

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WILLIAM KALMAR,

Plaintiff/Counterdefendant- Appellee,

v

MANFRED ENGLER and EME-ENGLER USA  
CORPORATION,

Defendants/Counterplaintiffs- Appellants.

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UNPUBLISHED

May 6, 1997

No. 191731

St. Clair Circuit Court

LC No. 93-003109-NZ

Before: Wahls, P.J., and Hood and Jansen, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment for \$15,000, plus taxable costs and interest, entered in favor of plaintiff following a jury trial on plaintiff's fraudulent misrepresentation claim. The trial court denied defendants' motion for summary disposition, motion for a directed verdict and motion for judgment notwithstanding the verdict (JNOV). We vacate the judgment and remand for entry of JNOV in favor of defendants.

This dispute relates to plaintiff's employment as the sales and marketing manager at Defendant EME-Engler USA Corporation. Plaintiff asserted that when defendant Manfred Engler offered him the position, Engler represented that he had obtained sufficient money or financing to fund plaintiff's position for at least a two-year period. Plaintiff claimed that this representation was either false when made or made with reckless disregard for the truth. Engler terminated plaintiff's employment about one and one-half years after plaintiff started the job due at least in part to EME-Engler USA's financial condition.

We agree with defendants that the trial court erred in concluding that plaintiff had presented facts that established a claim of fraudulent misrepresentation. To show fraud or misrepresentation, a plaintiff must prove that: (1) the defendant made a misrepresentation; (2) the defendant knew it was making a misrepresentation or made the misrepresentation in a reckless manner; (3) the misrepresentation was material; (4) the defendant made the misrepresentation with the intent that plaintiff would act on it; (5) that the plaintiff acted in reliance on it; and (6) the plaintiff suffered damage.

*Christensen v Michigan State Youth Soccer Ass'n*, 218 Mich App 37, 44; 553 NW2d 638 (1996); see also *Webb v First of Michigan Corp*, 195 Mich App 470, 473; 491 NW2d 851 (1992). A plaintiff must prove fraud by clear, satisfactory and convincing evidence. *Hi-Way Motor Co v Int'l Harvester Co*, 398 Mich 330, 336; 247 NW2d 813 (1976); *Jim-Bob, Inc v Mehling*, 178 Mich App 71, 90; 443 NW2d 451 (1989).

Moreover, an action for fraudulent misrepresentation must be predicated on a statement relating to a past or existing fact. Future promises cannot constitute actionable fraud. *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 208-209; 544 NW2d 727 (1996); *Kamalnath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 554; 487 NW2d 499 (1992). However, "a fraudulent misrepresentation may be based upon a promise made in bad faith without intention of performance." *Hi-Way Motor, supra*, 337-339; see also *Scott v Harper Recreation, Inc*, 444 Mich 441, 446 n 4; 506 NW2d 857 (1993). Thus, liability can be based on making a false statement about one's intent. However, to support a finding that a promise was false when made, evidence of fraudulent intent must relate to the actor's conduct at the time of making the representation or his conduct almost immediately thereafter. *Hi-Way Motor, supra*, 398 Mich 337-339. Accordingly, a mere broken promise is neither fraud nor evidence of fraud. *Michaels v Amway Corp*, 206 Mich App 644, 652; 522 NW2d 703 (1994); *Marrero v McDonnell Douglas Capital Corp*, 200 Mich App 438, 444; 505 NW2d 275 (1993).

Plaintiff failed to provide any evidence of conduct by Engler at the time of his asserted fraudulent misrepresentations or immediately thereafter to show that Engler lacked an intent to act in accordance with the representations or that he made any of the representations recklessly without regard for their truth. In *Hi-Way Motor, supra*, 338-339, the Michigan Supreme Court found that a letter dated about three years after the promises were made was too remote to indicate that they were made with no intent of being fulfilled. Likewise, the mere fact that plaintiff was terminated due to the economic condition of the company one and one-half years after he was hired is too remote from Engler's asserted representation about having adequate funding for plaintiff's job to support a finding that the representation was made falsely or with reckless disregard for its truth. We conclude that, viewing the evidence most favorably to plaintiff, a rational factfinder could not have found for plaintiff. Thus, we remand for entry of JNOV in favor of defendants. *Pakideh v Franklin Commercial Mortgage Group, Inc*, 213 Mich App 636, 639; 540 NW2d 777 (1995).

Because this holding is dispositive, we need not reach the issues regarding summary disposition and the directed verdict.

The judgment is vacated and this case is remanded for entry of JNOV in favor of defendants.

/s/ Myron H. Wahls  
/s/ Harold Hood  
/s/ Kathleen Jansen