STATE OF MICHIGAN

COURT OF APPEALS

CHARLES ANTHONY ROBINSON and STEPHANIE ANN ROBINSON,

Plaintiffs–Appellees,

v

MILLPOINTE OF WESTLAND, GREENPOINTE II, INC., d/b/a MILLPOINTE OF WESTLAND, CROSSWINDS COMMUNITIES, and BETSY JONES,

Defendants–Appellants.

UNPUBLISHED
December 10, 1996

No. 178946
LC No. 92-214834 NI

Before: Corrigan, P.J., and Jansen and M. Warshawsky,* JJ.

PER CURIAM.

Defendants appeal by leave granted from the circuit court's order denying their motion for summary disposition in this housing discrimination action. We affirm.

Plaintiffs brought this cause of action alleging that defendants discriminated against them in a real estate transaction based on plaintiffs' race in violation of the Elliott-Larsen Civil Rights Act, MCL 37.2502; MSA 3.548(502). Plaintiffs are African-Americans, and, on June 2, 1991, Stephanie Robinson saw an advertisement in a newspaper for the sale of housing in the range of $76,000. The following day, she contacted Millpointe and was told that several homes were still available in that price range. On June 4, 1991, Stephanie arrived at Millpointe and viewed some of the homes. She told the salesperson that she was interested in buying a house and that she was prepared to make a down payment of up to $50,000, but that her income derived from disability payments. At that time, the salesperson told Stephanie that no homes were available. Later that day, Stephanie called Millpointe and stated that she was interested in buying a home in the range of $70,000. The representative informed her that she had sold two houses that day and that two more were available. Subsequent conversation with the salesperson was again to the effect that no homes were available.

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

Stephanie then contacted the fair housing center and reported the events. The fair housing center sent several testers to investigate. A white female tester contacted Millpointe and was told that the models in the $76,000 range were not available, but that other models were available. A white male tester contacted Millpointe and was told that one home for $76,000 was available, as were other more expensive homes. He was also informed that homes in the range of $76,000 were currently under construction. A black male tester also contacted Millpointe and he was told that no homes in the range of $76,000 were available, but that higher priced homes were available. When this tester actually went to Millpointe, he was not given any information regarding available units.

In August 1991, plaintiffs returned to Millpointe and agreed to purchase a more expensive house for almost $113,000. Plaintiffs consulted with a mortgage loan officer, Gary Carr. Plaintiffs explained that they received approximately $1,500 to $2,000 in disability payments and admitted that they had a poor credit history. Carr indicated to them that they would qualify for a loan if they brought in documents indicating that their income from disability would continue. Carr also indicated that the mortgage would be approved if they had a thirty percent down payment for the house priced at $76,000. Plaintiffs, however, never verified their disability payments and did not want to make mortgage payments on the house costing $113,000, although they felt pressured into buying the higher priced house. Ultimately, plaintiff canceled their purchase agreement with defendants.

Plaintiffs then filed this action alleging housing discrimination under the Elliott-Larsen Civil Rights Act. Defendants filed a motion for summary disposition, claiming that plaintiffs had failed to raise a material factual dispute regarding whether they were qualified for the loan. The trial court denied the motion, finding that plaintiffs had met a prima facie case of housing discrimination, including whether they were qualified for a loan on the house priced at $76,000. Defendants filed an application for leave to appeal, which was granted by this Court on September 16, 1994.

Although no Michigan cases have expressly delineated the necessary elements for a prima facie case of housing discrimination under the civil rights act, "Michigan courts regard federal precedents on questions analogous to those presented under Michigan's civil rights statutes as highly persuasive." *Langlois v McDonald's*, 149 Mich App 309, 312; 385 NW2d 778 (1986). Federal courts have found that there are four elements necessary to establishing a prima facie case of housing discrimination: (1) that the plaintiff is a member of a racial minority; (2) that the plaintiff applied for and was qualified to rent or purchase certain property or housing; (3) that the plaintiff was rejected; and (4) that the housing or rental property remained available thereafter.[1] *Selden Apartments v U.S. Dep't of Housing & Urban Development*, 785 F2d 152, 159 (CA 6, 1986).

Defendants contend that the trial court erred in denying their motion for summary disposition pursuant to MCR 2.116(C)(10) because there was no question that plaintiffs were not qualified purchasers. We review a motion for summary disposition de novo. *Larrow v Miller*, 216 Mich App 317, 318-319; 548 NW2d 704 (1996). The court must consider the affidavits, pleadings, depositions, admissions, and any other documentary evidence submitted to it. MCR 2.116(G)(5). The court's task

is to review the record evidence, and all reasonable inferences drawn from it, and determine whether a genuine issue of any material fact exists to warrant a trial. *Skinner v Square D Co,* 445 Mich 153, 161; 516 NW2d 475 (1994). The court is not permitted to assess credibility or to determine facts on a motion for summary disposition brought under MCR 2.116(C)(10). *Id.* The evidence is taken in a light most favorable to the nonmoving party. *Larrow, supra,* p 318.

The evidence shows that Stephanie had been unemployed since February 1989, but that she had been collecting social security disability payments. Charles had also been unemployed and was collecting disability payments as well. Plaintiffs were collecting approximately $900 per month in disability. Further, Stephanie had received about $1,000 per month in wage loss payments from her auto insurance following a car accident. Her wage loss payments terminated in 1992. However, she had also collected a lawsuit settlement in an amount over $100,000 and received payments in 1990, 1991, and 1992. Stephanie testified at her deposition that she had $30,000 as a down payment for the house, and that she was prepared to make a down payment of up to $50,000 for the house priced at $76,000.

Additionally, there was Stephanie's deposition testimony that Carr told them that they could qualify for a mortgage if they brought in documentation stating that their disabilities were permanent or indefinite. Stephanie testified that no documentation was provided because she felt they were being pressured into a higher mortgage payment ($900 per month) than they wished to have. Plaintiffs also presented an affidavit[2] from David Reed, a mortgage lender with seven years' experience, that a couple receiving SSI benefits of approximately $900 per month with a poor credit history and with a down payment of $50,000 on a house costing $76,000 would, in all likelihood, qualify for an FHA loan.

Defendants point to many negatives regarding plaintiffs' ability to obtain a loan, such as the fact that plaintiffs concededly lied on their preliminary sales agreement, that plaintiffs failed to file tax returns for 1990, 1991, and 1992, and that plaintiffs did not produce documentation verifying their income for the mortgage lender. However, our task is to take the evidence in a light most favorable to plaintiffs and determine whether there is a material factual dispute on the issue of their qualification to obtain a loan. We agree with the trial court that there was a material factual dispute on this issue, especially where plaintiffs may have been able to qualify for a loan on the less expensive house priced at $76,000, even if they did not qualify for the more expensive house priced at $113,000.

Accordingly, the evidence presented created a question regarding whether plaintiffs were qualified as purchasers under the civil rights act. Defendants do not raise any issue regarding any other element of plaintiffs' prima facie case. Therefore, the trial court did not err in denying defendants' motion for summary disposition under MCR 2.116(C)(10). A jury will have to resolve whether plaintiffs were actually qualified purchasers as required to prove a prima facie case of housing discrimination under the civil rights act.

Affirmed.

/s/ Kathleen Jansen
/s/ Meyer Warshawsky

[1] The trial court appropriately utilized this four-part test in its order denying defendants' motion for summary disposition.

[2] Defendants argue that Reed's affidavit should not be considered by this Court because Reed was not identified as an expert witness and because the affidavit is not signed. We do not agree because plaintiffs' expert witness list included experts to be named and defendants were on notice that additional expert testimony might be utilized at trial if necessary. Also, the fact that Reed's affidavit is not signed does not preclude the information contained in it from being considered in deciding defendants' motion for summary disposition. See *Barney v League Life Ins Co*, 167 Mich App 317; 421 NW2d 674 (1988).