

STATE OF MICHIGAN
COURT OF APPEALS

MORGAN MANAGEMENT COMPANY, L.L.C.
and JOYCELYN THOMPSON,

UNPUBLISHED
July 16, 2002

Plaintiffs/Counterdefendants-
Appellees,

V

DEBRA MCGINNIS,

No. 231832
Wayne Circuit Court
LC No. 99-909024-CH

Defendant/Counterplaintiff-
Appellant.

Before: Gage, P.J., and Cavanagh and Wilder, JJ.

PER CURIAM.

Plaintiff Joycelyn Thompson, president of plaintiff entity Morgan Management Company, L.L.C., loaned defendant money that defendant utilized to make a down payment toward the purchase of residential real estate. Plaintiffs filed a lawsuit alleging various counts on the basis of defendant's failure to repay the loan. Defendant filed a countercomplaint asserting first, that plaintiffs had slandered her title to the real estate by filing a fraudulent lien on the property, second, that plaintiffs fraudulently misrepresented the terms of the loan, and third, that plaintiffs violated the Michigan Consumer Protection Act, MCL 445.901 *et seq.* Defendant appeals as of right the trial court's order granting plaintiffs summary disposition of defendant's countercomplaint, and the court's separate order granting plaintiffs summary disposition regarding their original complaint. We affirm.

Defendant first contends that the trial court improperly granted summary disposition of her countercomplaint's slander of title count. This Court reviews de novo the trial court's summary disposition ruling. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Plaintiffs sought summary disposition pursuant to MCR 2.116(C)(8) and (10). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim on the basis of the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted. The motion must be granted if no factual development could justify the plaintiff's claim for relief. A motion pursuant to MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. A court considering the motion must consider the pleadings, affidavits, depositions and other relevant documentary evidence submitted in the action to determine whether any genuine issue of material fact exists to warrant a trial. *Spiek, supra*.

To establish an action for slander of title, the plaintiff must prove that the defendant maliciously published false statements that disparaged a plaintiff's right in property, causing special damages. *B & B Investment Group v Gitler*, 229 Mich App 1, 8; 581 NW2d 17 (1998). Malice may not be inferred merely from the filing of an invalid lien; the plaintiff must show that the defendant knowingly filed an invalid lien with the intent to cause the plaintiff injury. *Stanton v Dachille*, 186 Mich App 247, 262; 463 NW2d 479 (1990).

The lien that plaintiffs had filed on defendant's property claimed the right to \$27,500 "for the initial investment made by Morgan Management, Corp. plus one half (1/2) of the current market value, less the First Mortgage that the property holds." In her countercomplaint, defendant alleged that plaintiffs "improperly caused a false and fraudulent claim of lien to be filed against the . . . property . . . for the sole purpose of placing a cloud on the title to prevent the purchase of the same by any other person and/or to prevent the Defendant from refinancing her property." Defendant asserted that plaintiffs' actions caused her "injuries" and entitled her to more than \$25,000 and "such other relief including costs, attorney fees, as a result of plaintiff[s] tortious conduct."

Thompson and defendant testified consistently at their depositions to their agreement that plaintiffs would provide defendant the money necessary to make the down payment and pay the closing costs for the house (\$28,600), plaintiffs would pay for repairs to the house, and plaintiffs and defendant would split 50/50 the profit generated when the house was resold.¹ While the parties at some point contemplated the possibility that defendant might herself live in the house, Thompson's un rebutted testimony established that defendant agreed she still would repay plaintiffs their anticipated investment and profit if she remained in the house. Defendant acknowledged that she never repaid plaintiffs any of the money that she received. In light of the undisputed facts regarding the parties' agreement, which plaintiffs' claim of lien accurately reflected, defendant failed to establish that plaintiffs knowingly filed an invalid lien with the intent to cause her injury. *Stanton, supra*. We further note that beyond a mere allegation regarding the amount of attorney fees defendant incurred during the lawsuit, defendant provided no documentation whatsoever regarding any specific special damages. Accordingly, we conclude that the trial court properly granted plaintiffs summary disposition of defendant's slander of title claim pursuant to MCR 2.116(C)(10).

Defendant next argues that the trial court erred in dismissing her countercomplaint for fraud. Defendant suggested that Thompson induced defendant to move into the house she purchased and live there herself on the basis of an agreement that defendant could "reimburse [plaintiffs'] loan upon an immediate re-finance of the subject property." According to defendant, she purchased the property in reliance on Thompson's representations and "secured refinancing as originally agreed; however, [Thompson] refused to accept the reimbursement and otherwise demanded an interest in the real estate and other usurious amounts of interest on the loan."

To establish an action for fraud or misrepresentation, a plaintiff must allege that (1) the defendant made a material representation, (2) the representation was false, (3) when the

¹ Defendant apparently purchased the house at a price (\$125,000) below market value, which the seller offered because defendant was a single mother.

defendant made the representation, it was known to be false, or was made recklessly, without any knowledge of its truth and was made as a positive assertion, (4) the defendant made the representation with the intention that it should be acted on by the plaintiff, (5) the plaintiff acted in reliance on it, and (6) the plaintiff suffered damages as a result. *H J Tucker & Assoc's, Inc v Allied Chucker & Engineering Co*, 234 Mich App 550, 571-572; 595 NW2d 176 (1999). Michigan also recognizes fraud in the inducement, which occurs where a party materially misrepresents future conduct under circumstances in which the assertions may reasonably be expected to be relied on and are relied on. *Samuel D Begola Serv's, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). General allegations will not suffice to state a fraud claim, and mere speculations are insufficient to overcome a motion for summary disposition. *LaMothe v Auto Club Ins Ass'n*, 214 Mich App 577, 586; 543 NW2d 42 (1995).

Even assuming that Thompson made a material misrepresentation regarding her willingness to accept repayment of the money she had loaned defendant through defendant's obtaining of a second mortgage on the property, defendant created no genuine issue of fact with respect to her reliance on it. While defendant's countercomplaint asserts that she relied on such a misrepresentation in borrowing money from plaintiffs and purchasing the property, the deposition testimony of Thompson and defendant agrees that no discussion regarding the possibility of defendant living in the home herself and seeking a second mortgage to repay plaintiff occurred until after the closing date on which defendant finalized the property's purchase.² Because the undisputed facts demonstrate that defendant did not rely on a misrepresentation when she decided to purchase the house, we conclude that the trial court properly granted plaintiffs summary disposition of defendant's fraud countercomplaint pursuant to MCR 2.116(C)(10).³

We also conclude that the trial court properly dismissed pursuant to MCR 2.116(C)(10) defendant's counterclaim premised on the Michigan Consumer Protection Act because defendant simply provided no evidence to support her allegations. Plaintiffs undisputedly arranged for defendant to obtain a mortgage that defendant utilized to purchase the property. Furthermore, the undisputed facts reflect that defendant approached Thompson for the loan she needed to close on the property, offering Thompson half the profits of a resale of the house after the making of

² Defendant testified that "[t]he day after the closing, I informed [Thompson] that I was going to live in the house and what do I need to do to get her money back to her. She told me to get a second mortgage."

³ Defendant also suggested before the trial court that plaintiffs forged defendant's signature on a promissory note and quitclaim deed that reflected plaintiffs' investment in the property. Plaintiffs filed the allegedly forged documents with their complaint. To the extent that defendant mentions the allegedly forged documents within the fraud count of her countercomplaint, we note that no fraud claim exists with respect to these documents because defendant failed to explain that she took any action in reliance on the documents. We further note that defendant failed to provide any documentary evidence or applicable law supporting her assertions, in her brief in opposition to summary disposition, that "Plaintiffs [sic] representation that they were acting as Defendants [sic] mortgage broker was a false statement relied upon by the Defendant where in reality Plaintiff was attempting to be co-purchaser of the property," or that plaintiffs committed fraud by filing "a lawsuit seeking to recover a rate of interest that is illegal in the State of Michigan."

certain repairs. We reiterate that in their deposition testimony both defendant and Thompson agreed regarding the terms of this deal. Accordingly, we find wholly lacking support in the record defendant's allegations that plaintiffs (1) "failed to reveal the true nature of a short term personal loan which was orally agreed upon," (2) "failed to reveal [the mortgage lending company's] lack of honesty, skill and trustworthiness," and (3) failed to explain "that [plaintiffs were] attempting to obtain an interest in Defendant[]'s property or profit from a false and usurious temporary loan of funds."⁴ Furthermore, any suggestion by defendant that plaintiffs did not possess a real estate broker's license forms no basis for a violation of MCL 445.903 because defendant fails to allege or demonstrate that she was misled regarding the status of plaintiffs' license or explain how she might have relied to her detriment on the existence of a license.

Defendant lastly contends that the trial court improperly resorted to equitable relief and circumvented "the fact-finding job of the jury to determine fair market value" of the property when the court granted judgment for plaintiffs with respect to their breach of contract claim and appointed an appraiser to determine the property's value.

After the trial court granted summary disposition with respect to defendant's counterclaims, plaintiffs filed a subsequent motion for summary disposition regarding the counts of their complaint. The trial court granted plaintiffs summary disposition with respect to the issue of defendant's liability, explaining as follows at the motion hearing:

The Court is satisfied with respect to the pleadings in front of me that there is no material fact in dispute with respect to the terms of the agreement between the parties in which the Plaintiff was going to front the initial closing costs for the benefit of the Defendant to purchase this home and then they would resell it at the current market value 50/50. That suggests to me, because both parties admitted to those terms, that there was going to be a profit. . . .

⁴ Defendant also argued in her brief in opposition to summary disposition that plaintiffs violated the Michigan Consumer Protection Act by forging defendant's signature on the promissory note and quitclaim deed plaintiffs filed with their complaint. We note, however, that beyond this allegation, defendant failed to produce any documentary evidence substantiating either that she did not sign the documents, or that plaintiffs signed defendant's name on the documents. Defendant presented only the deposition testimony of Toni Vickers, an employee of plaintiffs, who signed the allegedly fraudulent quitclaim deed as a witness before observing defendant herself sign the document. Vickers initially testified that the quitclaim deed was one of the several documents in a folder that defendant signed on the day of her closing, but later conceded that she could not "definitively say [the quitclaim deed] was in the file." Defendant also provided deposition testimony of the notary who signed both the quitclaim deed and the promissory note. The notary acknowledged that she had notarized the documents before defendant signed them, and that she did not witness defendant sign the documents. The notary explained that she notarized the documents on the basis of Thompson's representation that defendant had signed them. While defendant produced further evidence that Thompson apparently filled in the quitclaim deed blanks for the date and the addresses where the recorded deed and subsequent property tax bills should be sent, defendant produced absolutely no evidence that anyone other than herself signed the quitclaim deed or promissory note.

The Court is interested in appointing its own appraiser. *The Court is going to grant judgment in favor of Plaintiff on the contract where there are no material facts in dispute And the Court is doing that based on the claim of lien and the Defendant's deposition testimony.* The Court is going to have this appraiser give the Court a fair market value, if possible, from the date that the lien was filed. Defendant will be required then to pay the Plaintiff, 1) the initial investment, which you can pay into escrow today. And then 50% of the difference in the purchase price to the fair market value based on the number. *If we want to have an issue that I think is ripe for purposes of damages to go to the jury, then that's fine, but at this rate we're going to do one step at a time.* [Emphasis added.]

The trial court's order granting summary disposition, pursuant to MCR 2.116(C)(9) and (10), expressed that the court "finds Judgment in favor of Plaintiffs in equity based on Plaintiff[s'] . . . claim of lien and the deposition testimony of Defendant satisfying this Court that there are no material facts in dispute."

Irrespective whether the trial court finally characterized its grant of relief as "in equity based on the lien" or on the basis of the parties' contract, our review of the record convinces us that the trial court properly granted summary disposition for plaintiffs pursuant to MCR 2.116(C)(10). As we have repeatedly observed, Thompson's and defendant's deposition testimony agreed regarding the terms of the parties' bargain. The parties did not dispute that plaintiffs loaned defendant \$28,600 to purchase the property or that Thompson and defendant agreed to split equally any profits from a resale of the house. Defendant never repaid plaintiffs any money after deciding to remain in the house herself. Furthermore, defendant never expressed any disagreement with the trial court's decision to appoint an appraiser, the appraiser's valuation of the house,⁵ or the court's ultimate decision awarding plaintiffs one-half of the difference between the appraised value and the sale price of the house. See *Farm Credit Services of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 684; 591 NW2d 438 (1998) (explaining that error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence).

Because defendant failed to raise any genuine issues of material fact regarding the terms of the parties' agreement or the amount of plaintiffs' damages, we cannot conclude that the trial court erred in entering judgment for plaintiffs as a matter of law pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ Hilda R. Gage
/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder

⁵ The court-appointed appraiser determined that at the time plaintiffs filed their claim of lien with respect to defendant's property, the property had a value of \$154,000.