

STATE OF MICHIGAN
COURT OF APPEALS

ANTHONY C. THAYER and PASHA C.
THAYER,

UNPUBLISHED
April 12, 2002

Plaintiffs/Counter
Defendants-Appellants,

v

RICHARD L. COULTER,

No. 229233
Roscommon Circuit Court
LC No. 99-720875-CH

Defendant/Counter
Plaintiff-Appellee.

Before: K.F. Kelly, P.J., and Doctoroff and Cavanagh, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order granting defendant's motion for directed verdict. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs purchased a home "as is" from defendant under a land contract. Plaintiffs brought this action for rescission, alleging misrepresentation and fraud. Defendant brought a counter-complaint for land contract forfeiture. The trial court granted summary disposition to defendant, and allowed plaintiffs to file an amended complaint. On the date set for trial, the court granted defendant's motion for directed verdict.

To establish a claim of common law fraud, a plaintiff must show: (1) the defendant made a material misrepresentation, (2) the representation was false, (3) when the defendant made the representation, he knew that it was false or made it recklessly without knowledge of its truth as a positive assertion, (4) the defendant made the representation with the intention that the plaintiff would act upon it, (5) the plaintiff acted in reliance upon it, and (6) the plaintiff suffered damage. *M & D, Inc v McConkey*, 231 Mich App 22, 27; 585 NW2d 33 (1998).

A claim of silent fraud can only exist where a party suppresses a material fact that it is duty-bound to disclose. *Id.*, 28-29. Silence cannot constitute actionable fraud unless it occurred under circumstances where there was a legal duty of disclosure. *Id.* The Seller's Disclosure Act, MCL 565.955, states that a transferor is not liable for any error in a disclosure if the error was not within the personal knowledge of the transferor and ordinary care was exercised in the transmitting of the information.

Plaintiffs failed to present evidence that would show defendant made a material misrepresentation. The alleged oral statements were made after the purchase agreement was executed, and could not be material to the sale. There is no liability for innocent misrepresentation where property is purchased “as is”. *Lenawee Bd of Health v Messerly*, 417 Mich 17, 32; 331 NW2d 203 (1982). Plaintiffs provided no evidentiary support for their allegation that defendant failed to disclose information within his personal knowledge that he was legally obligated to disclose.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh