

STATE OF MICHIGAN
COURT OF APPEALS

ARCHIE SHARP, JR.,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED
February 23, 2010

No. 290154
Court of Claims
LC No. 08-000099-MK

Before: Fitzgerald, P.J., and Cavanagh and Davis, JJ.

PER CURIAM.

Plaintiff, acting in propria persona, appeals as of right from the trial court's order granting summary disposition pursuant to MCR 2.116(C)(8) in favor of defendant in plaintiff's breach of contract and account stated action. Plaintiff additionally appeals from the order denying his motion for reconsideration. We affirm.

Plaintiff, a prisoner serving a term of 30 to 110 years' imprisonment, filed a complaint alleging that defendant Department of Corrections owed him more than \$19 billion pursuant to a "Private Agreement" under which defendant became indebted to plaintiff at a rate of \$1 million per day for every day that plaintiff remained wrongfully imprisoned. Plaintiff alleged that he sent the "Private Agreement" to the prison warden by certified mail, but that neither the warden nor any other agent of defendant responded. By its terms, the document was "self-executing" and would become effective if defendant allowed a five-day period to expire without responding. Plaintiff claimed that defendant was liable to him under the terms of the "Private Agreement," as either an express contract or an account stated.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim on the basis of the pleadings alone to determine whether the plaintiff has stated a claim upon which relief can be granted." *Morden v Grand Traverse Co*, 275 Mich App 325, 331; 738 NW2d 278 (2007); MCR 2.116(G)(5). All of the plaintiff's well-pleaded factual allegations are accepted as true and are construed in a light most favorable to the nonmoving party. *Johnson v Detroit*, 457 Mich 695, 701; 579 NW2d 895 (1998); *Morden*, 275 Mich App at 331. Only if no factual development could justify the plaintiff's claim for relief can the motion be granted. *Koenig v South Haven*, 460 Mich 667, 674; 597 NW2d 99 (1999).

The trial court properly concluded that plaintiff failed to plead facts sufficient to establish mutuality of agreement. A contract requires mutual assent or a meeting of the minds on all the essential terms. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 453; 733 NW2d 766 (2006); *Burkhardt v Bailey*, 260 Mich App 636, 655; 680 NW2d 453 (2004). The document that plaintiff mailed to warden Kurt Jones, demanding payment of \$1 million for every day that plaintiff remained incarcerated, constituted, at best, an unaccepted offer. "An offer is a unilateral declaration of intention, and is not a contract. . . . A contract is made when both parties have executed or accepted it, and not before. . . . Mere discussions and negotiation, including unaccepted offers, cannot be a substitute for the formal requirements of a contract." *Kamal Nath v Mercy Mem Hosp Corp*, 194 Mich App 543, 549; 487 NW2d 499 (1992) (citations omitted). As plaintiff admitted in his complaint, Jones and defendant failed to respond in any way to plaintiff's unsolicited correspondence; accordingly, there was no acceptance, no mutuality of agreement, and no contract.

Plaintiff cites various provisions of the Uniform Commercial Code (UCC) in support of his contention that a valid contract exists. However, Article 2 of the UCC applies solely to transactions in goods, MCL 440.2102; *Neibarger v Universal Cooperatives, Inc*, 439 Mich 512, 536-537; 486 NW2d 612 (1992); *DaimlerChrysler Corp v Wesco Distribution, Inc*, 281 Mich App 240, 245; 760 NW2d 828 (2008), and is therefore inapplicable to plaintiff's Private Agreement.

Likewise, plaintiff's claim of account stated was appropriately dismissed. An "account stated" or "open account" is "an agreement, between parties who have had previous transactions of a monetary character, that all the items of the accounts representing such transactions are true and that the balance struck is correct, together with a promise, express or implied, for the payment of such balance." *Leonard Refineries, Inc v Gregory*, 295 Mich 432, 437; 295 NW 215 (1940) (citation omitted). "[W]here a plaintiff is able to show that the mutual dealings which have occurred between two parties have been adjusted, settled, and a balance struck, the law implies a promise to pay that balance." *Keywell & Rosenfeld v Bithell*, 254 Mich App 300, 331; 657 NW2d 759 (2002), quoting *Watkins v Ford*, 69 Mich 357, 361; 37 NW 300 (1888). Plaintiff's complaint makes no reference to any previous transactions of a monetary character; nor does he claim that he and defendant engaged in any "mutual dealings" at any time. Because plaintiff has not pleaded any facts demonstrating a course of dealing between the parties or the assent of both parties to the alleged account, he has failed to state a claim upon which relief can be granted. *Kaunitz v Wheeler*, 344 Mich 181, 185; 73 NW2d 263 (1955); *Keywell & Rosenfeld*, 254 Mich App at 331.

Furthermore, plaintiff's reliance on MCL 600.2145 is misplaced. "If an account stated exists, an unanswered affidavit under MCL 600.2145 creates a prima facie case that the party failing to respond owes the other party the amount stated." *Echelon Homes, LLC v Carter Lumber Co*, 261 Mich App 424, 435; 693 NW2d 171 (2004), rev'd on other grds 472 Mich 192; 694 NW2d 544 (2005) (emphasis supplied). Plaintiff is unable to avail himself of the presumption created by § 2145 because he has failed to state facts demonstrating the existence of an account stated in the first instance.

Finally, plaintiff seeks review of the trial court's denial of his motion for reconsideration. Because plaintiff failed to show that the trial court's decision granting summary disposition was erroneous, the court did not abuse its discretion in denying plaintiff's motion for reconsideration.

Nuculovic v Hill, ___ Mich App ___; NW2d ___ (2010), slip op p 6; *In re Beglinger Trust*, 221 Mich App 273, 279; 561 NW2d 130 (1997).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Mark J. Cavanagh

/s/ Alton T. Davis