

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

FIVE STAR MANAGEMENT, LLC,

Plaintiff,

vs.

Case No. 2014-1354-CK

DATA QUICK TITLE, LLC, and
JEFFREY HRIBAR and THERESA
HRIBAR,

Defendants.

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OPINION AND ORDER

Defendants Jeffrey and Theresa Hribar (“Defendants”) have moved for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff has filed a response and requests that the motion be denied.

Facts and Procedural History

In 2013 Plaintiff listed property for sale commonly known as 8796 Frederick, Washington Twp., MI 48094 (“Subject Property”). The Subject Property was listed for sale on the Multiple Listing Service (“MLS”). On December 23, 2013, the parties executed a purchase agreement pursuant to which Defendants agreed to purchase the Subject Property from Plaintiff (the “Purchase Agreement”). At the time the Purchase Agreement was executed Defendants tendered a \$10,000.00 earnest money deposit (the “Deposit”). Prior to closing the sale, Defendants cancelled the purchase and requested the return of the Deposit; however, Plaintiff refused to return the deposit.

On April 7, 2014, Plaintiff filed its complaint in this matter asserting claims for: Count I- Breach of Fiduciary Duty/Breach of Contract against Defendant Data Quick, LLC, Count II-

Specific Performance against Defendants and Count III- Declaratory Judgment against Defendants. On June 27, 2014, Defendants filed their instant motion for summary disposition. Plaintiff has since filed a response and requests that the motion be denied. On September 29, 2014, the Court held a hearing in connection with the motion and took the matter under advisement.

Standards of Review

A motion under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

Arguments and Analysis

In their motion, Defendants contend that Plaintiff's claims must be dismissed as the sale was terminated pursuant to MCL 565.954. Specifically, Defendants contend that Plaintiff failed to deliver the statutorily required seller's disclosures (the "Disclosures"), and that as a result they properly terminated the Purchase Agreement. MCL 565.954 provides:

(1) The transferor of any real property described in section 2 shall deliver to the transferor's agent or to the prospective transferee or the transferee's agent the written statement required by this act. If the written statement is delivered to the transferor's agent, the transferor's agent shall provide a copy to the prospective transferee or his or her agent. A written disclosure statement provided to a transferee's agent shall be considered to have been provided to the transferee. The written statement shall be delivered to the prospective transferee within the following time limits:

(a) In the case of a sale, before the transferor executes a binding purchase agreement with the prospective transferee.

(b) In the case of transfer by an installment sales contract where a binding purchase agreement has not been executed, or in the case of a lease together with an option to purchase or a ground lease coupled with improvements by the tenant, before the transferor executes the installment sales contract with the prospective transferee.

(2) With respect to any transfer subject to subsection (1), the transferor shall indicate compliance with this act either on the purchase agreement, the installment sales contract, the lease, or any addendum attached to the purchase agreement, contract, or lease, or on a separate document.

(3) Except as provided in subsection (4), if any disclosure or amendment of any disclosure required to be made by this act is delivered after the transferor executes a binding purchase agreement, the prospective transferee may terminate the purchase agreement by delivering written notice of termination to the transferor or the transferor's agent within the following time limits:

(a) Not later than 72 hours after delivery of the disclosure statement to the prospective transferee, if the disclosure statement was delivered to the prospective transferee in person.

(b) Not later than 120 hours after delivery of the disclosure statement to the prospective transferee, if the disclosure statement was delivered to the prospective transferee by registered mail.

(4) A transferee's right to terminate the purchase agreement expires upon the transfer of the subject property by deed or installment sales contract.

Defendants contend that they provided written notice of termination to Plaintiff as required subsection (3) within the time limits imposed by the statute. Further, Defendants both testified that they did not receive the Disclosures prior to terminating the sale. In its response, Plaintiff asserts that Defendants were provided with the Disclosures. In support of its position, Plaintiff relies on paragraph 28 of the Purchase Agreement, which provides that the Disclosures are attached to the Purchase Agreement. (*See* Plaintiff's Exhibit B.) In addition, Plaintiff attached

what it purports to be the Disclosures, and contends that they were attached to the Purchase Agreement.

If contract language is unambiguous the Court must construe and enforce the contract as written. *Quality Prods & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003). Therefore, an unambiguous contractual provision is reflective of the parties' intent as a matter of law, and that intent will be enforced unless it is contrary to public policy. *Id.* Indeed, "[t]he goal of contract interpretation is to read the document as a whole and apply the plain language used in order to honor the intent of the parties. [The Court] must enforce the clear and unambiguous language of a contract as it is written." *Greenville Lafayette, LLC v Elgin State Bank*, 296 Mich App 284, 291; 818 NW2d 460 (2012).

In this case, the Purchase Agreement, which is executed by Defendants, unambiguously provides that Defendants were given the Disclosures. While Defendants dispute whether they received the Disclosures, the provision of the Purchase Agreement addressing the Disclosures is unambiguous. Consequently, the Court need not explore parole evidence in order to determine whether the Disclosures were delivered. For these reasons, the Court is satisfied that Defendants' position is without merit.

In addition, even if the Disclosures were not provided Defendants would not be entitled to recover their deposit. The Purchase Agreement provides, in pertinent part, that the deposit becomes non-refundable if the transaction does not close by April 2, 2013 unless Defendants' loan is denied. Here the only evidence related to whether the loan was denied is a statement of credit denial related to their purchase of a different home in Oakland, MI. Consequently, Defendants have failed to establish that their application for a loan for the purchase of the

Subject Property was denied. Accordingly, even if they did not receive the Disclosures they would not be able to recover the deposit.

Conclusion

Based upon the reasons set forth above, Defendants' motion for summary disposition is DENIED. This Opinion and Order neither resolves the last claim nor closes the case. See MCR 2.602(A)(3).

IT IS SO ORDERED.

/s/ JOHN C. FOSTER
JOHN C. FOSTER, Circuit Judge

Dated: October 8, 2014

JCF/sr

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