

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT W. BAKE,

Plaintiff-Appellant,

v

WOLVERINE TITLE COMPANY,

Defendant-Appellee.

UNPUBLISHED

March 26, 1999

No. 207383

Washtenaw Circuit Court

LC No. 96-003708 NZ

Before: O’Connell, P.J., and Jansen and Collins, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting defendant’s motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, an experienced real estate broker, and his partners were interested in purchasing property owned by the Frances W. Parody Trust (“the Trust”). An attorney for the Trust contacted defendant and requested a search to verify the legal description and ownership of the property. The search produced by defendant contained a legal description and list of owners, ending with the Trust. The search did not identify any encumbrances on the property, and stated that it was “not to be construed as a guarantee of opinion of title.” Plaintiff was provided with a copy of the search. Thereafter, he and his partners agreed to lease the property. The lease contained an option to purchase. It provided that no penalty would attach if the option was not exercised; however, any improvements made to the property would inure to the benefit of the landlord if the option was not exercised.

After beginning improvements to a house on the property, plaintiff secured a title commitment from defendant. That commitment revealed a gas line easement held by Consumers Power Company. This easement precluded plaintiff from subdividing the property as planned. Nevertheless, plaintiff and his partners exercised the option and purchased the property.

Plaintiff filed suit alleging that defendant negligently provided a defective title search, and that he relied on the search to his detriment by obtaining the option to purchase the property. Defendant

moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that it could not be held liable for negligent misrepresentation of a contract that it had not been asked to perform. The trial court granted the motion, finding that reasonable minds could not differ on the issue of whether the Trust attorney had requested a deed search as opposed to a title search. We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

A tort action arising from the breach of a title abstracter's contractual duty is classified as one of negligent misrepresentation. *Williams v Polgar*, 391 Mich 6, 21-22; 215 NW2d 149 (1974). The elements of negligent misrepresentation are: (1) the plaintiff's justifiable and detrimental reliance on (2) information provided without reasonable care (3) by one who owed the party who relied a duty of care. *Law Offices of Lawrence J. Stockler v Rose*, 174 Mich App 14, 33; 436 NW2d 70 (1989).

We affirm the decision of the trial court. A party cannot be held liable for negligent misrepresentation for failure to perform a service it was not asked to perform. See *Williams, supra* at 21-22. In support of its motion for summary disposition, defendant submitted the affidavit of its vice-president, who stated that the Trust attorney contacted him and requested a deed search to verify the legal description of the property and the ownership chain. The affidavit established that defendant was not asked to perform a search to uncover encumbrances such as easements. In opposition to the motion plaintiff submitted hearsay affidavits, but no affidavit or other evidence sufficient under MCR 2.116(G)(4) to create a genuine issue of material fact regarding the nature of the search requested by the Trust.

A cause of action arising from the breach of an abstracter's contractual duty runs to those persons an abstracter could reasonably foresee as relying on the accuracy of the information provided. *Williams, supra* at 22. No genuine issue of fact existed as to whether defendant could foresee that plaintiff, an experienced real estate broker, would rely to his detriment on the search produced for the Trust as a guarantee of title. The search clearly stated that it was not a guarantee of title. In his deposition, plaintiff acknowledged that he did not rely on the search as a guarantee of title. Any improvements plaintiff made to the property prior to purchasing same were made with the knowledge that if the option was not exercised for any reason, the improvements would inure to the landlord. Finally, it was undisputed that plaintiff knew of the existence of the easement before he and his partners exercised the option to purchase the property.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kathleen Jansen
/s/ Jeffrey G. Collins