STATE OF MICHIGAN

COURT OF APPEALS

FREDA ALIBRI,

Plaintiff-Appellee,

v

DETROIT WAYNE COUNTY STADIUM AUTHORITY,

Defendant-Appellant.

FOR PUBLICATION
December 27, 2002
9:10 a.m.

No. 228921
Wayne Circuit Court
LC No. 98-818620-CK

Before: Fitzgerald, P.J., and Wilder and Cooper, JJ.

FITZGERALD, P.J.

Defendant appeals as of right the order granting plaintiff's motion for partial summary disposition pursuant to MCR 2.116(C)(10) and ordering partial rescission of an option to purchase real estate entered into by the parties on October 31, 1996.[1] The order also dismissed plaintiff's remaining claims. We reverse.

On August 20, 1996, the city of Detroit Downtown Development Authority (DDA), Wayne County (the county), the Detroit Lions, Inc. (the Lions), and the Detroit Tigers, Inc. (the Tigers) entered into a memorandum of understanding (MOU) for the purpose of acquiring land and infrastructure for, "and construction of, a new major league baseball stadium and a new professional football stadium/entertainment center and appurtenant facilities" in downtown Detroit. The MOU provided that the county would incorporate a building authority to be known as the Detroit/Wayne County Stadium Authority pursuant to 1948 PA 31, MCL 123.951 – MCL 123.965. On September 19, 1996, the Detroit/Wayne County Stadium Authority (hereafter defendant) was incorporated by the county and charged with acquiring the necessary real property to build and support the proposed dual stadiums.

Funding for the half-billion dollar project was proposed to come from a variety of public and private sources, including the DDA, the State of Michigan (The Michigan Strategic Fund,

[1] Although the option covered numerous parcels of property, this lawsuit concerns only parcels located in the area of Clifford and West Columbia on the west side of Woodward Avenue in downtown Detroit that plaintiff conveyed by warranty deed to defendant on January 3, 1997, for $264,551.94. Plaintiff conveyed the east side optioned properties to defendant for $6,324,000 on the same day.

"MSF"), the county, the Tigers, and the Lions. The MSF funding of $55,000,000 was restricted to costs associated with the land acquisition, infrastructure, and site development for the proposed new Tiger stadium. Part of the project funding was to come from bonds to be repaid by a "tourist tax" and from "parking bonds" to be funded by granting the Tigers the concession for parking. Pertinent to the subject of parking and additional parking, apparently located west of Woodward Avenue, the MOU provided:

> 13. PARKING.
>
> (a) Project Area Parking. Pursuant to the Tigers Concession/Management Agreement, the Tigers shall have the exclusive right to manage, operate and receive all revenues from all the Project Area Parking for a period coinciding with the term of such Tigers Concession/Management Agreement on terms on mutually acceptable to the parties hereto. The location and design of the Project Area Parking shall be mutually acceptable to the parties hereto.
>
> (b) Additional Parking Area. It is anticipated that the Authority shall acquire additional parking for the Complex at locations outside the Project Area (the "Additional Parking Areas") provided that the acquisition of such Additional Parking Areas can be financed by bond proceeds secured by the parking revenues from such Additional Parking Areas. To the extent the Authority acquires any parking facilities outside the Project Area, they shall be managed and operated by the Tigers on substantially the same terms and conditions as are set forth in Section 13(a) above, subject to the requirements of applicable law.

The building of new dual stadiums in downtown Detroit for the Tigers and the Lions was not a foregone conclusion, however, because the MOU included that any party to the agreement could withdraw by written notice given on or before November 1, 1996, if certain criteria were not established. The MOU would also terminate automatically if county electors did not approve the tourist tax in the November 5, 1996, general election. Defendant's acquisition of sufficient property to assure the financial viability of the project by November 1, 1996, was critical. In that regard, the MOU provided:

> 17. (b) Prior to November 1, 1996, the [defendant] shall investigate whether the property in the Project Area to be acquired by the [defendant] or the DDA is suitable to be taken for public purposes. The information from the investigation shall be provided to the Lions and the Tigers, either of whom may withdraw from this Memorandum upon written notice to the other parties on or before November 1, 1996, if either determines that the Costs of the Complex would be excessive, in which event this Memorandum shall terminate and none of the parties shall thereafter have any rights, liabilities or obligations under this Memorandum.

Defendant began negotiating with plaintiff in August 1996 to purchase her property on both the east side and the west side of Woodward Avenue for the stadium project. Defendant represented that it would obtain plaintiff's property and other west side property through the exercise of the power of eminent domain, if necessary. Defendant also informed plaintiff that sufficient property had to be obtained by November 1, 1996, for the project to continue. The

parties entered into an option contract on October 31, 1996, that would terminate on January 3, 1997, by which plaintiff would sell to defendant property located on both the east side and the west side of Woodward Avenue. Additional terms of the option included that it could not be assigned without plaintiff's consent and that if defendant did not exercise the option, then defendant "shall not condemn" the optioned property. The option also provided that "the per square foot price paid to Optioner for the property located on the Westside of Woodward shall be equal to the price per square foot paid by Optionee . . . to the owners of the Parcel located on Elizabeth and Park Avenue for the property located on Elizabeth and Park Avenue."

The option was exercised on January 3, 1997, when plaintiff conveyed by warranty deed the west side properties (the "subject property") to defendant for $264,551.94. It is undisputed that the Tigers advanced the purchase money for the subject property and that all of the property covered by the option was within the resolution of necessity adopted by defendant on November 27, 1996. After exercising its option to purchase the subject property, defendant adopted a resolution on May 1, 1998, withdrawing the prior resolution of necessity except as to property defendant had already acquired. After deciding to "downsize" the project, defendant entered into a second amendment of its concession and management agreement with the Tigers on April 28, 1998, by which defendant transferred the subject property to the Tigers to repay its purchase loan.

Plaintiff commenced this action on June 12, 1998. In an amended complaint filed on September 20, 1999, plaintiff alleged theories of fraud, negligent, innocent, or intentional misrepresentation, mutual mistake, promissory estoppel, and violations and violations of federal and state due process. Plaintiff acknowledged that defendant is a government entity with the power of eminent domain to acquire property necessary for the public purpose of constructing stadiums, including acquiring sufficient parking. However, plaintiff contended defendant improperly used the power of eminent domain to take property from one private owner to give it to another private owner. Further, plaintiff claimed that defendant misrepresented that the subject property would not be transferred to the Tigers (the Ilitch family), who apparently were particularly objectionable to plaintiff. However, plaintiff admitted that defendant could lawfully take plaintiff's property for stadium parking purposes, lease or enter into a concession agreement with the Tigers to collect the parking revenues, and then at some subsequent time decide to get out of the parking business and transfer the property to someone else (including the Tigers). Likewise, plaintiff acknowledged that nothing in the option contract precluded the above scenario.

Plaintiff also contended that she sold the subject property below market out of public spirit to ensure the success of the new stadiums project. Defendant's representative testified by deposition that although plaintiff negotiated the east side properties on a take-it-or-leave-it basis, plaintiff was not concerned about the west side properties and accepted the appraised value for them. Plaintiff's counsel conceded defendant had an "estimate" or "this pro forma appraisal" for the west side properties, and the sales price of $267,100 noted in the deed is consistent with the appraisal for the subject property. Plaintiff's counsel contended that because plaintiff's sale was the first of the west side properties to be purchased or taken by defendant, she insisted on a price guarantee - - the Abraham clause. Further, plaintiff contended that the Abraham clause was not "if" defendant bought the Abraham property but "when," and included a promise by defendant that it would purchase the Abraham property.

Defendant argued at its third motion for summary disposition that plaintiff's case was dependent on whether defendant misrepresented something to plaintiff during their purchase negotiations and plaintiff agreed. Defendant argued that plaintiff had produced no evidence from the public record of the government entities involved, or from deposing any of the key officials involved, to show anything other than a bona fide intent to purchase or take the property on the east side and the west side of Woodward Avenue for purposes of building two new stadiums and acquiring sufficient parking to support them. Moreover, defendant argued that its agreement with the Tigers whereby the Tigers would manage all property acquired by defendant for parking was a matter of public record. Defendant further argued that it was only after the purchase of plaintiff's property that the Tigers and the Lions reached their own agreement on parking and defendant reconsidered its plan to acquire the west side property for parking. The trial court denied defendant's motion, finding that sufficient but unspecified evidence existed to present the case to a jury.

On June 30, 2000, the parties argued plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff advanced a new theory that because at the time of negotiations with plaintiff defendant did not have funding to purchase and specific plans for plaintiff's west side properties, defendant's "threat" of condemnation exceeded its authority. Further, plaintiff argued that defendant abandoned its effort to acquire the west side properties, including the Abraham properties, and that such abandonment formed a basis for mutual mistake, failure of consideration and innocent misrepresentation, establishing grounds for rescission of the option contract. Plaintiff argued that the property would now be worth 2.5 million dollars and that plaintiff was only asking for the opportunity to participate in the market.

On July 11, 2000, the trial court granted plaintiff's motion for partial summary disposition, concluding in its oral remarks from the bench that "[t]he awesome power of government should not be utilized to benefit one property owner over another property owner." In its written order, the court also stated that "it is not good policy for a governmental entity with powers of eminent domain to threaten condemnation if a sale of the property is not reached with the property owner, and to then borrow the money from another private entity developer in the area, and then to repay the loan by transferring the purchased property to the private entity developer who loaned the money."

I

Defendant first argues that the trial court erred by applying the requirements of §§ 5(4) and (5) of the Uniform Condemnation Procedures Act (UCPA), MCL 213.55(4) and (5), to a negotiated purchase of real property by a governmental agency having the authority to make such a purpose and by concluding that defendant's failure to purchase or condemn other property formed a basis to rescind the sale of the subject property. A trial court's grant or denial of summary disposition is reviewed de novo on appeal. *General Motors Corp v Dep't of Treasury*, 466 Mich 231, 236; 644 NW2d 734 (2002). Similarly, the interpretation of contracts, *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998), and questions of statutory interpretation, *Detroit/Wayne Co Stadium Authority v 7631 Lewiston, Inc*, 237 Mich App 43, 47; 601 NW2d 879 (1999), are reviewed de novo on appeal. Equitable actions, including actions to rescind a contract, are reviewed de novo, but the factual findings of the trial court are reviewed for clear error. MCR 2.613(C); *Lenawee Co Bd of Health v Messerly*, 417 Mich 17; 331 NW2d 203 (1982).

A.

The trial court fundamentally erred by analyzing this case as a "taking," which occurs when the government physically appropriates private property or regulates it "too far." *Volkema v Dep't of Nat'l Resources*, 214 Mich App 66, 69; 542 NW2d 542 (1995). Neither category applies in the present case. Rather, the intent of the Legislature, found in the plain language of the statute, *Detroit/Wayne Co Stadium Authority, supra* at 47, makes it clear that the Legislature has vested in building authorities like defendant alternative means of purchase or condemnation to acquire property deemed necessary for public purposes. MCL 123.959 provides that for "the purpose of accomplishing the objects of its incorporation the authority may acquire property by purchase, construction, lease, gift, devise or condemnation." Plaintiff does not dispute that defendant is a duly created building authority vested with the power by the Legislature to purchase and, if necessary, to condemn property necessary for the public purpose of constructing stadiums, including acquiring sufficient parking. Here, the parties never reached the condemnation stage but rather engaged in purchase negotiations governed by § 5(1) of the UCPA, MCL 213.55(1). Thus, the concept of "taking" was not implicated.

The trial court also erred by basing its grant of summary disposition on its conclusion that defendant did not have the present ability to condemn the subject properties because it "did not have the funding available to purchase" and "did not have a plan in place to use" the subject properties in the stadium project. The requirements of MCL 213.55(4)(a), "[a] plan showing the property to be taken," and MCL 213.55(5), "When the complaint is filed, the agency shall deposit the amount estimated to be just compensation with [an escrow agent]," both clearly only establish criteria for complaints to institute condemnation. As noted above, the parties never reached the condemnation stage but rather engaged in purchase negotiations governed by MCL 213.55(1), which requires that the agency seeking the property must establish an appraisal of just compensation and make a good faith offer not less than the agency's appraisal. *Detroit/Wayne Co Stadium Authority, supra* at 47-48. It is undisputed that defendant negotiated with plaintiff to purchase the subject property based on appraisals it had obtained for the property in compliance with MCL 213.55(1) and, therefore, defendant's "present ability" to immediately file a condemnation complaint is immaterial.

Moreover, even if a taking were involved, the Tigers' involvement in the stadium project as both a beneficiary and as a benefactor would not render the taking unlawful providing the public is primarily benefited. *Tolksdorf v Griffith*, 464 Mich 1, 9; 626 NW2d 163 (2001); *McDonald v Marquette Circuit Judge*, 159 Mich 367, 370-371; 123 NW 1112 (1909). Plaintiff does not dispute that the acquisition of property for a stadium, and land for stadium parking, are permitted public purposes. Indeed, "the mere fact that the taking of property for a public use will result in greater benefit to some persons than to others, or that private individuals contribute to the expense of such a taking, does not affect the character of such use, or render it any the less public, within the meaning and scope of the law of eminent domain." *In re Condemnations for Improvement of River Rouge*, 266 F 105, 114 (ED Mich, 1920).

B.

The trial court found as fact that consideration for the option contract included, inter alia, that defendant "explicitly represented that they were going to purchase the property owned by the Abrahams and Postestivos which adjoined the underlying property." The trial court also

concluded that rescission of the sale of the subject property should be granted because of "failure of consideration due to [defendant's] failure to purchase the Abraham/Potestivo's west side properties." In essence, the trial court concluded that the option contract required defendant to purchase property described in additional term 3 of the option, which provided, "the per square foot price paid to Optioner for the property located on the Westside of Woodward shall be equal to the price per square foot paid by Optionee . . . to the owners of the Parcel located on Elizabeth and Park Avenue for the property located on Elizabeth and Park Avenue." The trial court erred in its interpretation of the option contract.

A contract must be construed in its entirety to determine the intent of the parties and give legal effect to it as a whole. *Perry v Sied*, 461 Mich 680, 689 n 10; 611 NW2d 516 (2000). Where the contract language is clear, its interpretation is a question of law. *Meagher v Wayne State University*, 222 Mich App 700, 721; 565 NW2d 401 (1997). Also, a contract must be interpreted and enforced according to its plain and ordinary meaning. *Id.* at 722. Here, the contract required plaintiff to convey by warranty deed twenty-three parcels of property upon payment by defendant of the sum of $6,459,100. While the contact provided that the price to be paid per square foot for the five west side parcels included in the contract shall be equal to the price per square foot paid by defendant for certain other property, nowhere does the contract require defendant to purchase the other property. The contract read as a whole plainly provided only that plaintiff would convey property to defendant upon payment of money but did not otherwise specify a separate price for any of the individual parcels of property.

It is undisputed that by closing defendant had not purchased the property specified in term 3 of the option contract and, therefore, that property could not serve as a yardstick to determine the price of the west side properties included in the option. The parties were clearly aware of the paragraph in question at the time of closing and were aware that defendant had not purchased the yardstick property. If defendant was required to purchase the yardstick property, plaintiff waived that condition. See, generally, 17A Am Jur 2d, Contracts, §§ 658, 659, pp 665-666. Moreover, as a general rule a deed executed in the performance of a contract for the sale of land operates as satisfaction and discharge of the terms of the purchase contract. *Chapdelaine v Sochocki*, 247 Mich App 167, 171; 635 NW2d 339 (2001). Here, the exception to the general rule does not apply because the alleged condition could have been fulfilled before delivery of the deed and plaintiff's conveyance of the subject property constituted full performance by her of the contract. Thus, to the extent the paragraph at issue was not satisfied, plaintiff's conveyance without a reservation of security for additional payment operated as a waiver and discharge of further performance by defendant.

II

Defendant argues that the trial court erred by making a factual finding directly contradictory to a previously stipulated fact adopted by the court. Defendant has abandoned this issue by failing to brief it in accord with the court rules and failing to set out any argument or authority supporting its claim of error. MCR 7.212(C)(7); *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

III

Defendant contends that the trial court erred by granting summary disposition in favor of plaintiff based on failure of consideration, mutual mistake, and innocent misrepresentation.

A. Failure of Consideration

The trial court concluded that there was a failure of consideration for the option contract that warranted rescission of the contract because (1) defendant promised to pay plaintiff the same price per square foot as it paid for the Abraham property but never purchased the Abraham property and (2) plaintiff was induced to contract with defendant based on a threat to acquire the property by eminent domain, which could not be commenced because defendant lacked funding to purchase and plan for the property. We have already concluded that the latter reason is based on misapplication of requirements to institute a complaint for condemnation to the alternative means of acquiring property through good-faith negotiations. Furthermore, the trial court's reasoning is fundamentally flawed by misconstruing motive for negotiating as consideration. Consideration is a bargained-for exchange that requires "a benefit on one side, or a detriment suffered, or service done on the other." *General Motors, supra* at 238. The "threat of condemnation" simply does not meet this definition of a bargained-for exchange but rather is what motivated plaintiff to negotiate. *Rose v Lurvey*, 40 Mich App 230, 234-235; 198 NW2d 839 (1972). "Inducements and motives . . . are not that bargained for exchange or legal detriment to defendants which is necessary to establish a legally valid contract." *Id*. at 235.

> The motive which prompts one to enter into a contract and the consideration for the contract are distinct and different things. Parties are led into agreements by many inducements, such as the hope of profit, the expectation of acquiring what they could not otherwise obtain, the desire of avoiding a loss, etc. These inducements are not, however, either legal or equitable consideration, and actually compose no part of the contract. [*Id*., quoting 17 Am Jur 2d, Contracts, § 93, pp 436-437.]

The trial court correctly concluded that the Abraham clause was bargained-for consideration. It is undisputed that plaintiff feared that Abraham would receive a better deal from defendant for his similarly situated property because of perceived political clout with the County administration and that the clause at issue was agreed to by defendant to placate plaintiff's fears. Clearly this was a bargained-for detriment to defendant, requiring defendant to pay plaintiff more money if defendant paid Abraham a higher price per square foot for his property, as well as benefit to plaintiff. However, as discussed above, the clause did not obligate defendant to purchase the Abraham property; nor did this consideration fail. Plaintiff bargained for and received peace of mind that defendant would not pay someone else more money than she was paid for similar property. Like the bargained-for after-warranty goodwill policy in *General Motors Corp, supra,* a bargained-for benefit flowed to plaintiff from the clause regardless whether it resulted plaintiff in being paid more money.

The trial court's finding that the subject property was purchased below market value is both unsupported by evidence and legally without merit. By deposition, defendant's representatives testified that negotiations for the west side property were based on appraisals.

Plaintiff admitted that defendant had an appraisal for the property and the appraisals attached to defendant's brief are consistent with the purchase price paid by defendant for the subject properties. Moreover, the parties' negotiations occurred at a point before sufficient property had been acquired to assure that the major corporate players, the Lions and the Tigers, would not withdraw, and before the electorate had approved taxation to support the project. Plaintiff's estimates of property values are based on land sales after events occurred that assured the project would go forward and that apparently created an economic boom for the area. Moreover, this claim strays into the sufficiency of the consideration, which courts generally will not examine. *General Motors Corp, supra* at 239. "Mere inadequacy of consideration, unless it be so gross as to shock the conscience of the court, is not ground for rescission." *Rose, supra* at 234, quoting *Hake v Youngs,* 254 Mich 545, 550; 236 NW 858 (1931).

The evidence viewed in the light most favorable to defendant, and indeed, the undisputed evidence, establish that rescission of plaintiff's sale of the subject property is unwarranted. Plaintiff bargained at a time when the future of the stadium project was uncertain and assumed the risk that she may have been better off not voluntarily selling the subject properties; rescission on these facts is unjustified. *Lenawee Co, supra* at 30.

B. Mutual Mistake

Defendant maintains that the trial court erred by finding that two mutual mistakes of fact provided a basis to rescind the sale of the subject property. The court found that the parties mistakenly believed that (1) defendant could immediately condemn the property and (2) defendant would purchase the Abraham property. As already discussed, the assumptions underlying the first alleged mutual mistake concerning defendant's ability to employ eminent domain amount to a misapplication of the statutory requirements for a condemnation complaint that are immaterial to good-faith negotiations to purchase property. The ability of defendant to exercise eminent domain was a motivating factor and was not a part of the contract. *Rose, supra* at 234-235.

Further, the parties' belief at the time of negotiating and entering the option contract that defendant would purchase or condemn all of the west side properties, including the Abraham property, does not support rescission of the contract. This "fact" clearly related to the occurrence or non-occurrence of a future event and as such cannot serve as a basis to rescind because of mutual mistake. *Lenawee Co, supra* at 24. Even assuming that defendant promised to purchase the Abraham property, plaintiff waived performance by delivery of a warranty deed for the subject property in exchange for payment of money recited in the deed.

C. Innocent Misrepresentation

Defendant contends that the trial court erred by finding that an innocent misrepresentation warranted rescission of the contract because no evidence supporting a finding that defendant misrepresented any fact resulting in unjust enrichment. The trial court found that (1) defendant represented it would immediately condemn the property if a purchase agreement could not be reached, and (2) defendant represented it would purchase the Abraham property.

Michigan recognizes the doctrine of "innocent misrepresentation" in the making of contracts whereby a false statement of fact made without knowledge of its falsity or intent to

deceive is actionable if relied upon by the other party to the contract to their detriment and that also unjustly enriches the party that made of the false statement. *United States Fidelity & Guaranty Co v Black*, 412 Mich 99, 115-118; 313 NW2d 77 (1981); *McConkey, supra* at 27-28. As with mutual mistake and intentional fraud, the misrepresentation must relate to a past or existing fact and not be promissory in nature. *Forge v Smith*, 458 Mich 198, 212; 580 NW2d 876 (1998). See also *Hi-Way Motor Co v International Harvester Co*, 398 Mich 330, 336; 247 NW2d 813 (1976). In this case, no evidence existed that defendant misrepresented its intent to purchase or condemn the west side property for the stadium project. Plaintiff's legal theory in this regard, adopted by the trial court, is erroneous as previously discussed. There can be no fraudulent or innocent misrepresentation without a false statement. *Hord v Environmental Research Inst* (*After Remand*), 463 Mich 399, 410; 617 NW2d 543 (2000), *McConkey, supra* at 28.

Further, the record does not support the conclusion that plaintiff relied on defendant's ability to immediately institute condemnation proceedings. Rather, it is undisputed that plaintiff was well aware at the time of negotiations that it was uncertain the stadium project would ever actually materialize. Specifically, plaintiff was aware defendant had to acquire the rights to sufficient property to convince the Lions and the Tigers that the project was financially feasible, and the electorate had to approve a tax supporting the project in the November election. As to the alleged promise to purchase the Abraham property, it was known at the time plaintiff delivered the deed to the subject property that defendant had not purchased the Abraham property and her conveyance without reservation waived any future claim in that regard. A claim of innocent misrepresentation cannot be supported on a promise of future performance and cannot be supported without proof of detrimental reliance. *Forge, supra* at 212; *McConkey, supra* at 28.

Furthermore, plaintiff's claim that she was misled concerning the Detroit Tigers is without merit. The intimate involvement of the Tigers in the stadium project, including providing a substantial financial contribution to building a stadium for the Tigers as their home field, and holding the concession for project parking, was a matter of public record. See, e.g., *Forge, supra* at 212, and *McMullen v Joldersma*, 174 Mich App 207, 213-214; 435 NW2d 428 (1988). The record discloses that plaintiff was very experienced in real estate transactions and also represented by counsel during negotiations. The record also establishes that the Tigers' loan to purchase the subject properties was consistent with the memorandum of understanding between the stadium project principals, a public record, and was disclosed at the time to plaintiff. Thus, any belief on plaintiff's part that the Tigers were not intimately involved in the stadium project, as well as stadium parking, was an unjustified inference that will not support a claim of misrepresentation. *Hord, supra* at 410.

Finally, the trial court's order provided:

> The Court further finds that it is not good policy for a governmental entity with powers of eminent domain to threaten condemnation if a sale of the property is not reached with the property owner, and to then borrow the money from another private entity developer in the area, and then to repay the loan by transferring the purchased property to the private entity developer who loaned the money.

We assume that the trial court's reference to "good policy" referred to "public policy," and not the trial court's own personal opinion. Our Supreme Court recently addressed the source of "pubic policy" in *Terrien v Zwit*, 467 Mich 56, 66; 648 NW2d 602 (2002), opining "it is clear to us that this term must be more than a different nomenclature for describing the personal preferences of individual judges, for the proper exercise of the judicial power is to determine from objective legal sources what public policy is, and not to simply assert what such policy ought to be on the basis of the subjective views of individual judges." It is without question the public policy of this state and of the United States as expressed in both the state and federal Constitutions that private property may not be taken by the government without just compensation, and then only in accordance with due process for public purposes. *Tolksdorf, supra* at 2, 7-9; *Attorney General v Public Service Comm*, 249 Mich App 424, 435; 642 NW2d 691 (2002). The record in this case discloses no evidence that defendant did anything other than pursue the public purposes of acquiring property to build dual stadiums and operate necessary parking facilities. MCL 123.951. Although the subsequent transfer of the subject property to the Tigers after defendant decided to "downsize" the project may "raise eyebrows," the trial court has cited no legal authority for the proposition that a private entity that will be both a major beneficiary and benefactor of the project may not assist its funding or be a transferee of property no longer deemed necessary.[2]

Neither the evidence nor the law supports the trial court's determination that failure of consideration, mutual mistake or innocent misrepresentation warranted rescission of the sale of the subject property. Because there are no material facts in dispute, we conclude that defendant, rather than plaintiff, was entitled to judgment as a matter of law. MCR 2.116(I)(2), MCR 7.216(A).[3]

Reversed.

/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder
/s/ Jessica R. Cooper

---

[2]This is not to suggest that legal or equitable remedies would not be available upon presentation of evidence that the original transaction was a sham or intentionally fraudulent. However, the trial court did not find intentional fraud and de novo review of the record reveals no evidence of fraud.

[3] In light of our resolution of this case, we need not address the remaining issues raised by defendant.