STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
April 6, 2006

MARY CAROL HOLCOMB,

Plaintiff-Appellant,

and

PAUL HOLCOMB,

Plaintiff,

v

No. 266023
Macomb Circuit Court
LC No. 04-003031-CK

HARBOUR POINTE CONDOMINIUM ASSOCIATION and SCHOSTAK BROTHERS & COMPANY, INC.,

Defendants/Cross-Defendants-Appellees.

Before: Owens, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Plaintiff Mary Carol Holcomb appeals as of right the trial court's order granting summary disposition to defendants, Harbour Pointe Condominium Association (HPCA) and Schostak Brothers & Company, Inc. (Schostak). We affirm.

Plaintiff purchased a condominium unit, number 31, that had numerous outstanding assessments and charges against it. She first argues that the trial court clearly erred in its finding of fact that HCPA's printout (a document that listed outstanding assessments and charges) contained no language indicating that it represented or was intended to represent all back, current and future unpaid fees on unit 31 when the printout stated, in handwritten form: "plus 2 remaining installments of add'l assessment @ $1,008.30 each." We disagree.

We do not review a grant of summary disposition for clear error. While it is true that a trial court's factual findings are reviewed for clear error, *Glen Lake-Crystal River Watershed Riparians v Glen Lake Ass'n*, 264 Mich App 523, 531; 695 NW2d 508 (2004), a trial court may not make factual findings when deciding a summary disposition motion, *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). The court may only determine, pursuant to MCR

2.116(C)(10), whether the nonmoving party established an issue of material fact sufficient to withstand granting judgment as a matter of law to the moving party. See *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001). Therefore, we review plaintiff's issue under the proper standard of review.

A trial court's ruling on a summary disposition motion is reviewed de novo. *Ormsby v Capital Welding, Inc*, 471 Mich 45, 52; 684 NW2d 320 (2004). A motion made under MCR 2.116(C)(10) tests the factual support for a claim. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). When the burden of proof at trial would rest on the nonmoving party, the nonmovant may not rest upon mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). A genuine issue of material fact exists when the record, drawing all reasonable inferences in favor of the nonmoving party, leaves open an issue on which reasonable minds could differ. *West v GMC*, 469 Mich 177, 183; 665 NW2d 468 (2003).

The Condominium Act provides:

> (1) *Upon the sale or conveyance of a condominium unit, all unpaid assessments, interest, late charges, fines, costs, and attorney fees against the condominium unit shall be paid out of the sale price or by the purchaser* in preference over any other assessments or charges of whatever nature . . . .
>
> (2) A purchaser or grantee is entitled to a written statement from the association of co-owners setting forth the amount of unpaid assessments, interest, late charges, fines, costs, and attorney fees *against the seller or grantor* and the purchaser or grantee is not liable for, nor is the condominium unit conveyed or granted subject to a lien for any unpaid assessments, late charges, fines, costs, and attorney fees against the seller or grantor in excess of the amount set forth in the written statement. Unless the purchaser or grantee requests a written statement from the association of co-owners as provided in this act, at least 5 days before sale, the purchaser or grantee shall be liable for any unpaid assessments against the condominium unit together with interest, costs, fines, late charges, and attorney fees incurred in the collection thereof. [MCL 559.211 (emphases added).]

When interpreting a statute, our goal is to give effect to the Legislature's intent. *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). To do so, we first examine the statute's language, which, if clear and unambiguous, must be enforced as written. *Wesche v Mecosta Co Rd Comm*, 267 Mich App 274, 279; 705 NW2d 136 (2005). The plain language of MCL 559.211 clearly indicates that a purchaser is entitled to a written statement of charges against the seller. It is axiomatic that a seller cannot be held responsible for charges incurred and assessed against a condominium unit after the seller no longer owns it. Hence, the statute can only refer to past or current charges assessed against the seller.

The proffered printout appears to be nothing more than a ledger sheet showing unpaid installments that had been assessed on the then-existing assessment. The trial court found that the printout was merely a printout of fees, with no indication whether it was intended to

represent future unpaid fees. The handwriting on the printout did not demonstrate an intent that *assessments to accrue or become due in the future* would somehow be precluded against plaintiff's unit. And plaintiff failed to present any evidence that the printout was provided to her in response to a request pursuant to MCL 559.211. Moreover, the January 13, 2004 letter that plaintiff acknowledged receiving several months after closing specifically referred to an additional assessment, the amount of which the association had not yet established at the time the letter was written; thus, because the challenged assessment did not exist at the time of closing, it could not have been considered an unpaid assessment at the time of closing. Therefore, the trial court correctly concluded that plaintiff failed to establish a material fact with respect to whether the printout was intended to represent future assessments on the condominium unit.

Finally, plaintiff briefly argues that the court should not have dismissed her promissory estoppel claim. However, plaintiff fails to cite the elements of a promissory estoppel claim, or to cite authority on promissory estoppel. A party who fails to adequately brief an argument abandons the argument on appeal. *Yee v Shiawassee County Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Moreover, plaintiff failed to raise this issue in the statement of issues presented. Therefore, we decline to address the issue. *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000)

Affirmed.

/s/ Donald S. Owens
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood