STATE OF MICHIGAN

COURT OF APPEALS

COMERICA BANK,

Plaintiff-Appellee,

v

THOMAS A. WARMUS,

Defendant-Appellant.

UNPUBLISHED
July 30, 1996

No. 178643
LC No. 93-460592

Before: Bandstra, P.J., and White and M.D. Schwartz,* JJ.

PER CURIAM.

Defendant appeals as of right the circuit court orders granting summary disposition to plaintiff and awarding attorney fees and costs to plaintiff. We reverse.

Defendant first argues that the circuit court incorrectly applied the parol evidence rule and improperly refused to consider the alleged oral agreement between Manufacturers National Bank and defendant to automatically renew the loan beyond the September 29, 1992 date found in the promissory note and mortgage. The parol evidence rule does not apply until the court finds that the parties entering a written contract intended the written document to be their complete agreement, and extrinsic evidence of prior or contemporaneous agreements or negotiations is admissible as it bears on this threshold question. *NAG Enterprises, Inc v All State Industries, Inc*, 407 Mich 407, 410-411; 285 NW2d 770 (1979). It appears from the record that the circuit court may have failed to consider the alleged oral agreement in making the threshold determination that the written documents constituted the complete contract between the parties. This was error.

Alternatively, the circuit court may have considered the allegations of an oral promise by Manufacturers, but concluded, nonetheless, that there was insufficient evidence to raise a genuine issue of material fact regarding whether the parties intended that all their agreements were integrated into the written documents. Plaintiff argues that defendant's affidavit regarding the agreement to renew the loan is insufficient to raise a factual question, but the affidavit is not insufficient merely because it is that of

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* Circuit judge, sitting on the Court of Appeals by assignment.

defendant rather than a third party. The affidavit is purportedly made on the basis of personal knowledge by defendant and it sets forth facts that would be admissible as evidence to deny the grounds for summary disposition stated in the motion. *SSC Associates Limited Partnership v Detroit Retirement System*, 192 Mich App 360, 364; 480 NW2d 275 (1991). We conclude that defendant presented sufficient evidence to prevent summary disposition under MCR 2.116(C)(10) because a genuine question exists as to the terms of the parties' agreement and whether those terms were violated. See *Cason v Auto Owners Ins Co*, 181 Mich App 600, 605; 450 NW2d 6 (1989). Further, the alleged oral contract, if proven at trial, would be a defense to plaintiff's action making summary disposition inappropriate under MCR 2.116(C)(9), *Norgan v American Way Life Ins Co*, 188 Mich App 158, 160; 469 NW2d 23 (1991); that allegation also suffices to prevent summary disposition against defendant on his counterclaim pursuant to MCR 2.116(C)(8) because breach of an oral contract states a claim on which relief can be granted. See *Bd of Co Rd Comm'rs for the Co of Eaton v Schultz*, 205 Mich App 371, 378; 521 NW2d 847 (1994).

Defendant also contends that the trial court erred in dismissing his claims based on a promissory estoppel theory. The trial court correctly reasoned that, to support a claim or defense of promissory estoppel, the material terms of the promise must be sufficiently definite and clear. *State Bank of Standish v Curry*, 442 Mich 76, 88; 500 NW2d 104 (1993). However, we conclude that the circuit court incorrectly decided that the material terms were insufficiently definite and clear in this case. A promise is not insufficiently clear or definite simply because the parties have left some matters to be determined in the future, so long as there is some objective method by which the missing terms can be supplied. *Id*. at 89-90, 92. Defendant testified at his deposition that the terms of the promised renewal loan were to be identical to the terms of the original loan, except as those terms would have to be changed to comply with new banking laws and regulations. Because all the terms of the promise to renew the loan could be found in the original loan documents and objectively identifiable sources, new banking laws and regulations, that promise was sufficiently clear and definite to establish a promissory estoppel theory. *Id.*

Plaintiff argues that defendant cannot raise a defense or claim based on promissory estoppel because the alleged promise by Manufacturers violates the statute of frauds, MCL 566.132(1), (2); MSA 26.922(1), (2). However, defendant is correct in responding that the statute of frauds does not apply if promissory estoppel is established. *Martin v East Lansing School Dist*, 193 Mich App 166, 178; 483 NW2d 656 (1992); *Clark v Coats & Suits Unlimited*, 135 Mich App 87, 98; 352 NW2d 349 (1984). Moreover, subsection 2 of the statute, expressly addressing actions against financial institutions, did not become effective until January 1, 1993, long after the alleged oral agreement in this case.

Plaintiff further argues that defendant cannot rely on the alleged oral agreement made by Manufacturers because defendant's acknowledgment of plaintiff's December 10, 1992 letter constituted an accord and satisfaction that displaced the previous oral agreement. However, to constitute an accord and satisfaction, defendant's statement of acknowledgment must be so clear, unequivocal, and unambiguous that it is not subject to any other interpretation. *Nationwide Mutual Ins Co v Quality*

Builders, Inc, 192 Mich App 643, 649-650; 482 NW2d 474 (1992). The acknowledgment could reasonably be interpreted as merely indicating that defendant agreed to have his payments applied to his outstanding loan while plaintiff worked out the details of the renewal. Accordingly, accord and satisfaction would not be established with respect to plaintiff's obligation to defendant under the oral agreement.

Finally, the trial court awarded plaintiff attorneys fees and costs pursuant to the promissory note. In light of our conclusion that summary disposition was improperly granted to plaintiff on the promissory note, we vacate the order granting attorney fees and costs to plaintiff.

We reverse and remand for further proceedings consistent with this opinion. The order granting attorney fees and costs to plaintiff is vacated. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Helene N. White
/s/ Michael D. Schwartz