STATE OF MICHIGAN

COURT OF APPEALS

JAY K. RUSSELL,

Plaintiff-Appellant,

V

MOMENA V. SETTIPANI, BRIANA L. SETTIPANI, and ALANA SETTIPANI,

Defendants-Appellees,

and

JOHN S. CZELADA and MARGARET S. CZELADA,

Defendants.

UNPUBLISHED
August 20, 2020

No. 348235
Wayne Circuit Court
LC No. 18-007277-CZ

Before: REDFORD, P.J., and METER and O'BRIEN, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's stipulated order dismissing John and Margaret Czelada (collectively the Czelada defendants) with prejudice and challenges the trial court's earlier order granting summary disposition under MCR 2.116(C)(8) and (10) in favor defendants Momena V. Settipani, Briana L. Settipani, and Alana Settipani (collectively the Settipani defendants). On appeal, plaintiff argues the trial court erred when it granted summary disposition in favor of the Settipani defendants. In addition, plaintiff argues the trial court should have permitted him to amend his complaint after dismissing his claims. We reverse and remand for further proceedings.

I. BACKGROUND

This case arises out of a dispute between plaintiff and defendants regarding ownership of real property in Hamtramck, Michigan. Beginning in 2011, plaintiff and Momena lived together in a house located on Evaline Street in Hamtramck, Michigan ("Evaline Property"). Plaintiff and

Momena occupied the Evaline Property under a residential lease between Momena and John. Momena and John also executed a letter of intent, under which John promised to convey the Evaline Property to Momena after 78 monthly payments of $550.

Momena and plaintiff resided together at the Evaline Property until 2017. Plaintiff claimed that while he resided at the Evaline Property, he made numerous improvements to the property, including work done to the roof, landscape, and plumbing. Plaintiff claimed that while he was out of town in September 2017, John transferred title to the Evaline Property to Momena as the sole owner. However, plaintiff asserted that he—not Momena—made all monthly payments to John, totaling $39,000, and on the basis of an oral promise between himself and Momena, the transfer of title was supposed to be to both plaintiff and Momena. After the transfer of title to Momena, she tried to evict plaintiff from the Evaline Property. Plaintiff brought this action, asserting claims of quiet title, breach of contract and promissory estoppel, equitable estoppel, unjust enrichment, fraud, fraud in the inducement, and conveyance with intent to defraud.

The Settipani defendants filed a motion for summary disposition under MCR 2.116(C)(8) and (10). The Settipani defendants argued that plaintiff's claim for quiet title failed because plaintiff did not adequately plead the facts to show his superior title to the Evanline Property. Plaintiff's breach-of-contract claim was barred by the statute of frauds, and the partial performance exception did not apply. The Settipani defendants further argued that plaintiff's claim for promissory estoppel failed because plaintiff failed to plead a clear and definite promise relating to plaintiff's ownership interest in the Evanline Property. Plaintiff's equitable estoppel claim also failed because equitable estoppel was not an independent cause of action. Additionally, plaintiff's claim for unjust enrichment failed because, even if plaintiff made the monthly payments, the Settipani defendants did not receive an independent benefit, and any benefit received was not unjust. With respect to plaintiff's fraud claim, the Settipani defendants asserted that the alleged fraudulent statement—that Settipani would share ownership of the Evaline Property—was not a statement of past or existing fact and, therefore, not actionable. The Settipani defendants argued that plaintiff's fraud in the inducement claim failed because plaintiff did not allege a breach of duty independent from the alleged contractual duty and because Momena was not a proper party to the claim since she did not have an ownership interest in the Evaline Property at the time the alleged statement was made. Lastly, the Settipani defendants argued that plaintiff's claim of conveyance with intent to defraud failed because plaintiff was not a creditor, which is a required element of the claim.

Following a hearing on the Settipani defendants' motion for summary disposition, the trial court granted the motion. Plaintiff and the Czelada defendants later stipulated to dismiss plaintiff's remaining claims against the Czelada defendants. This appeal follows.

II. STANDARD OF REVIEW

"This Court . . . reviews de novo a trial court's decision on a motion for summary disposition." *Dell v Citizens Ins Co of America*, 312 Mich App 734, 739; 880 NW2d 280 (2015).

> A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. A motion under MCR 2.116(C)(8) may be granted

> only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. When deciding a motion brought under this section, a court considers only the pleadings. [*Id*. at 739-740 (citation omitted).]

This Court "review[s] a motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id*.

III. DISCUSSION

We agree with plaintiff that the trial court erred when it granted summary disposition in favor of the Settipani defendants with respect to plaintiff's claims of quiet title, promissory estoppel, breach of contract, unjust enrichment, and fraud in the inducement. Summary disposition was granted under MCR 2.116(C)(8) and MCR 2.116(C)(10); however, the trial court did not always specify, for each claim, under which subrule it granted the motion. "[W]here a court's opinion does not invoke the proper court rule supporting its ruling, we may look to the substance of the holding to determine which rule governs." *Williamstown Twp v Hudson*, 311 Mich App 276, 288; 874 NW2d 419 (2015). Thus, where the trial court has relied on documentary evidence in making its ruling, we will presume the trial court acted under MCR 2.116(C)(10). See *Krass v Tri-County Security, Inc.*, 233 Mich App 661, 664-665; 593 NW2d 578 (1999).

A. QUIET TITLE AND BREACH OF CONTRACT

Plaintiff argues the trial court erred when it dismissed his claims of quiet title and breach of contract because the trial court erroneously construed the statute of frauds when dismissing those claims. We agree.

"[A] plaintiff who claims any interest—without regard to the nature of the interest—in a particular piece of real property may sue any other person with a competing claim to the property . . . ." *New Prod Corp v Harbor Shores BHBT Land Development, LLC*, 308 Mich App 638, 652; 866 NW2d 850 (2014). "[MCL 600.2932(1)[1]] does not limit the interests that may be resolved to those arising at law; indeed, a plaintiff may sue even when relying on an interest that

[1] MCL 600.2932(1) provides:

> Any person, whether he is in possession of the land in question or not, who claims any right in, title to, equitable title to, interest in, or right to possession of land, may bring an action in the circuit courts against any other person who claims or might claim any interest inconsistent with the interest claimed by the plaintiff, whether the defendant is in possession of the land or not.

arises in equity and may sue another person on the mere possibility that the other person 'might' make a claim that is inconsistent with the plaintiff's claimed interest." *Id*.

Under MCR 3.411(B)(2), a plaintiff's complaint for quiet title must allege: "(a) the interest the plaintiff claims in the premises; (b) the interest the defendant claims in the premises; and (c) the facts establishing the superiority of the plaintiff's claim." Additionally, "[t]he plaintiff must attach to the complaint, and the defendant must attach to the answer, a statement of the title on which the pleader relies, showing from whom the title was obtained and the page and book where it appears of record." MCR 3.411(C)(2). Further, "[w]ithin a reasonable time after demand for it, a party must furnish to the adverse party a copy of an unrecorded conveyance on which he or she relies or give a satisfactory reason for not doing so." MCR 3.411(C)(3).

The trial court dismissed plaintiff's quiet title claim under MCR 2.116(C)(8) because the court determined that plaintiff failed to establish his superior interest in the Evanline Property. The trial court concluded that plaintiff could not, as a matter of law, have a superior interest because the statute of frauds barred his claim. We disagree.

"The statute of frauds 'was designed to prevent disputes as to what the oral contract, sought to be enforced, was.' " *In re Rudell Estate*, 286 Mich App 391, 407; 780 NW2d 884 (2009), quoting *Bagaeff v Prokopik*, 212 Mich 265, 269; 180 NW 427 (1920). The statute of frauds, MCL 566.106, states:

> No estate or interest in lands, other than leases for a term not exceeding 1 year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing.

In addition, MCL 566.108 states, in pertinent part:

> Every contract for the leasing for a longer period than 1 year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof be in writing, and signed by the party by whom the lease or sale is to be made, or by some person thereunto by him lawfully authorized in writing . . . .

However, our courts have recognized the doctrine of partial performance as an exception to the statute of frauds. "If one party to an oral contract, in reliance upon the contract, has performed his obligation thereunder so that it would be a fraud upon him to allow the other party to repudiate the contract, by interposing the statute, equity will regard the contract as removed from the operation of the statute." *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 540; 473 NW2d 652 (1991) (quotation marks and citation omitted).

The trial court concluded that the part-performance doctrine did not apply because the purported agreement between plaintiff and Momena could not be performed within one year. This Court has held that "[w]here the contract cannot be performed within one year, partial performance

fails to negate the statute's writing or signature requirements." *Zander v Ogihara Corp*, 213 Mich App 438, 445; 540 NW2d 702 (1995).

It was error for the trial court to conclude that the oral contract at issue could not be performed within one year. As alleged by plaintiff, the oral contract between plaintiff and Momena was to share an interest in the Evaline Property once plaintiff made all monthly payments to John. Although unlikely, there was a possibility that plaintiff could have paid a lump sum amount to John, or otherwise paid the purchase price within one year. See *Dumas*, 437 Mich at 533 (quotation marks and citation omitted; emphasis added) ("The rule is that if, *by any possibility*, it is capable of being completed within a year, it is not within the statute . . . ."). Thus, the contract could have been performed within one year, and the partial-performance exception to the statute of frauds should not have been rejected by the trial court.

The trial court also concluded that the part-performance doctrine did not apply because plaintiff failed to present any evidence that he actually partially performed on the alleged oral agreement. However, the trial court dismissed plaintiff's claim of breach of contract and quiet title under MCR 2.116(C)(8), which "tests the legal sufficiency of the complaint solely on the basis of the pleadings." *Nyman v Thompson Reuters Holdings, Inc*, 329 Mich App 539, 543; 942 NW2d 696 (2019) (quotation marks and citation omitted). "All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmoving party." *Id*. Plaintiff alleged that he made the required monthly payments to the Czelada defendants. Plaintiff further alleged that he paid $39,000 toward the purchase of the Evaline Property. Plaintiff also claimed that he made permanent improvements to the property. Thus, we conclude that plaintiff sufficiently pleaded an oral agreement, and partial performance under that agreement, such that summary disposition should not have been granted in the Settipani defendants' favor for these claims.

B. PROMISSORY ESTOPPEL

Plaintiff argues that he adequately pleaded a claim for promissory estoppel. We agree.

The trial court did not address this claim when it ruled from the bench. Thus, even though the trial court did not provide a rationale for its decision to dismiss the claim, plaintiff has nevertheless preserved the issue for appeal. *Peterman v State Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994) (stating that with respect to preservation, a party "should not be punished for the omission of the trial court").

To state a claim for promissory estoppel, a plaintiff must plead the following elements:

> (1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee, and (3) that in fact produced reliance or forbearance of that nature in circumstances such that the promise must be enforced if injustice is to be avoided. [*Klein v HP Pelzer Auto Sys, Inc*, 306 Mich App 67, 83; 854 NW2d 521 (2014) (quotation marks and citation omitted).]

The Settipani defendants argue that plaintiff could not have reasonably relied on the alleged promise from Momena because the promise relied on contingent occurrences—i.e., the paying of

the land contract price—before the promise could be fulfilled. The Settipani defendants fail to cite any authority for the proposition that reliance on a promise premised on a contingent occurrence is, as a matter of law, unreasonable. See *Hooker v Moore*, 326 Mich App 552, 557 n 2; 928 NW2d 287 (2018) ("[W]hen a party merely announces his or her position and fails to cite any supporting legal authority, the issue is deemed abandoned.").

As pleaded in plaintiff's complaint, Momena promised to convey an interest in the Evaline Property to plaintiff, provided that plaintiff made the monthly payments. Plaintiff claims he relied on that promise and, in accordance with it, made the monthly payments. While the promise was contingent on plaintiff making the payments, any promise is contingent on each side taking some action or forbearance. Thus, we conclude that plaintiff sufficiently pleaded a claim for promissory estoppel.

The Settipani defendants also argue plaintiff provided no evidence to the trial court that a promise existed, justifying summary disposition under MCR 2.116(C)(10). The Settipani defendants, for their part, rely on Momena's affidavit that there was no promise to convey an interest in the Evaline Property. They ignore, however, the affidavit plaintiff included in his response to the summary disposition motion, in which Joseph Nabozny, a relative of plaintiff, stated that plaintiff and Momena represented to him that the two had an oral agreement to share an interest in the Evaline Property. The Nabozny affidavit created a genuine issue of material fact that precluded summary disposition under MCR 2.116(C)(10). *West*, 469 Mich at 183. Thus, under either MCR 2.116(C)(8) or MCR 2.116(C)(10), it was error for the trial court to dismiss plaintiff's promissory estoppel claim.

C. EQUITABLE ESTOPPEL

Plaintiff argues that the trial court erred by concluding that plaintiff could not assert that the Settipani defendants should be equitably estopped from denying the existence of the oral agreement. We agree.

"The doctrine of equitable estoppel has been applied to defeat the defense of the statute of frauds where a party has acted to his detriment in reliance on oral agreements or where application of the doctrine of equitable estoppel is necessitated by the facts." *Lakeside Oakland Dev, LC v H & J Beef Co*, 249 Mich App 517, 526-527; 644 NW2d 765 (2002). "Equitable estoppel may arise where (1) a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, (2) the other party justifiably relies and acts on that belief, and (3) the other party is prejudiced if the first party is allowed to deny the existence of those facts." *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 141; 602 NW2d 390 (1999).

The trial court dismissed plaintiff's claim of equitable estoppel because plaintiff failed to provide evidence supporting his contention that he partially performed under the oral contract. To the extent the trial court granted summary disposition under MCR 2.116(C)(10), we conclude that the trial court erred by requiring evidence of partial performance to sustain a claim of equitable estoppel. The trial court likely was relying on the second element—justifiable reliance—when it determined that the lack of evidence of partial performance was fatal to plaintiff's claim.

While plaintiff did not present to the trial court evidence of the alleged improvements he made to the Evaline Property, he did present evidence that he made the monthly payments believing those payments were going toward the land contract, and his ownership interest. Nabozny stated that he loaned plaintiff money after plaintiff lost his job so plaintiff could continue to make the payments and not lose his ownership interest. This was sufficient evidence to create a question of fact with respect to whether plaintiff justifiably relied on the alleged oral promise between himself and Momena. Thus, we hold that the trial court erred when it concluded that plaintiff could not assert that the Settipani defendants should be equitably estopped from asserting the statute of frauds.

D. UNJUST ENRICHMENT

Plaintiff argues that the trial court erred by dismissing his claim of unjust enrichment. We agree.

The trial court concluded that because plaintiff was able to live at the Evaline Property as a result of his alleged payments to John, he would be unable to demonstrate that Momena retained an independent benefit. Thus, it appears that the trial court dismissed the unjust-enrichment claim under MCR 2.116(C)(8). *Hudson*, 311 Mich App at 288.

"The elements of a claim for unjust enrichment are (1) receipt of a benefit by the defendant from the plaintiff, and (2) an inequity resulting to plaintiff from defendant's retention of the benefit." *Bellevue Ventures, Inc v Morang-Kelly Investment, Inc*, 302 Mich App 59, 64; 836 NW2d 898 (2013). "In such instances, the law operates to imply a contract in order to prevent unjust enrichment." *Id*. "Not all enrichment is unjust in nature, and the key to determining whether enrichment is unjust is determining whether a party unjustly received and retained an independent benefit." *Karaus v Bank of NY Mellon*, 300 Mich App 9, 23; 831 NW2d 897 (2012).

The trial court erred by failing to account for the fact that Momena retained the benefit of ownership of the Evaline Property as a result of plaintiff's alleged payments. In other words, had title to the Evaline Property not passed to Momena as a result of the payments, the trial court would have been correct in concluding that Momena and plaintiff retained the same benefit—the ability to live at the property. However, Momena received more than just the right to reside at the Evaline Property during the duration of the lease. She also received title to the property. This is an independent benefit apart from anything that plaintiff received. Thus, the trial court erred when it dismissed plaintiff's claim for unjust enrichment.

E. FRAUD IN THE INDUCEMENT

Plaintiff argues that the trial court erred by dismissing plaintiff's claim for fraud in the inducement. We agree.

"[I]n in general, actionable fraud must be predicated on a statement relating to a past or an existing fact," however, "Michigan also recognizes fraud in the inducement." *Samuel D Begola Servs, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). "Fraud in the inducement occurs where a party materially misrepresents future conduct under circumstances in which the assertions may reasonably be expected to be relied upon and are relied upon." *Id*. The elements of fraud in the inducement are:

> (1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth and as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage. [*Custom Data Solutions, Inc v Preferred Capital, Inc*, 274 Mich App 239, 243; 733 NW2d 102 (2006) (quotation marks and citation omitted).]

The trial court dismissed plaintiff's fraud in the inducement claim because, according to the trial court, a future promise is not actionable in tort. Thus, like the unjust-enrichment claim, the trial court appears to have dismissed the claim under MCR 2.116(C)(8). *Hudson*, 311 Mich App at 288. This was error by the trial court. While a standard fraud claim must be premised on a statement of past or existing fact, fraud in the inducement is premised on a promise by an individual that the individual does not intend to perform. *Wild Bros*, 210 Mich App at 639. We therefore reverse the decision of the trial court.[2]

IV. CONCLUSION

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ James Robert Redford
/s/ Patrick M. Meter
/s/ Colleen A. O'Brien

[2] Plaintiff has also argued on appeal that the trial court erred when it failed to grant him leave to amend his complaint after dismissing his claims. Because we reverse the trial court's grant of summary disposition in favor of the Settipani defendants, we need not address this issue.