

STATE OF MICHIGAN
COURT OF APPEALS

ANGELL & COSTOPOULOS, P.C.,

Plaintiff-Appellant,

v

SOUTHFIELD DATA PROCESSING, INC., and
JIM RICHARDSON,

Defendants-Appellees.

UNPUBLISHED

December 26, 2000

No. 215540

Wayne Circuit Court

LC No. 92-211122-CH

Before: Jansen, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from an amended judgment dismissing its case against defendants for unpaid rent. We affirm.

This case was originally brought by plaintiff to recover rent from defendants, Southfield Data Processing, Inc. (SDP) and Jim Richardson as personal guarantor of SDP's lease. Defendants argued that the lease could not be enforced because it was barred by the statute of frauds, MCL 566.108; MSA 26.908; MCL 566.132(1)(b); MSA 26.922(1)(b).

Following a one-day bench trial, the trial court entered a judgment in favor of plaintiff, on October 8, 1993, after finding by a preponderance of the evidence that the parties had a valid, enforceable agreement. Defendant Richardson appealed, and on September 20, 1996, this Court affirmed in part, reversed in part, and remanded. *Angell & Costopoulos, Inc v Southfield Data Processing, Inc*, unpublished opinion per curiam of the Court of Appeals, issued 9/20/96 (Docket No. 171527). In so doing, this Court directed the trial court to use the clear and convincing standard of proof to determine whether a contract was in existence between the parties. If the clear and convincing standard was not met by plaintiff, the trial court was directed to consider whether promissory or equitable estoppel barred the statute of frauds defense. On remand, the trial court found that plaintiff did not establish the existence of a contract by clear and convincing evidence nor were the elements of estoppel met. Consequently, the trial court dismissed the case.

In this appeal, plaintiff first contends that the trial court erred in dismissing the case against defendants because there was clear and convincing evidence establishing an existence of an enforceable contract. Specifically, plaintiff contends that the trial court erred in finding that there was not clear and convincing evidence that defendant Richardson signed the alleged lease

agreement and therefore the trial court erred in vacating its original judgment and dismissing the case. This Court reviews a trial court's decision to vacate a judgment and dismiss a case for an abuse of discretion. *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999).

Both John Angell and Andrew Costopoulos testified that a lease agreement existed. Costopolous testified that he prepared a lease that took effect on April 1, 1990, was for a three-year term, and testified that the lease was signed by all parties. Richardson, however, testified that the parties never reached an agreement and that the lease was shown to him after he moved into the premises on March 31, 1990. Richardson never signed the lease, although he did pay \$1,200 a month until October 1990. Plaintiff also introduced an unsigned contract that purportedly was an exact copy of the parties' three-year lease.

In *Zander v Ogihara*, 213 Mich App 438, 444; 540 NW2d 702 (1995), this Court held that extrinsic or parol evidence must be clear and convincing to prove an alleged signature of a lost contract. In *Zander*, the defendant denied signing the lease in question, while the plaintiffs alleged that the defendant had signed the lease, and the plaintiffs offered no other parol or extrinsic evidence to corroborate their testimony.

Plaintiff contends that *Zander* is distinguishable from the present case because, here, plaintiff presented other evidence that corroborated the testimony of Angell and Costopoulos such as the unsigned lease, the fact that defendants paid monthly rent of \$1,200, and evidence of the two previous leases. It is true that plaintiff presented some additional evidence; however, the trial court concluded that this evidence did not constitute clear and convincing proof of the existence of an enforceable contract. The trial court's reliance on *Zander* was proper and we find no basis for overturning the trial court's decision that the evidence was not clear and convincing to find that there was a valid and enforceable lease.

Plaintiff's second issue on appeal is that even if the evidence did not rise to the clear and convincing standard, promissory estoppel should apply.

The elements of promissory or equitable estoppel are:

(1) a promise; (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee; (3) which in fact produced reliance or forbearance of that nature; and (4) in circumstances such that the promise must be enforced if injustice is to be avoided. [*Schipani v Ford Motor Co*, 102 Mich App 606, 612-613; 302 NW2d 307 (1981).]

Applying these elements, the trial court determined that plaintiff failed to establish the first element, a promise by the defendant to lease the premises for three years at \$1,200 per month. After reviewing the record, it is clear that the only direct evidence that defendant agreed to the three-year lease was the testimony of Costopoulos and Angell. While defendant did move into the premises in April 1990 and paid the rent until October of 1990, this does not establish a promise on defendant's part to enter into a three-year lease; it simply indicates that defendant rented the office space for the months in question. This is consistent with defendant's testimony that no lease had been entered into and that he was simply a month-to-month tenant.

Accordingly, the trial court's factual determination that no promise existed between the two parties for a three-year lease is not clearly erroneous. MCR 2.613(C).

Affirmed.

/s/ Kathleen Jansen

/s/ Martin M. Doctoroff

/s/ Peter D. O'Connell