

STATE OF MICHIGAN
COURT OF APPEALS

SHELIA FRANKLYN, Legal Guardian of
VIVIAN ARMSTRONG, a Legally Incapacitated
Person,

UNPUBLISHED
December 18, 2007

Plaintiff-Appellant,

v

DWIGHT MAXWELL, d/b/a STRONG FAMILY
FUND,

No. 270138
Wayne Circuit Court
LC No. 04-430506-CH

Defendant-Appellee,

and

STEWART TITLE GUARANTY COMPANY and
CATHERINE BOWMAN, f/k/a CATHERINE
WILLIFORD,

Defendants.

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

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting summary disposition to defendant Maxwell under MCR 2.116(C)(8) and (10). We reverse and remand.

In March of 2003, the Wayne County Probate Court appointed plaintiff the guardian of her 72-year-old mother, Vivian Armstrong. On September 26, 2003, Ms. Armstrong sold her home to defendant Maxwell. Maxwell paid \$33,725.17 to discharge an existing mortgage, which was then in foreclosure. He obtained a deed to Ms. Armstrong's home. Ms. Armstrong received no money in the transaction, but did live in the home, rent free, for a year.

In September of 2004, plaintiff filed an eight-count complaint to rescind the sale and deed and to quiet title.¹ The complaint also sought money damages of \$90,000 in lieu of equitable relief. Among the allegations was that Maxwell approached Mrs. Armstrong while she was hospitalized and that he attempted to persuade her to sell her home despite being advised that plaintiff was her mother's guardian. The complaint also alleged that defendant Maxwell misrepresented the status of the Strong Family Fund and that he had promised to obtain refinancing for Mrs. Armstrong, as well as pay off the mortgage that was in foreclosure.

No discovery was undertaken by the parties. However, eventually all defendants moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). Pertinent to this appeal, the trial court granted defendant Maxwell's motion for summary disposition, ruling that, regarding the counts relating to "deceit, misrepresentations, consumer protection violations, wrongful conversion, [and] intentional infliction of emotional distress," plaintiff had not established a prima facie case. As to any claim based on equity, the court stated that Mrs. Armstrong had obtained the full benefit of the bargain by having the delinquent mortgage paid off and then living in the home, rent free, for a year. Thus, because plaintiff had not tendered back the amount paid by Maxwell, the court ruled that the plaintiff was equitably estopped from her claim to quiet title, rescission or other equitable relief.

We review decisions on motions for summary disposition under MCR 2.116(C)(8) de novo, to ascertain, from the pleadings alone, whether the complaint states a claim upon which relief can be granted. The allegations in the complaint, and every inference that can be reasonably drawn from them are taken as true, and construed in a light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817(1999); *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). We likewise review decisions on motions brought pursuant to MCR 2.116(C)(10) de novo, viewing the evidence submitted in a light most favorable to the nonmoving party. *Maiden v Rozwood*, *supra* at 120.

Plaintiff argues on appeal that the trial court should not have dismissed Counts I – III, essentially those relating to fraud and seeking equitable relief, because there was at least a genuine issue of material fact regarding whether Mrs. Armstrong lacked the capacity to contract for the sale of her home. We agree.

Michigan law has long held that a person under a guardianship is conclusively presumed incompetent to make a valid contract and that any contract made by a person under guardianship is void. *Wies v Brandt*, 294 Mich 240, 247; 293 NW 773 (1940); *Acacia Mutual Life Ins Co v Jago*, 280 Mich 360, 362; 273 NW 599 (1937); *May v Leneair*, 99 Mich App 209, 215; 297 NW2d 882 (1980).

¹ The specific counts in the complaint were an equitable claim to quiet title (Count I), deceit, fraud and misrepresentations (Count II), fraud in the inducement based on duress and undue influence (Count III), slander to legal title of real property action for damages - intentional tort (Count IV), violation of the Michigan Consumer Protection Act (Count V), violation of Michigan Mortgage Consumer Protection Act (Count VI), intentional infliction of emotional distress (Count VII), and wrongful conversion of real property (Count VIII).

Additionally, MCL 700.5134(b) and 700.5423(3) require that if the real property, or any interest in real property, of the ward is sold during the course of the guardianship, the guardian must notify all interested parties and obtain court approval. Here, the guardianship was in effect when the real estate transaction occurred between Armstrong and defendant, and there was no involvement or approval by the guardian or court. Although the trial court cited contract language and some evidence, which might suggest that Armstrong competently entered into the contract, it could not under this record resolve that issue by way of a motion for summary disposition.

We also hold that the complaint's factual assertions – which were sworn to by plaintiff – contained sufficient factual support on Counts I – III to withstand summary disposition at this stage of the proceedings.

Claims for fraud should allege that: (1) the charged party made a material representation; (2) it was false; (3) when the representation was made that it was known to be false, or made recklessly, without any knowledge of its truth and as a positive assertion; (4) the representation was made with the intent that it be relied on by the other party; (5) the other party did act on the representation made; and (6) the other party suffered damage. *City of Novi v Adell Trusts*, 473 Mich 242, 253 n 8; 701 NW2d 144 (2005).

It is true that promises of future action—here, Maxwell's promise to refinance Armstrong's home—cannot usually be the subject of a fraud claim. *Hi-Way Motor Co v International Harvester Co*, 398 Mich 330, 336; 247 NW2d 813 (1976). However, there is an exception when the plaintiff can prove that the defendant never intended to carry out the future promise at the time that the initial promise was made. *Hi-Way Motor, supra* at 337-338, *Danto v Charles C Robbins, Inc*, 250 Mich 419, 425; 230 NW 188 (1930); *Foreman v Foreman*, 266 Mich App 132, 143; 701 NW2d 167 (2005).

Plaintiff alleged that defendant Maxwell misrepresented his status as a company and that he obtained the deed as an individual, while paying less than half the value of Mrs. Armstrong's home after pursuing an elderly woman that he had some reason to know was incapacitated. From these facts, it might fairly be inferred that his promise to refinance was a part of a plan to induce a contract by fraud. *Converse v Blumrich*, 14 Mich 109, 111 (1866); *U S Fidelity & Guaranty v Black*, 412 Mich 99, 120-121; 313 NW2d 77 (1981); *Kroninger v Anast*, 367 Mich 478, 482; 116 NW2d 863 (1962).

Finally, although plaintiff does not to any extent address the trial court's ruling on equitable estoppel, we hold that the trial court erred in concluding that equitable estoppel applied on the basis that plaintiff retained the benefit of the bargain. In order to apply equitable estoppel, the court must find, *inter alia*, that plaintiff negligently or intentionally induced defendant to believe facts through silence or representation. *Anagra Inc v Farmers State Bank*, 237 Mich App

109, 140-141; 602 NW2d 390 (1999). In the absence of making any conclusion in that respect, the trial court could not apply equitable estoppel.²

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder

² We are somewhat limited in deciding this case. For one, defendant has not filed a brief on appeal. Additionally, the brief in support of defendant Maxwell's motion for summary disposition contained no citation to any evidence when discussing the reliance issues, including what was, or was not, said by Mrs. Armstrong during the transaction. Without admissible evidence refuting the sworn allegations in plaintiff's complaint, summary disposition is not proper. MCR 2.116(G)(3)(b).