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BILL ANALYSIS



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Senate Bill 253 (as enacted)
Sponsor: Senator Peter J. Lucido
Senate Committee: Judiciary and Public Safety
House Committee: Judiciary

PUBLIC ACT 63 of 2020

Date Completed: 5-7-20

CONTENT

The bill amended Revised Statutes (RS) 81 of 1846 to prohibit a person from bringing an action to enforce certain real estate agreements, promises, or contracts unless the agreement, promise, or contract is in writing signed by the party to be charged.

Generally, RS 81 specifies that in certain cases an agreement, contract, or promise is void unless that agreement, contract, or promise, or a note or memorandum of the agreement, contract, or promise, is in writing and signed with an authorized signature by the party to be charged with the agreement, contract, or promise. One of those cases specified in RS 81 is an agreement, promise, or contract to pay a commission for or upon the sale of an interest in real estate.

Under the bill, a person may not bring an action to enforce an agreement, promise, or contract to pay a commission for or upon the sale of an interest in real estate against the owner or purchaser of the real estate unless the agreement, promise, or contract is in writing signed by the party to be charged.

The bill took effect on March 17, 2020.

MCL 566.132

BACKGROUND

Michigan Compiled Laws 566.132 (also known as the statute of frauds) requires certain types of agreements to be in writing and signed by the party against whom the agreement will be enforced, including an agreement, promise, or contract to pay a commission for or upon the sale of an interest in real estate.

In a 2017 case, the Michigan Court of Appeals determined that the statute of frauds does not bar a commission claim based on promissory estoppel.¹ (Promissory estoppel is a legal doctrine asserted to enforce certain promises or agreements in the absence of a written contract or in circumstances in which the promise or agreement does not meet the traditional elements to form a contract. The elements required to succeed on a claim of promissory estoppel are: 1) a promise, 2) that the promisor reasonably should have expected to induce action of a definite and substantial character on the part of the promisee, 3) that in fact

¹ *North American Brokers, LLC v. Howell Public Schools*, unpublished opinion of the Michigan Court of Appeals, Docket No. 330126.

produced reliance or forbearance of that nature, and 4) in circumstances such that the promise must be enforced if injustice is to be avoided.²⁾ In their brief, plaintiffs, North American Brokers, LLC and Mark Ratliff (Brokers), asserted that they had worked with St. John Providence to develop a concept that required a particular type of property. The Brokers believed that the Latson School property, which the Howell Public Schools had for sale, suited that concept, and approached St. John Providence about purchasing it. The property had a 'for sale' sign stating that it was "broker protected". Eventually, Howell Public Schools and St. John Providence reached a purchase agreement through a different real estate agency. The Brokers received no commission.

The Brokers sued Howell Public Schools and St. John Providence alleging a variety of claims, including a count of promissory estoppel. The Brokers alleged that the "broker protected" sign was a promise that induced them to approach St. John Providence to purchase the property. Howell Public Schools filed a motion for summary disposition arguing that the statute of frauds (and governmental immunity) barred the Brokers' claim to broker commission. The trial court granted the motion for summary disposition stating that the statute of frauds did not bar a claim for broker commission under the theory of promissory estoppel.

On appeal, the Court of Appeals reversed the trial court's grant of summary disposition on the promissory estoppel claim and remanded the case for further proceedings. In its opinion, the Court of Appeals relied on a 1982 Michigan Supreme Court Case, *Opdyke Investment Co. v. Norris Grain Co.*, in which the Supreme Court stated that the doctrine of promissory estoppel was developed "to avoid the arbitrary and unjust results by the overly mechanistic application of the statute of frauds".³ Although the Court of Appeals noted that it was reluctant to apply promissory estoppel exception to the statute of frauds in this case, it felt bound by the precedent of the Michigan Supreme Court.

Howell Public Schools appealed to the Michigan Supreme Court, but the Court denied the application for consideration.⁴

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Michael Siracuse

² *Id.*

³ 413 Mich 354, 365.

⁴ *North American Brokers, LLC v. Howell Public Schools*, order of the Michigan Supreme Court, Case No. 155498 (2018).

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.