

STATE OF MICHIGAN  
COURT OF APPEALS

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DENNIS OJA,

Plaintiff-Appellant,

v

SELECTIVE FAIRWAY, INC.,

Defendant-Appellee.

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UNPUBLISHED

December 11, 1998

No. 203140

Wayne Circuit Court

LC No. 96-634225 CK

Before: Sawyer, P.J., and Wahls and Hoekstra, JJ.

MEMORANDUM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition. MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

We decline to address whether the construction contract at issue in this case obligated defendant to assist plaintiff in securing his mortgage by providing plaintiff or his lender with a permanent certificate of occupancy. Assuming arguendo that defendant had such a contractual obligation and that it breached this obligation, plaintiff has failed to provide any documentation establishing that defendant's failure to provide this certificate resulted in plaintiff's inability to secure the mortgage and to close within the period prescribed by the contract. This failure to provide documentation is fatal to plaintiff's claim and entitled defendant to summary disposition, plaintiff having failed to demonstrate the existence of a genuine issue of material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 363; 547 NW2d 314 (1996); *Kamalnath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 553; 487 NW2d 499 (1992).

Moreover, assuming that a question of fact exists regarding whether defendant waived the right to insist on strict compliance with the contract, such a question is not material where the record establishes significantly less than substantial compliance on the part of plaintiff.

Finally, we conclude that summary disposition was not prematurely granted. *Hasselbach v TG Canton, Inc*, 209 Mich App 475, 482; 531 NW2d 715 (1995).

Affirmed.

/s/ David H. Sawyer

/s/ Myron H. Wahls

/s/ Joel P. Hoekstra