favor of the party opposing the motion and grant the benefit of any reasonable doubt to the opposing party. *Radtke, supra*, 374.

In dismissing the breach of contract claim, the court held that plaintiff had no enforceable interest in the property. This decision was based, in part, on a finding that plaintiff failed to produce a written agreement sufficient to satisfy the statute of frauds. With regard to the ground lease, we find that the trial court's decision was correct. It is undisputed that the lease agreement was not signed by the trustees. The general statute of frauds, MCL 566.106; MSA 26.906, states:

No estate or interest in lands, other than leases for a term not exceeding 1 year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing.

See also MCL 566.108; MSA 26.908 (every lease for longer than a one year period shall be void unless the contract, or some note or memorandum thereof, is in writing and signed by the lessor or his

lawfully authorized agent); MCL 566.132; MSA 26.922 (an agreement that, by its terms, is not to be performed in one year is void unless it is signed by the party to be charged).

Plaintiff argues that the lease agreement, together with letters signed by the trustees' agents, establishes the existence of a binding and enforceable agreement. However, plaintiff does not identify the specific letters upon which it relies in support of this contention, nor does plaintiff explain how these documents evidence a writing sufficient to satisfy the statute of frauds. Moreover, the trustees submitted affidavits below in which they denied authorizing their agents to commit to any agreement on their behalf. Plaintiff presented no evidence to contradict this contention. Accordingly, any lease agreement is not enforceable. See *Dewald v Isola*, 180 Mich App 129, 135; 446 NW2d 620 (1989).

Plaintiff contends that the trustees are estopped from asserting the statute of frauds as a defense under the doctrine of part performance. We disagree. For partial performance to be established, there must be acts which unequivocally refer to, and result from, the agreement. *Groening v McCambridge*, 282 Mich 135, 140; 275 NW 795 (1937). The actions undertaken by plaintiff were not required under the terms of the existing documentation. Plaintiff did not take possession of the property or begin making payments. Rather, plaintiff's actions were preliminary to performance under the contract itself. See e.g. *Cassidy v Kraft-Phenix Cheese Corp*, 285 Mich 426, 432-433; 280 NW 814 (1938). Accordingly, these activities did not constitute part performance sufficient to remove the unsigned lease from the statute of frauds.

Although the lease agreement was void under the statute of frauds, the option contract allegedly entered into between plaintiff and the trustees was not rendered unenforceable merely because it lacked the signature of the trustees. An option contract does not create an interest in land. Therefore, it is not subject to the statute of frauds. *Marina Bay Condominiums, Inc v Schlegel*, 167 Mich App 602, 607; 423 NW2d 284 (1988). Nevertheless, reversal of the trial court's decision dismissing plaintiff's breach of contract claim is not warranted.

The option agreement specified that the plaintiff could exercise the option to purchase the property "at any time during the term of a Lease of such property by Cadieux Corporation from the Seller." Thus, the option contract does not exist independent of the lease agreement. At trial, plaintiff argued that the two-year term identified in the lease agreement could be applied to the option by incorporation to create an enforceable contract. However, if the terms of a contract are not severable, and part of a contract is within and part is outside the statute of frauds, the entire contract is unenforceable. *Dumas, supra*, 437 Mich 537 (Riley, J.). Because it is impossible to determine when the option may be executed without relying on the lease agreement, we find that the option contract is unenforceable.¹

Finally, plaintiff argues that the conveyance from the trustees to the McPhedrain defendants should be set aside as fraudulent. Section 101 of the Uniform Fraudulent Conveyance Act, MCL 566.11 *et seq.*; MSA 26.881 *et seq.* (the "UFCA") provides that any conveyance of real property made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration shall be void against such purchasers. MCL 566.101; MSA 26.901. A conveyance will not be set

aside, however, if a subsequent purchaser buys real property for value and without notice of the grantor's fraudulent intent. MCL 566.225; MSA 26.975.

Plaintiff's fraud claim was premised upon the belief that an enforceable agreement existed between the plaintiff and the trustees. No such agreement exists. Because a showing of fraud is required under § 101 of the UFCA in order to invalidate a conveyance, the McPhedrain defendants were entitled to summary disposition.

Affirmed.

/s/ Peter D. O'Connell

/s/ Michael R. Smolenski

/s/ Thomas G. Power

¹ Although this issue was not reached by the trial court or raised as an issue on appeal, it was addressed by the parties on two occasions below.