

STATE OF MICHIGAN
COURT OF APPEALS

WAAD F. SEBA,

Plaintiff-Appellant,

v

LAWYER'S TITLE INSURANCE
CORPORATION, TRI-COUNTY TITLE
AGENCY, INC.,

Defendants-Appellees,

and

LEO GILHOOL,

Defendant,

and

DATATRACE INFO SERVICES COMPANY,
INC.,

Third-Party Defendant-Appellee.

Before: Servitto, P.J., and Owens and Kelly, JJ.

PER CURIAM.

In this title insurance dispute, plaintiff appeals as of right from the trial court's grant of summary disposition in favor of defendants on plaintiff's claims for breach of contract, fraud and misrepresentation, and promissory estoppel. We affirm.

UNPUBLISHED

December 18, 2008

No. 278911

Oakland Circuit Court

LC No. 2006-073839-CK

I. Facts

Defendants issued a title insurance policy on two property parcels that plaintiff purchased for development.¹ The policy excluded coverage of loss or damage arising from “easements and restrictions, if any of record, affecting the use of [the property].” After plaintiff began developing the property, plaintiff learned of a 1994 settlement agreement that restricted use of the property. Although the settlement agreement was recorded in the Oakland County records, defendant Tri-County did not learn of the agreement during its search of an electronic database containing recorded title information. The settlement agreement was posted in the database, but apparently was not accessible using standard search methods.

Plaintiff alleges that the settlement agreement significantly impaired his development plans, resulting in financial loss. He sought coverage from defendant Lawyer’s Title under the title insurance policy, but Lawyer’s Title denied coverage citing an exclusion in the policy on easements or restrictions. Plaintiff then filed the present case.

II. Standard of Review

This Court conducts a de novo review of a trial court’s ruling on a summary disposition motion. *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005). Accordingly, this Court considers the entire record, examining the evidence in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 277; 681 NW2d 342 (2004). If the moving party presents evidence negating an element of the opposing party’s claim, the opposing party must respond with sufficient evidence to demonstrate a material factual issue. See *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Summary disposition is appropriate if the record contains no material factual issues and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10).

III. Breach of Contract

Plaintiff maintains that there is a genuine factual issue as to whether defendants timely delivered title commitments to plaintiff. According to plaintiff, defendants failed to provide title commitments on the subject properties until long after the plaintiff had closed on the property purchases. We find that although there is a fact question in the record as to whether plaintiff received the title commitments at the closings, the fact question is immaterial to the resolution of plaintiff’s claims.

Turning to plaintiff’s breach of contract claims, we conclude that the only cognizable contracts in the record are the title commitments and the title insurance policy. None of these contracts required defendants to deliver title commitments at or prior to closing. Rather, the title

¹ Plaintiff purchased two parcels for his development project, but the record contains only one title insurance policy. The parties do not dispute that the title insurance policy is the same for both parcels.

commitments were contracts to provide title insurance once certain conditions were met, and the title insurance policy was a contract to insure certain losses, not including the loss at issue here. Plaintiff has provided no evidence of any other contract that would impose the duties plaintiff seeks to impose upon defendants. *Hess v Cannon Twp*, 265 Mich App 582, 592; 696 NW2d 742 (2005) (essential elements contract are competency to contract, proper subject matter, consideration, mutuality of agreement, and mutuality of obligation). Accordingly, the factual issue of whether defendants delivered the commitments prior to closing is immaterial, and plaintiff's breach of contract claims fail as a matter of law.

IV. Fraud and Misrepresentation

As for plaintiff's fraud and misrepresentation claims, each of the parties to this appeal contends that this Court should determine whether title insurance companies and their agents have duties in tort to conduct a reasonable title search and to use reasonable care to inform the insureds of the results of that search. We need not make such a determination, because we find that even if such duties existed, plaintiff has failed to support any claim arising from those duties. To avoid summary disposition on his fraud claims, plaintiff would have had to provide some evidence

(1) that the insurer made a material representation; (2) that it was false; (3) that when the statement was made, the insurer knew that it was false, or the insurer made it recklessly without any knowledge of its truth and as a positive assertion; (4) that the insurer made the statement with the intention that it would be acted upon by the insureds; (5) that the insureds acted in reliance upon the statement; and (6) that the insureds consequently suffered injury. [*Cooper v Auto Club Ins Assoc*, 481 Mich 399, 414; 751 NW2d 443 (2008)].

Plaintiff's misrepresentation claim requires proof of the same elements.² *New Freedom Mortgage Corp v Globe Mortgage Corp*, ___ Mich App ___; ___ NW2d ___ (2008). Further, the Michigan Court Rules mandate that allegations of fraud be stated with particularity. MCR 2.112(B(1)).

Plaintiff did not allege the details of his fraud and misrepresentation claims with sufficient particularity. Moreover, the record contains nothing to demonstrate that either defendant made any statement knowing that the statement was false, or made a statement recklessly without knowledge of the truth. Plaintiff's reference to a representation allegedly made by a Tri-County employee concerning the status of the title does not suffice, because plaintiff provided nothing to indicate that the employee knew the statement was false (if in fact it was false) or that the employee made the statement in reckless disregard for the truth. Similarly, we find no factual basis in the record for plaintiff's speculation that defendants may have altered the title insurance commitment or the policy after they learned of the recorded settlement agreement.

² To the extent plaintiff seeks to present a negligent misrepresentation claim, we find that plaintiff has failed to preserve that claim for appeal.

V. Promissory Estoppel

Plaintiff's promissory estoppel claims fail for similar reasons. To withstand summary disposition on these claims, plaintiff would have had to identify a "definite and clear" promise made by defendants. *Ypsilanti Twp v Gen Motors Corp*, 201 Mich App 128, 134; 506 NW2d 556 (1993). The record contains no evidence of a promise to conduct a title search or a promise to advise plaintiff of any encumbrances on the title to the property. Furthermore, even if plaintiff had established an actionable promise, plaintiff would have had to provide some evidence that defendants should reasonably have expected the promise to induce action by plaintiff; that plaintiff reasonably relied on the promise; and that the circumstances of the case are "such that the promise must be enforced if injustice is to be avoided." *Zaremba Equip, Inc v Harco Nat'l Ins Co*, 280 Mich App 16; ___ NW2d ___ (2008); see also *Northern Warehousing, Inc v Michigan Dep't of Ed*, 475 Mich 859; 714 NW2d 287 (2006). The record contains no evidence on these elements of promissory estoppel. Therefore, summary disposition on these claims was appropriate.

Affirmed.

/s/ Deborah A. Servitto

/s/ Donald S. Owens

/s/ Kirsten Frank Kelly