

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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QUICKEN LOANS, INC., a/k/a ROCK  
FINANCIAL,

UNPUBLISHED  
January 24, 2008

Plaintiff-Appellant,

v

No. 273965  
Oakland Circuit Court  
LC No. 2005-071266-CK

GREAT HORIZONS, INC., d/b/a GREAT  
AMERICAN MORTGAGE CORPORATION,

Defendant-Appellee,

and

BOB STAHL, TOM WHEATON, BRADLEY  
SWANCOAT, FARIS ARABO, DAVID  
GILHOOLY, BOBBY MIZE, JR., and DEREK  
SMITH,

Defendants.

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Before: Whitbeck, P.J., and Owens and Schuette, JJ.

PER CURIAM.

Plaintiff Quicken Loans, Inc. a/k/a Rock Financial (Rock) appeals as of right the trial court's order dismissing its complaint against defendant, Great Horizons, Inc., d/b/a Great American Mortgage Corporation (GAMC). We affirm.

I. Basic Facts And Procedural History

Rock filed its complaint on December 19, 2005, alleging tortious interference with contractual/business relationships, misappropriation of trade secrets, unfair competition, conversion, breach of fiduciary duties, and civil conspiracy. Rock alleged that GAMC and individual defendants<sup>1</sup> were "engaged in a systematic pattern and practice of raiding mortgage

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<sup>1</sup> The trial court entered consent judgments regarding Count I, Breach of Contract, against Bob Stahl, Faris Arabo and Tom Wheaton, and any remaining claims against them were dismissed. The trial court entered default judgments against Derek Smith, David Gilhooly and Bobby Mize, Jr., for failing to answer the complaint. All claims against Bradley Swancoat, the alleged Chief Executive Officer of GAMC, were dismissed.

bankers employed, trained, and licensed by plaintiff.” On May 4, 2006, Rock and GAMC executed a Settlement Agreement (the Agreement) in which Rock agreed to dismiss its complaint against GAMC in exchange for \$15,000 and certain other promises. The parties also executed a Permanent Injunction (the Injunction), prohibiting GAMC from soliciting any of Rock’s employees for confidential or proprietary information. The parties further executed a Consent Judgment in the amount of \$75,000 that was to be entered in the event that GAMC breached the Agreement or violated the Injunction. On June 8, 2006, Rock moved to have the Consent Judgment entered, claiming that GAMC breached the Agreement, but the trial court denied the motion. The trial court granted GAMC’s motion to dismiss the complaint on October 9, 2006.

## II. Motion To Enter Consent Judgment

### A. Standard Of Review

Rock argues that the trial court erred by denying its motion to enter the Consent Judgment because it established that GAMC breached the Agreement and violated the Injunction. We review for an abuse of discretion a trial court’s determination whether to enter a consent judgment.<sup>2</sup> We also review for an abuse of discretion a trial court’s determination whether an injunction was violated.<sup>3</sup> A trial court abuses its discretion when it chooses an outcome that is outside the range of reasonable and principled outcomes.<sup>4</sup> We review for clear error a trial court’s determination whether a contract was breached.<sup>5</sup>

### B. Legal Standards

An agreement to settle a lawsuit is a contract subject to the legal principles associated with the interpretation and construction of contracts.<sup>6</sup> A contract is “an agreement, upon a sufficient consideration, to do or not to do a particular thing.”<sup>7</sup> Nonperformance of a duty due under a contract is a breach.<sup>8</sup> An injunction is “a court order commanding or preventing an action.”<sup>9</sup>

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<sup>2</sup> Cf. *Vestevich v West Bloomfield Twp*, 245 Mich App 759, 763; 630 NW2d 646 (2001) (stating that this Court reviews for an abuse of discretion a trial court’s decision on a motion to set aside a consent judgment).

<sup>3</sup> Cf. *S Abraham & Son, Inc v Dep’t of Treasury*, 260 Mich App 1, 9; 677 NW2d 31 (2003) (stating that this Court reviews for an abuse of discretion a trial court’s order of contempt).

<sup>4</sup> *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

<sup>5</sup> *Local 1064, RWDSU AFL-CIO v Ernst & Young*, 449 Mich 322, 326; 535 NW2d 187 (1995).

<sup>6</sup> *Kloian v Domino’s Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006).

<sup>7</sup> *McInerney v Detroit Trust Co*, 279 Mich 42, 46; 271 NW 545 (1937).

<sup>8</sup> *Woody v Tamer*, 158 Mich App 764, 771; 405 NW2d 213 (1987).

<sup>9</sup> Black’s Law Dictionary (8th ed).

## C. Applying The Standards

### (1) Breach Of The Agreement

In ¶ 10 of the Agreement, GAMC warranted that it had performed a “diligent, thorough and exhaustive investigation,” and that, upon its information and belief, since January 1, 2005, and up to May 4, 2006, it had not employed, hired, or engaged any mortgage bankers who were formerly employed by Rock, with the exception of several specifically named individuals. Rock claims that the trial court erred by finding that GAMC did not breach ¶ 10 of the Agreement when GAMC misrepresented that it thoroughly researched its employee records and misrepresented the number of Rock’s former employees that it hired. However, GAMC’s *representation* in ¶ 10 was not a *promise* to perform a thorough investigation.<sup>10</sup> Therefore, while GAMC may have misrepresented the number of Rock’s former employees that it hired, it did not commit a breach of a contractual obligation.

Rock further claims that the trial court erred by finding that GAMC did not breach ¶ 12 of the Agreement. GAMC made a representation in ¶ 12 that it had notified all of its employees about the terms of the Injunction. Again, any misrepresentation in ¶ 12 did not constitute a breach of a promise to perform. Thus, while the trial court may have mistakenly analyzed Rock’s claims by determining that GAMC fulfilled any performance due Rock under the Agreement, the trial court properly determined that GAMC did not breach ¶¶ 10 or 12 of the Agreement.

### (2) Violation Of The Injunction

The Injunction provides, in relevant part:

GAMC shall not attempt to obtain from any current and/or former Quicken Loans employees and/or other agents any confidential and/or proprietary business information of Quicken Loans, including, but not limited to, any information, data, material and/or compilation submitted by a mortgage applicant or prospective mortgage applicant and/or pertaining to any mortgage client, prospect, client lead and/or client inquiry.

In June 2006, a GAMC mortgage banker sent the following email to a Quicken Loans mortgage broker:

Hello, I just wanted to touch base with you to see if there were any loans you recently turned away because you were unable to work with their less than perfect scenario? If so, please provide to them another option and another chance to improve their financial situation by sending them to me. Want more info on my referral program? Call me.

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<sup>10</sup> See *McInerney, supra* at 46.

Please forward this information on to anyone who you think might enjoy receiving free money from me for their referral. Thank you.

The trial court determined that GAMC was not attempting to solicit confidential information through the email, but rather, making an innocent request for referrals. We conclude that the trial court's determination that GAMC did not violate the Injunction was within the range of principled outcomes,<sup>11</sup> and, therefore, was not an abuse of its discretion.

Affirmed.

/s/ William C. Whitbeck

/s/ Donald S. Owens

/s/ Bill Schuette

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<sup>11</sup> *Maldonado, supra* at 388.