STATE OF MICHIGAN

COURT OF APPEALS

IRMA GIVENS, d/b/a EDUCATE OUR KIDS, INC.,

Plaintiff-Appellee,

V

ROOSEVELT REESE and SYLVIA REESE,

Defendants-Appellants.

UNPUBLISHED
November 17, 2005

No. 254910
Wayne Circuit Court
LC No. 01-137309-CZ

Before: Jansen, P.J., and Cavanagh and Fort Hood, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment entered in plaintiff's favor. We affirm.

The case arose out of plaintiff's purchase of defendants' building. Plaintiff operated a licensed day care center that was damaged by fire, and she concluded that replacing the building would be more expedient than repairing it. Defendants owned a licensed day care center and sought to sell the building. There is no dispute that licenses are not transferable, either between individuals or facilities, and that the sale was only of the building, not the business. However, at plaintiff's request, defendants' agent included an addendum to plaintiff's offer to purchase that stated, "Seller to correct any violations relative the [sic] puchaser being able to secure a child care license prior to closing." Plaintiff's goal was to get her business back in operation with minimal turnaround time. However, state and local agencies ultimately required her to expend considerable time and money on repairs and legal matters. Therefore, by the time she received her license, her students had mostly gone elsewhere. She eventually filed for bankruptcy, defendants repossessed the building, and plaintiff filed the instant suit alleging, among other things, breach of contract.

Defendants argue that the trial court should have granted their motion for summary disposition as to the breach of contract claim because no evidence showed that defendants breached the terms of the land contract and because the land contract superseded the offer to purchase, so the matter should not go to a jury. We disagree.

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118-119; 597 NW2d 817 (1999). We also review de novo as a question of law the proper interpretation of a contract, including a trial court's determination

whether contract language is ambiguous. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). Courts "may not resolve factual disputes or determine credibility in ruling on a summary disposition motion." *Burkhardt v Bailey*, 260 Mich App 636, 647; 680 NW2d 453 (2004).

Defendants argue that the initial offer to purchase merged into the land contract. However, this is only true to the extent that there are overlapping terms. Multiple, sequential contracts between parties are to be interpreted together and the intentions of the parties determined from all of them; a later contract supersedes a prior contract only where the later contains terms different from and irreconcilable with the prior. *Nib Foods, Inc v Mally*, 70 Mich App 553, 560; 246 NW2d 317 (1976); *Omnicom of Michigan v Giannetti Investment Co*, 221 Mich App 341, 346-347; 561 NW2d 138 (1997). Defendant argues "a contract to convey land is merged in a deed executed in performance of such contract, and the deed operates as a satisfaction and discharge of the executory contract." *Mueller v Bankers' Trust Co of Muskegon*, 262 Mich 53, 57; 247 NW 103 (1933), quoting *Blake-McFall Co v Wilson*, 98 Ore 626, 642; 193 P 902 (1920), quoting 2 Devlin on Real Estate (3d Ed) § 850a; 27 RCL p 529. However, the deed "effects a merger to the extent that it is contemplated that a deed shall be a performance of the contract." *Id*. In other words, any provisions in the first contract that are not at least addressed by the second contract will not be nullified by the second. Thus, this is merely a restatement of the same rule.

There is no dispute that the offer to purchase and the land contract were both agreements between the parties. Thus, to the extent they do not overlap, they must be considered together. There is no allegation that the land contract addresses licensing in any way. The land contract also does not contain any language explicitly stating that it supersedes prior agreements or constitutes the only agreement between the parties. Thus, the land contract does not supersede the addendum merely by being a subsequent agreement between the parties covering the same general topic.

Defendants argue that a clause in the land contract stating in part that the purchaser "has examined the above described premises and is satisfied with the physical conditions of any structures thereon" is irreconcilable with an allegation that defendants failed to correct any licensing defects. However, the gravamen of plaintiff's complaint is that the facility as a whole did not meet the requirements that Michigan and Detroit imposed as conditions for granting a daycare license, including zoning violations. Furthermore, the clause could be interpreted as a certification that plaintiff was satisfied that the premises physically met all legal requirements for licensing, but it could also be interpreted as a certification that plaintiff was personally satisfied that it would be safe and comfortable to operate a daycare center there. It is also plausible to conclude that the land contract refers to plaintiff's satisfaction, whereas the addendum refers to the licensing agencies' satisfaction. If it is equally plausible to interpret a contract in multiple ways, it is ambiguous as a matter of law and may only be interpreted by the factfinder. *Mayor of Lansing v Michigan Pub Service Comm*, 470 Mich 154, 166; 680 NW2d 840 (2004); *Klapp*, *supra* at 467-469.

Defendants also argue that, in any event, plaintiff failed to introduce any evidence showing that they breached the terms of the addendum. We agree that plaintiff's evidence was not conclusive, but we disagree that it was nonexistent.

In effect, the parties dispute the parsing of the addendum quoted above. Specifically, they debate the significance of "prior to closing." Defendants argue that it modifies "secure a child care license." Plaintiff argues that it modifies "correct any violations." Thus, defendants conclude that they could never be obligated to correct any violations pertaining to plaintiff's license because she did not apply for it until after closing, so they must only have been required to correct their own licensing violations. Plaintiff concludes that "relative the [sic] purchaser being able to secure a child care license" explains the nature of the "violations," and any violations fitting that description were required to be corrected before the parties closed.

"It is a general rule of statutory as well as grammatical construction that a modifying clause is confined to the last antecedent, unless there is something in the subject matter or dominant purpose which requires a different interpretation." *Winokur v Michigan State Bd of Dentistry*, 366 Mich 261, 266; 114 NW2d 233 (1962). "Last antecedent" is defined as "'the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence.'" *Fluor Enterprises, Inc v Dep't of Treasury*, 265 Mich App 711, 721; 697 NW2d 539 (2005), quoting 2A Singer, Sutherland Statutory Construction (6th ed.), § 47:33, pp 369-371. This might seem to support defendants' parsing of the sentence simply because "secure a child care license" immediately precedes "prior to closing." However, such an interpretation would be irrational: it would effectively provide for plaintiff obtaining a child care license at a facility she did not own and doing so not only before she owned it, but before defendants vacated the premises. Defendants' conclusion that correction of violations refers to their *own* license violations is plainly contrary to the emphasis on the "*purchaser* being able to secure a child care license" (emphasis added). Defendants' interpretation would render that language effectively nugatory.

The evidence at trial also showed that it was impossible to predict what requirements a new licensee, which plaintiff was, would be subject to. Thus, it is not certain that the parties intended defendants to guarantee plaintiff's license. However, we are satisfied that the evidence presented raised a question of fact on the matter and could allow a rational trier of fact to so find. Thus, the trial court appropriately denied summary disposition. For the same reason, and because defendants raise essentially the same arguments in support, we also uphold the trial court's denial of defendants' motions for judgment notwithstanding the verdict or for a new trial. *Garg v Macomb Co Community Mental Health Services*, 472 Mich 263, 272; 696 NW2d 646 (2005); *Bean v Directions Unlimited, Inc*, 462 Mich 24, 31-32, 34-35; 609 NW2d 567 (2000).

We note that defendants allege, but do not meaningfully argue, that the jury verdict was excessive. "We will not search the record for factual support for [a party's] claims." *Derderian v Genesys Health Care Systems*, 263 Mich App 364, 388; 689 NW2d 145 (2004). We therefore find it unnecessary to address plaintiff's arguments in support of the verdict.

Affirmed.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood