

STATE OF MICHIGAN
COURT OF APPEALS

ELMER G. PEELMAN,

Plaintiff-Appellee,

v

JEFFREY GOULD and LOIS GOULD,

Defendant-Appellants.

UNPUBLISHED
November 15, 2012

No. 306712
Saginaw Circuit Court
LC No. 10-010542-CZ

Before: TALBOT, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

Jeffrey and Lois Gould (“the Goulds”) appeal as of right the trial court’s grant of summary disposition¹ in favor of Homer J. Peelman² in this equitable action involving rescission of a purchase agreement for real property based on fraud in the inducement. We reverse and remand.

We review a trial court’s decision on a motion for summary disposition de novo.³ A motion brought “under MCR 2.116(C)(10) tests the factual sufficiency of the complaint.”⁴ This Court reviews a motion under this subsection “by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party.”⁵

¹ MCR 2.116(C)(10).

² Elmer G. Peelman is the brother of the original plaintiff Homer J. Peelman. Homer passed away on November 26, 2011, and this Court granted Elmer’s motion to be substituted as plaintiff on May 22, 2012. *Peelman v Gould*, unpublished order of the Court of Appeals, entered May 22, 2012 (Docket No. 306712).

³ *Steinmann v Dillon*, 258 Mich App 149, 152; 670 NW2d 249 (2003).

⁴ *BC Tile & Marble Co, Inc v Multi Bldg Co, Inc*, 288 Mich App 576, 582; 794 NW2d 76 (2010).

⁵ *Comerica Bank v Cohen*, 291 Mich App 40, 45; 805 NW2d 544 (2010), quoting *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008) (quotation marks omitted).

“When the record leaves open an issue on which reasonable minds could differ, a genuine issue of material facts exists that precludes summary disposition.”⁶

The Goulds argue that the trial court erred when it granted summary disposition in favor of Peelman. We agree.

Peelman filed a complaint “to set aside conveyance of real property.” Review of the record reveals that Peelman is alleging that rescission is proper based on fraud in the inducement.⁷ Fraud in the inducement “occurs where a party materially misrepresents future conduct under circumstances in which the assertions may reasonably be expected to be relied upon and are relied upon.”⁸ “[A]t the option of the defrauded party[,]” a contract entered into because of fraud in the inducement is rendered “voidable.”⁹ To demonstrate fraud in the inducement, the following elements must be shown:

- (1) the defendant made a material misrepresentation;
- (2) the representation was false;
- (3) when the defendant made the representation, the defendant knew that it was false . . . ;
- (4) the defendant made the representation with the intention that the plaintiff would act upon it;
- (5) the plaintiff acted in reliance upon it; and
- (6) the plaintiff suffered damage.¹⁰

Assuming *arguendo* that Peelman has established all of the other elements of fraud in the inducement, Peelman has failed to demonstrate that when the Goulds made the representation that he could reside on the property for the remainder of his life, they knew the representation was false. Although the Goulds purchased the home at a reduced price, the Goulds did not terminate Peelman’s tenancy immediately after the property was purchased. Rather, Peelman resided on the property for one year after the execution of the purchase agreement. The purchase agreement states that the option to reside on the property was for Peelman only. In opposition to Peelman’s motion, the Goulds provided an affidavit which indicates that their reason for seeking Peelman’s eviction was because there were other individuals residing with him on the property in violation of the purchase agreement. Peelman disputes that the language of the purchase agreement limited the occupancy of the property to him only. That notwithstanding, because there was evidence presented that the Goulds’ attempted eviction of Peelman was based on his alleged failure to comply with the purchase agreement, a genuine issue of material fact exists regarding whether the Goulds intended to permit Peelman to reside on the property for the

⁶ *Fries v Mavrick Metal Stamping, Inc*, 285 Mich App 706, 713; 777 NW2d 205 (2009).

⁷ *Johnston v Livonia*, 177 Mich App 200, 208; 441 NW2d 41 (1989) (“[T]his Court is not bound by plaintiff’s choice of labels for [his] action because this would exalt form over substance.”)

⁸ *Custom Data Solutions, Inc v Preferred Capital, Inc*, 274 Mich App 239, 242-243; 733 NW2d 102 (2006) (citation and quotation marks omitted).

⁹ *Samuel D Begola Servs, Inc v Wild Bros*, 210 Mich App 636, 640; 534 NW2d 217 (1995).

¹⁰ *Custom Data Solutions, Inc*, 274 Mich App at 243 (citations and quotation marks omitted).

remainder of his life at the time the representation was made.¹¹ Accordingly, the trial court erred when it granted summary disposition in Peelman's favor.¹²

Because the above analysis is dispositive, we need not address the Goulds' remaining argument.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Jane M. Beckering
/s/ Michael J. Kelly

¹¹ *Fries*, 285 Mich App at 713.

¹² Peelman's argument that the Goulds' intent to deceive and defraud is established by the fact that the option to reside was omitted from the warranty deed is unpersuasive. The language contained in the deed suggests that Peelman or someone acting on his behalf prepared the deed.