

STATE OF MICHIGAN
COURT OF APPEALS

BRUCE L. KILPATRICK, JR., d/b/a SUNRISE
DISPOSAL,

Plaintiff-Appellant,

v

CAG CORPORATION,

Defendant-Appellee,

and

THE FAIRVILLE COMPANY,

Defendant.

UNPUBLISHED
November 30, 2004

No. 249466
Shiawassee Circuit Court
LC No. 99-003931-CB

Before: Donofrio, P.J., and Markey and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of no cause of action. We affirm.

This case arises from plaintiff's purchase of three trucks to be used in his disposal business. Plaintiff contacted defendant CAG Corporation, a financing broker, based on an advertisement in Hauler magazine. Although plaintiff spoke to a representative of defendant CAG, this defendant acted as a broker only and the financing was provided by defendant, The Fairville Company.¹ Plaintiff alleged that he negotiated an interest rate of 18% for the first transaction involving the purchase of one truck, and a second interest rate of 10% for the second transaction involving the purchase of two trucks. Plaintiff testified that he learned that he was charged usurious interest rates when he had an opportunity to sell his business. Plaintiff paid the amount due and owing, under protest, and this case proceeded to trial on the issue of an alleged fraudulent misrepresentation by defendant CAG.

¹ The dismissal of this defendant in the lower court before trial is not at issue on appeal.

Contrary to plaintiff's testimony, defendant CAG's representative testified that he does not quote interest rates. He testified that plaintiff sought a monthly payment amount, rather than a specific interest rate. The representative testified that plaintiff was a "high risk" candidate because of prior financial problems that included a bankruptcy filing. Following a bench trial, the lower court held that there was no fraudulent misrepresentation and rendered a verdict of no cause of action. Plaintiff appeals as of right.

Plaintiff first alleges that the trial court erred in its application of Michigan long arm statutes. This claim of error is without record support. Although defendant initially objected to jurisdiction, the objection was withdrawn prior to trial. The trial court's discussion of the circumstances surrounding the negotiation and signing of the contract arose in the context of analyzing the fraud claim. The trial court did not reach the issue of jurisdiction, and plaintiff's challenge on this basis is without merit.

Plaintiff next alleges that the trial court erred in applying Michigan case law addressing a usurious contract because it is distinguishable from the facts in this case. However, review of the record reveals that the agreements signed by the parties provided that the contracts were to be governed by Pennsylvania law. The trial court expressly noted that there was no evidence submitted at trial addressing whether the interest rates charges were usurious based on Pennsylvania law.

When resolving a conflict of law question, Michigan law is applied unless a rational reason to do otherwise exists. *Frydrych v Wentland*, 252 Mich App 360, 363; 652 NW2d 483 (2002). In the present case, the contract expressly provided for application of Pennsylvania law. Plaintiff acknowledged that he reviewed the contract prior to signing. Additionally, defendant CAG's representative testified that the contract provided that Pennsylvania law was to apply to avoid any question regarding usurious rates. Thus, there was no basis to apply Michigan law in light of the governing contract. The challenge to the application of Michigan usury case law is without merit.

Lastly, the trial court did not abuse its discretion by excluding evidence of defendant's contractual transactions with other parties. *Campbell v Sullins*, 257 Mich App 179, 196; 667 NW2d 887 (2003). The sole issue in this case was whether defendant fraudulently induced plaintiff to enter into a contract. Evidence of defendant's contractual relations with others was not relevant to the issue at hand. Therefore, the exclusion of evidence was not an abuse of discretion.

Affirmed.

/s/ Pat M. Donofrio
/s/ Jane E. Markey
/s/ Karen M. Fort Hood