

STATE OF MICHIGAN
COURT OF APPEALS

CHARTER TOWNSHIP OF WHITE LAKE,

Plaintiff/Counter-Defendant-
Appellee,

v

AZAC HOLDINGS, L.L.C.,

Defendant/Counter-Plaintiff-
Appellant,

and

BRIGHTON COMMERCE BANK,

Defendant.

UNPUBLISHED
February 21, 2013

No. 305294
Oakland Circuit Court
LC No. 2010-108675-CC

Before: K. F. KELLY, P.J., and MARKEY and FORT HOOD, JJ.

PER CURIAM.

In this condemnation action, defendant AZAC Holdings, L.L.C. (AZAC), appeals by right the trial court's order granting summary disposition to plaintiff White Lake Township (White Lake) on AZAC's countercomplaint. We affirm.

On February 16, 2010, White Lake's township board authorized the acquisition of a temporary construction easement over property that AZAC owned on the basis that the easement was necessary to construct township utilities that crossed the property. White Lake issued a declaration of taking, made a written offer of just compensation for the temporary easement, and informed AZAC that it could move for court review of the necessity for the easement within 21 days of service of the complaint. AZAC and Brighton Commerce Bank, which held an interest in the property, answered the complaint, denying the necessity of the taking and alleging that the compensation offered was not just. AZAC also moved the court to review the necessity for the easement, but it then withdrew the motion. The circuit court subsequently entered an order granting the temporary easement, requiring the township treasurer to pay the interested parties a proportionate share of the estimated just compensation, and informing AZAC and the bank that they could challenge the estimated compensation.

With its answer to White Lake's complaint, AZAC filed a countercomplaint, asserting claims for a taking without just compensation, "coercion contract," fraud, and misrepresentation. AZAC alleged that it had begun development and construction on the property in September 2005. During the construction, White Lake required AZAC to pay for and install sewage, water, and drainage systems. AZAC alleged it paid in excess of \$400,000 for this installation, but White Lake required AZAC to sell the systems to the township for \$1 before White Lake would issue a certificate of occupancy. AZAC alleged that this was an illegal taking, that White Lake had interfered with AZAC's business and ability to lease its premises and had coerced AZAC to enter into a sales contract. AZAC also alleged claims for fraud and misrepresentation, arguing that White Lake made false statements to AZAC regarding the necessity of selling the installed systems for less than fair market value and that AZAC relied on the false statements when it agreed to sell the systems for \$1.

White Lake moved for summary disposition under MCR§ 2.116(C)(8) and MCR 2.116(C)(10) arguing: (1) that AZAC failed to state a claim for an illegal taking because, as a matter of law, it had no right to compensation for construction and connection of its office building to the public water and sewer systems or for its grant of easements allowing White Lake access to those underground utilities for maintenance, repairs, and future extensions; (2) that AZAC failed to state a claim for a coercion contract because AZAC did not identify any unlawful act by White Lake in connection with the review and approval of AZAC's development of the property; and (3) that AZAC failed to state claims for fraud or misrepresentation because it did not allege circumstances that would constitute fraud, and its allegations were factually and legally insufficient. White Lake also sought summary disposition under MCR 2.116(C)(7) on the grounds that AZAC's claims were barred by the applicable statute of limitations and by governmental immunity.

In its response to White Lake's motion for summary disposition, AZAC maintained that during the construction phase, White Lake required AZAC to employ various contractors whose services were unnecessary and duplicative of work AZAC had performed. AZAC alleged that White Lake would not issue a certificate of occupancy unless AZAC not only granted an easement for its water and sewer lines but also sold those lines to White Lake for \$1. AZAC argued that it was not complaining about being forced it to connect to public water and sewage lines, but it was challenging for both the forced sale of its water and sewage lines to White Lake below market value and having to hire and pay White Lake's friends for the construction project. AZAC maintained that it brought the countercomplaint seeking just compensation for those lines and for the money White Lake required AZAC to pay its friends. The trial court granted summary disposition to White Lake on all of AZAC's claims.

This Court reviews a trial court's grant or denial of summary disposition de novo. *Gillie v Genesee Co Treasurer*, 277 Mich App 333, 344; 745 NW2d 137 (2007).

The taking of private property by a government entity without just compensation is prohibited by both the federal and state constitutions. US Const, Am V; Const 1963, art 10, § 2. The Takings Clause is "designed not to limit the governmental interference with property rights

per se, but rather to secure *compensation* in the event of otherwise proper interference amounting to a taking.” *Lingle v Chevron USA, Inc*, 544 US 528, 537; 125 S Ct 2074; 161 L Ed 2d 876 (2005) (emphasis in original; citation omitted). All takings cases require a case-specific inquiry. *K & K Constr, Inc v Dep’t of Natural Resources*, 456 Mich 570, 576; 575 NW2d 531 (1998).

In *Chelsea Investment Group LLC v City of Chelsea*, 288 Mich App 239; 792 NW2d 781 (2010), this Court outlined the tenets underlying condemnation law in light of the takings clauses but noted that other types of government action, short of physically taking private property, can also amount to an unconstitutional taking. Governmental regulations may so overburden a property that a compensable taking occurs. *Id.* at 261. Whether a regulatory taking has occurred requires balancing “(1) the character of the government’s action, (2) the economic effect of the regulation on the property, and (3) the extent by which the regulation has interfered with distinct, investment-backed expectations.” *Id.* (citations omitted). “The relevant inquiries regarding the character of the government’s action is whether it singles [a] plaintiff[] out to bear the burden for the public good and whether the regulation being challenged ‘is a comprehensive, broadly based regulatory scheme that burdens and benefits all citizens relatively equally.’” *Cummins v Robinson Twp*, 283 Mich App 677, 720; 770 NW2d 421 (2009) (citation omitted). Just compensation is intended to return the property owner to as good a position as if the property not been taken. *Dep’t of Transp v VanElslander*, 460 Mich 127, 129; 594 NW2d 841 (1999). “The public must not be enriched at the property owner’s expense, but neither should the property owner be enriched at the public’s expense.” *Id.*

AZAC challenges two of White Lake’s ordinances, Ordinance 22, § 4.7, and Ordinance 108, § 4.05, arguing that White Lake relied on these ordinances in forcing AZAC to convey its water and sewer lines for \$1. AZAC acknowledges that the ordinances do not require that the conveyance be “without just compensation.” It does argue, however, that that is what White Lake “forced upon AZAC.” But these ordinances were neither cited in AZAC’s countercomplaint or in opposition to White Lake’s motion for summary disposition, nor were they were relied upon by White Lake or the trial court. In granting summary disposition, the trial court relied on Ordinance No. 22, § 3.3, “Water System Ownership and Surety Bond,” which provides, in pertinent part:

Any new water system, extension and/or any portion thereof constructed by any persons, firms, associations and/or corporations shall have the ownership of said system, extension and/or portion transferred to the Charter Township of White Lake, Oakland County, Michigan by the appropriate legal conveyances upon satisfactory completion of all necessary inspections by the Township and prior to the system, extension and/or portion thereof being placed in service. . . .

When the trial court inquired about the appropriate sewer ordinance, it was directed to Ordinance 108, § 3.05, “Required Connection to Public Sanitary Sewer Systems,” and § 4.02, “Permits for Connection.” Section 3.05 provides, in pertinent part:

A. All new structures in which sanitary sewage originates lying within the Township shall be connected to an available public sanitary sewer in the Township before a certificate of occupancy shall be issued if such a sewer exists.

No sewer connection shall be installed or made without a permit having been issued by the Township or its agents. Where required the applicant shall provide the Township with a permanent access easement in form approved by, and executed by all individuals with an interest in the property, as determined by the Township attorney.

Section 4.02 provides:

No sewer connection shall be installed or made without a permit having been issued by the Township or its agents. Where required the applicant shall provide the Township with a permanent access easement in form approved by, and executed by all individuals with an interest in the property, as determined by the Township attorney.

AZAC acknowledges that White Lake properly could require AZAC to connect to the township's public water and sewer systems pursuant to its ordinances and relevant case law. AZAC maintains that the actual issue is whether a municipality can force the property owner to grant title to the lines without just compensation. AZAC maintains that it received only \$1 for its property and in addition was "forced to pay thousands of dollars to the 'friends' of White Lake," which AZAC maintains constitutes an illegal taking without just compensation.

We conclude that the trial court did not err in granting summary disposition on AZAC's takings claim. As the trial court noted, AZAC went into the construction project "with notice of the ordinances that required the dedication and the granting of easements for those utilities so that the township could assume . . . their rightful duty to maintain" the utilities. AZAC's president, Christopher Trainor, an attorney, signed the easements granted to White Lake, which stated that the consideration for the easements was \$1. Whether White Lake's ordinances are unique or unusual is not relevant because AZAC had notice of White Lake's requirements. Michigan law is well settled that ordinances are presumed valid, and the party challenging the ordinance has the burden of rebutting that presumption. *Detroit v Qualls*, 434 Mich 340, 364; 454 NW2d 374 (1990). White Lake's ordinances are intended to promote public health and welfare through publicly owned and maintained water and sewer systems. AZAC has not shown that it was treated differently from any other property owner in similar circumstances. The ordinances requiring permanent easements do not burden the property as a whole but only the sanitary and water systems. Therefore, we find no error in the trial court's grant of summary disposition to White Lake on this claim.

The trial court rejected AZAC's claim that it was coerced to contract by the mere fact that it was required to comply with the ordinance. We agree. "[A]llegations of coercion, like other contract defenses of mistake, duress, and fraud, must be proven by the party seeking to avoid the contract on such grounds." *Morris v Metriyakool*, 418 Mich 423, 440; 344 NW2d 736 (1984). Coercion is comparable to the defense of duress, which "exists when one, by the unlawful act of another, is induced to make a contract or perform some act under circumstances which deprive him of the exercise of free will." *Knight v Brown*, 137 Mich 396, 398; 100 NW 602 (1904)(citation omitted). "In order to void a contract on the basis of economic duress, the wrongful act or threat must deprive the victim of his unfettered will." *Hungerman v McCord Gasket Corp*, 189 Mich App 675, 677; 473 NW2d 720 (1991).

AZAC focuses on allegedly being forced to pay contractors chosen by White Lake to perform tasks such as surveying and drafting. Although AZAC names contractors it alleges were friends of White Lake that it was forced to hire, AZAC provides no specifics of how or when it was coerced to hire these contractors and how much the contractors were paid. Further, AZAC has not alleged or argued that any illegal activity occurred that coerced it to hire certain contractors. AZAC failed to state a cogent legal claim, and White Lake was entitled to summary disposition under MCR 2.116(C)(8). See *Gillie*, 277 Mich App at 344.

Finally, the trial court did not err in granting summary disposition to White Lake on AZAC's claims for fraud and misrepresentation. AZAC failed to plead facts in support of these claims. To provide sufficient notice of a claim, the complaint must set forth the "allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend[.]" MCR 2.111(B)(1); see also *Johnson v QFD, Inc*, 292 Mich App 359, 368; 807 NW2d 719 (2011). To establish fraud or misrepresentation, a plaintiff must show that: (1) the defendant made a material misrepresentation that was false; (2) the defendant knew at the time the statement was made that it was false or made the statement recklessly and without knowing whether it was true or false; (3) the defendant intended that the plaintiff would act upon the misrepresentation; (4) the plaintiff acted in reliance on the misrepresentation; and (5) the plaintiff suffered damages. *Arim v Gen Motors Corp*, 206 Mich App 178, 195; 520 NW2d 695 (1994). Claims of fraud must be pleaded with particularity, although "conditions of mind may be alleged generally." MCR 2.112(B); see also *Groves v Dep't of Corrections*, 295 Mich App 1, 8; 811 NW2d 563 (2011).

In its countercomplaint, AZAC alleged that White Lake made false statements regarding the necessity of selling the installed water, sewage, and drainage systems for less than fair market value, either knowing that the statements were false, without regard to their falsity, or without knowing that the statements were false, and that AZAC relied on the statements. AZAC did not indicate who allegedly made the statements, to whom the statements were allegedly made, or when the statements were allegedly made. Even at the hearing on White Lake's motion for summary disposition, AZAC's attorney could not provide the specifics of the fraud claims, stating only that unspecified individuals affiliated with White Lake made fraudulent statements that White Lake did not have to pay just compensation for the water and sewage easements. AZAC maintained that it properly asserted claims for fraud and misrepresentation because unnamed individuals had misstated White Lake's ordinances and the constitution.

We agree with the trial court that AZAC failed to state its claim for fraud and misrepresentation with sufficient particularity to give notice to White Lake of what allegedly false statements it was being called on to defend. Furthermore, even if AZAC had specified who made the statements, when they were made, and to whom they were made, AZAC had notice of White Lake's ordinances, as well as the state and federal constitutions. AZAC did not allege how it relied to its detriment on any such statements. AZAC failed to state a claim for fraud and misrepresentation, and the trial court did not err in granting summary disposition to White Lake.

We affirm. As the prevailing party, plaintiff White Lake may tax costs pursuant to MCR 7.219.

/s/ Kirsten Frank Kelly

/s/ Jane E. Markey

/s/ Karen M. Fort Hood