STATE OF MICHIGAN

COURT OF APPEALS

NAZEM SAAD and HAYTHEM NAZEM SAAD,

Plaintiffs-Appellants,

v

HOMETOWN GROUP REAL ESTATE, INC., AHMAD MOUSSA and Y.M. ABDALLAH, a/k/a JOE ABDALLAH,

Defendants-Appellees,

and

MIKE EL-MALLAH,

Defendant.

UNPUBLISHED
June 28, 2002

No. 226764
Wayne Circuit Court
LC No. 98-826131-CZ

NAZEM SAAD and HAYTHEM NAZEM SAAD,

Plaintiffs-Appellees,

v

HOMETOWN GROUP REAL ESTATE, INC., AHMAD MOUSSA, and Y.M. ABDALLAH, a/k/a JOE ABDALLAH,

Defendants-Appellants,

and

MIKE EL-MALLAH,

Defendant.

No. 226845
Wayne Circuit Court
LC No. 98-826131-CZ

Before: Whitbeck, C.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

A jury returned a verdict in favor of plaintiff in this action arising from a real estate transaction. In Docket No. 226764, plaintiff appeals as of right the trial court order granting defendants'[1] motion for remittitur. In Docket No. 226845, defendants appeal as of right the order denying their motion for new trial and/or judgment notwithstanding the verdict (JNOV). We reverse and remand for entry of a judgment in favor of defendants.

Plaintiffs are the purchasers of a service station that was owned by Mike El-Mallah. Defendants are the real estate broker with whom El-Mallah listed the service station for sale and one of its sales agents, Joe Abdallah. After showing plaintiffs several service stations that were listed for sale, defendant Abdallah drafted a purchase offer for El-Mallah's service station. A purchase price of $200,000, with $100,000 to be held in escrow to pay specified debts and liens, was negotiated. Any monies remaining after payment of the debts and liens were to be paid to the seller. The offer to purchase also provided that the seller would provide a warranty deed at closing.

At closing, plaintiffs discovered that the debts and liens on the property totaled approximately $170,000. They also discovered that the seller's wife had not signed the warranty deed. Despite these defects, plaintiffs completed the closing of the property.

Plaintiffs thereafter filed suit against the seller and defendants. Pertinent to this appeal is plaintiffs' claims against defendants for negligence, breach of fiduciary duty, and emotional distress. Plaintiffs alleged that defendants performed their fiduciary duties negligently by failing to ensure that all closing documents, including the warranty deed, were properly executed and recorded, by failing to procure a proper warranty deed at closing, by failing to complete a reasonable investigation, by advising plaintiff to pay $200,000 to the seller, by failing to confirm that the property had no more than $100,000 in encumbrances, by failing to advise plaintiff to obtain title insurance, and by failing to advise plaintiff not to purchase the stock of the business.

Following a jury trial, the jury returned a verdict in favor of plaintiffs in the amount of $233,000. The trial court entered an order granting defendants' motion for remittitur in the amount of $66,750.24.[2]

Both parties have raised issues on appeal. We find one issue to be dispositive of this case.

Defendants argue that the trial court erred by denying defendants' motion for JNOV because defendants are seller's agents and owed no duties to plaintiffs as buyers. A trial court's decision to grant or deny a motion for JNOV is reviewed de novo. *Attard v Citizens Ins C. of*

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[1] The term "defendants" refers to Hometown Group Real Estate, Inc., Ahmad Moussa, and Y.M. Abdallah. Defendant Mike El-Mallah was never served with process and was not involved in the proceedings below or on appeal.

[2] It is unclear how the trial court arrived at this figure.

America, 237 Mich App 311, 321; 602 NW2d 633 (1999); citing *Farm Credit Services of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 672; 591 NW2d 438 (1998).

Plaintiffs' claims of negligence and breach of fiduciary duty require, among other elements, that defendants owed plaintiffs a duty. *Schultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993). Plaintiffs essentially alleged that defendants breached a duty to correctly handle the real estate transaction. Duty is "a question of whether the defendant is under any obligation for the benefit of a particular plaintiff," *id.* at 449-450, and the existence of a legal duty is a question of law. *Oja v Kin*, 229 Mich App 184, 187; 581 NW2d 739 (1998).

Real estate brokers are agents of the seller and owe the seller fiduciary duties. *Andrie v Chrystal-Anderson*, 187 Mich App 333, 335; 466 NW2d 393 (1991).[3] The relationship "between the seller's agent and the potential buyer is a commercially antagonistic one, with each side working for his best advantage and not the benefit of the other." *Id.* at 337. Because the seller's agent is not working to benefit the buyer in any manner, there is no duty between the seller's agent and the buyer. Accordingly, defendants did not owe any duties to plaintiffs. *Lakeside Oakland Development, LC v H & J Beef Co*, 249 Mich App 517, 530; ___ NW2d ___ (2002). Judgment notwithstanding the verdict is therefore appropriate on plaintiffs' negligence and breach of fiduciary duty claims.[4] In light of this conclusion, we need not address any of the remaining issues.

Reversed and remanded for entry of judgment in favor of defendants. Jurisdiction is not retained.

/s/ William C. Whitbeck
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey

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[3] There is no dispute that defendants had a listing agreement with the seller and, therefore, were seller's agents. MCL 339.2517. Plaintiffs did not produce any documentary evidence to support their assertion that defendants were acting as dual agents. Joseph Abdallah testified that defendants were exclusively seller's agents and that plaintiffs were advised to consult with an attorney. Absent a broker-client relationship between the buyer and the agent, there is no breach of a duty to uphold professional real estate standards by the agent.

[4] Because the claim for emotional distress stems from the negligence and breach of duty claims, judgment notwithstanding the verdict is appropriate on this claim as well.