

STATE OF MICHIGAN
COURT OF APPEALS

NO-AM CORPORATION, ,

Plaintiff-Appellant,

v

STEELCASE, INC.,

Defendant-Appellee.

UNPUBLISHED

January 6, 1998

No. 199616

Kent Circuit

LC No. 93-081676

Before: Corrigan, C.J., and Doctoroff and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's grant of summary disposition to defendant regarding plaintiff's innocent misrepresentation claim. We affirm.

Plaintiff is a parts supplier to defendant and defendant was plaintiff's largest customer, purchasing more than seventy-five percent of plaintiff's production. When plaintiff's president and director resigned, defendant became concerned about plaintiff's ability to meet production requirements. Defendant increased its weekly orders of the parts for the stated purpose of building an inventory in case plaintiff went out of business. A few months later, defendant placed an order for the parts with a company formed by plaintiff's former president and director. The following month, defendant notified plaintiff that it would no longer purchase plaintiff's parts. According to plaintiff, that decision caused plaintiff to go out of business. Plaintiff filed suit raising several claims. The trial court granted summary disposition for defendant on four of plaintiff's claims, and granted directed verdicts for defendant on two of the claims. This appeal involves only the trial court's grant of summary disposition for defendant with regard to plaintiff's claim of innocent misrepresentation.

Plaintiff first argues that the trial court erred in granting summary disposition upon its conclusion that plaintiff's injury did not inure to the benefit of defendant. Plaintiff contends that defendant benefited from the inventory build-up as a result of its misrepresentation, and plaintiff's losses from additional operational costs and its liquidated asset sale coincided with that activity. We disagree.

We review a grant or denial of summary disposition de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). A motion for

summary disposition may be granted pursuant to MCR 2.116(C)(10) when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* The elements of innocent misrepresentation are as follows:

[1] [I]n a transaction between them, [2] any representations which are false in fact [3] and actually deceive the other, and [4] are relied on by him to his damage, are actionable, irrespective of whether the person making them acted in good faith in making them, [5] where the loss of the party deceived inures to the benefit of the other. [*United States Fidelity & Guaranty Co v Black*, 412 Mich 99, 116; 313 NW2d 77 (1981).]

The loss of the deceived inures to the benefit of the one making the misrepresentation only when “the defendant obtained what the false representations caused the plaintiff to lose.” *Aldrich v Scribner*, 154 Mich 23, 28; 117 NW 581 (1908).

Here, the actual damages claimed by plaintiff, the amount of its additional operation costs, which it would not have incurred had it gone out of business earlier, and the amount lost in the liquidation sale, did not inure to the benefit of defendant. The amount lost by plaintiff did not result in an increase the value of defendant’s business. Defendant did not obtain what plaintiff lost. Accordingly, the trial court did not err in granting summary disposition for defendant.

Because we find on these grounds that plaintiff’s innocent misrepresentation claim fails as a matter of law, it is unnecessary to address plaintiff’s argument that defendant made a representation which was false in fact. Even considering this argument, our review of the record reveals nothing to suggest that defendant’s proffered purpose for the inventory build-up in question was untrue or that defendant had already decided to change suppliers at the time defendant stated its purpose for the inventory build-up. Therefore, defendant did not make an affirmative misstatement, which is required to constitute a representation which is false in fact. *Dix v American Bankers Life Assurance Co of Florida*, 141 Mich App 650, 660; 367 NW2d 896 (1985), modified on other grounds 429 Mich 410 (1987). Therefore, plaintiff’s argument has no merit.

Affirmed.

/s/ Maura D. Corrigan
/s/ Martin M. Doctoroff
/s/ E. Thomas Fitzgerald