# STATE OF MICHIGAN

# COURT OF APPEALS

SHERWOOD AMERICA LAMIRANDA CA.,

Plaintiff-Appellee,

v

RADIOS, KNOBS, SPEAKERS & THINGS, INC., d/b/a ALTRON INTERNATIONAL,

Defendant-Appellant.

UNPUBLISHED
November 26, 2002

No. 233834
Oakland Circuit Court
LC No. 1998-010434-CZ

Before: Markey, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right a judgment for plaintiff entered following the trial court's grant of plaintiff's motion in limine and motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff manufactures consumer electronic products. Defendant is a wholesaler of consumer electronic products. In May 1997, defendant purchased a quantity of compact disc (CD) changers from plaintiff at a special price. Defendant also purchased various other products in order to obtain the special price on the CD changers. The purchases were memorialized on three purchase orders.

Defendant failed to tender payment for the merchandise, and plaintiff filed suit to recover the money. Defendant filed a counter-complaint in which it alleged that it had purchased the CD changers in reliance on plaintiff's promise that no other dealer in the state would be allowed to sell the same product. Defendant alleged that plaintiff made the CD changers available to other dealers, and as a result it could not sell the merchandise at a profit.

On the morning of trial, plaintiff made an oral motion in limine to exclude any evidence proffered by defendant regarding an alleged oral agreement pursuant to which plaintiff allegedly granted defendant the exclusive right to sell the CD changers in Michigan. Plaintiff argued that such evidence was inadmissible under the parol evidence rule, and the agreement alleged by defendant was void under the statute of frauds. The trial court granted the motion, finding that the proffered evidence would not explain or supplement the terms of the parties' contract as contained in the purchase orders, but rather would materially alter the terms. The trial court remarked that it did not believe an agreement of the type asserted by defendant to exist would not be in writing.

Plaintiff moved for summary disposition on its complaint and on defendant's counter-complaint based on the court's ruling on its motion in limine. The trial court granted the motion and dismissed the entire case. Thereafter, the trial court entered judgment in favor of plaintiff.

Defendant argues the trial court erred by granting plaintiff's motion in limine and motion for summary disposition. We disagree. We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). Parol evidence of prior or contemporaneous agreements that contradict or vary the terms of the written contract is not admissible to vary the terms of a contract which is clear. Parol evidence regarding prior or contemporaneous negotiations may be admitted to determine the threshold issue whether a written contract is an integrated instrument, which is a complete expression of the parties' agreement. Extrinsic evidence is admissible to show that: (1) the writing was a sham that was not intended to create a legal relationship; (2) the contract has no effect because of fraud, illegality, or mistake; (3) the parties did not integrate their agreement or assent to it as the final embodiment of their understanding; or (4) the agreement was only partially integrated because essential elements were not reduced to writing. *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 492-493; 579 NW2d 411 (1998). Whether parties to a written contract intended the writing to be a complete and integrated expression of their agreement is a factual inquiry. *Central Transport, Inc v Fruehauf Corp*, 139 Mich App 536, 544-545; 362 NW2d 823 (1984). This Court reviews a trial court's findings of fact for clear error. MCR 2.613(C); *Id*. at 545.

An agreement that by its terms cannot be performed within one year of its making is void unless it is in writing and signed by the party against which it is asserted. MCL 566.132(1)(a). An oral agreement that by its terms is to last "forever" is void under the statute of frauds. *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 532-533; 473 NW2d 652 (1991). An agreement of the type alleged by defendant, i.e., that plaintiff would give it the exclusive right to sell the CD changers in Michigan "forever," would be void under the statute of frauds. MCL 566.132(a); *Dumas*, *supra* at 532-533. The purchase orders set forth details of the transactions, including the quantity of goods ordered, the descriptions of the merchandise, the unit prices of the goods and the total price, and the terms of payment. Special shipping instructions were handwritten at the bottoms of the orders. The trial court properly considered the proffered extrinsic evidence to make the threshold determination of whether the purchase orders were an integrated agreement and constituted the parties' entire agreement. *NAG Enterprises, Inc v All State Industries, Inc*, 407 Mich 407, 410; 285 NW2d 770 (1979).

Furthermore, the trial court did not improperly invade the province of the jury by weighing the credibility of the parties. The determination of whether the parties intended that a written instrument constituted their complete agreement is for the court. *Central Transport*, *supra* at 545. The trial court found that given that the parties took pains to include all essential terms of their agreement in the purchase orders, including handwritten shipping instructions, it was not logical to conclude that the parties would omit from the purchase orders the term alleged by defendant to be the most crucial element of the agreement, i.e., the exclusivity arrangement.

We believe that the trial court did not clearly err in finding that the parties intended that the purchase orders were to constitute their complete agreement.

Affirmed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Michael R. Smolenski