STATE OF MICHIGAN

COURT OF APPEALS

REGINALD E. VANSICKLE,

Plaintiff-Appellee,

v

SHARON DIANE WARCZINSKY,

Defendant-Appellant,

and

FREDERICK WALTER WARCZINSKY,

Defendant-Appellee.

UNPUBLISHED
January 15, 2015

No. 318954
Sanilac Circuit Court
LC No. 13-034987

Before: DONOFRIO, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Defendant appeals by right from an order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10) based on a determination that plaintiff and defendant Sharon Warczinsky ("defendant") had a valid and enforceable contract for the sale of a piece of real property. Defendant was ordered to appear for consummation of the sale within 21 days. We affirm.

Defendant is the owner of the property at issue in this case. On September 14, 2006, defendant appointed her son, co-defendant Frederick Walter Warczinsky, as her lawful agent and attorney-in-fact. In June 2012, defendant and Fredrick Warczinsky signed a listing agreement for the subject property with Richard Hall, of the Peters Real Estate Company. On December 18, 2012, plaintiff made an offer to purchase the subject property for $20,000. Thereafter, defendant, plaintiff, Fredrick Warczinsky, and Hall participated in a conference call in order to discuss the offer. According to plaintiff, Fredrick Warczinsky and Hall, defendant specifically agreed to sell the property for the purchase price of $20,000, and authorized Fredrick Warczinsky to sign the purchase agreement on her behalf. According to defendant, she never agreed to sell the property for $20,000, and never authorized Fredrick Warczinsky to sign the purchase agreement on her behalf. On December 19, 2012, Fredrick Warczinsky and plaintiff executed the purchase agreement. However, in January 2013, prior to closing, defendant

informed the parties involved that she was canceling the sale. Thereafter, she revoked the power of attorney.

In response to plaintiff's motion for summary disposition, defendant denied that she ever agreed to sell the property for $20,000 and claimed that the consideration was inadequate. She provided a real estate summary sheet showing that the property had a state equalized value ("SEV") of $27,100. In granting plaintiff's motion, the lower court took judicial notice that "in this market in this area that the SEV's are not reliable indicators of value of property," but concluded that, regardless, it could not "look at the adequacy of the consideration unless it reaches a level of being obviously grossly inadequate or there's some other mitigating factor." The court granted summary disposition and specific performance to plaintiff.

This Court reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Klapp v United Ins Group Agency*, 468 Mich 459, 463; 663 NW2d 447 (2003). Our review of the trial court's decision on a motion for summary disposition is limited to the evidence presented to the trial court at the time the motion was decided. *Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 475; 776 NW2d 398 (2009). Summary disposition of a claim may be granted when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." MCR 2.116(C)(10). "The moving party must support its motion with affidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted." *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009), lv den 485 Mich 1127 (2010). "If the moving party properly supports its motion, the burden "then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Id*. In determining whether a genuine issue of material fact exists, the court must consider all documentary evidence in a light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004).

The trial court did not err in granting plaintiff summary disposition. It considered the conflicting affidavits of the parties and defendant's grant of a durable power of attorney to her son. Despite defendant's affidavit that she never agreed to sell the property for the price offered and never gave permission to her attorney-in-fact to accept the offer, she did not challenge the validity of the durable power of attorney in effect at the time of the contract. The durable power of attorney gave Warczinsky the unfettered power to sell defendant's interests in real property. It is well established that an attorney-in-fact can sell his principal's real property if the attorney-in-fact has been granted that power in clear and direct language. *Bergman v Dykhouse*, 316 Mich 315, 319; 25 NW2d 210 (1946). Therefore, the valid power of attorney and the purchase agreement signed by defendant's attorney-in-fact establish a valid contract as a matter of law. As a result, the burden of persuasion shifted from plaintiff to defendant, and defendant was required to establish that a genuine issue of material fact existed in order to avoid summary disposition.

Defendant argues that summary disposition was erroneous because factual issues exist regarding the adequacy of consideration. Defendant is correct in arguing that inadequacy of consideration can be a valid defense to the enforcement of a contact. See *Rose v Lurvey*, 40 Mich App 230, 234; 198 NW2d 839 (1972). However, in this case, the relative inadequacy of consideration does not rise to a level sufficient to create a genuine issue of material fact. "It is a

general principle of contract law that courts will not ordinarily look into the adequacy of the consideration in an agreed exchange." *Id*. Thus, inadequate consideration will not constitute a ground for recession unless it is "so gross as to shock the conscience of the court." *Id*. at 235 (citation omitted). This requires more than the consideration being simply less than the fair value of the property. *Id*. (Citation omitted). The inadequacy of consideration must be so strong, gross, and manifest, that it would "be impossible to state it to a man of common sense without producing an exclamation" as to its inequality. *Id*. at 235-236 (citation omitted).

Defendant produced documentation showing that the property had an SEV of $27,100, which suggests a value of $54,200. It is noteworthy that defendant did not challenge the listing price, which was 48,900. Even accepting the higher value of $54,200, a purchase price of $20,000 is not so inadequate as to warrant rescission of the contract. While selling a piece of property for less than half its value certainly constitutes a "bad deal," it does not "shock the conscience" nor generates exclamation as to its inequity. Defendant bases her claim upon this Court's decision in *Rose, supra*. There, this Court held that $1.05 in total consideration for a transfer of property worth $12,000 was so inadequate as to shock the conscience. Unlike in *Rose*, the plaintiff in this case offered a substantial sum of money for the property in question, rather than mere sham or token consideration. In addition, nothing in the record suggests, nor does defendant argue, that the parties did not negotiate at arm's length, or that plaintiff did not make his offer in good faith. As a result, the lower court did not clearly err in concluding that a $20,000 purchase price for property worth $54,200 was not so inadequate as to shock the conscience and require rescission.

We note that defendant also claimed that the court erred in taking judicial notice that the SEV was not necessarily an adequate indicator of value. That issue is, at best, relevant to whether there was inadequate consideration. Having found that the consideration was not grossly inadequate, we need not address the judicial notice argument.

Affirmed.

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens