STATE OF MICHIGAN

COURT OF APPEALS

KATHY GLISSON,

Plaintiff-Appellant,

v

BRYAN L. POLLMAN and MOLLY M. POLLMAN,

Defendants-Appellees.

UNPUBLISHED
February 15, 2005

No. 250271
Calhoun Circuit Court
LC No. 00-004689-NI

Before: Talbot, P.J., Whitbeck, C.J., and Jansen, J.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for involuntary dismissal after plaintiff presented her proofs at trial. We reverse and remand. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendants agreed to lease their farmland in Albion Township. The lease form that was used originally indicated that the lessee would be John Howell, who is plaintiff's husband. Raymond Reed, a leasing agent who worked for Howell and plaintiff, initially negotiated the lease, but Howell later became involved. Shortly before the lease was signed, Howell and Reed decided that plaintiff would be the lessee instead of Howell because Howell had too much land already in his name to qualify for government subsidies. Plaintiff's name was then substituted on the lease as the lessee. Reed, who had power of attorney to lease land for plaintiff, signed it on plaintiff's behalf, as her agent. The lease term was ten years.

At trial, plaintiff testified that she regularly leases farmland in her name alone, but admitted that she did not participate in the negotiations for this lease. After the lease was executed, plaintiff hired John Howell Farms, L. L. C. ("Howell Farms") to farm the land the first year. Plaintiff paid the first year's rent from her own checking account. After the first year, defendants wanted more money and leased the land to someone else.

Plaintiff subsequently brought this action, alleging breach of the lease agreement. After plaintiff submitted her proofs at trial, the trial court granted defendants' motion for involuntary dismissal, giving two reasons for its decision: (1) plaintiff was not the real party in interest; and (2) plaintiff failed to show that she sustained any damages.

A motion for involuntary dismissal is appropriate in a bench trial when the court is satisfied after the plaintiff presents her case "that on the facts and the law the plaintiff has shown no right to relief." MCR 2.504(B)(2); *Samuel B Begola Services, Inc v Wild Bros,* 210 Mich App 636, 639; 534 NW2d 217 (1995). The trial court's ultimate decision and conclusions of law are reviewed de novo. *Sands Appliance Services v Wilson,* 231 Mich App 405, 409; 587 NW2d 814 (1998), rev'd on other grounds 463 Mich 231 (2000). Any findings of fact made by the court are reviewed for clear error. *Samuel B Begola Services, supra*; *Sands Appliance Services, Inc v Wilson,* 463 Mich 231, 238; 615 NW2d 241 (2000).

The trial court erred in finding that plaintiff was not the real party in interest to this action.

> MCR 2.201(B) requires that, generally, an action must be prosecuted in the name of the real party in interest. A real party in interest is the one who is vested with the right of action on a given claim, although the beneficial interest may be in another. *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 95; 535 NW2d 529 (1995). This standing doctrine recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy. *Michigan Nat'l Bank v Mudgett*, 178 Mich App 677, 679; 444 NW2d 534 (1989). In addition, the doctrine protects a defendant from multiple lawsuits for the same cause of action. *Kearns v Michigan Iron & Coke Co*, 340 Mich 577, 581; 66 NW2d 230 (1954). A defendant is not harmed provided the final judgment is a full, final, and conclusive adjudication of the rights in controversy that may be pleaded to bar any further suit instituted by any other party. *Id.* [*City of Kalamazoo v Richland Twp,* 221 Mich App 531, 534; 562 NW2d 237 (1997).]

The "real party in interest" rule is concerned only with the power of the plaintiff then before the court to bring suit. *Hofmann, supra.*

The trial court concluded that plaintiff was not the real party in interest because the evidence showed that she did not negotiate the lease and was not directly involved in farming the land. Although the evidence indicated that Howell and Reed negotiated and signed the lease, it also indicated that Howell's name was crossed off and replaced with plaintiff's name on the first page of one of the two copies of the lease that was presented at trial and, more significantly, that plaintiff was listed as the tenant on the signature page of both copies. Further, there was no dispute that Reed had the authority to enter into leases for plaintiff. Reed testified that he had a power of attorney from plaintiff for this purpose. Further, consistent with plaintiff's status as the named party to the lease, the evidence indicated that plaintiff personally paid the first year's rent under the lease. These facts demonstrate that plaintiff was the lessee for the property, notwithstanding that she was not directly involved in negotiating the lease or in farming the property. Contrary to the trial court's conclusion, mutuality of obligation, a necessary element for a valid contract, *Thomas v Leja,* 187 Mich App 418, 422; 468 NW2d 58 (1991), was not lacking.

> "Mutuality of obligation" means that both parties to an agreement are bound or neither is bound, that is, mutuality is not present where one party is bound to perform, but not the other. . . . "By 'mutuality of obligation' is apparently meant that there must be consideration, without which there is no obligation on

> either party because there is no binding contract." [*Reed v Citizens Ins Co of America,* 198 Mich App 443, 449; 499 NW2d 22 (1993) (citations and footnote omitted).]

As previously discussed, even though plaintiff was not personally involved in negotiating the lease, the evidence clearly demonstrated that she was the named party to the lease, that Reed executed the lease on plaintiff's behalf as plaintiff's authorized agent, and that plaintiff was the party who tendered performance under the lease by paying the rent for the first year. On these facts, there is no basis for concluding that plaintiff was not legally bound by the terms of the lease. On the contrary, there clearly was mutuality of obligation because there was consideration on both sides. Plaintiff was obligated to pay the rent, which she did, and defendants were obligated to turn their land over to plaintiff to farm. Further, plaintiff's decision to hire Howell Farms to farm the land did not constitute an assignment of the lease itself.

For these reasons, the trial court erred in determining that plaintiff was not the real party in interest to bring an action for breach of the lease agreement.

As an additional reason for granting defendants' motion for involuntary dismissal, the trial court stated that plaintiff did not prove that she sustained any damages. The basis for this conclusion was the trial court's belief that, by 2001, plaintiff had leased over 2,000 other acres of farmland and, therefore, would not have been eligible for government subsidies on the land leased from defendants. But plaintiff's expert, David Skjaerlund, testified that plaintiff lost profits of $73,958 over the remaining nine years that she was unable to farm the land, and his calculations included both market profits and government subsidies. The government subsidies were only a portion of the total lost profits calculated by Skjaerlund. Furthermore, Skjaerlund testified that plaintiff could realize another $14,144.34 in market profits if she used a different rotation of crops with greater profit margins. Thus, the trial court erred to the extent that it found that plaintiff did not establish any damages apart from government subsidies.

Furthermore, in support of her motion to set aside the dismissal, plaintiff presented the affidavit of Skjaerlund, who clarified that the limits on government subsidies were not based on the amount of acreage farmed by one producer, but on dollar limits available to an individual producer and that plaintiff did not exceed those limits. Skjaerlund's affidavit further demonstrates that the trial court erred in concluding that plaintiff failed to prove any damages.

Accordingly, we reverse the trial court's involuntary dismissal order and remand this case for further proceedings.

Reversed and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Kathleen Jansen