STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM PERCHA and CHARLES A. KOTCHER, Plaintiffs-Appellants, v DETROIT LIONS, INC. and CITY OF PONTIAC, Defendants-Appellees.	UNPUBLISHED December 23, 2003 No. 240675 Oakland Circuit Court LC No. 01-035844-CP

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

PER CURIAM.

Plaintiffs appeal as of right the grant of summary disposition in defendants' favor and we affirm.

Plaintiffs filed this class action suit to recover "service fees" allegedly improperly included in the price of tickets to Lions' football games played at the Pontiac Silverdome from 1975 to 2001. The service fee of $1.50 per ticket was collected by the Detroit Lions, Inc. as assessed by the City of Pontiac pursuant to a sublease between it and the Lions, generally, for the purpose of paying for costs associated with the stadium. Plaintiffs' action alleged breach of fiduciary duty and breach of contract against the Lions, breach of contract against the City, as well as unjust enrichment and violation of the Michigan Consumer Protection Act (MCPA) against both defendants. After extensive briefing and arguments, the trial court dismissed the entire case, holding that (1) plaintiffs were not intended third-party beneficiaries of the sublease between the City and the Lions, thus, their breach of contract claim against the City failed, (2) plaintiffs did not have a contract with the Lions by virtue of their purchase of a ticket, a license, which itself contained no terms with regard to the service fees, (3) the Lions did not owe a fiduciary duty to plaintiffs because plaintiffs did not repose their faith and confidence in the Lions to protect any financial interest related to an overcharge, (4) plaintiffs' unjust enrichment claim against the City failed because the sublease permitted the collection of service fees, (5) plaintiffs' claim of unjust enrichment against the Lions failed because the Lions served only as an agent, pursuant to its contractual obligation, to collect the fees and did not have title to the money, (6) the City, a governmental body, was exempt from the MCPA, and (7) the Lions did not violate the MCPA because they did not fail to disclose or make any false claims to plaintiffs that the service fees were due and owing. Accordingly, the action was dismissed in its entirety, with prejudice. This appeal followed.

Plaintiffs appeal all of the trial court's rulings; however, the dispositive issue is whether plaintiffs had any right to pursue this matter against either defendant. Plaintiffs claim that because they purchased tickets to Lions' football games, they are entitled to challenge the imposition of the service fee, i.e., the price of the ticket. They have no such right.

When plaintiffs voluntarily purchased tickets to the football games for the price printed on the ticket, they purchased a revocable license to attend the event. See *Meisner v Detroit, BI & W Ferry Co*, 154 Mich 545, 548-549; 118 NW 14 (1908). This is well-established law in Michigan and any assertion of a contractual right arising merely from the purchase of a ticket to attend such an event is disingenuous. Similarly, the purchase of the tickets did not create a fiduciary relationship[1] between the Lions and plaintiffs. As holders of such licenses, plaintiffs did not acquire the legal right to challenge how the price of the ticket was determined. That the price was derived, in some part, from a contractual obligation between the City and the Lions is irrelevant to any right asserted by plaintiffs. Plaintiffs have not claimed that they were denied any rights granted by their license; thus, they have asserted no cognizable right against the Lions to recover any portion of the ticket price—they got what they paid for – admission into the Silverdome to watch the football games for which they had purchased tickets. For that reason, as well as the reason that there is an express contract covering the subject matter of the service fee, plaintiffs' unjust enrichment claim is without merit and they also failed to establish a violation of the MCPA, MCL 445.901 *et seq*. See *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993).

Further, plaintiffs have asserted no cognizable right to recover any portion of the ticket price from the City. Plaintiffs were neither parties to the subject contract between the City and the Lions, nor were they intended third-party beneficiaries of that contract. Pursuant to MCL 600.1405, a contractual promise will be construed as having been made for the benefit of a person or designated class of persons not party to the agreement when the promisor undertook to give, do, or refrain from doing something directly to or for the person or class of persons. See MCL 600.1405; *Koenig v South Haven*, 460 Mich 667, 676-677; 597 NW2d 99 (1999). Here, any benefit derived by plaintiffs from the contract between the City and the Lions—such as the maintenance of the stadium—was incidental and does not give rise to any rights to contest or enforce the contract. See *Oja v Kin*, 229 Mich App 184, 193; 581 NW2d 739 (1998). Further, plaintiffs' unjust enrichment claim against the City fails because plaintiffs received what they paid for and the City received what it negotiated for from the Lions, pursuant to an express contract that plaintiffs had no right to contest. See *Barber*, *supra*. And, finally, plaintiffs' purchase of a football ticket from the Lions does not fall within the ambit of the MCPA. See MCL 445.902(d), 445.903; *Noggles v Battle Creek Wrecking, Inc*, 153 Mich App 363, 366-367; 395 NW2d 322 (1986).

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[1] "A fiduciary relationship arises from the reposing of faith, confidence, and trust, and the reliance of one upon the judgment and advice of another." *Ulrich v Federal Land Bank of St Paul*, 192 Mich App 194, 196; 480 NW2d 910 (1991).

In sum, the trial court properly granted summary disposition in defendants' favor, dismissing this case in its entirety.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Peter D. O'Connell