

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

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MICHIGAN LAND TECH, INC.,

Plaintiff/Counterdefendant-  
Appellant,

v

WHISPERING PINES GOLF CLUB, L.L.C.,

Defendant/Counterplaintiff/Third-  
Party Plaintiff-Appellee,

and

WP, INC.,

Third-Party Defendant.

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UNPUBLISHED

December 26, 2000

No. 218264

Livingston Circuit Court

LC No. 97-016308-CZ

Before: Smolenski, P.J., and Wilder and Meter, JJ.

PER CURIAM.

Plaintiff Michigan Land Tech appeals by right from an order granting summary disposition to defendant Whispering Pines Golf Club under MCR 2.116(C)(10). We affirm.

This case involves the sale of land by plaintiff to defendant for residential development. Plaintiff alleges that defendant fraudulently induced plaintiff to agree to a sales contract by misrepresenting the extent to which the land would be developed, which in turn materially affected the contract's purchase price.

On July 17, 1996, the parties signed a contract that based the total purchase price of the land on the number of condominium units ultimately approved for development on the land by the local township. On February 11, 1997, defendant signed a site plan application proposing that 218 units be built on the land. On February 18, 1997, the parties agreed to an amendment to the contract. The amendment indicated that "[f]or all purposes of the Land Contract, the number of Condo Sites for purposes of determining the Purchase Price is hereby determined and agreed to be one hundred thirty-four (134)." Thereafter, on February 24, 1997, defendant submitted the

218-unit site plan application to the township, which ultimately approved the building of 202 units on the land.

Plaintiff contends that the timing of (1) defendant's signing of the proposed site plan, (2) the parties' signing of the contractual amendment, and (3) defendant's submission of the proposed site plan to the township was sufficient evidence of "[d]efendant's fraudulent representations that only 134 condominiums could be developed on the property, and bad faith intent not to perform a promise to develop 134 condominiums on the property." We review a trial court's decision on a motion for summary disposition *de novo*. *Nesbitt v American Community Mutual Ins Co*, 236 Mich App 215, 219; 600 NW2d 427 (1999). When reviewing a motion granted under MCR 2.116(C)(10), a reviewing court must examine all relevant documentary evidence in the light most favorable to the nonmoving party and determine whether there exists a genuine issue of material fact on which reasonable minds could differ. *Nesbitt, supra* at 219-220. A party opposing a motion for summary disposition under MCR 2.116(C)(10) may not rest upon its pleadings but must demonstrate a factual issue using documentary evidence. MCR 2.116(G)(4); see also *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

Contrary to plaintiff's argument, the evidence did not raise a genuine issue of material fact regarding whether defendant had a "bad faith intent not to perform a promise to develop 134 condominiums on the property." Indeed, there was simply no evidence that such a promise had been made. The contractual amendment did not indicate that defendant promised to build only 134 units; instead, it plainly indicated that the parties "still differ[ed]" regarding the number of units that could be built on the land and stated that "[f]or all purposes of the Land Contract, the number of Condo Sites *for purposes of determining the Purchase Price* is hereby determined and agreed to be . . . 134" (emphasis added). Under the plain language of the contractual amendment, defendant did not agree to limit itself to building 134 units. Instead, the parties merely agreed that for purposes of a compromised settlement, they would use a numerator of 134 units *for purposes of the purchase price formula* as set forth in the original contract (which made the purchase price dependent on the number of units). We must honor the plain, unambiguous meaning of this contractual language. *Zurich Ins Co v CCR & Co (On Rehearing)*, 226 Mich App 599, 604; 576 NW2d 392 (1997). Because there was no evidence that defendant promised to build only 134 units, plaintiff's argument that defendant had a "bad faith intent not to perform a promise to develop 134 condominiums on the property" is without merit.

Nor, contrary to plaintiff's argument, did the evidence raise a genuine issue of material fact regarding whether defendant "fraudulent[ly] represent[ed] that only 134 condominiums could be developed on the property." Merely because defendant (1) signed and submitted a site plan for 218 units, and (2) compromised on 134 units for purposes of the purchase price does not indicate that defendant told plaintiff that only 134 units could be developed on the property. Indeed, the available evidence gave no indication regarding the types of negotiations and compromises that went into the final purchase price based on 134 units. Neither we, the trial court, nor a potential jury could reasonably infer fraud based merely on evidence that the compromised purchase price used a lower number of condominium units than the proposed number submitted to the township, since there was no evidence regarding how the compromise was reached. Plaintiff contends that defendant and its engineer *told* plaintiff that only 134 units,

or less, could be developed on the property, but plaintiff presented no documentary evidence below regarding this alleged conversation. Accordingly, it was not relevant to the court's decision. See MCR 2.116(G)(4) ("When a motion under subrule (C)(10) is made and supported as provided by this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleadings, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial."). The trial court did not err in granting defendant's motion for summary disposition.

Plaintiff argues that "[d]efendant's fraudulent actions further damaged [plaintiff] by precluding the development of 68 units on the adjoining . . . property. . . ." However, because no fraud was demonstrated by plaintiff to survive the summary disposition motion, any consideration of damages is unnecessary.

Affirmed.

/s/ Michael R. Smolenski

/s/ Kurtis T. Wilder

/s/ Patrick M. Meter