

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

ROSALBA MARTINEZ, individually and as
Personal Representative of Alejandro Martinez, Jr.,

Plaintiffs/Counter-Defendants,

Case No. 13-09606-NMB

vs.

HON. CHRISTOPHER P. YATES

AVANTI LAW GROUP, PLLC, a Michigan
professional limited liability company; RAQUEL
SALAS, an individual; QUISQUEYANA
VENTURE, LLC, a Michigan limited liability
company; TERESA CARMEN MEJIA GURIDY,
an individual; LUNA VERDE, LLC, a Michigan
limited liability company; ALTAGRACIA
GURIDY, an individual; and GABRIEL ANTONIO
CORCINO-GURIDY, an individual,

Defendants,

and

AVANTI LAW GROUP, PLLC, a Michigan
professional limited liability company; and
RAQUEL SALAS, an individual,

Counter-Plaintiffs,

and

VIDAFLEX GROUP, LLC, a Michigan limited
liability company,

Intervening Defendant/Counter-
Plaintiff/Third-Party Plaintiff,

vs.

PROPIEIDADES, AZTECAS, LLC, a Michigan
limited liability company,

Third-Party Defendant.

ORDER DENYING MOTION FOR SUMMARY DISPOSITION

Once upon a time, intrepid explorers would travel to distant lands and return home with all manner of exotic beasts. Throngs of gawkers would marvel at the strange creatures on display in the town square and try to guess what types of animals appeared before them. The Court feels that same sense of wonderment as it examines the West Michigan Regional Purchase Agreement executed on February 19, 2013, by Alejandro Martinez, Jr., acting as the principal of the third-party defendant, Propiedades Aztecas, LLC (“Propiedades”), and Raquel Salas, acting as the principal of Third-Party Plaintiff VidaFlex, LLC (“VidaFlex”). VidaFlex contends that the purchase agreement was nothing more than a promise to enter into a land contract for the sale of 527 Mae-Thy Street S.E., in the City of Wyoming, whereas Propiedades argues that the parties entered into a land contract by signing the purchase agreement. The resolution of this dispute significantly affects the viability of VidaFlex’s counterclaims and third-party claims, but the language of the purchase agreement could reasonably support either competing interpretation. Therefore, the Court cannot decide, as a matter of law, what legal creature the purchase agreement constitutes, so the Court must deny the motion for summary disposition filed by Plaintiff Rosalba Martinez and Third-Party Defendant Propiedades.

I. Factual Background

Plaintiff Rosalba Martinez and Third-Party Defendant Propiedades seek summary disposition under MCR 2.116(C)(8) and (10) on the counterclaims and third-party claims advanced by VidaFlex. Ordinarily, “[w]hen reviewing a motion brought under MCR 2.116(C)(8), the Court considers only the pleadings,” Michigan ex rel Gurganus v CVS Caremark Corp, 496 Mich 45, 63 (2014), and when reviewing a motion brought under MCR 2.116(C)(10), the Court “considers the entire record in the light most favorable to the party opposing the motion[.]” Corley v Detroit Bd of Ed, 470 Mich 274,

278 (2004). But the legal arguments devised by Rosalba Martinez and Propiedades to support their motion for summary disposition depend upon the characterization of the February 19, 2013, purchase agreement. Because the Court finds that the purchase agreement is ambiguous, the Court need only lay the factual background of this dispute by relying upon the language of the purchase agreement itself and the allegations in VidaFlex's counter-complaint and third-party complaint.

On October 7, 2013, Plaintiff Rosalba Martinez, acting in her individual capacity and as the personal representative for her deceased husband, Alejandro Martinez, Jr., filed a complaint against Attorney Raquel Salas, Avanti Law Group, PLLC, and several other defendants based upon their alleged misconduct in handling real-estate transactions for Alejandro Martinez. Rosalba Martinez requested damages and an order quieting title on several properties that were purportedly wrongfully transferred. Only one of the disputed properties located at 527 Mae-Thy Street, S.E., is at issue in the summary-disposition motion before the Court. Accordingly, at this juncture, the Court simply must recount the facts concerning that disputed parcel of property.

On February 19, 2013, Alejandro Martinez, Jr., acting on behalf of Propiedades, entered into a purchase agreement to sell the Mae-Thy property to VidaFlex on a land contract, but a title search revealed several breaks in the chain of title for that property that needed to be cured before closing. Unfortunately, Alejandro Martinez unexpectedly passed away before the title issues were resolved, so his widow and personal representative – Rosalba Martinez – and VidaFlex now assert competing interests in the Mae-Thy property. VidaFlex sought leave to intervene, which the Court granted, so VidaFlex filed a counter-complaint against Rosalba Martinez on May 9, 2014, seeking to quiet title on the Mae-Thy property and a declaratory judgment that Rosalba Martinez has no legal interest in the purchase agreement. In addition, VidaFlex filed a third-party complaint against Propiedades on

June 2, 2014, seeking to quiet title on the Mae-Thy property and asserting a raft of claims for specific performance, breach of contract, unjust enrichment, and quantum meruit. Next, Rosalba Martinez and Propiedades moved for summary disposition on the counter-complaint and third-party complaint pursuant to MCR 2.116(C)(8) and (10) because VidaFlex purportedly forfeited the land contract and, therefore, now lacks any legal interest in the Mae-Thy property. In response, VidaFlex contends that the parties entered into a mere purchase agreement on February 19, 2013, so VidaFlex may properly asserts claims to enforce its interest in the Mae-Thy property. Therefore, the outcome of this motion necessarily depends upon the legal characterization of that purchase agreement.

II. Legal Analysis

Summary disposition pursuant to MCR 2.116(C)(8) “is properly granted if ‘[t]he opposing party has failed to state a claim on which relief can be granted.’” See Gurganus, 496 Mich at 62-63. “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 General Motors Corp, 469 Mich 177, 183 (2003). Such “[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. Applying these standards, the Court must turn to the motion for summary disposition filed by Rosalba Martinez in her capacity as a counter-defendant and by Third-Party Defendant Propiedades.

Rosalba Martinez and Propiedades argue that VidaFlex forfeited any interest in the Mae-Thy property by failing to make land-contract payments. This theory presupposes that the parties entered into an enforceable land contract when they executed the purchase agreement on February 19, 2013, but VidaFlex insists that the purchase agreement was merely a promise to enter into a land contract

at closing. Thus, the Court must decide whether the purchase agreement executed on February 19, 2013, constitutes a valid land contract or, instead, something less than a land contract.

The interpretation of a contract is typically a question of law, see Klapp v United Ins Group Agency, Inc, 468 Mich 459, 463 (2003), and unambiguous contracts “must be enforced as written.” Rory v Continental Ins Co, 473 Mich 457, 468 (2005). But “the meaning of an ambiguous contract is a question of fact that must be decided by the jury.” See Klapp, 468 Mich at 469. A contract “is ambiguous when its provisions are capable of conflicting interpretations.” Id. at 467. Thus, “if two provisions of the same contract irreconcilably conflict with each other, the language of the contract is ambiguous.” Id. Here, the purchase agreement drafted on a generic West Michigan Realtor Board form leaves substantial doubt as to whether it constitutes a land contract. The purchase agreement itself describes the \$39,000 transaction as seller-financed by a land contract in the following manner:

\$ 10,000.00 upon execution and delivery of a Land Contract to be provided by seller. form (name or type of form and revision date), a copy of which is attached, wherein the balance of \$ 29,000.00 will be payable in monthly installments of \$ See attached addendum or more including interest at 0 % per annum, interest to start on date of closing, and first payment to become due thirty (30) days after date of closing. The entire unpaid balance will become due and payable 28 months after closing.

See Motion for Summary Disposition, Exhibit 2 (West Michigan Regional Purchase Agreement, ¶ 6). The “Addendum to Purchase Agreement,” in turn, specifies that a \$10,000 down payment is due “at time of close” followed by a series of payments due on specified dates over the next two years. See id. (Addendum to Purchase Agreement, ¶ 2). By all accounts, VidaFlex tendered a check for \$10,000 on February 19, 2013, which was cashed by Propiedades. Accordingly, the Court could find that the parties intended the purchase agreement to serve as a valid land contract. But the Court just as readily could find that the parties intended to enter into a separate land contract at closing. See Zurcher v Herveat, 238 Mich App 267, 291 (1999) (“While in modern practice purchase agreements

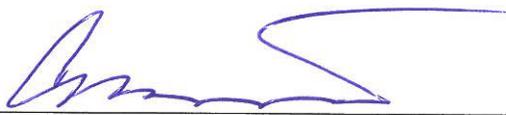
and land contracts are often not the same document, in earlier times they often were.”). Accordingly, the purchase agreement is ambiguous, so the Court cannot determine as a matter of law whether the purchase agreement constitutes a valid land contract. Therefore, the Court must deny the motion for summary disposition filed by Rosalba Martinez and Propiedades because their motion rests upon the assertion that the parties entered into a valid land contract on February 19, 2013.

III. Conclusion

For all of the reasons set forth above, the viability of the claims asserted by VidaFlex against Counter-Defendant Rosalba Martinez and Third-Party Defendant Propiedades turn upon the proper characterization of the purchase agreement executed on February 19, 2013, and the language of that purchase agreement gives rise to an ambiguity that the Court cannot simply resolve on a motion for summary disposition under MCR 2.116(C)(8) or (10). Consequently, the Court must deny summary disposition to Rosalba Martinez and Propiedades.

IT IS SO ORDERED.

Dated: September 25, 2014



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge