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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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CHAMPION MORTGAGE COMPANY	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 16-LM-2244
	)	
LISA CARLSON AND	)	
UNKNOWN OCCUPANTS,	)	Honorable
	)	Daniel L. Jasica,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE McLAREN delivered the judgment of the court.  
Presiding Justice Birkett and Justice Zenoff concurred in the judgment.

¶ 1 *Held:* The trial court properly rejected defendant's affirmative defenses and claimed Fair Housing Act violation in entering summary judgment in mortgage company's forcible entry and detainer action.

**ORDER**

¶ 2 In this forcible entry and detainer action brought by plaintiff, Champion Mortgage Company, defendant, Lisa Carlson, appeals from the dismissal of affirmative defenses and the entry of summary judgment in favor of plaintiff. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Upon her mother's death in June 2012, defendant became the executor of her estate. The estate included residential property that was subject to a reverse mortgage loan, procured in April 2009. Defendant, as the estate's representative, received notice on June 12, 2012 that the mortgage balance of \$561,029 was due and owing under the terms of the reverse mortgage. One of the options for satisfying the debt set out in the notice was to purchase the property for at least 95 per cent of the HUD appraised value, even if that amount was less than the balance due. Defendant, who had moved into the property following her mother's death, advised plaintiff on July 3, 2012 that she intended to purchase the property and satisfy the outstanding debt.

¶ 5 Plaintiff initiated foreclosure proceedings in 2013 due to the unpaid balance on the reverse mortgage; however, the parties continued to correspond about purchasing the property. The foreclosure resulted in an order approving sale entered on June 10, 2016.

¶ 6 In July 2016, plaintiff advised defendant that the HUD approved appraisal value of the property was \$430,000. In September 2016, defendant made an offer to purchase the property for \$100,000. Plaintiff rejected the offer and countered with the HUD-approved appraisal value, \$430,000. Defendant did not respond with a counter offer.

¶ 7 Plaintiff filed a forcible entry and detainer complaint against defendant on November 1, 2016. Plaintiff alleged that it was the owner of the property entitled to possession and that defendant was in unlawful possession of the property.

¶ 8 Defendant's answer included affirmative defenses alleging violations of the Fair Housing Act. Following a hearing, plaintiff's motion to dismiss the affirmative defenses pursuant to section 2-615 (735 ILCS 5/2-615 (West 2017)) was granted without prejudice and with leave to amend. Defendant filed amended affirmative defenses alleging equitable estoppel based on misrepresentations made relative to the value of the property, equitable lien based on repairs

defendant made to the property, and a Fair Housing Act claim based on plaintiff's failure to negotiate or disclose value information because defendant was an unmarried woman. Specifically, with respect to equitable estoppel, defendant alleged that as a result of dual agency with plaintiff's broker, she was not advised of a broker price opinion valuing the property at \$275,000 or a recent appraisal valuing the property at \$360,000. With respect to an equitable lien, defendant alleged she had paid \$32,000 in improvements to the property for which she had not been reimbursed. With respect to the Fair Housing Act violation, she alleged that plaintiff refused to negotiate with her, sell to her, or deal with her "in an honest, and legal manner because, in part, she is an unmarried woman with no family support."

¶ 9 Plaintiff moved to strike the amended affirmative defenses. Following a hearing, the trial court dismissed the equitable estoppel and equitable lien affirmative defenses without prejudice, finding, *inter alia*, that neither claim was viable because even if the allegations were accepted as true, defendant did not make an offer for the property that came close to the lowest appraisal amount. Although it denied the motion to dismiss the Fair Housing Act violation affirmative defense, the court was "skeptical" of the claim as pleaded and admonished defendant that there was "certainly going to have to be more" evidence at trial.

¶ 10 Defendant filed no further amended affirmative defenses. Plaintiff moved for summary judgment on its complaint and the remaining affirmative defense of a Fair Housing Act violation. The trial court granted the motion, and this appeal followed.

¶ 11 **II. ANALYSIS**

¶ 12 "The purpose of a forcible entry and detainer action is to adjudicate the party's rights to possession of the premises." *Poulos v. Reda*, 165 Ill. App. 3d 793, 798 (1987). However, "[m]atters germane to the distinctive purpose of the action may be introduced by a defendant by

way of counterclaim.” *Rosewood Corp. v. Fisher*, 46 Ill. 2d 249, 255 (1970). Defendant did not argue a superior right to possession in the trial court and, on appeal, concedes plaintiff’s right to possession at least since July 10, 2016, thirty days after confirmation of the foreclosure sale. Instead of asserting a possession right, defendant stands on her counterclaims, contending that the trial court improperly granted plaintiff’s motion to dismiss her affirmative defenses of equitable estoppel and equitable lien pursuant to section 2-615 of the Code of Civil Procedure (750 ILCS 5/2-615 (West 2017) and improperly granted summary judgment in favor of plaintiff over defendant’s affirmative defense that plaintiff violated the Fair Housing Act (42 U.S.C. § 3604) (West 2017). We review both claims of error *de novo*. *Zahl v. Krupa*, 365 Ill. App. 3d 653, 658 (2006) (section 2-615 dismissal); *Sterling Homes, Ltd. v. Raspberry*, 325 Ill. App. 3d 703, 706 (2001) (summary judgment).

¶ 13

A. Equitable Estoppel

¶ 14 Equitable estoppel is defined as “the effect of the person’s conduct whereby the person is barred from asserting rights that might otherwise have existed against the other party who, in good faith, relied upon such conduct and has been thereby led to change his or her position for the worse.” *Geddes v. Mill Creek Country Club, Inc.*, 196 Ill. 2d 302, 313 (2001). The party claiming equitable estoppel must establish that: “(1) the other person misrepresented or concealed material facts; (2) the other person knew at the time he or she made the representations that they were untrue; (3) the party claiming estoppel did not know that the representations were untrue when they were made and when they were acted upon; (4) the other person intended or reasonably expected that the party claiming estoppel would act upon the representations; (5) the party claiming estoppel reasonably relied upon the representations in good faith to his or her

detriment; and (6) the party claiming estoppel would be prejudiced by his or her reliance on the representations if the other person is permitted to deny the truth thereof.” *Id.* at 313-14.

¶ 15 Here, defendant did not plead misrepresented or concealed facts on which she reasonably relied to her detriment. To the contrary, plaintiff consistently represented to defendant that it would sell her the property at 95% of the HUD-approved appraisal value of \$460,000. During four and a half years of corresponding with plaintiff, defendant’s one and only offer was \$100,000. Even if, as defendant argues, a later HUD-approved appraisal value of \$360,000 existed and was not made known to defendant, she did not detrimentally rely on the earlier appraisal value because her only offer did not approach it. Moreover, according to her own evidence, a letter from her attorney to plaintiff, the highest amount defendant was willing to pay was \$200,000, substantially below even the lower appraisal value. Accordingly, she can show no prejudice from any misrepresentation or concealment of facts material to the appraisal value of the property.

¶ 16 Although the trial court dismissed the estoppel affirmative defense without prejudice, defendant chose to stand on her original pleading. The trial court did not err in dismissing the affirmative defense as pleaded.

¶ 17 B. Equitable Lien

¶ 18 “The imposition of an equitable lien is a remedy for a debt that cannot be legally enforced, but which ought in right and fairness to be recognized.” *CitiMortgage, Inc. v. Parille*, 2016 IL App (2d) 150286, ¶ 33. “In order to assert an equitable lien, a plaintiff must allege (1) a debt, duty or obligation owed to it by the defendant, and (2) the existence of a res—an asset that in some way is particularly related to the debt or obligation.” (Internal quotation marks omitted.) *Id.*

¶ 19 Whether defendant is entitled to an equitable lien for improvements she made to the property has no bearing on plaintiff's right to possession. Defendant's assertion of an equitable lien was properly dismissed because it is not a valid affirmative defense to plaintiff's forcible entry and detainer action.

¶ 20 C. Fair Housing Act Violation

¶ 21 In determining whether a violation of the federal Fair Housing Act has occurred in the sale of housing, courts borrow from the analysis used in employment discrimination enunciated by the United States Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), and *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981). *Turner v. Human Rights Comm'n*, 177 Ill. App. 3d 476, 487 (1988).

“Under *McDonnell Douglas* and *Burdine*, the petitioner has the burden of proving by a preponderance of the evidence a *prima facie* case of unlawful discrimination. If the petitioner succeeds, the respondent must then articulate some legitimate, non-discriminatory reason for its decision. If the respondent carries this burden of production, the presumption of discrimination drops from the case, and the petitioner must prove by a preponderance of the evidence that the legitimate reason offered by the respondent was not its true reason and is a pretext to unlawful discrimination. [Citations.]” *Id.*

¶ 22 To establish a *prima facie* case, a petitioner generally must show: “1) the petitioner is a member of a protected group; 2) the petitioner applied for an opportunity and was qualified for the opportunity; 3) the opportunity was denied to the petitioner; and 4) after the opportunity was denied, the opportunity was offered to others not in the protected group. [Citations.]” *Turner*, 177 Ill. App. 3d at 487.

¶ 23 The purpose of a motion for summary judgment is to determine whether a genuine issue of triable fact exists and should be granted when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West 2017).

¶ 24 Defendant contends that her affirmative defense under the Fair Housing Act precludes the entry of summary judgment in plaintiff’s favor because she established a *prima facie* case of a violation. Defendant’s contention is premised on the alleged existence of an illegal dual agency; the failure to disclose a broker’s price opinion and a more recent, lower HUD-approved appraisal value; and an alleged refusal to negotiate with her due to her status as an unmarried woman in her 50’s.

¶ 25 Defendant claims that during the relevant time period her real estate broker also acted as plaintiff’s agent, without defendant’s consent. Defendant fails, however, to demonstrate that the alleged dual agency impacted the parties’ negotiations regarding the sale of the property. Defendant, through her attorney, made an offer that was far below market price. Plaintiff responded with a counteroffer based on a HUD-approved appraisal. Defendant did not respond to the counteroffer. According to defendant, both her broker and plaintiff breached fiduciary duties to advise her of the updated HUD-approved appraisal of \$360,000 and her broker’s own opinion that the value of the property was \$275,000. Yet, defendant does not suggest that having this information impacted her decision to offer only \$100,000. Because she has failed to show a causal connection between any breach of fiduciary duty and the determination of the parties’ rights to possession in this forcible entry and detainer action, she has not established a *prima facie* case under the Fair Housing Act.

¶ 26 Defendant also asserts that she established a *prima facie* case with her claim that plaintiff refused to negotiate with her because she is a single woman in her 50's. Other than being a member of a protected group, defendant satisfied none of the elements of the *McDonnell Douglas-Burdine* test. She did not show that she was financially qualified to purchase the house for the offered price or anything near its market value. Because she did not respond to plaintiff's counteroffer, she could not show that the opportunity to purchase the property was denied to her. Finally, she made no showing that the house was offered to others not in her protected group. Absent evidence of "disparate treatment" (*Phillips v. Hunter Trails Community Association.*, 685 F.2d 184, 189-90 (7th Cir. 1982)), defendant is left with the irrational claim that, by mere fact of her gender and age, she should have been allowed to purchase the property at the price she preferred to pay.<sup>1</sup>

¶ 27 Additionally, we note that even if defendant had succeeded in establishing a *prima facie* case, it is clear that plaintiff had a legitimate, non-discriminatory reason to reject her offer: it was well below the HUD-approved appraisal value, which defendant was told plaintiff would not accept.

¶ 28

### III. CONCLUSION

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<sup>1</sup> To support her claim of disparate treatment, defendant referenced in an affidavit a comment purportedly made by her realtor when visiting the house to inspect it for needed repairs: "I do not think that a single woman living alone should stay here and in my opinion as a realtor it would be better for you to give up the home and move out." This comment, offered in the context of repairing the house, states only the opinion of the realtor and does not mention plaintiff or address plaintiff's willingness to sell to defendant; as such, it is irrelevant to the issue of discrimination or discriminatory intent on the part of plaintiff.



¶ 29 The judgment of the circuit court of Lake County is affirmed.

¶ 30 Affirmed.