

STATE OF MICHIGAN
COURT OF APPEALS

SALEM HANNA NAMOU,

Plaintiff-Appellant,

UNPUBLISHED
April 11, 1997

v

DELHI FAMILY RESTAURANT, LTD.,
f/k/a GOLDEN GATE RESTAURANT AND
LOUNGE, INC., and LOUIS J. VLAHAKIS,

No. 192568
Ingham Circuit Court
LC No. 95-081079-NZ

Defendants-Appellees.

Before: Saad, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting summary disposition for defendants pursuant to MCR 2.116(C)(10). We affirm.

I

Plaintiff purchased a restaurant from defendants. The purchase contract included a non-compete agreement that governed an area which was bounded on one side by the Lansing city limits. Defendants later opened a new restaurant outside the Lansing city limits but within a mile of the restaurant purchased by plaintiff.

Plaintiff brought suit alleging breach of contract and fraud. Plaintiff conceded that defendants complied with the terms of the non-compete agreement but argued that defendants failed to disclose the location of the Lansing city limits, and that plaintiff would not have purchased the old restaurant if he had realized that the city limits were so close to the site of the restaurant. Plaintiff further argued that in agreeing to purchase the old restaurant from defendants, he relied on defendant Louis J. Vlahakis' representation that he would be retiring from the restaurant business. On appeal, plaintiff relies only on this second argument.

II

Vlahakis' statement about retiring was a statement of intent, not disputed by any evidence in the record. Plaintiff contends that the statement was misleading, thus forming the basis for an action for fraud. However, "[t]o constitute fraud, the misrepresentation in question must be predicated on a statement of past or existing fact." *Michaels v Amway Corp*, 206 Mich App 644, 652; 522 NW2d 703 (1994). "A mere promise that is broken is neither fraud nor evidence of fraud." *Id.* Plaintiff's reliance on *US Fidelity & Guaranty Co v Black*, 412 Mich 99, 126-127; 313 NW2d 77 (1981), is misplaced because the statements at issue in *US Fidelity* were of existing fact, in contrast to Vlahakis' statement of intent.

Contending that Vlahakis had not retired from the restaurant business, plaintiff submitted a newspaper article purporting to show that Vlahakis was a co-owner of the new restaurant. However, "newspapers are [generally] hearsay evidence of the facts stated within them and are not admissible in evidence to prove such facts." *People v Burt*, 89 Mich App 293, 295-296; 279 NW2d 299 (1979); see also *Detroit v Larned Associates*, 199 Mich App 36, 39-41; 501 NW2d 189 (1993). Plaintiff has not shown that the newspaper article was offered for a non-hearsay purpose or that it falls within any exception to the hearsay rule.

Moreover, as noted above, only a statement regarding past or existing fact can be a basis for fraud; therefore, even if Vlahakis stated that he would retire and then failed to retire, plaintiff would not have an actionable case of fraud. Accordingly, the trial court properly granted summary disposition.

Affirmed. Defendants, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Henry William Saad
/s/ Janet T. Neff
/s/ Kathleen Jansen