STATE OF MICHIGAN

COURT OF APPEALS

FRANK P. MYSHOCK,

Plaintiff-Appellee,

and

PAULA MYSHOCK,

Plaintiff,

V

WILLIAM C. LONGNECKER and OLIVIA N. LONGNECKER,

Defendants-Appellants,

and

SAM LONGNECKER and GIO REALTY,

Defendants.

UNPUBLISHED
February 8, 2002

No. 226465
Monroe Circuit Court
LC No. 96-004372-CH

Before: Cooper, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment for plaintiff in the amount of $47,216.58, inclusive of interest and costs, following a jury trial. We affirm.

Plaintiffs purchased a house from defendants William and Olivia Longnecker. They subsequently commenced this action against William and Olivia Longnecker, as well as their son Sam Longnecker, to recover damages associated with alleged defects in the house. Sam Longnecker was thereafter dismissed from the case after the court determined that he had no privity of contract with plaintiffs. The case proceeded to trial on theories of misrepresentation, breach of contract, and negligence. Over defendants' objection, plaintiffs were permitted to advance an agency theory in connection with the negligence claim, i.e., that defendants were liable for any negligence by Sam Longnecker in his construction of the house because Sam was acting as an agent for defendants.

On appeal, defendants argue that the trial court erred in denying their motion for a new trial based on plaintiffs' presentation of the agency theory at trial. The decision whether to grant a new trial is addressed to the trial court's discretion, and the trial court's decision will not be reversed on appeal absent an abuse of that discretion. *Constantineau v DCI Food Equipment, Inc*, 195 Mich App 511, 514; 491 NW2d 262 (1992).

Defendants argue that the pleadings did not sufficiently indicate that plaintiffs would be pursuing a theory of liability against defendants based on an agency theory with respect to any negligent acts by Sam Longnecker and, therefore, the trial court erroneously allowed plaintiffs to argue such a theory, contrary to MCR 2.111(B)(1) and MCR 2.118(C)(2).

MCR 2.111(B)(1) provides that a complaint must contain

> [a] statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend.

MCR 2.118(C)(2) provides:

> If evidence is objected to at trial on the ground that it is not within the issues raised by the pleadings, amendment to conform to that proof shall not be allowed unless the party seeking to amend satisfies the court that the amendment and the admission of the evidence would not prejudice the objecting party in maintaining his or her action or defense on the merits. The court may grant an adjournment to enable the objecting party to meet the evidence.

First, it is apparent that MCR 2.118(C)(2) was not implicated because the court did not allow plaintiffs to amend their pleadings. Rather, the court determined that the agency theory was sufficiently raised in the complaint and, therefore, amendment was not necessary.

We likewise agree that MCR 2.111(B)(1) was not violated. Defendants contend that after the dismissal of Sam Longnecker from the action, the complaint failed to provide reasonable notice that plaintiffs would still be pursuing a theory of liability against them based on Sam's alleged negligence. Defendants maintain that once Sam Longnecker was dismissed, plaintiffs were obligated to amend their complaint to allege an agency theory.

A complaint must provide reasonable notice to opposing parties. *Dacon v Transue*, 441 Mich 315, 329; 490 NW2d 369 (1992). As the *Dacon* Court explained:

> This rule is designed to avoid two opposite, but equivalent, evils. At one extreme lies the straightjacket of ancient forms of action. Courts would summarily dismiss suits when plaintiffs could not fit the facts into these abstract conceptual packages. At the other extreme lies ambiguous and uninformative pleading. Leaving a defendant to guess upon what grounds plaintiff believes recovery is justified violates basic notions of fair play and substantial justice. Extreme formalism and extreme ambiguity interfere equivalently with the ability of the judicial system to resolve a dispute on the merits. The former leads to

> dismissal of potentially meritorious claims while the latter undermines a defendant's opportunity to present a defense. . . . Neither is acceptable. [*Id.* (citations and footnote omitted)]

In *Iron Co v Sundberg, Carolson & Associates, Inc*, 222 Mich App 120, 124; 564 NW2d 78 (1997), this Court further stated:

> Under Michigan's rule of general fact-based pleading, see MCR 2.111(B)(1), the only facts and circumstances that must be pleaded "with particularity" are claims of "fraud or mistake." MCR 2.112(B)(1). In other situations, MCR 2.111(B)(1) provides that the allegations in a complaint must state "the facts, without repetition, on which the pleader relies," and "the specific allegations necessary reasonably to inform the adverse party" of the pleader's claims. See *Dacon v Transue*, 441 Mich 315, 330; 490 NW2d 369 (1992). A complaint is sufficient under MCR 2.111(B)(1) as long as it "contain[s] allegations that are specific enough reasonably to inform the defendant of the nature of the claim against which he must defend." *Porter v Henry Ford Hosp*, 181 Mich App 706, 708; 450 NW2d 37 (1989); see also *Goins v Ford Motor Co*, 131 Mich App 185, 195; 347 NW2d 184 (1983).

In this case, we agree with the trial court that the complaint provided sufficient notice of the negligence claim to defendants because plaintiffs were not required to specifically recite that defendants' alleged liability was based on the conduct of an agent. See S*udworth v Morton*, 137 Mich 575, 577-578; 100 NW 769 (1904); *Iron Co, supra* at 124-125. Accordingly, the trial court did not abuse its discretion in allowing plaintiffs to proceed on an agency theory or in denying defendants' motion for a new trial.

Defendants also contend that the trial court erred in submitting a confusing verdict form to the jury. We have reviewed the form and, while it was lengthy, this was due to the differing theories of liability that were being pursued. We are satisfied, however, that it was not unduly confusing.

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard Allen Griffin
/s/ Henry William Saad