

STATE OF MICHIGAN
COURT OF APPEALS

METRO CAR COMPANY,

Plaintiff-Appellant,

v

BRIAN B. HEMKER,

Defendant-Appellee.

UNPUBLISHED

December 29, 2005

No. 254687

Oakland Circuit Court

LC No. 03-054815-CZ

Before: Hoekstra, P.J., and Gage and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition in this action for equitable relief and negligence. We affirm.

Defendant sold his 1999 BMW to a purchaser and unwittingly accepted a counterfeit cashier's check in payment for the vehicle. Defendant assigned the certificate of title to the fraudulent purchaser in exchange for the counterfeit check. The next day, plaintiff purchased that same BMW for \$18,000, and received the certificate of title to the vehicle from the fraudulent purchaser. The cashier's check was returned to defendant as counterfeit, and defendant filed a stolen vehicle report with the police. The police confiscated the vehicle from the plaintiff and returned it to the defendant, who then obtained a re-issued certificate of title to the vehicle from the secretary of state's vehicle division.

Plaintiff filed a two-count complaint against defendant seeking as to both counts, *inter alia*, a judgment against defendant in excess of \$25,000. Defendant moved for summary disposition, contending that the damages failed to exceed the jurisdictional threshold for circuit court actions, that the complaint failed to properly state a claim for equitable relief, and that plaintiff's negligence claim failed as a matter of law because defendant owed no duty to the plaintiff. Plaintiff opposed the motion and the matter was submitted to the trial court on briefs. The trial court granted defendant's motion for summary disposition, and denied defendant's motions for sanctions. This appeal ensued.

Plaintiff first argues that trial court erred in granting defendant summary disposition on the basis that there is no legal and factual support for plaintiff's claims. We disagree. Defendant's motion requested summary disposition pursuant to MCR 2.116(C)(4)(lack of subject matter jurisdiction), MCR 2.116(C)(8) (failure to state a claim), and MCR 2.116(C)(10) (no genuine issue of material fact). While the trial court did not specify the subrule upon which

it based its ruling, the trial court referenced documentary evidence beyond the pleadings in ruling on defendant's motion for summary disposition. Thus, we treat the motion as having been granted pursuant to MCR 2.116(C)(10). *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). We review the grant of defendant's motion for summary disposition de novo. *Id.*

A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Id.* A motion for summary disposition pursuant to MCR 2.116(C)(10) may be granted when the moving party is entitled to judgment as a matter of law, or the affidavits or other proofs show that there is no genuine issue of material fact. *Morales v Auto Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). Review is limited solely to the evidence that had been presented to the trial at the time the motion was decided. *Pena v Ingham Co Road Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003).

Plaintiff contends that the trial court had jurisdiction over plaintiff's equitable claim under MCL 600.601(1)(b).¹ "A court's subject-matter jurisdiction is determined only by reference to the allegations listed in the complaint. If it is apparent from the allegations that the matter alleged is within the class of cases with regard to which the court has the power to act, then subject-matter jurisdiction exists." *Trost v Buckstop Lure Co, Inc*, 249 Mich App 580, 586; 644 NW2d 54 (2002), quoting *Grubb Creek Action Committee v Shiawassee Co Drain Comm'r*, 218 Mich App 665, 668; 554 NW2d 612 (1996). "Circuit courts are courts of general jurisdiction, and have original jurisdiction over all civil claims and remedies 'except where exclusive jurisdiction is given by the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state.'" *Farmers Ins Exchange v South Lyon Community Schools*, 237 Mich App 235, 241; 602 NW2d 588 (1999), quoting MCL 600.605. "However, MCL 600.8301 provides district courts with exclusive jurisdiction over civil claims when the amount in controversy does not exceed \$ 25,000." *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 473; 628 NW2d 577 (2001).

Here, plaintiff failed to provide any basis for its claim that damages exceed \$25,000. "A party asserting a claim has the burden of proving its damages with reasonable certainty," and "damages based on speculation or conjecture are not recoverable." *Berrios v Miles, Inc*, 226 Mich App 470, 478; 574 NW2d 677 (1997). According to the affidavit of Waed Murad, plaintiff's president, plaintiff purchased the BMW for \$18,000 from Dewayne Eli. Thus, even if defendant were liable for the damage that plaintiff claims, the amount in controversy did not exceed the \$25,000 jurisdictional threshold for the circuit court. Also, contrary to plaintiff's contention that defendant sought equitable relief, from the face of the complaint, it is apparent

¹ The circuit court has power and jurisdiction "[p]ossessed by courts and judges in chancery in England on March 1, 1847, as altered by the state constitution of 1963, the laws of this state, and the rules of the supreme court." MCL 600.601(1)(b).

that plaintiff solely requested monetary damage. Because plaintiff's complaint cannot be characterized as seeking equitable relief and the monetary damage it claims does not exceed \$25,000, we find no genuine issue of material fact to support plaintiff's allegation that the circuit court had jurisdiction over plaintiff's claim.

Plaintiff next argues that the trial court erred in granting defendant summary disposition because plaintiff properly stated a claim for equitable relief and negligence and there is a genuine issue of material fact. Again, we disagree. Plaintiff's complaint alleged that by selling the BMW, defendant placed the vehicle into the stream of commerce, thereby making the fraudulent action by Eli against plaintiff possible.

Plaintiff has provided no relevant legal authority to support its assertion that these allegations are sufficient to support a claim for equitable relief, and we will not search for such authority. See *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001). Moreover, as we previously noted, plaintiff's complaint requested damages and not equitable relief. The trial court properly dismissed plaintiff's equitable claim.

The trial court also correctly granted defendant summary disposition on plaintiff's negligence claim. To establish a prima facie case of negligence, a plaintiff must prove four elements: (1) a duty owed by the defendant to the plaintiff; (2) a breach of that duty; (3) causation; and (4) damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). The existence of a legal duty is a question of law. *Beaudrie v Henderson*, 465 Mich 124, 130; 631 NW2d 308 (2001). "Duty can arise from a statute or a contract or by application of the basic rule of common law, which imposes an obligation to use due care or to act so as not to unreasonably endanger the person or property of others." *Hampton v Waste Mgt of Michigan, Inc*, 236 Mich App 598, 602; 601 NW2d 172 (1999). Duty concerns whether a defendant is under any legal obligation to act for the benefit of the plaintiff. *Valcaniant v Detroit Edison Co*, 470 Mich 82, 86; 679 NW2d 689 (2004). Generally, there is no duty which obligates one person to aid or protect another unless there is a special relationship between them or some special circumstance. *Beaudrie, supra* at 141.

In the instant case, there is no basis for concluding that defendant owed plaintiff a legal duty. Plaintiff alleges no facts that give rise to any legal obligation on defendant's part for plaintiff's benefit. *Valcaniant, supra* at 86. Notably, there is neither a duty imposed by statute nor a contract between the parties giving rise to a duty. *Hampton, supra* at 602. Further, the parties did not have a special relationship because, at the time of plaintiff's purchase, plaintiff had not entrusted itself to the control and protection of defendant. *Beaudrie, supra* at 141; See also *Dykema v Gus Maker Enterprises, Inc*, 196 Mich App 6, 9; 492 NW2d 472 (1992) (observing that the determination whether a duty-imposing special relationship exists in a particular case involves the determination whether the plaintiff entrusted himself to the control and protection of the defendant, with a consequent loss of control to protect himself).

On appeal, plaintiff asserts that defendant owed plaintiff a duty to act in a good faith pursuant to § 1-203 of the Uniform Commercial Code (UCC). Plaintiff failed to assert such a duty under UCC § 1-203 in the complaint, thus this issue is waived. *Napier v Jacobs*, 429 Mich 222, 233; 414 NW2d 862 (1987). However, even assuming arguendo that plaintiff pleaded this issue with minimal sufficiency, his claim nonetheless fails as a matter of law. First, plaintiff cited no authority to support its novel assertion that defendant's alleged failure to verify whether

the cashier's check was a counterfeit before placing the car into the stream of commerce violated the "obligation of good faith" imposed by UCC § 1-203. A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim. *Eldred, supra* at 150. Where a party merely announces a position and provides no authority to support it, this Court considers the issue waived. See *Mudge v Macomb Co*, 458 Mich 87, 104-105; 580 NW2d 845 (1998).

In any event, UCC § 1-203 applies only to a "contract or duty within" the UCC, and plaintiff failed to show how defendant's alleged actions violate a duty within the Code. Also, even if the UCC applies to plaintiff's negligence claim, the UCC requires only that the transaction be made in good faith and in a commercially reasonable manner. UCC § 1-203; see also MCL 440.1203. Plaintiff offered no evidence of defendant's dishonesty or bad faith omissions in execution of his duty. In fact, plaintiff admitted that defendant properly assigned the title to the BMW and received a check that was later found to be fraudulent. Moreover, we find that defendant's course of conduct qualifies him for the status of a good faith holder in due course of a negotiable instrument under the UCC § 3-302; MCL 440.3302(1). Defendant could satisfy the requirements for a holder in due course because it is undisputed that the fraudulent cashier's check from Eli to defendant did not bear any apparent evidence of forgery or alteration and was not otherwise so irregular or incomplete as to call into question its authenticity. MCL 440.3302(1)(a). Also, it is undisputed that defendant took the check for value, in good faith and without notice that the check was fraudulent. MCL 440.3302(1)(b). A holder of a negotiable instrument is under no duty to make an inquiry as to the validity of the underlying transaction if the negotiable instrument is valid on its face. *Mox v Jordan*, 186 Mich App 42, 47; 463 NW2d 114 (1990). As there is no duty, no question of material fact exists and we hold that summary disposition on plaintiff's claim for negligence was appropriate. *Morales, supra* at 294.

Accordingly, we conclude that the trial court did not err in granting defendant summary disposition based on its finding that there is no legal or factual basis for plaintiff's claim.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Hilda R. Gage
/s/ Kurtis T. Wilder