

STATE OF MICHIGAN
COURT OF APPEALS

FAIRWAY CONSTRUCTION COMPANY,

Plaintiff-Appellee,

v

MAMIE McCIER,

Defendant-Appellant,

and

JAMES McCIER, FEDERAL HOME LOAN
MORTGAGE CORPORATION and
COUNTRYWIDE HOME LOANS, INC.,

Defendants.

UNPUBLISHED

April 21, 2000

No. 207794

Oakland Circuit Court

LC No. 96-529101-CK

Before: Gribbs, P.J., and Doctoroff and T.L. Ludington*, JJ.

MEMORANDUM.

Defendant Mamie McCier appeals as of right the order granting plaintiff's motion for directed verdict in this breach of contract action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant signed a contract with plaintiff for a remodeling project on her home. The contract contained a condition stating that plaintiff would assist her in obtaining financing, and that the contract would be void if the terms of the financing were unacceptable. On the same day that she signed the contract, defendant also completed an application for financing, which was approved. Shortly thereafter the parties signed a change order indicating that the homeowner approves of bank financing for \$63,262.00, with \$55,262 going to plaintiff, and \$8,000 to defendant.

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

Defendant objected when plaintiff began work on this project, and plaintiff filed this action for breach of contract and quantum meruit, and to foreclose a construction lien. Plaintiff's claims were satisfied by the lien, and defendant's counterclaim for breach of contract proceeded to trial. After defendant rested, the court granted plaintiff's motion for directed verdict.

In deciding a motion for directed verdict, the court must examine all the evidence presented to determine whether a question of fact exists. The testimony and all legitimate inferences are viewed in a light most favorable to the nonmoving party. If the evidence and reasonable inferences create a prima facie case, the court must deny the motion. *Auto Club Ins Ass'n v General Motors Corp*, 217 Mich App 594, 603-604; 552 NW2d 523 (1996).

Defendant failed to offer any evidence that would allow the court to find a question of fact regarding a breach of contract. The original contract allowed defendant to void the contract if acceptable financing was not secured. The change order indicates that defendant approved the financing. Once financing was approved, there was no basis for defendant to declare the contract void. The trial court properly granted a directed verdict.

Affirmed.

/s/ Roman S. Gibbs
/s/ Martin M. Doctoroff
/s/ Thomas L. Ludington