

STATE OF MICHIGAN
COURT OF APPEALS

KIRK R. VERCNOCKE and DEBORAH
VERCNOCKE,

UNPUBLISHED
June 15, 2004

Plaintiffs/Counterdefendants-
Appellants/Cross-Appellees,

v

No. 245422
Oakland Circuit Court
LC No. 02-038296-CH

RANDALL STUBBS and LORRAINE STUBBS,

Defendants/Counterplaintiffs-
Appellees/Cross-Appellants.

Before: Fitzgerald, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal as of right the opinion and order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) in this action alleging claims of fraudulent misrepresentation and silent fraud arising from the sale of a home. Defendants cross-appeal, challenging the trial court's denial of their request for sanctions pursuant to MCR 2.625 and MCL 600.2591. We affirm.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Trost v Buckstop Lure Co*, 249 Mich App 580, 583; 644 NW2d 54 (2002). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Lewis v LeGrow*, 258 Mich App 175, 192; 670 NW2d 675 (2003). In reviewing a motion under MCR 2.116(C)(10), this Court must consider the available pleadings, affidavits, depositions, and other documentary evidence in a light most favorable to the nonmoving party and determine whether the moving party was entitled to judgment as a matter of law. *Michigan Ed Employees Mut Ins Co v Turow*, 242 Mich App 112, 114; 617 NW2d 725 (2000).

To establish a prima facie claim of fraudulent misrepresentation, a plaintiff must prove that (1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth or falsity, and as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act on it; (5) the plaintiff acted in reliance on the representation; and (6) the plaintiff suffered damage. *Campbell v Sullins*, 257 Mich App 179, 195; 667 NW2d 887 (2003).

Under the doctrine of silent fraud, a seller of real property may be held liable to a buyer for failing to disclose material defects in the property or its title. Such a claim also requires that the plaintiff act in reliance and suffer injury. *McMullen v Joldersma*, 174 Mich App 207, 212-213; 435 NW2d 428 (1988). Moreover, in order for the suppression of information to constitute silent fraud there must be a legal or equitable duty of disclosure. *United States Fidelity & Guarantee Co v Black*, 412 Mich 99, 125; 313 NW2d 77 (1981); *M & D, Inc v McConkey*, 231 Mich App 22, 31; 585 NW2d 33 (1998).

We conclude that the trial court properly dismissed plaintiffs' claims because plaintiffs failed to establish a genuine issue of material fact with regard to the element of reliance. Reliance is an element of both of plaintiffs' claims. To be actionable, the reliance must be reasonable, and there can be no fraud where a person has the means to determine that a representation is not true. *Nieves v Bell Industries, Inc*, 204 Mich App 459, 464; 517 NW2d 235 (1994); *Novak v Nationwide Mutual Ins Co*, 235 Mich App 675, 690; 599 NW2d 546 (1999).

Here, the inspection provision in the parties' purchase agreement establishes that plaintiffs did not rely on defendants' alleged statements, but rather sought an independent assessment of the condition of the property. Moreover, this Court has recognized that integration clauses vitiate any reliance on representations not included in the contract. See *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 504; 579 NW2d 411 (1998); *Novak, supra* at 689-691. In this case, the existence of a valid integration clause made it unreasonable for plaintiffs to rely on any alleged representations not expressly included in the purchase agreement. Accordingly, the trial court properly entered summary disposition in defendants' favor.

On cross-appeal, defendants argue that plaintiffs' complaint was frivolous and, therefore, the trial court erred in denying their request for sanctions pursuant to MCR 2.625(A)(2) and MCL 600.2591(3). We review the trial court's decision for clear error. *Attorney General v Harkins*, 257 Mich App 564, 575; 669 NW2d 296 (2003). The mere fact that plaintiffs did not ultimately prevail does not render their complaint frivolous. *Kitchen v Kitchen*, 465 Mich 654; 641 NW2d 245 (2002). We are not persuaded that the trial court clearly erred in determining that sanctions for filing a frivolous lawsuit were not warranted.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot