

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD KRANIAK,

Plaintiff-Appellant,

v

ROBERT A. FOX,

Defendant-Appellee.

UNPUBLISHED

August 2, 2005

No. 253162

Wayne Circuit Court

LC No. 03-330252-CH

Before: Borrello, P.J., and Bandstra and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arises out of earlier litigation in which plaintiff sued defendant, a second individual, and Prophet Productions, Ltd. (Prophet). After trial commenced, but before the jury began deliberating, the parties entered into a settlement agreement in which Prophet agreed to pay plaintiff \$587,500, payable in six installments. With two payments totaling \$125,000 remaining, Prophet filed for bankruptcy. Plaintiff then initiated the instant suit alleging fraud and asserting that when defendant executed the settlement agreement, individually and on behalf of Prophet, he had no present intention of performing the promises set forth therein. The trial court granted summary disposition in favor of defendant under MCR 2.116(C)(8), on the basis that plaintiff had failed to state a claim upon which relief could be granted.

We review de novo a trial court's grant or denial of summary disposition to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion for summary disposition under MCR 2.116(C)(8) "tests the legal sufficiency of the complaint," *id.* at 119, and a movant is entitled to summary disposition if "[t]he opposing party has failed to state a claim on which relief can be granted." All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the non-moving party, and "[a] motion under MCR 2.116(C)(8) may be granted only where the claims alleged are 'so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.'" *Id.*, quoting *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992).

Plaintiff contends that corporate agents may be found personally liable if they make fraudulent representations that induce another party to enter into a contract with the corporation. Plaintiff further asserts that our Supreme Court's holdings in *Triplett v St Amour*, 444 Mich 170; 507 NW2d 194 (1993), and *Daoud v De Leau*, 455 Mich 181; 565 NW2d 639 (1997), do not apply to the facts of this case and, therefore, do not require this Court to affirm the trial court order.

"It is beyond question that a corporate employee or official is personally liable for all tortious or criminal acts in which he participates, regardless of whether he was acting on his own behalf or on behalf of the corporation." *Attorney General v Ankersen*, 148 Mich App 524, 557; 385 NW2d 658 (1986). Consequently, it would have been error for the trial court to have dismissed plaintiff's complaint on the ground that he failed to state a claim for fraud because defendant was acting as a corporate officer at the time of the alleged misrepresentation. But rather than granting defendant's motion for this reason, the trial court correctly held that plaintiff's sole remedy was to seek relief from the order of dismissal entered at the time of the settlement agreement.

In *Triplett*, *supra* at 172, the alleged tortfeasor in a previous action, his employer, and its insurer brought an independent action for fraud seeking money damages based on a fraudulently induced settlement agreement. The defendant had misrepresented the cause of her shoulder injuries and convinced the plaintiffs to enter into a settlement agreement. *Id.* at 173-174. Our Supreme Court determined that the plaintiffs' interests and the goal of deterring fraud were outweighed by the need for finality in judgments, and declined to adopt a new cause of action, holding that the plaintiffs' only option was to move to rescind the settlement agreement under MCR 2.612(C). *Id.* at 176-177.

Contrary to plaintiff's arguments on appeal, the facts in *Triplett* mirror those of this case. Plaintiff contends that he agreed to settle a lawsuit against defendant's company based on a promise that he would receive a series of payments from the corporation. But plaintiff alleges that the promise constituted a misrepresentation and that defendant never intended to have the company make all of the payments. Like the plaintiffs in *Triplett*, the essence of plaintiff's claim is that defendant's misrepresentations fraudulently induced him to enter a settlement agreement in the initial litigation. Based on our Supreme Court's ruling in *Triplett*, *supra* at 176-177, plaintiff cannot bring an independent cause of action regarding defendant's representations, and his remedies are limited to seeking relief from the order dismissing the earlier litigation. Consequently, the trial court did not err in granting defendant's motion for summary disposition.

Further, our Supreme Court's holding in *Daoud* does nothing to alter this result. There, the plaintiff filed suit for fraud alleging that his parental rights had been terminated because of perjured testimony. *Daoud*, *supra* at 182. In affirming the trial court order dismissing the plaintiff's claim, our Supreme Court stated:

In the end, the rule of *Triplett* is that a second suit for fraud, based on perjury ("intrinsic fraud"), may not be filed against a person involved in a first suit, if the statutes and court rules provide an avenue for bringing the fraud to the attention of the first court and asking for relief there. Whether a second suit is allowed in other circumstances is a question not presented in *Triplett* or in this case. [*Id.* at 203.]

Plaintiff's argument that this holding limited the application of *Triplett* to cases involving perjury is without merit. Intrinsic fraud is defined as "a fraud within the cause of action itself." *Sprague v Buhagiar*, 213 Mich App 310, 314; 539 NW2d 587 (1995). Examples include "perjury, . . . discovery fraud, fraud in inducing a settlement, or fraud in the inducement or execution of the underlying contract." *Id.* Rather than limiting the rule from *Triplett*, the *Daoud* Court merely applied the rule to perjury, the specific type of intrinsic fraud at issue. *Daoud* reaffirmed *Triplett* and requires dismissal of plaintiff's complaint in the instant case.

We affirm.

/s/ Stephen L. Borrello
/s/ Richard A. Bandstra
/s/ Kirsten Frank Kelly