

STATE OF MICHIGAN
COURT OF APPEALS

REBEKAH BEAL and ROBERT BEAL,

Plaintiffs-Appellants,

v

IMC MORTGAGE COMPANY,

Defendant-Appellee.

UNPUBLISHED

January 22, 2004

No. 242528

Wayne Circuit Court

LC No. 01-121170-CZ

Before: Donofrio, P.J., and Griffin and Jansen, JJ.

PER CURIAM.

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

Plaintiffs owned property that was subject to a recorded mortgage held by Mortgage America, Inc., a company that is not a party to this case. Plaintiffs applied for a second mortgage from defendant, but failed to disclose the existence of the first mortgage on their application. Nevertheless, defendant granted plaintiffs a mortgage. Plaintiffs defaulted on both loans. Defendant purchased the property at a foreclosure sale. Plaintiffs did not redeem the property, but subsequently approached defendant and signed an offer to purchase the property. This transaction was never completed.

Plaintiffs filed suit alleging that defendant wrongfully refused to close on the property unless they paid off the other mortgage. They sought specific performance of the purchase agreement, and consequential and exemplary damages. The trial court granted defendant's motion for summary disposition, finding that plaintiffs' failure to disclose the existence of the first mortgage when they applied for a mortgage from defendant constituted fraud, and that plaintiffs had no basis for a cause of action against defendant. The trial court denied plaintiffs' motion for reconsideration.

We review a trial court's decision on a motion for summary disposition de novo, *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001), and a decision on a motion for reconsideration for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

Actionable fraud must be predicated on a statement relating to a past or an existing fact. *Scott v Harper Recreation, Inc*, 444 Mich 441, 446 n 3; 506 NW2d 857 (1993). Fraud in the inducement occurs where a party materially misrepresents future conduct under circumstances in which the assertions might reasonably be expected to be relied upon and are relied upon. Fraud in the inducement to enter a contract renders the contract voidable at the option of the defrauded party. *Samuel D. Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639-640; 534 NW2d 217 (1995).

Plaintiffs do not dispute that they had a duty to disclose the existence of the first mortgage, nor do they assert that they took affirmative steps to do so. Plaintiffs' failure to disclose the existence of the first mortgage induced defendant to approve their application for a mortgage. Plaintiffs' failure to pay either mortgage caused the property to be sold at foreclosure, and resulted in defendant's loss of the property due to the existence of the undisclosed senior mortgage. Any failure by defendant to learn of the existence of the first mortgage by examining title records does not excuse plaintiffs' failure to disclose the existence of the mortgage. *Rood v Midwest Matrix Mart, Inc*, 350 Mich 559, 569-570; 87 NW2d 186 (1957). Summary disposition was proper. *Wild Bros, supra*.

We reject plaintiffs' assertion that the trial court abused its discretion by denying their motion for reconsideration. The information in Robert Beal's affidavit could have been submitted in opposition to defendant's original motion for summary disposition. No abuse of discretion occurred. *Maiden v Rozwood*, 461 Mich 109, 126 n 9; 597 NW2d 817 (1999); *Churchman, supra*.

Affirmed.

/s/ Pat M. Donofrio
/s/ Richard Allen Griffin
/s/ Kathleen Jansen