

STATE OF MICHIGAN  
COURT OF APPEALS

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VIRGINIA A. ORMANIAN and NORMA  
ASTOURIAN,

UNPUBLISHED  
September 27, 2005

Plaintiffs-Appellants/Cross-  
Appellees,

v

No. 256424  
Wayne Circuit Court  
LC No. 03-334304-CZ

DETROIT ENTERTAINMENT, LCC, d/b/a  
MOTOR CITY CASINO, MGM GRAND  
DETROIT, LLC, and GREEKTOWN CASINO,  
LLC,

Defendants-Appellees/Cross-  
Appellants.

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Before: Fitzgerald, P.J., and Meter and Owens, JJ.

PER CURIAM.

Plaintiffs appeal as of right, and defendant casinos cross appeal, from the trial court's order granting summary disposition to defendants. We affirm.

The trial court granted defendants' motion for summary disposition under MCR 2.116(C)(8) on the ground that MCL 432.225(14) barred plaintiffs' claims. That statute provides: "This act does not create any right or cause of action on behalf of the individual whose name is placed on the list of disassociated persons against the state of Michigan, the board, or a casino licensee."

We review de novo a grant of summary disposition under MCR 2.116(C)(8). *Adair v Michigan*, 470 Mich 105, 119; 680 NW2d 386 (2004).

Each of plaintiffs' claims is plainly based on MCL 432.225 because, without that statute, there would be no list of disassociated persons.<sup>1</sup> Each of plaintiffs' claims stems from that list

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<sup>1</sup> We will hereafter refer to this list as the "disassociation list." In connection with requesting to be placed on the dissociation list, a person is statutorily required to sign a form expressing  
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and, thus, the claims are barred by the clear and unambiguous language of MCL 432.225(14). See *Costa v Community Emergency Medical Services, Inc*, 263 Mich App 572, 582-583; 689 NW2d 712 (2004) (when a statute is clear and unambiguous, it is improper to analyze legislative intent beyond the plain meaning of the statute).<sup>2</sup>

In particular, it is without question that plaintiffs' claims that are expressly based on defendants' breach of a statutory duty are barred, and even assuming, arguendo, that plaintiffs' remaining claims are not barred by MCL 432.225(14), defendants were entitled to summary disposition in their favor regarding those claims.

First, plaintiffs' breach of contract claims are predicated on plaintiffs' being intended third-party beneficiaries to "contracts" between defendants and the Michigan Gaming Control Board (the Board). However, it is manifest from plaintiffs' complaint that the only alleged "contracts" being relied on by plaintiffs were licensing agreements between defendants and the Board in connection with the Board's having granted defendants licenses to operate their casinos. Contrary to the premise of plaintiffs' argument, the licensing agreements do not constitute contracts, because they are merely part of a statutorily mandated process that requires defendants to apply to the Board to be licensed to operate their casinos and the Board to grant those licenses if defendants meet the requisite eligibility requirements. In particular, MCL 432.206(1) provides, in part, that "[t]he board shall issue a casino license to a person who applies for a license," who pays certain fees, and "who the board determines is eligible and suitable to receive a casino license under this act and the rules promulgated by the board." Thus, because the Board's conduct in connection with the licensing agreements was part of fulfilling its mandatory statutory duty to issue such licenses, the licensing agreements did not constitute contracts. The Board's fulfillment of its preexisting statutory duty did not involve the necessary consideration to support the existence of a contract. See *General Aviation, Inc v Capital Region Airport Authority (On Remand)*, 224 Mich App 710, 714-715; 569 NW2d 883 (1997) (holding that a "pledge to undertake a preexisting statutory duty is not supported by adequate consideration" and thus could not support a breach of contract claim).

With regard to plaintiffs' claims of fraudulent misrepresentation, even if they are not barred by MCL 432.225(14), defendants were still entitled to summary disposition concerning those claims because plaintiffs have failed to plead their claims with specificity. MCR 2.112(B)(1) provides that allegations of fraud "must be stated with particularity." See also *Iron Co v Sundberg, Carlson & Associates, Inc*, 222 Mich App 120, 124; 564 NW2d 78 (1997). Plaintiffs merely assert that defendants made representations regarding their future use of the disassociation list and that defendants "knew at the time they made these representations that

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agreement to a criminal complaint for trespass being filed against the person if he or she enters a casino in Michigan and to the confiscation by the Michigan Gaming Control Board of any money the person wins in a casino. MCL 432.225(4)(e)(i) and (ii). Presumably, a purpose of MCL 432.225 is to provide problem gamblers with a strong disincentive to participate in casino gambling.

<sup>2</sup> Plaintiffs' argument to the effect that MCL 432.225(4)(d), by requiring a person wishing to be placed on the disassociation list to sign a release, somehow limits the force of MCL 432.225(14) is without merit.

they had no intention of enforcing or abiding by the list.” Plaintiffs give no specific indication of their basis for claiming that defendants knew they were making false representations. Thus, defendants were entitled to summary disposition with regard to plaintiffs’ fraudulent misrepresentation claims because they were not pleaded with particularity.

Finally, in their breach of right-to-privacy claims, plaintiffs claim that (1) defendants “unnecessarily published” plaintiffs’ names on the disassociation list and (2) invaded their privacy by using the list to obtain the information that plaintiffs had gambling addictions. First, the claim that defendants unnecessarily published plaintiffs’ names is lacking any specific indications regarding how or to whom defendants allegedly improperly published the names. Therefore, we conclude that plaintiffs have not adequately stated a claim, because conclusory statements are insufficient to state a cause of action. See *Churella v Pioneer State Mutual Ins Co (After Remand)*, 258 Mich App 260, 272; 671 NW2d 125 (2003).

Second, with respect to the claim that defendants invaded plaintiffs’ privacy by essentially obtaining personal information from the disassociation list, MCL 432.225(7) and (10) expressly require that the disassociation list be provided “to each casino licensee,” i.e., to defendants, and that defendants keep a computer record of each individual on that list. Accordingly, there was no tortious invasion of plaintiffs’ privacy based on defendants’ learning that plaintiffs were on the disassociation list and thus presumably were addicted or problem gamblers. Indeed, plaintiffs obviously had no right to keep that information from defendants when MCL 432.225(7) expressly requires that it be provided to defendants. Thus, plaintiffs cannot establish an invasion of privacy claim by way of their so-called “intrusion upon seclusion” theory, because a reasonable person could not find it objectionable for defendants to follow the statutory mandate to obtain the information from the disassociation list. See *Lewis v LeGrow*, 258 Mich App 175, 193; 670 NW2d 675 (2003), quoting *Doe v Mills*, 212 Mich App 73, 88; 536 NW2d 824 (1995) (noting that one element of an invasion of privacy claim based on “intrusion upon seclusion” is “the obtaining of information about that subject matter through some method objectionable to a reasonable man”).

In light of our conclusion that the trial court properly granted summary disposition to defendants, we need not reach the additional issues raised by defendants on cross appeal.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Patrick M. Meter

/s/ Donald S. Owens