

STATE OF MICHIGAN
COURT OF APPEALS

28TH STREET KENTWOOD ASSOCIATION,

Plaintiff-Appellant,

v

RAMCO GERSHENSON, INC.,

Defendant-Appellee.

UNPUBLISHED
September 18, 2001

No. 223036
Oakland Circuit Court
LC No. 99-014459-CH

Before: Smolenski, P.J., and McDonald and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendant under MCR 2.116(C)(8). We affirm.

Plaintiff is a partnership that was formed to acquire land and develop a shopping center. Ramco Kentwood Associates (RKA) is plaintiff's managing partner. Under the partnership agreement, RKA has a fifty percent interest, Frederick Rubin has a 15.92578 percent interest, Robert Doettl has a 6.19526 percent interest, and Sydney Rose and David Rose have the remaining interest. RKA had contractual authority to assign its duties to defendant, which RKA and defendant ultimately contracted so that defendant would assume managerial responsibility for the shopping center project. Plaintiff filed suit against defendant, alleging that defendant breached its contractual and fiduciary duties, and alleged negligence.

Defendant moved for summary disposition on the basis that the suit was contractually barred by the partnership agreement, which expressly delegated responsibility for managing the business and affairs of the partnership to the managing partner, thus depriving the general partners of standing to sue without the managing partner's consent. The trial court initially ruled that the partnership agreement did not preclude the general partners from bringing suit on behalf of the partnership without the managing partner's consent. On defendant's motion for reconsideration, however, the trial court ruled that the general partners were statutorily barred from bringing suit on behalf of the partnership without the managing partner's consent under MCL 449.18(h).

The issue in this case is essentially whether the general partners may, regardless of minority status, file derivative actions on behalf of the partnership where the managing partner has not agreed to the action. We affirm the trial court's order granting summary disposition, but

for the reason that plaintiff's claims are barred by the express language of the partnership agreement. See *Etefia v Credit Technologies, Inc.*, 245 Mich App 466, 470; 628 NW2d 577 (2001) (This Court will not reverse where the trial court reaches the right result, although for the wrong reason). Consequently, we need not decide whether plaintiff's claims are statutorily barred, as ruled by the trial court.

The partnership agreement states in relevant part:

4.01 Management Powers of the Managing Partner.

a. The Managing Partner shall manage the business and affairs of the Partnership and shall devote so much of its time, efforts and personnel to the business and affairs of the Partnership as it may, in its reasonable discretion, determine to be required for the conduct thereof.

The Managing Partner shall periodically keep the other Partners advised as to its activities and shall periodically meet with the other Partners as may reasonably be requested by a Majority in Interest of the Rose Partners. The Managing Partner shall keep all Partners advised, on a regular continuous basis, of the Managing Partner's activities and of the terms and conditions with respect to financing and refinancing the Project.

b. Subject to Sections 4.01 c. and 4.05 hereof, the Managing Partner shall have the authority to make such decision and take such action as it may, in its discretion, deem necessary to effectuate the affairs of the Partnership. All such decisions so made by the Managing Partner shall be binding upon the Partnership and its partners.

c. Notwithstanding the foregoing, as to the following decisions, no action shall be taken by the Managing Partner without first obtaining the approval of the Majority in Interest of the Partners:

(1) The sale, financing or refinancing of the Land or Project or any portion thereof;

(2) The entering into of any lease for the Project of over ten thousand (10,000) square feet or for a term greater than ten (10) years;

(3) The entering into of any contract or agreement for compensation with the Managing Partner or any of its Affiliates;

(4) Final construction and development budget (the "Construction and Development Budget").

d. Subject to the preceding paragraphs, the Managing Partner shall have authority to execute any and all documentation required to be executed by the Partnership, including, but not limited to, contracts, deeds, notes, mortgages,

security, instruments, checks, easements and leases. All documents so executed by the Managing Partner on behalf of the Partnership shall be binding on the Partnership and both parties thereof. The Managing Partner shall furnish a copy of each executed lease for the Project to the Rose Partner designated by the Rose Partners. Any member of Ramco designated by that Partner or those Partners holding a majority of interest in Ramco may act as the representative of an on behalf of Ramco and all members of Ramco with power to act in connection with all matters relating to this Agreement or the Partnership.

We find that the above language is clear and unambiguous. The partnership agreement grants to the managing partner the exclusive authority to manage partnership affairs, except for the matters specifically listed. The listed matters do not include suing a contracting partner for breach of contract, thus, that matter is left to the discretion of the managing partner. The partnership agreement simply does not permit the general partners to bring suit on behalf of the partnership where the managing partner does not assent.

Moreover, to the extent that plaintiff argues that defendant is equitably estopped from asserting a defense under the partnership agreement, we find that the issue is waived for appellate review because plaintiff never raised this issue below. In any event, defendant is not equitably estopped from relying on the partnership agreement because there is no evidence that defendant induced plaintiff to act in reliance on a knowingly concealed or falsely represented material fact such that plaintiff now stands to suffer prejudice from a change in defendant's position. See *Adams v Detroit*, 232 Mich App 701, 708; 591 NW2d 67 (1998). Plaintiff's complaint that the managing partner and defendant are one and the same entity and that defendant refuses to sue itself, does not establish equitable estoppel.

Accordingly, the trial court's order granting summary disposition in favor of defendant is affirmed, albeit for a different reason than that of the trial court.

Affirmed.

/s/ Michael R. Smolenski
/s/ Kathleen Jansen

McDonald, J., did not participate.