

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD W. PARRY,

Plaintiff-Appellant,

v

CHARLES W. CAIRNS and VILICAN-LEHMAN
& ASSOCIATES, INC.,

Defendants-Appellees.

UNPUBLISHED

June 12, 2001

No. 220160

Oakland Circuit Court

LC No. 98-009182-NM

Before: Bandstra, C.J., and Griffin and Collins, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition. We affirm.

Plaintiff submitted an application to the Groveland Township Planning Commission (planning commission) seeking approval to divide his property into four smaller parcels. The planning commission approved plaintiff's land division request, with the condition that a pole barn, which would have remained on one of the four parcels, be removed within ninety days. Plaintiff believed the condition to be in violation of township ordinances.

Plaintiff filed a five-count complaint against defendants alleging (1) professional malpractice; (2) fraud and deceit; (3) breach of contract; (4) willful, wanton, reckless, and outrageous conduct; and (5) breach of fiduciary duty. Plaintiff alleged that he had contracted with defendants to assist him in obtaining permission to divide the property, that defendants failed to properly advise the planning commission with regard to plaintiff's application and misrepresented to the planning commission the nature of the pole barn on plaintiff's property, and that because of these errors and misrepresentations, the planning commission imposed an illegal condition on the division of his land.

Defendants filed a motion for summary disposition arguing that as township planners acting under contract with Groveland Township (the township), they had no ability to approve plaintiff's land division request, and that no relationship existed between plaintiff and defendants from which liability could be imposed. The trial court granted defendants' motion regarding all counts contained in plaintiff's complaint. Plaintiff appeals the dismissal of all the counts, except for the dismissal of count IV alleging willful, wanton, reckless, and outrageous conduct.

We review a trial court's grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Defendants brought their motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). Because the circuit court considered documents beyond the pleadings in making its decision, we will treat the motions as having been granted under MCR 2.116(C)(10) and examine the pleadings and documents. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A trial court "may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999), quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). All affidavits, pleadings, depositions, admissions, and other documentary evidence filed in the action or submitted by the parties is viewed in the light most favorable to the party opposing the motion. *Id.*

Plaintiff first contends that the trial court erred in granting defendants' motion for summary disposition regarding the breach of contract and professional malpractice claims because, according to plaintiff, a contractual relationship existed between the parties. Plaintiff argues that the trial court improperly focused on the absence of a written contract without acknowledging that an oral contract is equally enforceable.

If the subject matter does not require a contract to be written, an oral agreement is as effective as a written agreement. *Strom-Johnson Construction Co v Riverview Furniture Store*, 227 Mich 55, 67; 198 NW 714 (1924). However, there must be a meeting of the minds on all material facts in order to form a valid contract, and whether such mutual assent occurred is judged by an objective standard, looking to the express words of the parties and their acts. *Groulx v Carlson*, 176 Mich App 484, 491; 440 NW2d 644 (1989).

We conclude that the documentary evidence submitted to the lower court failed to establish a factual issue regarding whether a contract existed between the plaintiff and defendants. The documentary evidence shows that defendants were performing their duties pursuant to their relationship with the township by assisting with overall township planning, which included dealings with plaintiff and other township property owners. Plaintiff did not submit any affidavits, depositions, or other documentary evidence that established mutuality of agreement and obligation or a meeting of minds to assent to a contractual relationship between plaintiff and defendants. *Groulx, supra*. If anything, the documentary evidence presented by plaintiff established a contractual relationship between defendants and the township. For example, the invoices submitted by plaintiff reference an agreement between the township and defendants and show charges to the township by defendants for consulting services regarding a number of properties, including plaintiff's. Also, plaintiff submitted a letter from the township to him requesting reimbursement for costs incurred in reviewing his earlier rezoning request, pursuant to the requirements of a township ordinance. Because there was no evidence raising a question of fact regarding whether there existed a contractual relationship between plaintiff and defendant, the circuit court properly granted summary disposition to defendants on plaintiff's breach of contract claim. Likewise, because professional relationships are established by contract, see *Hill v Kokosky*, 186 Mich App 300, 302-303; 463 NW2d 265 (1990), the court properly granted summary disposition on plaintiff's professional malpractice claim as well.

Plaintiff next argues that the trial court erred in granting defendants' motion for summary disposition regarding his breach of fiduciary duty claim.

[A] fiduciary relationship arises from the reposing of faith, confidence, and trust and the reliance of one upon the judgment and advice of another. Relief is granted when such position of influence has been acquired and abused, or when confidence has been reposed and betrayed. [*Vicencio v Jaime Ramirez, MD, PC*, 211 Mich App 501, 508; 536 NW2d 280 (1995); citations omitted.]

Plaintiff contends that he placed his faith in defendants to advocate for his proposed land division before the planning commission, and that defendants betrayed plaintiff's trust. However, in the context of a claim that an attorney breached a fiduciary duty to a *nonclient*, the Supreme Court has stated as follows:

To claim breach of fiduciary duty, there must be a situation in which the nonclient *reasonably* reposed faith, confidence, and trust in the attorney's advice. As is apparent, it is unreasonable for a nonclient to repose confidence and trust in an attorney when any of the interests of the client and the nonclient are adverse. Moreover, this Court has repeatedly declined to recognize a fiduciary obligation running to a potentially adverse party because such a duty would necessarily "permeate all facets of the litigation" and have a significantly deleterious effect on the attorney's ability to make decisions for the benefit of his client. [*Beaty v Hertzberg & Golden*, 456 Mich 247, 260-261; 571 NW2d 716 (1997); emphasis added; citations omitted.]

Similarly, given the relationship between defendants and the township in this case, as shown by the documents submitted, plaintiff, a nonclient, could not *reasonably* repose faith, confidence, and trust in the defendants' advice because plaintiff's interests would be potentially adverse to the township's. Indeed, the potential for such a conflict of interest is raised in one of the documents submitted by plaintiff. Because the documentary evidence does not establish that defendants owed plaintiff a fiduciary duty, the circuit court properly granted defendants summary disposition with regard to plaintiff's claim for breach of fiduciary duty.

Finally, plaintiff claims that the trial court erred in granting defendants' motion for summary disposition regarding his fraud claim. In order to succeed in an action for fraud or misrepresentation, a plaintiff must establish:

(1) that the defendant made a material representation, (2) that the representation was false, (3) that when the defendant made the representation, it was known to be false, or was made recklessly, without any knowledge of its truth and was made as a positive assertion, (4) that the defendant made the representation with the intention that it should be acted on by the plaintiff, (5) that the plaintiff acted in reliance on it, and (6) that the plaintiff suffered damages as a result. [*H J Tucker & Associates, Inc v Allied Chucker & Engineering Co*, 234 Mich App 550, 572; 595 NW2d 176 (1999).]

“An action for fraudulent misrepresentation must be predicated on a statement relating to a past or existing fact.” *Eerdmans v Maki*, 226 Mich App 360, 366; 573 NW2d 329 (1997). “Future promises are contractual in nature and cannot constitute actionable fraud.” *Id.*

Plaintiff contends that defendant Charles W. Cairns falsely represented that he would fairly and accurately present plaintiff’s application to the planning commission and use his influence to gain the commission’s approval. However, even if plaintiff could show that the alleged statements were made and that they were false, such statements constitute future promises and thus cannot serve as the basis for a claim of fraud. Because plaintiff failed to provide any documentary evidence showing misrepresentation by defendants to plaintiff of past or existing facts, plaintiff’s claim fails. Accordingly, the trial court properly granted defendants’ motion for summary disposition as to plaintiff’s fraud claim.

Affirmed.

/s/ Richard A. Bandstra
/s/ Richard Allen Griffin
/s/ Jeffrey G. Collins