STATE OF MICHIGAN

COURT OF APPEALS

SANDRA LOGAN, IRVIN YAROCH and BONNIE YAROCH,

Plaintiffs-Appellants,

v

BLUE WATER TITLE COMPANY and NATIONAL SECURITY TITLE INSURANCE AGENCY, INCORPORATED,

Defendants-Appellees.

UNPUBLISHED
October 1, 1996

No. 185053
LC No. 94-481393-CP

Before: Reilly, P.J., and Sawyer and W.E. Collette,* JJ.

PER CURIAM.

Plaintiffs Sandra Logan and Irvin and Bonnie Yaroch appeal by right the order granting summary disposition to defendants Blue Water Title Company and National Security Title Insurance Agency, Inc. We affirm.

Plaintiffs brought suit alleging that defendants defrauded them and violated the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.*; MSA 19.418(1) *et seq.*, when they required plaintiffs to pay allegedly unauthorized processing and escrow fees in connection with the closings on plaintiffs' purchases of real estate. The trial court granted defendants' motions for summary disposition pursuant to MCR 2.116(C)(8) and (10), finding that the MCPA was inapplicable as a matter of law and that plaintiffs had failed to state a claim for fraud.

The trial court did not err in granting defendants' motions for summary disposition. MCL 445.904(1); MSA 19.418(4)(1) provides that "a transaction or conduct specifically authorized under laws administered by a regulatory board . . . acting under statutory authority of this state" is exempt from the scope of the MCPA. Furthermore, MCL 445.904(2)(a); MSA 19.418(4)(2)(a) provides that the MCPA "does not apply to an unfair, unconscionable, or deceptive method, act, or practice that is

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

made unlawful by . . . Chapter 20 of the insurance code of 1956." Thus, even assuming, as plaintiffs contend, that defendants engaged in unfair or deceptive practices, if the charging of allegedly unauthorized closing fees can be characterized as an unfair, unconscionable or deceptive practice that is made unlawful by the insurance code, the MCPA does not apply. The insurance commissioner is specifically authorized by MCL 500.2043; MSA 24.12043 "to stop any unfair method of competition or practice which may be otherwise undefined." Defendants are unquestionably engaged in the business of insurance, and the acts plaintiffs complain of are alleged to be unfair and deceptive. Consequently, the MCPA is inapplicable because any unfair or deceptive practice defendants may have engaged in is subject to supervision and review by the insurance commissioner under § 2043 of the insurance code. See *Kekel v Allstate Ins Co*, 144 Mich App 379, 386-387; 375 NW2d 455 (1985); *Dagen v Hastings Mutual Ins Co*, 166 Mich App 225, 227 n 3; 420 NW2d 111 (1987).

Plaintiffs' reliance on *Attorney General v Diamond Mortgage Co*, 414 Mich 603; 327 NW2d 805 (1982), is misplaced. Plaintiffs in this case raise the identical arguments rejected by this Court in *Kekel*, *supra* at 384. Plaintiffs have cited no authority for their proposition that the insurance code is only applicable to policy interpretation questions between insurer and insured. On the contrary, such a holding would be in direct contravention of the express language of § 2043 of the insurance code, which provides that the insurance commissioner may investigate *any* unfair or deceptive practice. For the same reason, *Price v Long Realty, Inc*, 199 Mich App 461; 502 NW2d 337 (1993), is inapposite to the instant case. There is no position of authority in the real estate industry comparable to the insurance commissioner's; while some of the activities of real estate agents and brokers are regulated by the occupational code, MCL 339.101 *et seq.*; MSA 18.425(101) *et seq.*, that statute does not confer upon the real estate licensing board the broad powers enjoyed by the insurance commissioner under MCL 500.2028; MSA 24.12028 and MCL 500.2043; MSA 24.12043. *Kekel*, *supra*, is dispositive with regard to this issue.

Moreover, plaintiffs failed to state a claim for fraud where they did not identify any material misrepresentation in the settlement statement provided to them prior to closing. Plaintiffs have offered no argument to refute the trial court's statement that they "are the masters of their own contract and can determine in advance of the closing that certain fees will not be assessed to the buyer." The affidavit of the Yarochs' attorney, stating that purchasers have no realistic opportunity to object to payment of the fee at closing, is of questionable value. As an attorney professed to be experienced in real estate transactions and in possession of the knowledge that title companies commonly charge certain fees to purchasers of real estate, the attorney should have advised his clients to insist early on that the purchase agreement contain a provision that the sellers pay all closing or processing fees charged by the title company.

Plaintiffs also claimed that defendants withheld from them the fact that they would be expected to pay the closing fees, and that the withholding of this information supports a claim of "silent fraud." "In order for a suppression of information to constitute silent fraud there must be a legal or equitable duty of disclosure." *United States Fidelity & Guaranty Co v Black*, 412 Mich 99, 114; 313 NW2d

77 (1981). Defendants complied with their duty to disclose in two ways: first, by filing their fees with the Insurance Bureau; and second, by providing plaintiffs with settlement statements prior to closing that listed the fees. Plaintiffs have cited no authority requiring defendants to disclose their fees at an earlier time. Consequently, the trial court did not err when it granted summary disposition to defendants.

Affirmed.

/s/ Maureen Pulte Reilly
/s/ David H. Sawyer
/s/ William E. Collette