

STATE OF MICHIGAN
COURT OF APPEALS

LEE SITTO,

Plaintiff-Appellant,

v

KHALIL AYOUB and RAJAH AYOUB,

Defendants-Appellees.

UNPUBLISHED

January 27, 2004

No. 241629

Wayne Circuit Court

LC No. 00-012008-CK

Before: Cooper, P.J. and Markey and Meter, JJ.

MARKEY, J. (dissenting).

I respectfully dissent. Although I agree with the majority's recitation of the facts and the law pertaining to this case, I disagree with the majority's analysis. I would reverse.

As the majority states plaintiff argues that the trial court erred by denying his motion for summary disposition and granting the motion defendants filed. He emphasizes that the amendment clearly stated that "notwithstanding" any other provision in the amendment or the earlier documents, the deposit of \$25,000 was to be refunded in the event the parties did not complete the transaction. The amendment did not require that written notice of termination of the purchase agreement be provided in order for the deposit to be refundable and that, in fact, the last agreement unequivocally provided that "notwithstanding" any other provision in any document, the \$25,000 deposit was fully refundable in the event the parties did not complete the transaction. The language used was clear and unambiguous. The amendment plainly stated that plaintiff was entitled to a refund of his deposit if the parties did not consummate the transaction. Most importantly, there is no requirement that plaintiff had to notify defendants that he intended to terminate the purchase agreement. Although the addendum to the purchase agreement provided that plaintiff was required to give defendants written notice of his intention to terminate the transaction, and that if he did not do so, he forfeited the right to a refund of his deposit, the specific language in the amendment at issue that "[n]otwithstanding anything in the Agreements and this Amendment to the contrary" patently trumps the prior written notice requirement. The "notwithstanding" wording precludes any preconditions to the agreement of the parties that plaintiff's "good faith deposit shall be fully refundable to Purchaser in the event the parties do not consummate the transactions contemplated." Accordingly, I find that the trial court erred by concluding that the amendment did not eliminate the requirement that plaintiff provide written notice of his intention to terminate the purchase agreement in order to be entitled to a refund of

his deposit. The trial court further erred by denying plaintiff's motion for summary disposition and granting defendants' motion.

Consequently, I would reverse and remand.

/s/ Jane E. Markey