

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

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ROBERT STEPHAN,

Plaintiff-Appellant,

V

MICHAEL KAHLER, and DEBORAH KAHLER,

Defendants-Appellants,

and

COLDWELL BANKER<sup>1</sup> SCHWEITZER REAL  
ESTATE, CAROLINE VESTOVICH, and MARY  
PARKS,

Defendants.

UNPUBLISHED

December 28, 2001

No. 226664

Oakland Circuit Court

LC No. 98-007902-CK

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Before: White, P.J., and Talbot and E.R. Post\*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's dismissal of his fraud and misrepresentation claims against defendants Michael and Deborah Kahler. The circuit court granted defendants' motion for summary disposition under MCR 2.116(C)(10), and denied plaintiff's motion for reconsideration of that ruling. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We conclude that there were genuine issues of material fact regarding whether defendants committed traditional common law fraud, innocent misrepresentation, and silent fraud<sup>2</sup> regarding the condition of the home they sold to plaintiff.

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<sup>1</sup> In a number of pleadings this defendant's company name is misspelled as CALDWELL BANKERS.

<sup>2</sup> This is how the circuit court characterized plaintiff's allegations, and plaintiff does not take issue with that characterization.

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

Common-law fraud requires a showing that the defendant made a material representation; the representation was false; the defendant knew that it was false when he made the representation or made it recklessly, without knowledge of its truth, as a positive assertion; the defendant made the representation with the intention that the plaintiff act on it; that the plaintiff acted in reliance on the representation; and that the plaintiff suffered damage. *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 687; 599 NW2d 546 (1999). “A claim of innocent misrepresentation is shown if a party detrimentally relies upon a false representation in such a manner that the injury suffered by the party inures to the benefit of the party who made the representation.” *M&D Inc v McConkey*, 231 Mich App 22, 27; 585 NW2d 33 (1998). A claim for silent fraud requires that a plaintiff show that the defendant made some type of false or misleading representation and that the defendant had a legal or equitable duty of disclosure. *Id.* at 31.

Viewed in a light most favorable to plaintiff, plaintiff presented evidence from which a reasonable fact-finder could conclude that defendants, who had owned the house in question for seven years, made material representations regarding the actual condition of the house that were false by stating in their seller’s disclosure statement that they had “corrected” the one problem they had had with water in the basement by caulking a broken seal around basement windows, and that they had “corrected” the one problem they identified regarding roof leaks, “flashing broken seal,” among other things,<sup>3</sup> that defendants knew such representations were false or made them recklessly, that defendants did so with the intention that plaintiff would act on them, and that plaintiff relied on those representations to his detriment.

The purchase agreement stated that the sellers agreed to keep the property in the same condition as of the date of the purchase agreement and maintain the property “except for any conditions that may have been disclosed in the Sellers Disclosure Statement, or conditions that may have been discovered by the Purchaser(s) as part of any inspections made.” The purchase agreement also stated that by executing the agreement, the purchaser acknowledged that he had examined the property and is satisfied with the physical condition of the structures therein in an “as is” condition”, “subject only to the right of a property inspection . . . **and the Seller’s Disclosure Statement.**” Under the seller disclosure act, MCL 565.951 *et seq.*, “each disclosure required by this act shall be made in good faith.” A reasonable fact-finder could have concluded that plaintiff buyer was entitled to rely on defendants’ statements in their seller’s disclosure statement, and that defendants had a duty to disclose under the seller disclosure act.

Plaintiff testified on deposition that when he walked through the house several times before purchasing it, including with an inspector, there was no evidence of recent leakage and it was not raining. Plaintiff testified that within days of taking possession of the house he found 32 leaks, including in the basement, and in the basement-grade garage, and that he later found the main roof of the house leaked as well. Plaintiff submitted photographs below evidencing the leaks and damage done by the leaks, and was questioned on deposition about damages he had

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<sup>3</sup> These include that the stove and dishwasher were in working order, and that the TV antenna, TV rotor and controls were in working order. Plaintiff testified on deposition that the dishwasher never worked, and was filled with stagnant sewage-type water, and that the two back burners on the stove did not work.

incurred as a result. Plaintiff's complaint alleged that he had expended \$26,145 to excavate and waterproof the foundation, \$434 to replace the dishwasher, and had incurred \$1,629.66 for water damage to his pool table and to purchase equipment for clean up of flood damage.

Reversed.

/s/ Helene N. White  
/s/ Michael J. Talbot  
/s/ Edward R. Post