

STATE OF MICHIGAN
COURT OF APPEALS

JACKHILL OIL COMPANY,

Plaintiff-Counterdefendant-
Appellant,

v

CONLIN, McKENNEY, & PHILBRICK, P.C.,
PHILLIP BOWEN, and NEIL J. JULIAR,

Defendants-Counterplaintiffs-
Appellees.

UNPUBLISHED
February 12, 2002

No. 224930
Washtenaw Circuit Court
LC No. 97-003857-NM

Before: Bandstra, C.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Plaintiff, Jackhill Oil Company, appeals as of right the trial court's dismissal of its complaint in this action alleging fraud, fraudulent concealment, and breach of fiduciary duty and the court's denial of plaintiff's motion to amend the complaint post-summary disposition. We affirm.

This lawsuit was originally a legal malpractice suit that had its origins in defendants' representation of plaintiff in a Hillsdale Circuit Court lawsuit involving plaintiff's dispute with Powell Production, Inc., another venturer in an oil-drilling and exploration venture. The details of the joint venture and of the dispute over it are of little relevance to this lawsuit. However, one fact of relevance to this lawsuit involves a letter of intent signed by both parties apparently governing the terms of the joint venture and the way it was presented at trial. Plaintiff and defendants, as plaintiff's attorneys in that suit, were ordered to pay sanctions to Powell Production, Inc., for misconduct in withholding and misrepresenting the nature of the letter of intent.

Plaintiff thereafter filed a legal malpractice suit against defendants. The malpractice suit was dismissed on statute of limitation grounds. Plaintiff then sought to sue defendants for fraud. The alleged fraud consisted of defendants' withholding of the existence of the letter of intent during the Hillsdale suit not only from Powell but from plaintiff -- notwithstanding the fact that plaintiff had executed the document -- and that plaintiff, therefore, due to defendants' misconduct, did not even know that the letter of intent existed. Plaintiff averred that if it had known of the letter of intent it would have realized the weakness of its position in the underlying

litigation and been able to settle the Hillsdale suit on more favorable terms or would have incurred lesser litigation costs.

Plaintiff first argues that the trial court erred by not making more explicit findings regarding its denial of plaintiff's motion to amend its complaint pursuant to MCR 2.116(I)(5) after summary disposition was granted. Even where no such findings are made, reversal is not required if amendment would be futile. *Dowerk v Oxford Charter Twp*, 233 Mich App 62, 75-76; 592 NW2d 724 (1998). Amendment would clearly be futile here. In order to prevail on the proposed amended complaint plaintiff would have had to show that defendant concealed the letter of intent from plaintiff corporation. However, it is undisputed that one of plaintiff's directors signed the agreement that defendant allegedly concealed from plaintiff, that another director swore that he was aware of the agreement, and that plaintiff's president "at least glanced at the document." Corporate law is clear that the knowledge of directors is attributed to the corporation. *Gordon Sel-Way, Inc v Spence Bros, Inc*, 177 Mich App 116, 123-125; 440 NW2d 907 (1989).

Plaintiff also argues that the trial court erred by failing to take judicial notice of the order imposing sanctions in the Hillsdale Circuit Court suit.¹ We disagree. Assuming, without deciding,² that the Hillsdale Circuit Court proceedings are relevant to the present proceeding, the Hillsdale Circuit Court order was not even entered at the time the Washtenaw court made its rulings and, therefore, the trial court could not possibly have taken judicial notice of the order.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage

¹ Plaintiff gives the impression that the Hillsdale suit resulted not merely in a finding that both plaintiff and defendant were liable to a third party for misconduct, but also in a holding that plaintiff can recover from defendants for the misconduct. This is a complete misrepresentation of the Hillsdale Circuit Court ruling. Defendants were held to be liable with plaintiff to a third party for conduct that they perpetrated jointly.

² Plaintiff has not demonstrated that the Hillsdale Circuit Court proceedings, which decided whether these defendants concealed a document from Powell Productions, Inc., are relevant to whether these defendants concealed the document from this plaintiff.