

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL P. FEINBERG and JUDITH L. HARP-
FEINBERG,

UNPUBLISHED
September 17, 1996

Plaintiffs-Appellants,

v

No. 169901
LC No. 92-232095

ANDRUS REAL ESTATE CO, d/b/a THE
PRUDENTIAL GROSSE POINTE REAL ESTATE
CO, and DELORES ZAMBONI,

Defendants-Appellees,

and

J. DENNIS ANDRUS, DOUGLAS E. ANDRUS,
CARLA M. MILLER, JAMES VEIT, BEVERLY J.
VEIT, and JOHN D. DYLE, d/b/a PROPERTY
INSPECTION CONSULTANTS,

Not Participating.

Before: Marilyn Kelly, P.J., and Gribbs and W. E. Collette,* JJ.

PER CURIAM.

Plaintiffs appeal the circuit court order granting summary disposition for defendants. We affirm.

Plaintiffs argue that the trial court erred in finding no genuine issue of fact as to plaintiffs' claim for misrepresentation. We disagree. The elements of a claim for fraudulent misrepresentation are (1) the defendant made a material representation, (2) it was false, (3) the defendant knew it was false when made, or made it recklessly, without knowledge of its truth and as a positive assertion, (4) it was made with the intention to induce reliance by the plaintiff, (5) the plaintiff acted in reliance upon it, and (6) the plaintiff thereby suffered injury. *Hungerman v McCord Gasket*, 189 Mich App 675, 677-678; 473

* Circuit judge, sitting on the Court of Appeals by assignment.

NW2d 720 (1991). In this case, although plaintiffs told defendant Zamboni, a real estate agent, that they were looking for a house in the Parcels “district”, plaintiff Daniel Feinberg acknowledged that defendant Zamboni never represented to plaintiffs that the house was within the Parcels attendance area. There is no evidence that defendant Zamboni knew that the house was not within the attendance area for Parcels Middle School. Nor is there any evidence that defendant Zamboni recklessly misled plaintiffs about the house. The record shows that the house was within a mile of Parcels school, and that the daughter of the former owner attended Parcels school at one time. Summary disposition was properly granted.

There is no merit to plaintiffs’ claim that defendant Zamboni, the sellers’ real estate agent, was acting as plaintiffs’ agent. The fact that defendant Zamboni showed plaintiffs several houses and did what she could to effectuate a sale is not sufficient to establish an agency relationship. There is no evidence here that defendant Zamboni discouraged plaintiffs from seeing other agents or that she made any affirmative statements to show her intent to take care of them. See *Grandchamp v Patzer*, 39 Mich App 350, 352-353; 197 NW2d 537 (1972). Defendant Zamboni’s duty, as a real estate agent, was to the seller. *Andre v Chrystal-Anderson*, 187 Mich App 333, 335; 466 NW2d 393 (1991).

There is no merit to plaintiffs claim that summary disposition was improperly granted as to their cause of action for violation of the Michigan Occupational Code, MCL 339.101 et seq; MSA 18.425(101) et seq. As noted previously, there was no evidence of misrepresentation in this case to sustain plaintiffs’ claim. Because there was no evidence that defendant Zamboni intentionally or recklessly misled plaintiffs in this case, we need not consider whether a private cause of action exists under the occupation code.

Nor do plaintiffs have a cause of action under the Michigan Consumer Protection Act, MCL 445.903, MCL 445.904; MSA 19.418(3), MSA 19.418(4). Even assuming arguendo that the conduct complained of is not exempted from application of the consumer protection act, there is no evidence in this case to support plaintiffs’ claim.

Finally, because we find no evidence of knowing or reckless misrepresentation, and because plaintiffs failed to present any evidence of injury, we find summary disposition was proper as to the existence of damages.

Affirmed.

/s/ Marilyn Kelly
/s/ Roman S. Gribbs
/s/ William E. Collette