

STATE OF MICHIGAN
COURT OF APPEALS

DENNIS STEWART,

Plaintiff-Appellant,

v

BIRMINGHAM MORTGAGE CORPORATION
and FLEET FINANCE, INC.,

Defendants-Appellees,

and

BIRMINGHAM BANCORP and HOME LOAN
FINANCIAL CORPORATION,

Defendants.

Before: Neff, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Plaintiff appeals as of right the dismissal of his multi-count action against defendant Birmingham Mortgage Corp., a mortgage broker, and defendant Fleet Finance, Inc., to which Birmingham assigned plaintiff's residential mortgage. We affirm.

Plaintiff first contends that the trial court abused its discretion by limiting discovery and by denying him the opportunity to file a fourth and fifth amended complaint. We disagree. The reasons plaintiff advanced to support his requests for extension of discovery and for permission to file additional complaints were inadequate.

Plaintiff also maintains that the trial court erred when it set aside a default against Fleet on the ground that Fleet possessed a meritorious defense. We disagree. The propriety of the court's action is evidenced by the fact that shortly after setting aside the default the court granted Fleet summary

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disposition regarding all counts of the third amended complaint. See *Komejan v Suburban Softball, Inc*, 179 Mich App 41, 49-51; 445 NW2d 186 (1989).

Plaintiff challenges the trial court's grant of Birmingham's motion in limine, filed after the deadline set by the pretrial order. As the court stated, its consideration of the motion expedited trial, and Birmingham could have objected to the proposed evidence at trial even if the court had declined to hear the motion. No error occurred.

Plaintiff contends that the trial court improperly awarded Fleet summary disposition regarding his breach of contract claim. The court noted that plaintiff was requesting it to cancel and forgive the balance owing on his promissory note and mortgage, but had not cited any legal authority indicating that the court had the power to do so as a matter of law, or that any jury had the right to do so as a matter of fact. Reviewing de novo the trial court's grant of summary disposition, *Wills v State Farm Ins Co*, 222 Mich App 110, 114; 564 NW2d 488 (1997), we conclude that the court's action was proper.

We disagree with plaintiff's allegation that the trial court erred by ruling that Fleet was a holder in due course with respect to plaintiff's mortgage. According to MCL 440.3302(1)(a) & (b); MSA 19.3302(1)(a) & (b), the holder of an instrument is a holder in due course if the instrument, when issued or negotiated to the holder, does not bear apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity, and the holder took the instrument for value, in good faith, without notice that the instrument was overdue or had been dishonored, without notice that it contained an unauthorized signature or had been altered, without notice of any claim to the instrument, and without notice that any party had a defense or claim in recoupment. Pursuant to these criteria, the trial court correctly concluded from the evidence that Fleet was a holder in due course.

Plaintiff claims that the trial court erred by dismissing as "untimely and unnecessary" his motion for summary disposition made pursuant to MCR 2.116(C)(10). However, plaintiff was not prejudiced by the dismissal because the court stated that it had considered with respect to each count the assertions made by plaintiff that he was entitled to summary disposition, and expressly rejected them.

Plaintiff maintains that the trial court erred by awarding a directed verdict for Birmingham with respect to Counts I and II of the third amended complaint, on the ground that plaintiff's proof of damages was legally insufficient. This Court reviews for an abuse of discretion a trial court's decision to grant a directed verdict, considering the evidence presented up to the time that the motion was made and viewing that evidence in the light most favorable to the nonmoving party, while resolving all doubt in the nonmoving party's favor. *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996). The evidence shows that the trial court granted the directed verdict not because plaintiff failed to prove his damages "to the last dollar," but rather because he was unable to suggest a reasonable method of proving his damages at all. No error occurred.

Plaintiff argues that both the trial judge and the chief judge of the circuit erred by denying his motion to disqualify the court. MCR 2.003(C)(3). An order denying disqualification of a judge will be reversed only where it is apparent that the court abused its discretion. *Michigan Ass'n of Police v*

Pontiac, 177 Mich App 752, 757; 442 NW2d 773 (1989). We concur with the chief circuit judge's determination that plaintiff's motion was without merit. No abuse of discretion occurred.

Plaintiff also alleges that prejudicial error occurred because the attorney representing Judge Soet in plaintiff's post-trial suit to disqualify the judge consulted with Fleet's counsel. However, we agree with the chief circuit judge's finding that there was

no arguable impropriety in the judge's counsel consulting with counsel for the other side because the only possible objective of any such consultation is defending the judge's ruling. Counsel needs to be educated about the case, which is what is done by consulting with other counsel, and defense of the ruling needs to be coordinated, which is also done by consulting with other counsel as co-counsel do regularly.

Plaintiff's remaining allegations of error are either not preserved for appellate review or are without merit.

Affirmed.

/s/ Janet T. Neff

/s/ David H. Sawyer

/s/ William B. Murphy