

STATE OF MICHIGAN
COURT OF APPEALS

RONALD JOSEPH POSLUNS,

Plaintiff-Appellant,

v

MARVIN OKUN AGENCY, INC., and MARVIN
OKUN,

Defendants-Appellees,

and

DOES 1-100,

Defendant.

UNPUBLISHED

October 8, 2002

No. 224608

Kalamazoo Circuit Court

LC No. 98-003200-CZ

Before: Murphy, P.J., and Hood and Murray, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition. We affirm.¹

¹ As an initial matter, we note that plaintiff's brief fails to comport with the provisions of MCR 7.212(C)(6). Despite the deficiency, we will address the merits of the claim of appeal. Additionally, we reject plaintiff's procedural challenges. The trial court's decision to deny the motion to set aside the default was not an abuse of discretion, *Zaiter v Riverfront Complex, Ltd*, 463 Mich 544, 552; 620 NW2d 646 (2001); MCR 2.603(D)(1). The decision to deny the motion to disqualify the trial judge was also not an abuse of discretion. *Mourad v Auto Club Ins Ass'n*, 186 Mich App 715, 731; 465 NW2d 395 (1991). Plaintiff failed to overcome the presumption of impartiality by demonstrating actual prejudice requiring disqualification. *Jackhill Oil Co v Powell Production, Inc*, 210 Mich App 114, 120; 532 NW2d 866 (1995). There mere fact that the trial judge was insured by Citizens Insurance Company, a non-party, was insufficient to warrant disqualification under MCR 2.003(B)(5). *Mourad, supra*. Lastly, plaintiff's contention that summary disposition was premature is without merit, MCR 2.116(D)(3), particularly in light of the extensive history underlying this case. See *Ireland v Edwards*, 230 Mich App 607, 623; 584 NW2d 632 (1998).

Plaintiff alleges that the trial court erred in granting defendants' motion for summary disposition of his claim pursuant to MCR 2.116(C)(8). We disagree. A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a plaintiff's claim. *Dolan v Continental Airlines*, 454 Mich 373, 380; 563 NW2d 23 (1997). The motion should be granted if the claim is so manifestly unenforceable as a matter of law that no factual progression could support recovery. *Id.* A mere statement of a pleaders' conclusions, unsupported by allegations of fact, will not suffice to state a cause of action. *ETT Ambulance Service Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395; 516 NW2d 498 (1994). In the present case, plaintiff merely presented allegations and failed to allege facts, with particularity, to support the conclusive statement of some of the elements of the counts of the complaint. Accordingly, the trial court did not err in granting summary disposition of the negligence,² tortious interference with contractual relations,³ Michigan Consumer Protection Act (MCPA),⁴ MCL 445.901 *et seq*, misrepresentation,⁵ unjust enrichment,⁶ and promissory estoppel⁷ claims.

Affirmed.

/s/ William B. Murphy
/s/ Harold Hood
/s/ Christopher M. Murray

² See *Harts v Farmers Insurance Exchange*, 461 Mich 1, 10-11; 597 NW2d 47 (1999).

³ See *BPS Clinical Laboratories v Blue Cross & Blue Shield (On Remand)*, 217 Mich App 687, 698-699; 552 NW2d 919 (1996).

⁴ See *BPS*, *supra*.

⁵ See *James v City of Burton*, 221 Mich App 130, 134-135; 560 NW2d 668 (1997).

⁶ See *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993).

⁷ See *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 173; 568 NW2d 365 (1997).