

STATE OF MICHIGAN
COURT OF APPEALS

RONALD KORTE,

Plaintiff-Appellant,

v

HUGH LOYER and GEORGE CHAPEL,

Defendants-Appellees.

UNPUBLISHED

September 17, 2002

No. 232692

Oakland Circuit Court

LC No. 00-026148-CB

Before: Smolenski, P.J., and Neff and Bandstra, JJ.

PER CURIAM.

In this action alleging fraud, plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendants. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arises from a written settlement agreement regarding the parties' respective interests in certain commercial property. In his complaint, plaintiff alleged that defendants fraudulently induced him into executing the agreement by making verbal promises "they never intended to keep." The trial court, finding these allegations insufficiently specific to properly state a claim for fraud, granted defendants summary disposition pursuant to MCR 2.116(C)(8). We find no error in the trial court's conclusion in this regard.¹

To avoid summary disposition under MCR 2.116(C)(8), the circumstances constituting fraud must be stated with particularity in the pleadings. MCR 2.112(B)(1). "General allegations will not suffice to state a fraud claim." *LaMothe v Auto Club Ins Ass'n*, 214 Mich App 577, 586; 543 NW2d 42 (1995). Here, although plaintiff alleged in his complaint that he would not have entered into the settlement agreement if not for verbal promises made by defendants regarding execution of the written agreement, plaintiff failed to set forth in his complaint any facts regarding the nature and content of those promises. Accordingly, plaintiff's complaint for fraud

¹ The trial court also found that because the validity of the settlement agreement had already been adjudicated in bankruptcy proceedings initiated by plaintiff, summary disposition was also appropriate under MCR 2.116(C)(7). However, because we find summary disposition to have been properly granted under MCR 2.116(C)(8), we do not address the propriety of the trial court's ruling under MCR 2.116(C)(7).

was appropriately dismissed pursuant to MCR 2.116(C)(8) and MCR 2.112(B)(1), as insufficiently specific to state a claim for fraud. *LaMothe, supra*.

In reaching this conclusion, we reject plaintiff's claim that, even if the complaint was insufficient to plead fraud, he was entitled to amend his complaint to cure the insufficiency and that the trial court therefore erred in dismissing his suit with prejudice. Although plaintiff is correct that where, as here, summary disposition is granted under MCR 2.116(C)(8), MCR 2.116(I)(5) requires that the trial court afford the parties an opportunity to amend their pleadings "unless the evidence then before the court shows that amendment would not be justified," there is nothing in the record to indicate that plaintiff ever sought leave to amend his complaint, as required by MCR 2.118(A)(2). Accordingly, any failure of the trial court to follow the mandate in MCR 2.116(I)(5) is attributable to plaintiff, and not the trial court. Moreover, even assuming that the trial court was obligated to sua sponte grant plaintiff the opportunity to amend his complaint, because the settlement agreement at issue here included a merger clause indicating that the agreement contains "all of the understandings" between the parties, and that "[t]here are no other agreements between the parties, either oral or written," amendment of plaintiff's complaint for fraud based on verbal agreements made regarding execution of the agreement would have been futile and thus not "justified" under MCR 2.116(I)(5).

We similarly reject plaintiff's claim that, because defendants did not specifically request that the suit be dismissed "with prejudice," the trial court's order dismissing plaintiff's claims with prejudice was improperly entered. Contrary to plaintiff's assertion, nothing in MCR 2.116(B)(1) required defendants to make such a request in presenting their motion. Moreover, as noted above, in light of the merger clause included in the written settlement agreement, dismissal of plaintiff's claims with prejudice was warranted.

Finally, although plaintiff is correct that summary disposition is generally premature if granted before discovery on a disputed issue is complete, *State Treasurer v Sheko*, 218 Mich App 185, 190; 553 NW2d 654 (1996), where further discovery cannot reasonably be expected to uncover factual support for the opposing party's position, summary disposition is nonetheless appropriate, *Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000). Here, because the settlement agreement unambiguously provided that there were no other agreements or understandings between the parties, "either oral or written," further discovery could not possibly improve plaintiff's fraud claim because the misrepresentations alleged by plaintiff derived from alleged oral promises that are inadmissible at trial under the parole evidence rule. See *Central Transport, Inc v Fruehauf Corp*, 139 Mich App 536, 544; 362 NW2d 823 (1984). Accordingly, any further discovery would have been futile and summary disposition of plaintiff's claims was, therefore, proper.

We affirm.

/s/ Michael R. Smolenski
/s/ Janet T. Neff
/s/ Richard A. Bandstra