

2011 IL App (1st) 100442-U
No. 1-10-0442

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DON L. THOMPSON and SHIRLEY BLEDSOE,)	Appeal from the
)	Circuit Court of
Plaintiffs-Appellants,)	Cook County
v.)	
)	No. 06 L 10788
SOUTH UNIVERSITY LLC and JOHN MUNSON,)	
)	
Defendants-Appellees.)	Honorable
)	Sidney A. Jones III,
)	Judge Presiding.
)	
)	
)	

JUSTICE MURPHY delivered the judgment of the court.
Neville and Steele, JJ., concurred in the judgment.

ORDER

HELD: The circuit court erred in granting summary judgment in favor of defendants because the statute of frauds could not be used as a defense to plaintiffs' claims where plaintiffs had fully performed their obligations under the alleged oral contract.

¶ 1 Plaintiffs, Don L. Thompson and Shirley Bledsoe, appeal from an order of the circuit court of Cook County entering summary judgment against them and in favor of defendants,

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South University LLC (South) and John Munson. On appeal, plaintiffs contend that the court erred in granting summary judgment where their claims were not barred by the statute of frauds. For the reasons that follow, we reverse and remand.

¶ 2

BACKGROUND

¶ 3 On August 8, 2008, plaintiffs filed a third amended complaint, in which they alleged causes of action against Munson for breach of settlement contract and South for breach of contract. Plaintiffs asserted that in 2002, South, which was owned by Munson, agreed to sell them a two bedroom condominium apartment located at 1145 East 61st Street in Chicago and that they made a down payment of \$2,000 to Munson on that property. Munson breached the real estate sales contract and sold the property to other buyers, then reached an oral settlement agreement with plaintiffs in which he agreed to cause South to sell plaintiffs a duplex apartment unit at the same address.

¶ 4 On June 18, 2002, Munson met with plaintiffs and informed them that he was the seller of the duplex unit, that he was using the name “University Center,” and that he would provide them with financing to purchase the duplex unit. Munson also “filled in the blanks” of a written real estate contract and told plaintiffs that he would sell them the duplex for \$221,000 and provide them with financing to complete the purchase if they would pay his agent an earnest money deposit of \$1,500 in addition to the \$2,000 they had previously paid him toward the purchase of the condominium. That same day, Thompson caused LaSalle Bank to issue a cashier’s check for \$1,500 payable to Munson’s agent, MetroPro.

¶ 5 Plaintiffs alleged that Munson then breached the agreement by refusing to sign the real

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estate contract he had prepared and selling the duplex unit to a third party. Plaintiffs requested \$79,000 in damages, which represented the difference between the contract price and the fair market value of the duplex unit.

¶ 6 Defendants subsequently filed a motion to transfer the case to the municipal division, in which they alleged that plaintiffs could not recover more than \$4,000 plus interest in damages, and the court granted the motion. Defendants later filed a motion for summary judgment and judgment on the pleadings, in which they asserted, *inter alia*, that plaintiffs' claims were barred by the statute of frauds, and the circuit court entered summary judgment in favor of defendants and against plaintiffs.

¶ 7

ANALYSIS

¶ 8 Plaintiffs contend on appeal that the circuit court erred in granting summary judgment because their claims are not barred by the statute of frauds. Summary judgment is proper where the pleadings, depositions, admissions, affidavits, and exhibits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Jones v. Chicago HMO Ltd. of Illinois*, 191 Ill. 2d 278, 291 (2000). A triable issue of fact exists where there is a dispute as to a material fact, or where reasonable minds might differ in drawing inferences from facts which are not in dispute. *Petrovich v. Share Health Plan of Illinois, Inc.*, 188 Ill. 2d 17, 31 (1999). We review the grant of a motion for summary judgment *de novo*. *General Casualty Insurance Co. v. Lacey*, 199 Ill. 2d 281, 294 (2002).

¶ 9 Pursuant to the Frauds Act:

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“No action shall be brought to charge any person upon any contract for the sale of lands, tenements or hereditaments or any interest in or concerning them, for a longer term than one year, unless such contract or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized in writing, signed by such party. This section shall not apply to sales for the enforcement of a judgment for the payment of money or sales by any officer or person pursuant to a judgment or order of any court in this State.” 740 ILCS 80/2 (West 2000).

Thus, a person cannot enforce a real estate contract under the statute of frauds unless: “(1) there is a written memorandum or note on one or more documents; (2) the documents collectively contain a description of the property and the terms of sale, including price and manner of payment; and (3) the memorandum or note contains the signature of the party to be charged.”

Prodromos v. Poulos, 202 Ill. App. 3d 1024, 1028 (1990).

¶ 10 Plaintiffs, citing *Szymkowski v. Szymkowski*, 104 Ill. App. 3d 630 (1982), and *Kalman v. Bertacchi*, 57 Ill. App. 3d 542 (1978), first assert that even though the contract upon which their claims are based involved the sale of real estate, their claims are not barred by the statute of frauds because the contract was a settlement agreement, which need not be in writing if its terms can be reliably established by other means. In *Szymkowski*, 104 Ill. App. 3d at 633-34, this court held that the statute of frauds did not bar a claim to enforce an oral settlement agreement reached in open court because such a claim fell within the exception provided in the statute for a sale of land “pursuant to a judgment or order of any court in this State” (740 ILCS 80/2 (West 2000)).

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In doing so, this court noted that “[t]he safeguards of the Statute of Frauds are fully met when a settlement is reached in open court in the presence of the parties.” *Szymkowski*, 104 Ill. App. 3d at 634. In *Kalman*, 57 Ill. App. 3d at 549, this court held that a settlement agreement was not rendered unenforceable by the statute of frauds where the agreement “was arrived at by the parties and stated in open court” and “[t]he entire proceeding was under the guidance and supervision of the court.”

¶ 11 In this case, the alleged oral settlement agreement was not reached in court, and therefore does not fall within the statutory exception for a sale of land pursuant to a court order or meet the safeguards set forth in the statute. As such, we determine that plaintiffs’ allegation that the oral contract at issue was a settlement agreement in connection with their claim against defendants’ breach of a previous contract for the sale of a condominium does not remove its claims from the scope of the statute of frauds.

¶ 12 Plaintiffs next assert that they fully performed their obligations under the oral agreement by paying defendants \$3,500 and signing all documents they were asked to sign, and that the statute of frauds therefore does not bar their claims. The doctrine of complete performance provides that “where one party completely performs a contract, the contract is enforceable and the statute of frauds may not be used as a defense to performance.” *Greenberger, Krauss & Tenenbaum v. Catalfo*, 293 Ill. App. 3d 88, 96 (1997). When one party fully performs its part of an alleged oral contract, the courts recognize that such performance strongly indicates the existence of a contract because it minimizes the dangers that the statute of frauds was designed to prevent. *Meyer v. Logue*, 100 Ill. App. 3d 1039, 1043-44 (1981).

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¶ 13 Plaintiffs alleged in their complaint that Munson had agreed to sell them the duplex unit for \$221,000 and provide them with financing to complete the purchase if they paid his agent an earnest money deposit of \$1,500, which was in addition to the \$2,000 they had previously paid him toward the purchase of the condominium. Plaintiffs also alleged that Thompson caused LaSalle Bank to issue a cashier's check for \$1,500, payable to MetroPro, Munson's agent, and a copy of that check is included in the record.

¶ 14 As stated earlier, this court must view the pleadings, depositions, admissions, affidavits, and exhibits on file in the light most favorable to the nonmoving party when reviewing a grant of summary judgment. *Brugger v. Joseph Academy, Inc.*, 202 Ill. 2d 435, 446 (2002). Viewed in the light most favorable to plaintiffs, the pleadings and evidence show that plaintiffs reached an oral agreement with defendants to pay Munson \$1,500 in exchange for his promise to sell them the duplex unit for \$221,000 and provide them with financing to complete the purchase. Thus, plaintiffs fully performed their obligations under that agreement by causing LaSalle Bank to issue a cashier's check payable to MetroPro for \$1,500, and by signing the written contract Munson had allegedly prepared.

¶ 15 Under such circumstances, defendants would be precluded from invoking the statute of frauds as a defense to plaintiffs' claims by the doctrine of complete performance. As such, we determine that the circuit court erred in granting summary judgment where, viewing the pleadings and evidence in the light most favorable to plaintiffs, their claims are not barred by the statute of frauds and genuine issues of material fact exist as to whether the parties entered into an enforceable contract, and whether defendants breached that agreement.

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¶ 16 Defendants respond by citing to *Anastaplo v. Radford*, 14 Ill. 2d 526 (1958), and asserting that Illinois courts have only applied the doctrine of complete performance in the context of real estate contracts where the prospective buyer is seeking equitable relief and has taken possession of the property and made improvements to it. Defendants maintain that the doctrine of complete performance therefore should not be applied in this case because plaintiffs are not seeking specific performance, or other equitable relief, and have not taken possession of the duplex unit or made improvements to it.

¶ 17 In *Anastaplo*, 14 Ill. 2d at 537-38, our supreme court held that the statute of frauds was “never available as a defense where there has been *sufficient* performance by one party in reliance upon the agreement.” (Emphasis added.) Thus, in *Anastaplo*, our supreme court applied the doctrine of part performance in determining that the defendants were precluded from invoking the statute of frauds. *Cohn v. Checker Motors Corp.*, 233 Ill. App. 3d 839, 844-45 (1992); *Payne v. Mill Race Inn*, 152 Ill. App. 3d 269, 277-78 (1987); *Gibbons v. Stillwell*, 149 Ill. App. 3d 411, 415 (1986).

¶ 18 In this case, however, plaintiffs are not claiming partial performance, but are asserting that they fully performed their obligations under the terms of the alleged agreement, and the holding in *Anastaplo* therefore does not apply. Although a party’s partial performance of a contract does not remove it from the scope of the statute of frauds in an action at law for money damages (*B&B Land Acquisition, Inc. v. Mandell*, 305 Ill. App. 3d 1068, 1072 (1999)), “an oral contract is not unenforceable under the Statute of Frauds if the contract has been performed completely by one party” (*Estate of Jesmer v. Rohlev*, 241 Ill. App. 3d 798, 806 (1993)). We

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therefore conclude that the circuit court erred by granting summary judgment in favor of defendants where the pleadings and evidence, viewed in the light most favorable to plaintiffs, show that they fully performed their obligations under the alleged agreement.

¶ 19

CONCLUSION

¶ 20 Accordingly, we reverse the judgment of the circuit court of Cook County and remand for further proceedings consistent with this order.

¶ 21 Reversed and remanded.