

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES C. STODDARD and GRAND BANK,
personal representatives of the estate of Howard P.
Stoddard,

UNPUBLISHED
November 19, 1996

Plaintiffs–Appellants,

v

No. 180032
LC No. 93-300024

COMERICA BANK,

Defendant–Appellee.

Before: Saad, P.J., and Holbrook and G. S. Buth,* JJ.

PER CURIAM.

Plaintiffs contend that defendant’s liquidation of certain collateral breached their loan agreement and was commercially unreasonable. We affirm the circuit court’s summary disposition of this suit.

Plaintiffs are personal representatives of an estate in which the principal asset was a block of Michigan National Corporation stock. Plaintiffs obtained a loan from defendant and pledged a portion of the stock as security. When the stock price began to fall, the collateral became insufficient under the loan-to-market-value formula in the loan agreement and defendant deemed the loan to be in default. After unsuccessful attempts to have plaintiffs replenish the value of the collateral, defendant sold most of the stock. Plaintiffs then sued, and alleged that: (1) defendant breached the loan agreement by liquidating the stock without giving plaintiffs five days notice; (2) defendant’s actions were commercially unreasonable; and (3) defendant was equitably estopped from liquidating the collateral without notice to plaintiffs. The circuit court properly granted defendant’s motion for summary disposition on all claims.

I

Plaintiffs contend that the circuit court erred in granting summary disposition because there was a genuine dispute of fact over whether defendant breached the loan agreement by not giving plaintiffs five days notice before defendant sold the stock. We disagree. When presented with an issue of

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

contract interpretation, a court must determine the meaning and intent of the agreement and enforce it accordingly. *G & A Inc v Nahra*, 204 Mich App 329, 330; 514 NW2d 255 (1994). The language of the contract must, of course, be given its ordinary and plain meaning. *Id.*, 204 Mich App at 330-331. Extrinsic evidence of prior or contemporaneous agreements between the parties that contradict or vary the terms of the contract are not admissible where the contract is clear and unambiguous. *Schmude Oil Co v Omar Operating Co*, 184 Mich App 574, 580; 458 NW2d 659 (1990). However, extrinsic evidence of prior or contemporaneous agreements is always admissible to determine whether the contract is a complete expression of the parties' agreement. *Id.*

Here, the language of the promissory note is plain and unambiguous on the issue of notice -- it states that no notice is required by defendant before selling the collateral. The letter agreement adds nothing on the issue of notice. Taking the letter agreement on its face--without subjecting it to any constrained or technical reading--the agreement does not address the issue of notice.

The so-called extrinsic evidence of the loan officer's deposition testimony does not support plaintiffs' contention that the contract was not a complete expression of the parties' agreement. Rather, the testimony merely addressed the requirement in the letter agreement that plaintiffs cure any default within five days. The testimony is not relevant to the issue of notice. The circuit court did not err in dismissing plaintiffs' breach of contract claim.

II

Plaintiffs also argue that the circuit court erred in dismissing their claim that defendant liquidated the stock in a commercially unreasonable manner. Plaintiffs are simply wrong. Michigan's Uniform Commercial Code (MCL 440.1101 *et seq.*; MSA 19.1101 *et seq.*), allows a secured party after default to sell any or all of the collateral. MCL 440.9504(1); MSA 19.9504(1). And, of course, the sale of collateral must be accomplished in a commercially reasonable manner. MCL 440.9504(3); MSA 19.9504(3). Where, as here, the collateral is typically traded on a recognized market, sale of the collateral on that market is deemed to be commercially reasonable. MCL 440.9507(2); MSA 19.9507(2). Because there is no dispute that the loan was in default, and that defendant liquidated the collateral by selling the shares on a recognized stock market, defendant acted in a commercially reasonable manner in disposing of the stock.¹ MCL 440.9507(2); MSA 19.9507(2).

III

Finally, we conclude that the trial court properly granted summary disposition on plaintiffs' equitable estoppel and waiver claim. Equitable estoppel rests on broad principles of justice and may be employed to alleviate the unjust result of strict adherence to settled legal principles. *Kamalnath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 551; 487 NW2d 499 (1992). Equitable estoppel may arise when: (1) a party by representation, admissions or silence, intentionally or negligently induces another to believe certain facts; (2) the other party justifiably relies and acts upon this belief; and (3) the other party would be prejudiced if the promisor is permitted to deny the existence of the facts. *Schmude*, 184 Mich App at 581-582. This doctrine should only be applied when the facts calling for

its application are unquestionable and the wrong to be remedied is undoubted. *Kamalnath*, 194 Mich App at 552.

Here, the contract itself put plaintiffs on notice that the collateral could be sold without giving plaintiffs notice of the sale. Further, there is no evidence that defendant made any representation which would induce plaintiffs to believe that defendant would not sell the stock without prior notice. In fact, plaintiffs' pleas not to sell the stock show that plaintiffs recognized defendant's contractual right to sell without notice. In addition, here defendant would be prejudiced by application of equitable estoppel, and, because plaintiffs were highly experienced in such financial matters, there is no unjust result.

Affirmed.

/s/ Henry William Saad

/s/ Donald E. Holbrook, Jr.

/s/ George S. Buth

ⁱ However, plaintiffs further contend that even though the disposition of the collateral satisfied the legal definition of commercial reasonableness, *equitable* considerations preclude the court from determining this issue as a matter of law. Plaintiffs did not raise this argument below and thus the circuit court did not rule on this issue. Therefore, it has not been preserved for appeal. *In re Forfeiture of \$19,250*, 209 Mich App 20, 32; 530 NW2d 759 (1995). Furthermore, because plaintiffs cite no authority in support of this argument, it is effectively abandoned. *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995). We find no error.