STATE OF MICHIGAN

COURT OF APPEALS

BRADLEY T. WUMMEL and JOAN F. WUMMEL,

Plaintiffs-Appellants,

v

FIRST NATIONAL BANK OF AMERICA and MICHAEL GALBRETH,

Defendants-Appellees.

UNPUBLISHED
April 20, 2004

No. 247023
Otsego Circuit Court
LC No. 02-009901-CZ

Before: Bandstra, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiffs appeal as of right the order granting summary disposition in favor of defendants. We affirm.

Plaintiff Bradley T. Wummel purchased a motel called the Sheridan Valley Resort in the early 1990s. In 1997, he decided to expand the motel by adding eight additional motel units, a pool, and a restaurant. Wummel negotiated a loan with defendant First National Bank of America (hereinafter "the bank") to finance the construction project. The initial loan was in the amount of $170,000 and was secured by a mortgage and promissory noted dated September 19, 1997, a commercial security agreement, and an assignment of rents.

After obtaining the loan, Wummel began the construction project. By the fall of 1998 he realized that he would not be able to complete the project without borrowing additional funds. Wummel renegotiated his loan with defendant. The renegotiation involved increasing the loan amount by $70,000, to a total loan amount of $250,000, and was secured by a mortgage and promissory note dated October 27, 1998, a commercial security agreement, and an assignment of rents.

After negotiating the second loan, Wummel continued the construction project. However, Wummel again underestimated the cost of the construction and approached the bank at the end of 2000 to renegotiate the loan. Wummel requested that the loan amount be increased from $250,000 to $390,000. The bank required additional collateral, and Wummel's mother, plaintiff Joan Wummel, mortgaged her home as collateral for the loan, and plaintiff mortgaged the motel property, a vacant lot, and a rental home. This loan was secured by mortgages and a

promissory note dated January 3, 2001, a commercial security agreement, and an assignment of rents.

Even with the additional amount he borrowed from the bank, Wummel was unable to complete his construction project. By March 2001, the proceeds of the loan were exhausted, and an additional $93,000 was needed to complete the project. Wummel attempted to renegotiate the loan a fourth time, claiming that at the time he closed on the January 2001 mortgage he was given verbal assurance from defendant Michael Galbreth, a loan officer at the bank and an agent of the bank, that the bank would loan him an additional $100,000 to complete the project. Galbreth and the bank denied that any verbal commitment to lend additional funds was made, noting that the value of the real estate securing the loan was only $385,000, and the bank would not loan an additional $100,000 without an additional $100,000 in security.

The bank received no payments after May 2001. Wummel allowed the insurance on the property to lapse, forcing the bank to purchase insurance on the property to protect its interests. Wummel also failed to provide financial information to the bank when requested. Both of these conditions are conditions of default under the terms of the mortgage and loan documents. The bank requested that Wummel cure the defaults, but plaintiff failed to do so.

The bank commenced foreclosure proceedings against the mortgaged properties in June 2002. Wummel filed the present complaint alleging breach of fiduciary duty, breach of contract, misrepresentation, fraud, specific performance, and promissory estoppel. Wummel also sought, and was granted, a temporary restraining order. Wummel alleged that Galbreth advised Wummel that the bank would advance sufficient funds to complete the project and that more money would be available when and as needed to complete the project. Wummel also alleged that he "was repeatedly assured that the Bank was committed to completion of the project and that additional loan monies would be made available for that purpose." He alleged that there "were no limits on the amount the bank was willing to loan to complete the construction project." Essentially, Wummel alleged that defendants "reneged on their promise to finance Mr. Wummel's project to 100% completion."

The bank filed a motion to set aside the TRO, grant summary disposition in favor of the bank, and allow the bank to proceed with the foreclosure. Defendants argued that plaintiffs' claims, which were based upon a business loan agreement, were strictly controlled by writings, specifically MCL 566.132(2). The trial court agreed and granted summary disposition in favor of the bank.

Plaintiffs first argue that the trial court erred by refusing to consider parol evidence to determine the intent of the parties with regard to the amount of money that the bank was willing to lend. We disagree.

The contract in this case contained a merger or integration clause that explicitly states the document represents the full and accurate agreement of the parties.

> This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration or amendment to this Mortgage shall be effective unless

given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

In addition, the "Notice of Final Agreement" states in bold print near the top of the page:

> BY SIGNING THIS DOCUMENT EACH PARTY REPRESENTS AND AGREES THAT: (A) THE WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES, (B) THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES, AND (C) THE WRITTEN LOAN AGREEMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDING BY THE PARTIES.

"The parol evidence rule operates to exclude evidence of prior contemporaneous agreements, whether oral or written, which contradict, vary or modify an unambiguous writing intended as a final and complete expression of the agreement. Where a binding agreement is integrated, it supersedes inconsistent terms of prior agreements and previous negotiations to the extent that it is inconsistent with them." *Ditzik v Schaffer Lumber Co,* 139 Mich App 81, 87-88; 360 NW2d 876 (1984). Parol evidence that does not vary or contradict the unambiguous terms of a written agreement is admissible. *Wheelmakers, Inc v City of Flint,* 47 Mich App 434, 439; 209 NW2d 444 (1973).

Plaintiffs' claims were based on Galbreth's alleged verbal representation at the time Wummel closed on the January 2001 loan that the bank would loan whatever amount of money was necessary to complete the project. However, evidence of Galbreth's alleged verbal representations is not admissible to modify the parties' unambiguous and integrated written agreement that, "THE MAXIMUM PRINCIPAL AMOUNT OF THIS MORTGAGE EXCLUDING PROTECTIVE ADVANCES, IS $390,000." *Ditzik, supra* at 87-88.

Plaintiffs contend that the mortgage is ambiguous because they believed that the term "protective advances" meant that the bank would loan whatever additional monies were necessary to complete the project. We disagree. The term "protective advances" is specifically defined in the mortgage:

> **Protective Advance.** The words "Protective Advance" mean an indebtedness or obligation that is secured by this Mortgage and that arises because Lender makes an expenditure or expenditures (1) to fulfill or perform an obligation of Grantor under this Mortgage, with respect to the premises, that Grantor has failed to fulfill or perform, (2) to preserve the priority of this Mortgage or the value of the premises, or (3) for reasonable attorneys' fees or other expenses that are incurred in exercising a right or remedy under this Mortgage or that Grantor has agreed in this Mortgage to reimburse to lender."

This language is not ambiguous, and could not reasonably be interpreted to mean that a "protective advance" would include the loaning of additional principal beyond the maximum principal amount of $390,000 provided for in the mortgage.[1]

The circuit court did not err by granting summary disposition of plaintiffs' claims. MCL 566.132(2) states in relevant part:

> An action shall not be brought against a financial institution to enforce any of the following promises or commitments of the financial institution unless the promise or commitment is in writing and signed with an authorized signature by the financial institution:
>
> (a) A promise or commitment to lend money, grant or extend credit, or make any other financial accommodation.
>
> (b) A promise or commitment to renew, extend, modify, or permit a delay in repayment or performance of a loan, extension of credit, or other financial accommodation.

In *Crown Park Technology Park v D & N Bank,* 242 Mich App 538, 549-550; 619 NW2d 66 (2000), this Court held that MCL 566.132(2) is interpreted to preclude *all* actions for the enumerated promises and commitments:

> A party is precluded from bringing a claim – no matter its label against a financial institution to enforce the terms of an oral promise to waive a loan provision. . . . By not specifying what sort of "action" MCL 566.132(2) prohibits, we read this as an unqualified and broad ban. . . . This is consistent with interpreting MCL 566.132(2) to preclude all actions for the enumerated promises and commitments, including actions for promissory estoppel.

Given the applicability of the statute of frauds, MCL 566.132(2), to defendants' alleged promises of financial accommodation and plaintiffs' failure to meet the writing requirement contained therein, we find no error in the trial court's grant of summary disposition on plaintiffs' claims.

Affirmed.

/s/ Richard A. Bandstra
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald

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[1] Further, given the prior renegotiations between the parties, it would not have been reasonable for plaintiffs to assume that the bank would loan an additional $100,000 without requiring additional security and a new mortgage.