STATE OF MICHIGAN

COURT OF APPEALS

BIRCHWOOD MALL LIMITED,

Plaintiff-Appellee,

v

RICHARD KRAFSUR d/b/a JONNY ALMOND NUT COMPANY,

Defendant-Appellant.

UNPUBLISHED
December 30, 1997

No. 195423
St. Clair Circuit Court
LC No. 94-002226-CZ

Before: Hood, P.J., and McDonald and White, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment for plaintiff for $9,740.41. We affirm.

In 1993, plaintiff and defendant entered into a lease agreement pursuant to which defendant leased space in plaintiff's mall to allow him to operate a kiosk from which the Jonny Almond Nut Company sold almonds. Defendant fell behind on lease payments and eventually left the mall. Plaintiff brought this action to recover $6,768.20 in lease payments plus further damages that plaintiff would incur if defendant continued to avoid his obligation to pay $1,800 per month for the lease. Defendant filed a counterclaim, seeking rescission of the lease and $40,000 in lost profits. Defendant alleged plaintiff fraudulently induced him to enter into the lease. The trial court entered judgment in favor of plaintiff, finding that defendant was personally liable under the lease, and that he had failed to present sufficient evidence to prove his counter-claim.

Defendant first argues the trial court erred in holding him personally liable under the lease. Defendant contends that the Jonny Almond Nut Company was the intended lessor and that his being named lessor was a mistake. However, defendant admits that he did not read the lease agreement, which clearly states that the tenant is defendant, in his individual capacity, doing business as Jonny Almond Nut Company. It is well-established that "one who signs a contract cannot seek to invalidate it on the basis that he or she did not read it or thought that its terms were different, absent a showing of fraud or mutual mistake." *Sherman v DeMaria Building Co*, 203 Mich App 593, 599; 513 NW2d 187 (1994); *Paterek v 6600 Ltd* 445, 450; 465 NW2d 342 (1990). Here, any mistake that occurred

was unilateral. Accordingly, the trial court did not err in holding defendant personally liable under the lease agreement.

Defendant next argues he presented sufficient evidence to prove his counterclaim for misrepresentation. We disagree. In order to recover under the tort of misrepresentation, defendant must prove: (1) plaintiff made a material representation; (2) it was false; (3) when plaintiff made the representation, plaintiff knew that it was false or made it recklessly without knowledge of its truth or falsity; (4) plaintiff made it with the intent that defendant would act upon it; (5) defendant acted in reliance upon it; and (6) defendant suffered damage. *Mitchell v Dahlberg*, 215 Mich App 718, 723; 547 NW2d 74 (1996).

Defendant claims plaintiff misrepresented the mall's traffic volume by giving him inflated figures of how many people visited the mall. Moreover, defendant argues plaintiff induced him to enter into the lease by using a "bait and switch" technique. The trial court ruled that defendant did not prove his cause of action, finding that defendant did not establish that he relied on the alleged misrepresented traffic figures or any "deceptive switching tricks." After reviewing the record, we are not convinced that the trial court erred. *Hertz Corp v Volvo Truck Corp*, 210 Mich App 243, 246; 533 NW2d 15 (1995). Accordingly, defendant's claim must fail.

Affirmed.

/s/ Harold Hood
/s/ Gary R. McDonald
/s/ Helene N. White