STATE OF MICHIGAN

COURT OF APPEALS

STEPHEN G. PINTO,

Plaintiff-Appellant,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

UNPUBLISHED
December 10, 1999

No. 208392
Oakland Circuit Court
LC No. 96-532412 CK

Before: Gage, P.J., and Smolenski and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's orders granting defendant's motion for summary disposition and denying plaintiff's motion to amend his complaint. We affirm.

Plaintiff was the owner and sole shareholder of Nexco, Inc., a supplier of technical personnel to defendant. In July 1993, plaintiff met with Mel Plaskey, a GM purchasing agent with whom plaintiff had worked since 1988. Plaintiff testified that Plaskey told him at this meeting that GM was moving toward dealing with fewer, larger suppliers, and that now would be a good time for plaintiff to get out of the business. Plaintiff alleged that Plaskey implied that he would award Nexco's business to its successor company during this meeting, but that in months following the initial meeting, Plaskey expressly stated he would award a blanket purchase order to the purchaser of Nexco. Plaintiff claims the details were discussed repeatedly over the next several months until plaintiff's efforts culminated in the sale of his company to Tech/Aid. Plaintiff admits that he never asked Plaskey if he had authority to assign GM work and that he never asked Plaskey to commit to the Tech/Aid delegation in writing. Significantly, the litigants' relationship was defined by a written agreement. This agreement provided that Nexco could not assign or delegate its GM work without first obtaining written consent from GM. In late December, four days before the sale was to be finalized, Plaskey informed plaintiff that GM would never do business with Tech/Aid, which forced plaintiff to reduce the selling price of his company from $650,000 to $350,000.

Plaintiff first argues that the trial court erred in granting summary disposition to defendant on the promissory estoppel claim. We disagree. A trial court's grant of summary disposition is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for

summary disposition is properly granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10).[1] Promissory estoppel arises in equity when (1) there is a promise (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of promisee (3) which in fact reasonably produced on the part of promisee reliance or forbearance of that nature (4) under circumstances such that the promise must be enforced if injustice is to be avoided. *Ardt v Titan Ins Co*, 233 Mich App 685, 692; 593 NW2d 215 (1999).

The doctrine of promissory estoppel is cautiously applied. *Barber v SMH (US) Inc*, 202 Mich App 366, 376; 509 NW2d 791 (1993). To determine whether the elements of promissory estoppel are met, the court must make a threshold inquiry into the circumstances surrounding both the making of the promise and the promisee's reliance as a matter of law. *State Bank of Standish v Curry*, 442 Mich 76, 84; 500 NW2d 104 (1993). In making this inquiry, a court should objectively examine "the nature of the relationship between the parties, the clarity of the representation, as well as the circumstances surrounding the making of the representation." *Id.* at 86.

We find that plaintiff's reliance upon any promise that defendant may have made was not reasonable as a matter of law, in light of the express written contract that exists between the litigants. The contract provides, in pertinent part:

> 27. NON-ASSIGNMENT: Seller may not assign or delegate its obligations under this order without Buyer's prior written consent.
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> * * *
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> 31. ENTIRE AGREEMENT: . . . This order may only be modified by a purchased *[sic]* order amendment/alteration issued by Buyer.

Michigan courts have consistently held that equity should not be utilized to imply a contract where there is an express contract covering the same subject matter. *Faust v Kent-Moore*, 324 Mich 45, 53; 36 NW2d 208 (1949); *Vanderhoef v Parker Bros Co*, 267 Mich 672, 680; 255 NW2d 672 (1934); *Barber*, *supra* at 375. Stability of express contracts is enhanced by this rule. Parties to a contract know that the terms to which they agree will be given meaning by the courts. Moreover, equity would not be served by turning an otherwise unambiguous express contract on its head and imposing upon the parties something that is at odds with their express agreement.

In light of the express terms of the written contract, we find that reliance on an oral promise to the contrary cannot be reasonable as a matter of law. Therefore, we find that the trial court did not err in granting summary disposition as to plaintiff's claim in equity under the doctrine of promissory estoppel.

Plaintiff next argues that the trial court erred in dismissing his negligent misrepresentation claim. We again disagree. A motion for summary disposition that is brought under MCR 2.116(C)(8) is

properly granted when a claim is legally insufficient on the pleadings because the plaintiff has not stated a claim on which relief may be granted. *Id.*

The tort of negligent misrepresentation arises when a party justifiably relies to his detriment on information prepared without reasonable care by one who had a contractual duty to exercise reasonable care in preparing the information. *Williams v Polgar*, 391 Mich 6, 22-23; 215 NW2d 149 (1974).[2] This Court has declined to extend the tort of negligent misrepresentation to cases where the misrepresentation consists of anything beyond a summary of facts that can be checked for accuracy against a record, such as an abstract of title. *City Nat'l Bank v Rodgers*, 155 Mich App 318, 323-324; 399 NW2d 505 (1986). In the instant case, plaintiff failed to allege that he relied, to his detriment, on documentation that defendant provided consisting of a summary of facts that could be checked against some record. Instead, plaintiff alleged defendant conveyed a "false impression" to plaintiff about the prospect of transferring his company's blanket purchase order to its successor. Plaintiff has characterized Plaskey's representation to him as a promise. A promise to do something in the future, even if made carelessly, is not analogous to the negligent preparation of a title abstract, where a present fact, i.e., the state of the title, is represented. Therefore, we find no error in the trial court's finding that plaintiff failed to state a cause of action for the tort of negligent misrepresentation.

We also find without merit plaintiff's claim that the trial court erred in granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) on the common-law fraud claim. Future promises cannot provide a basis for a fraud action. *Kamalnath v Mercy Hospital*, 194 Mich App 543, 554; 487 NW2d 499 (1992). However, under the "bad faith exception," a future promise can support a fraud claim if the promisor had no intention of keeping the promise at the time it was made. *Foodland Dist v Al-Naimi*, 220 Mich App 453, 490; 559 NW2d 379 (1996). A plaintiff must produce evidence of statements or conduct showing that the other party did not intend to fulfill the promise. *Id.* at 490.

Plaintiff rests his claim of bad faith on a memo that Plaskey wrote in which he stated that there had been eighty-five contract suppliers when he assumed buying responsibility in 1988, but "[t]here was a major reduction in supplier base to 20." This evidence does not suffice to establish bad faith for two reasons. First, evidence of bad intention must relate to conduct "at the very time of making the representations, or almost immediately thereafter." *Hi-Way Motor Co v Int'l Harvester Co*, 398 Mich 330, 338-339; 247 NW2d 813 (1976). See also *Foodland, supra* at 490. This evidence relates to events occurring over a five-year period prior to the representation that Plaskey would do business with Tech/Aid. Second, even if it were contemporaneous with the representation, this evidence does not raise an inference that Plaskey had no intention of doing business with Tech-Aid. Plaskey's memo states, in the past tense, that there was a major reduction in suppliers. If any inference is to be drawn from this sentence, it is that the reduction was over at the time he wrote the memo. The trial court did not err in granting summary disposition to defendant on this issue.

Finally, plaintiff argues that he had standing to bring this action as an individual, or in the alternative, that the trial court erred in denying his motion to amend the complaint to add his former company as a party. We find both arguments to be moot in light of our finding that plaintiff's substantive claims were properly dismissed by the trial court. Therefore, we decline to address these issues.

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Affirmed.

/s/ Michael R. Smolenski
/s/ Brian K. Zahra

[1] Defendant made its motion to dismiss the promissory estoppel, negligent misrepresentation, and common-law fraud claims pursuant to both MCR 2.116(C)(8) and (C)(10). The court granted the motion on all bases. When it is not clear under which subrule an issue was decided, we analyze the issue under the appropriate rule. *Spiek v Dep't of Transportation*, 456 Mich 331, 338; 572 NW2d 201 (1998). For that reason, we decide the promissory estoppel and common-law fraud claims under MCR 2.116(C)(10) and the negligent misrepresentation claim under MCR 2.116(C)(8).

[2] The tort of negligent misrepresentation also requires justifiable reliance upon the alleged misrepresented fact. As previously stated, plaintiff's reliance upon any oral statement made by Plaskey was not reasonable as a matter of law.