

STATE OF MICHIGAN
COURT OF APPEALS

XANADU, LTD.,

Plaintiff-Appellant,

v

MICHAEL PERLMAN,

Defendant-Appellee.

UNPUBLISHED

October 19, 2001

No. 224607

Wayne Circuit Court

LC No. 99-920546-CZ

Before: Cooper, P.J., and Sawyer and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition. Plaintiff had sought damages under theories of fraud, misrepresentation, innocent misrepresentation, and promissory estoppel. We affirm.

Although defendant moved for summary disposition pursuant to MCR 2.116(C)(5), (8), and (10), the trial court did not specify which subrule or grounds that it relied on in granting defendant's motion. Generally, we review de novo a trial court's decision on a motion for summary disposition. *Diehl v Danuloff*, 242 Mich App 120, 122; 618 NW2d 83 (2000). A motion for summary disposition may be granted where, after examining the entire record in a light most favorable to the non-moving party, there is no "relevant factual issue about which reasonable minds might differ" and the moving party is entitled to judgment as a matter of law. *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 681; 599 NW2d 546 (1999); MCR 2.116(C)(10). The nonmoving party must provide documentary evidence showing the existence of a disputable issue to avoid summary disposition. *Id.*

As noted above, plaintiff sought to recover under several legal theories: fraud, misrepresentation, innocent misrepresentation, and promissory estoppel. In regard to fraud and misrepresentation, we have ruled:

To assert an action for fraud or misrepresentation, a plaintiff must allege (1) that the defendant made a material representation, (2) that the representation was false, (3) that when the defendant made the representation, it was known to be false, or was made recklessly, without any knowledge of its truth and was made as a positive assertion, (4) that the defendant made the representation with the intention that it should be acted on by the plaintiff, (5) that the plaintiff acted in reliance on it, and (6) that the plaintiff suffered damages as a result. [*HJ Tucker*

& Associates, Inc v Allied Chucker & Engineering Co, 234 Mich App 550, 571-572; 595 NW2d 176 (1999).]

However, we have also ruled that “a person who *unreasonably* relies on false statements should not be entitled to damages for misrepresentation” or fraud. *Novak, supra* at 689-690.

In the instant matter, defendant contends that, even if he misrepresented to plaintiff that he was able to convey the property redemption rights at issue, plaintiff’s agreement with the City of Detroit to repay delinquent property taxes on the property was unreasonable.¹ We agree. The letter that plaintiff relied on to begin negotiations with the City of Detroit plainly indicated that the owner of the property was willing to convey the property rights to plaintiff *only* if the pending purchase agreement expired. In fact, reasonable minds could not differ that plaintiff’s execution of an agreement obligating it to pay a debt on property that it had not yet acquired was unreasonable. Plaintiff, having failed to introduce any persuasive evidence supporting the reasonableness of its actions, is not entitled to resulting damages for fraud or misrepresentation. *Nowak, supra* at 689-690. Consequently, the trial court did not err by granting defendant’s motion for summary disposition on plaintiff’s fraud and misrepresentation claims pursuant to MCR 2.116(C)(10).

Plaintiff also sought to recover under an innocent misrepresentation theory. In *M & D, Inc v McConkey*, 231 Mich App 22, 27-28; 585 NW2d 33 (1998), quoting and adopting Judge Young’s opinion in the previous *M & D Inc v McConkey*, 226 Mich App 801, 806-807; 573 NW2d 281 (1997), we opined:

A claim of innocent misrepresentation is shown if a party detrimentally relies upon a false representation in such a manner that the injury suffered by that party inures to the benefit of the party who made the representation. *United States Fidelity & Guaranty Co v Black*, 412 Mich 99, 118; 313 NW2d 77 (1981). The innocent misrepresentation rule represents a species of fraudulent misrepresentation but has, as its distinguished characteristics, the elimination of the need to prove a *fraudulent purpose* or an intent on the part of the defendant that the misrepresentation be acted upon by the plaintiff, and has, as added elements, the necessity that it be shown that an unintendedly false representation was made in connection with the making of a contract and that the injury suffered as a consequence of the misrepresentation inure to the benefit of the party making the misrepresentation. *Id.* at 118.

Even if plaintiff could show that it detrimentally relied on false representations, plaintiff did not allege that defendant benefited from the purported misrepresentations, nor was any evidence introduced to that effect.² Thus, we conclude that defendant was entitled to summary disposition on this claim.

¹ Defendant does not concede, however, that he made any misrepresentations.

² It is possible that Conwood Properties Limited Partnership, defendant’s client, received some benefit from defendant’s alleged misrepresentations. However, this was not alleged or proven, nor was Conwood a party to this lawsuit. Further, plaintiff did not even advance a theory of how
(continued...)

Finally, plaintiff sought to recover under a promissory estoppel theory.³ In *Crown Technology Park v D & N Bank, FSB*, 242 Mich App 538, 548-549; 619 NW2d 66 (2000), we opined as follows:

In order to invoke promissory estoppel, the party relying on it must demonstrate that (1) there was a promise, (2) the promisor reasonably should have expected the promise to cause the promisee to act in a definite and substantial manner, (3) the promisee did in fact rely on the promise by acting in accordance with its terms, and (4) and the promise must be enforced to avoid injustice.

As noted above, even if we accept plaintiff's contention that defendant made the alleged representations, as we must when reviewing a motion for summary disposition pursuant to MCR 2.116(C)(10), we do not believe that reasonable minds could find plaintiff's actions reasonable under the circumstances. Similarly, we do not believe that reasonable minds could find that defendant could have expected plaintiff to enter into an agreement with the City of Detroit based on the alleged representations. Nor are we persuaded that defendant's representations must be enforced to "avoid injustice." Consequently, defendant was entitled to summary disposition on the promissory estoppel claim.

Affirmed.⁴

/s/ Jessica R. Cooper
/s/ David H. Sawyer
/s/ Donald S. Owens

(...continued)

defendant might have benefited indirectly from a benefit that hypothetically inured to Conwood.

³ We note that plaintiff's complaint referenced "equitable estoppel." However, "equitable estoppel" is not a cause of action, and may only be asserted as a defense or used defensively. *Westfield Companies v Grand Valley Health Plan*, 224 Mich App 385, 391; 568 NW2d 854 (1997). Thus, plaintiff could not have recovered damages under this theory. Regardless, equitable estoppel may only be applied where a party justifiably relies and acts on a belief that misrepresented facts are true. *Id.*, at 390-391, quoting *Soltis v First of America Bank-Muskegon*, 203 Mich App 435, 444; 513 NW2d 148 (1994).

⁴ To the extent that the trial court granted defendant's motion for summary disposition on separate grounds, we note that we may affirm where the trial court reaches the right result, but for the wrong reason. *People v Jory*, 443 Mich App 403, 425; 505 NW2d 228 (1993).