STATE OF MICHIGAN

COURT OF APPEALS

CORD L.L.C., Plaintiff-Appellant,	UNPUBLISHED July 24, 2012
v	No. 304894 Genesee Circuit Court
RPF OIL COMPANY, INC., Defendant-Appellee.	LC No. 10-294601-CK

Before: DONOFRIO, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

In this breach of contract action, plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. Because the trial court erred by failing to consider plaintiff's evidence of fraud in the inducement, we reverse and remand for further proceedings.

This case involves a lease termination agreement and an underlying lease agreement between the parties.[1] On October 5, 2010, plaintiff filed a complaint against defendant for unpaid rent pursuant to the lease agreement. Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(7) arguing that plaintiff's claim was barred by release pursuant to the lease termination agreement. Defendant also asserted that the lease termination agreement's integration clause precluded plaintiff from relying on parol evidence to vary the terms of the release. In response, plaintiff argued that the lease termination agreement was invalid because it was part of an overall global agreement with which defendant failed to comply and because defendant failed to timely tender payment pursuant to the terms of the lease termination agreement. The trial court agreed with defendant and granted summary disposition in its favor.

Plaintiff argues that the trial court's decision was erroneous because it refused to consider parol evidence that plaintiff offered in support of its claim of fraud. We review de novo a trial

[1] Although plaintiff attached to its brief on appeal a copy of the lease agreement and a copy of an assignment and assumption of the lease agreement, because those documents were not included in the lower court record, we have not considered them in deciding this appeal. MCR 7.210(A)(1); *Isagholian v Transamerica Ins Corp*, 208 Mich App 9, 18; 527 NW2d 13 (1994).

court's decision on a motion for summary disposition. *Oliver v Smith*, 290 Mich App 678, 683; 810 NW2d 57 (2010). Pursuant to MCR 2.116(C)(7), summary disposition is appropriate if a "claim is barred because of release." "A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence. If such material is submitted, it must be considered. MCR 2.116(G)(5)." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). "We consider all documentary evidence submitted by the parties and accept the plaintiff's well-pleaded allegations, except those contradicted by documentary evidence, as true." *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 681; 599 NW2d 546 (1999). Further, we must consider the evidence in the light most favorable to the nonmoving party. *RDM Holdings, Ltd v Continental Plastics Co*, 281 Mich App 678, 687; 762 NW2d 529 (2008). "If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide." *Id*.

In this case, there is no dispute that the lease termination agreement unambiguously terminated defendant's obligation to pay rent. Plaintiff argues, however, that it was fraudulently induced to sign the lease termination agreement and that, as such, the agreement is void. Plaintiff contends that the trial court erred by refusing to consider the parol evidence that it presented on the basis of the integration clause in the lease termination agreement. "The parol evidence rule may be summarized as follows: parol evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary the written contract, is not admissible to vary the terms of a contract which is clear and unambiguous." *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 492; 579 NW2d 411 (1998) (quotation marks, brackets, and citation omitted). An exception to the parol evidence rule exists in cases of fraud, and extrinsic evidence is admissible to show that a contract has no effect because of fraud that invalidates the integration clause. *Id*. at 493, 502.

In *Custom Data Solutions, Inc v Preferred Capital, Inc*, 274 Mich App 239, 242-243; 733 NW2d 102 (2006), which involved an integration clause, this Court explained:

> "[I]n general, actionable fraud must be predicated on a statement relating to a past or an existing fact." *Samuel D. Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). However, "Michigan also recognizes fraud in the inducement . . . [which] occurs where a party materially misrepresents future conduct under circumstances in which the assertions may reasonably be expected to be relied upon and are relied upon." *Id*.

In order to establish fraud in the inducement, a party must show that

> (1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth and as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage. [*Custom Data Solutions, Inc*, 274 Mich App at 243 (quotation marks and citations omitted).]

"Fraud in the inducement to enter a contract renders the contract voidable at the option of the defrauded party." *Id.* In order for parol evidence to be admissible to prove fraud, the fraud must relate to integration clause itself. *UAW-GM Human Resource Ctr*, 228 Mich App at 503. "[W]hen a contract contains a valid merger clause, the only fraud that could vitiate the contract is fraud that would invalidate the merger clause itself[.]" *Id*.

Here, plaintiff proffered e-mails that, viewed in the light most favorable to plaintiff, create a question of fact regarding fraud. The day before the lease termination agreement was signed, plaintiff's attorney e-mailed the following to defendant's attorney:

> Counselor,
>
> By your signature, please confirm the following with regard to the CORD/RPF transaction:
>
> It is agreed that the signature by CORD and William Sefton to the Lease Termination Agreement, Property Transfer Agreement, Fuel Supply Agreement and Commodity Schedule is for the benefit of advancing RPF's financing initiative and that these documents will not be binding an[d] in full force and effect as between the parties until agreement and signature to a mutually agreeable Promissory Note and Performance and Security Agreement is achieved. These two documents must be signed within 2 weeks of this date.

Defendant's attorney responded:

> Agreed, except that an additional document will be provided for the conveyance of land by the William R. Fleckenstein Trust as discussed, rather than conveyance in the lease termination agreement as previously stated.

Viewing this evidence in a light most favorable to plaintiff, a question of fact exists regarding whether defendant misrepresented its assent to the notion that the lease termination agreement would not be immediately binding, but rather, was part of a larger global agreement. The fact that defendant failed to comply with the global agreement could lead a trier of fact to conclude that defendant knew that the representation was false when it was made. A trier of fact could also conclude that plaintiff acted in reliance on the representation by signing the lease termination agreement. As this Court determined in *Custom Data Solutions, Inc*, 274 Mich App at 244, a party's reliance on a "package deal" used to induce that party to sign an agreement containing an integration clause that does not reference the package deal may form the basis of a claim of fraudulent inducement where the package deal is never effectuated. We reject defendant's argument that the e-mails were inadmissible under MRE 408 as evidence of an offer to compromise. As recognized in *Gorman v Soble*, 120 Mich App 831, 842; 328 NW2d 119 (1982), MRE 408 does not preclude the admission of evidence to prove a claim of fraudulent inducement. Because the e-mails created a question of fact regarding fraudulent inducement, and fraudulent inducement would render the lease termination agreement voidable at plaintiff's option, the trial court erred by refusing to consider them on the basis of the integration clause and instead granting summary disposition for defendant. See *RDM Holdings, Ltd*, 281 Mich App at 687 ("If a factual dispute exists . . . summary disposition is not appropriate.")

Defendant next argues that even if plaintiff's claim is not barred by release, it is barred by the doctrine of accord and satisfaction. By failing to explain how the elements of accord and satisfaction were met, however, defendant has abandoned its argument. A party may not simply announce a position and leave it to the Court to rationalize the basis for its claim. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

Plaintiff next argues that the trial court erred by denying its request to amend its complaint to allege that the lease termination agreement was not a stand-alone agreement and was part of an overall global agreement. Considering our resolution of plaintiff's issue discussed above, however, this issue is moot. As previously discussed, an amendment is not necessary for plaintiff to assert its claim of fraudulent inducement, which necessarily involves showing that the lease termination agreement was part and parcel to a larger global agreement.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra