STATE OF MICHIGAN

COURT OF APPEALS

ROCHELLE DANIEL, Plaintiff-Appellant,	UNPUBLISHED March 13, 2012
v	No. 301563 Oakland Circuit Court
PUBLIC STORAGE INCORPORATED, Defendant-Appellee.	LC No. 2009-102855-CK

Before: STEPHENS, P.J., and CAVANAGH and SAAD, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant summary disposition and dismissing her remaining claims in this contract dispute. We affirm.

On appeal, plaintiff argues that the trial court erred in granting summary disposition to defendant on her breach of contract and silent fraud claims. We disagree.

"This Court reviews de novo a trial court's decision on a motion for summary disposition." *Cedroni Assoc v Tomblinson, Harburn Assoc*, 290 Mich App 577, 584; 802 NW2d 682 (2010). Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), which applies to the factual support for a party's cause of action. See *id*. When reviewing a motion for summary disposition brought under MCR 2.116(C)(10), this Court considers the pleadings, affidavits, and other evidence in the light most favorable to the nonmovant. *Id*. A motion for summary disposition should be granted "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). A genuine issue of material fact exists when "reasonable minds could differ . . . after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

This case involves a rental agreement under which plaintiff rented a storage unit at defendant's facility. The agreement explicitly states that plaintiff was storing her property at her own risk, that defendant bore no responsibility for any damage to property stored in the unit, and that plaintiff had viewed the unit and found it satisfactory. The agreement also contains an integration clause providing that defendant disclaims any warranties, representations, or guarantees not specifically made in the agreement. Neither party alleges that this agreement is invalid. This suit arises from plaintiff's allegation that her unit was defective and her door did not close completely, which caused damage to the property she had stored in the unit.

First, plaintiff has failed to create an issue of fact with respect to her breach of contract claim. Plaintiff's amended complaint alleges that defendant did not repair her unit's left side after she complained, did not repair her unit's right side after a snow plow left a large opening there, and did not tell her that her property was exposed to the elements. With respect to the claim about the left side of her unit, the record bears uncontroverted evidence that defendant did try to make a repair. Plaintiff was told to leave a key with defendant's manager so a contractor could access her unit and make any necessary repairs. Plaintiff refused. At this time, defendant also offered plaintiff a different storage unit, which plaintiff refused.

With respect to the right side of plaintiff's unit, plaintiff provides no evidence that defendant actually knew of any damage to her unit caused by a snow plow before it repaired the unit in January of 2010. Plaintiff herself did not report a problem, as she also alleges that defendant breached the rental agreement by failing to tell her that her property was exposed. Plaintiff argues that defendant breached paragraph eight of the rental agreement, which she says gives discretion to defendant regarding whether to repair a unit. In fact, paragraph eight merely gives defendant and government authorities the right, but not the obligation, to remove the unit's locks when there is an emergency or to make repairs when the tenant refuses to grant access. This provision itself does not give rise to a breach of contract, and does not, in fact, say what plaintiff alleges.

Second, plaintiff's claim, that defendant breached the duty of good faith and fair dealing, has no legal basis. Michigan does not recognize a common law cause of action for breach of an implied covenant of good faith and fair dealing without a valid underlying claim for breach of contract. *In re Leix Estate*, 289 Mich App 574, 591; 797 NW2d 673 (2010); *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 476; 666 NW2d 271 (2003). As discussed above, there is no underlying breach of contract claim here.

Plaintiff's silent fraud claim was also properly dismissed. To establish a claim for silent fraud, "the plaintiff must prove that the defendant knew of a material fact but concealed or suppressed the truth through false or misleading statements or actions and with the intent to deceive." *Roberts v Saffell*, 280 Mich App 397, 405; 760 NW2d 715 (2008). In addition, a party's concealment of the truth constitutes silent fraud only when he has a legal or equitable duty to disclose. *Id.* at 404.

Plaintiff's silent fraud claim alleged that defendant knew, and failed to inform plaintiff, that plaintiff's storage unit was built on a hill and so the door would never properly close due to faulty design and construction. However, plaintiff has provided no evidence that defendant knew of a defect with her unit and intentionally concealed the truth through false or misleading statements. Plaintiff claims that in December of 2006, she was told by the facility's manager that the unit was built on a hill and so the door would never be able to close properly. However, there is no evidence that defendant knew of a problem with the unit in April of 2004, when it rented the unit to plaintiff. In fact, when plaintiff reported a problem, it appears that defendant made a good-faith effort to examine and repair the unit. However, the contractor could not access the unit because plaintiff refused to leave her key at the facility. Defendant also offered plaintiff a different unit, but plaintiff refused.

Plaintiff alleges that because the facility existed for 20 years, defendant must have known that the unit door was defective. However, she presents no evidence that defendant had previous problems or complaints with respect to that unit. Plaintiff also clearly had the right, per the rental agreement, to examine the unit prior to signing the rental agreement. She claims that she was never shown the unit, yet she signed the agreement clause stating that she viewed it and found it satisfactory. Plaintiff again had the opportunity to view the unit when she moved her property in at some point in 2004. However, she made no complaint of a defect at that time, presumably because there was no defect evident. Instead, it appears from the evidence that the defect was not discovered by anyone, including defendant, until plaintiff made a complaint in September of 2006.

Additionally, the rental agreement unambiguously provides that defendant bears no responsibility for any loss from any cause, unless the loss is a direct result of defendant's fraud, willful injury, or willful violation of law. The agreement also includes an integration clause which states, in part, that "there are no representations, warranties, or agreements by or between the parties which are not fully set forth herein." Defendant made no representations in the agreement guaranteeing that plaintiff's property would be completely protected from the elements, but rather explicitly stated that she stored her property at her own risk. Consequently, it would be unreasonable for plaintiff to rely on any alleged representations that were not part of the rental agreement.

Plaintiff also argues that the trial court erred in denying her leave to amend her complaint to add a claim that defendant violated the Michigan Consumer Protection Act (MCPA). We disagree.

This Court reviews a trial court's decision regarding leave to amend a complaint for abuse of discretion, and will only reverse when that abuse of discretion resulted in injustice. *PT Today Inc v Comm'r of Fin and Ins Servs*, 270 Mich App 110, 142; 715 NW2d 398 (2006). A court has abused its discretion when its decision falls outside the range of reasonable and principled outcomes. *In re Kostin Est*, 278 Mich App 47, 51; 748 NW2d 583 (2008).

A court should generally grant leave to amend a complaint. See MCR 2.118(A)(2); *PT Today*, 270 Mich App at 142-143; *Franchino v Franchino*, 263 Mich App 172, 189-190; 687 NW2d 620 (2004). A request to amend should be denied only for particularized reasons, "including undue delay, bad faith or a dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party, or futility." *PT Today*, 270 Mich App at 143. The failure of a trial court to identify its reasons for denying leave to amend requires reversal, unless amendment would be futile. *Id*. "An amendment would be futile if (1) ignoring the substantive merits of the claim, it is legally insufficient on its face, (2) it merely restates allegations already made; or (3) it adds a claim over which the court lacks jurisdiction." *Id*.

In the instant case, the trial court did not specify its reasons for denying plaintiff leave to amend her complaint to add a claim that defendant violated the MCPA. However, this failure does not require reversal because plaintiff's MCPA claim would have been futile. Her MCPA claim essentially restated her silent fraud claim, which was properly dismissed. Both plaintiff's silent fraud and MCPA claims rested on her allegation that defendant failed to reveal the fact that

the storage unit was structurally defective. This allegation implies that defendant knew of a defect and had a duty to disclose it. As discussed above, plaintiff's silent fraud claim was properly dismissed because there were no genuine issues of material fact; it would be futile to allow her to restate her silent fraud claim as a claim that defendant violated the MCPA.

Finally, plaintiff argues that the trial court's order granting defendant summary disposition with respect to her breach of contract claim is void because defense counsel committed a fraud upon the court. We disagree.

On appeal, plaintiff argues that defendant's second motion for summary disposition included false and misleading statements of fact and defense counsel intimidated and interrupted the trial court at the motion hearing. Plaintiff did not raise these arguments below, so this issue was not properly preserved. This Court reviews unpreserved issues for plain error affecting substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

MCR 2.612(C)(1)(c) provides that a court can "relieve a party or the legal representative of a party from a final judgment, order, or proceeding" on the grounds of "[f]raud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party." A fraud upon the court occurs "when some material fact is concealed from the court or some material misrepresentation is made to the court." *Matley v Matley*, 242 Mich App 100, 101; 617 NW2d 718 (2000).

There is no evidence that defense counsel intimidated the trial court judge or influenced her ruling. At the hearing on defendant's second motion for summary disposition, defense counsel presented his case before the court and did not speak again until the court granted the motion and requested that an order be submitted. There is no indication that he interrupted or intimidated the court in any way. There is also no evidence in the lower court record that defendant concealed any material facts from the court.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Henry William Saad