STATE OF MICHIGAN

COURT OF APPEALS

IAN LEFFLER,

Plaintiff-Appellant,

v

HTNB CORPORATION,

Defendant-Appellee,

and

BEECHEE SYSTEMS CORPORATION and ATSALIS BROTHERS PAINTING COMPANY,

Defendants.

UNPUBLISHED
March 18, 2008

No. 275962
Wayne Circuit Court
LC No. 04-430822-NO

Before: O'Connell, P.J., and Borrello and Gleicher, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's decision to dismiss his claims against defendant HTNB Corporation under MCR 2.116(C)(10). For the reasons set forth in this memorandum, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was seriously injured while working on a bridge painting project on I-75 in Detroit. Plaintiff was on a scaffold when the support brackets failed, causing him to fall about thirty feet to the pavement.

Plaintiff's tort claims against HTNB allegedly flow from a contract for engineering consulting services between HTNB and the Michigan Department of Transportation (MDOT). Plaintiff claims the contract promised safety engineering services from HTNB and that he is a third party beneficiary of these contract provisions. MCL 600.1405. Plaintiff also argues that the contract terms are ambiguous and, therefore, a jury question exists as to the meaning of the terms. *Zinchook v Turkewycz*, 128 Mich App 513, 521; 340 NW2d 844 (1983).

Motions decided under MCR 2.116(C)(10) test the factual sufficiency of the evidence to support the complaint. In evaluating such motions, this Court reviews de novo the entire record, including affidavits, depositions, pleadings, etc., to determine whether the movant was entitled to

judgment as a matter of law. *Corley* v *Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004).

Our examination of the contract between HTNB and MDOT reveals that the parties contracted for consulting engineering services for the Rouge River bridge project. The incidental mention of quality control and compliance with plans and specifications was not intended to benefit this specific plaintiff because there was no "direct" promise to him or a class of persons like him as required by our Supreme Court's decisions in *Koenig v South Haven*, 460 Mich 667, 677; 597 NW2d 99 (1999); *Brunsell v City of Zeeland*, 467 Mich 293, 298-299; 651 NW2d 388 (2002); *Schmalfeldt* v *North Pointe Ins Co*, 469 Mich 422, 429; 670 NW2d 651 (2003).

Michigan law also bars plaintiff's tort claim that HTNB negligently performed its contractual duties. *Fultz v Union-Commerce Associates*, 470 Mich 460,467-468; 683 NW2d 587 (2004); *Ghaffari v Turner Construction Co (On Reh)*, 268 Mich App 460, 465-466; 708 NW2d 448 (2005); *Teufel v Watkins*, 267 Mich App 425, 430; 705 NW2d 164 (2005).

Affirmed.

/s/ Peter D. O'Connell
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher