

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ERIC J. MCCANN,

Plaintiff-Appellant,

v

MICHIGAN STATE HOUSING  
DEVELOPMENT AUTHORITY,

Defendant-Appellee.

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UNPUBLISHED

December 18, 2001

No. 225763

Court of Claims

LC No. 99-017287-CM

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ERIC J. MCCANN,

Plaintiff-Appellant,

v

U.S. BANK and COMERICA BANK,

Defendants-Appellees.

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No. 226238

Oakland Circuit Court

LC No. 99-011823-CK

Before: Meter, P.J., and Jansen and Gotham\*, JJ.

PER CURIAM.

In these consolidated cases, plaintiff appeals as of right orders entered by the Court of Claims and the circuit court granting motions for summary disposition filed by defendants. We affirm in each case. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

In 1982, plaintiff, an attorney, purchased a Michigan State Housing Development Authority (MSHDA) capital appreciation bond. He paid \$25,000 for the bond, which if held to maturity on April 1, 1999 would have yielded \$200,000. Plaintiff supplied his office address for entry into the registry books. The bond was issued pursuant to a resolution that provided that the bond was subject to partial mandatory redemption in the years 1995 through 1998. The resolution provided that as long as the MSHDA deposited sufficient funds to effectuate a redemption, interest would cease to accrue on that portion of the bond recalled in each year.

\* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff's bond was called for partial redemption in the years 1995 through 1998. Each year, notice of the redemption was mailed to plaintiff at the address contained in the registry books. Plaintiff moved his office several times during that period; therefore, the notices were returned as undeliverable. In 1998, defendants conducted an Internet search for plaintiff and located his home address. Plaintiff tendered his bond on October 1, 1998 and received a check for \$111,774.98 and a bond worth \$45,000 at maturity on April 1, 1999. Plaintiff tendered the second bond at maturity and received \$45,000.

In January 1999, plaintiff filed suit in circuit court naming the MSHDA, Comerica Bank (the MSHDA's trustee/paying agent), and U.S. Bank (Comerica's successor), as defendants. He alleged that defendants committed breach of contract by failing to honor the terms of the original bond and that they acted in concert to defraud him of some \$45,000 in unpaid interest by refusing to provide proper notices of the partial redemptions. Plaintiff's claims against the MSHDA were transferred to the Court of Claims.

Both the Court of Claims and the circuit court granted summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). The courts found that the undisputed evidence showed that defendants sent notices to plaintiff at the address shown in the registry books. Furthermore, the courts found that defendants' stated obligation to send notice to the address shown in the registry books was not false.

We review a trial court's decision on a motion for summary disposition *de novo*. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Plaintiff argues that the Court of Claims and the circuit court erred by granting defendants' motions for summary disposition. We disagree and affirm in each case. A bond is a contract between the bondholder and the issuing authority. The bondholder cannot demand any remedy or enforcement beyond that provided by the terms of the bond. *Sessa v Macomb County*, 220 Mich App 279, 285-286; 559 NW2d 70 (1996). The bond resolution provided that plaintiff's bond was subject to mandatory partial redemptions in the years 1995 through 1998. In addition, the resolution provided that if the MSHDA deposited sufficient monies to fund the redemption, interest would cease to accrue on that portion of the bond redeemed in each year. It was undisputed both that the MSHDA deposited sufficient monies to fund the redemption for each year from 1995 through 1998 and that defendant banks complied with the notice provisions as specifically set out in the resolution. Prior to the issuance of a federal regulation requiring paying agents to conduct searches for lost security holders,<sup>1</sup> the banks had no obligation to take affirmative steps to search to determine if a new address could be located. See generally *Smith v Cliffs on the Bay Condominium Ass'n*, 463 Mich 420, 429; 617 NW2d 536 (2000). The lower courts properly granted summary disposition in favor of defendants on plaintiff's claim of breach of contract.

An allegation of fraud must be pleaded with particularity. MCR 2.112(B). To plead actionable fraud, it must be shown: (1) that the defendant made a material representation; (2) that the representation was false; (3) that the defendant knew that the representation was false

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<sup>1</sup> 17 CFR § 240.17Ad-17.

when he made it, or made it recklessly, without knowledge of its truth and as a positive assertion; (4) that the defendant intended that the plaintiff should act on the representation; (5) that the plaintiff acted in reliance on the representation; and (6) that the plaintiff sustained injury by so acting. *Kassab v Michigan Basic Property Ins Ass'n*, 441 Mich 433, 442; 491 NW2d 545 (1992). Plaintiff alleged that defendants refused to provide proper notice of the redemptions, notwithstanding their representations that they did so, and that they acted in concert to defraud him of some \$45,000. The undisputed evidence showed that the MSHDA complied with the bond resolution by depositing sufficient monies to fund the partial redemptions and that the banks complied with the resolution by sending notices to plaintiff at the address recorded in the registry books. Plaintiff has not shown that defendants made false representations. The lower courts properly granted summary disposition in favor of defendants on plaintiff's claim of fraud.

Affirmed.

/s/ Patrick M. Meter

/s/ Kathleen Jansen

/s/ Roy D. Gotham