STATE OF MICHIGAN

COURT OF APPEALS

HORIZON PAINTING, INC.,

Plaintiff-Appellant,

v

JAMES ADAMS,

Defendant-Appellee,

and

TOM BIELSKI,

Defendant/Third-Party Plaintiff-Appellee,

and

GREAT LAKES FUNDING, LTD.,

Third-Party Defendant.

UNPUBLISHED
February 27, 2007

Nos. 265789; 266717
Wayne Circuit Court
LC No. 03-333261-CZ

Before: Kelly, P.J., and Davis and Servitto, JJ.

PER CURIAM.

In Docket No. 265789, plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendants, James Adams and Tom Bielski, in this breach of fiduciary duty and conversion action. In Docket No. 266717, plaintiff appeals as of right orders awarding case evaluation sanctions to defendants. We affirm the trial court's orders in both appeals.

I. Docket No. 265789

In Docket No. 265789, plaintiff argues that the trial court erred in granting defendants' motions for summary disposition and dismissing plaintiff's breach of fiduciary duty and conversion claims against defendants. We disagree.

Because the trial court considered evidence outside the pleadings, it is apparent that summary disposition was granted pursuant to MCR 2.116(C)(10). *DeHart v Joe Lunghamer Chevrolet, Inc*, 239 Mich App 181, 184; 607 NW2d 417 (1999). We review de novo a trial court's decision on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence submitted by the parties, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 164; 645 NW2d 643 (2002).

A. Breach of Fiduciary Duty

Plaintiff alleged that defendants were fiduciaries who breached their duties to plaintiff in the following respects: (1) not requiring third-party defendant Great Lakes Funding, Ltd., Inc. ("GL Funding") or Great Lakes Factors, Inc. ("GL Factors"), to pay back to plaintiff the balance owed from the invoices, and (2) by taking money in cash from plaintiff's account at GL Funding.

"[A] fiduciary relationship arises from the reposing of faith, confidence, and trust, and the reliance of one upon the judgment and advise of another." *Vicencio v Jaime Ramirez, MD, PC,* 211 Mich App 501, 508; 536 NW2d 280 (1995). A plaintiff is entitled to relief when "such position of influence has been acquired and abused, or when confidence has been reposed and betrayed." *Id.* While Michigan courts have recognized fiduciary relationships such as trustees and beneficiaries, guardians and wards, attorneys and clients, and doctors and patients, *Portage Aluminum Co v Kentwood Nat'l Bank*, 106 Mich App 290, 294; 307 NW2d 761 (1981), there is no authority for the proposition that a fiduciary relationship exists between parties to contractual agreements as in this case. On the contrary, a fiduciary relationship "generally does not arise within the lender-borrower context." *Farm Credit Services of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 680; 591 NW2d 438 (1998). And Michigan courts have expressed some reluctance to extend the cause of action for breach of fiduciary relationship beyond traditional contexts. *Teadt v St John Evangelical Lutheran Church*, 237 Mich App 567; 603 NW2d 816 (1999).

In this case, plaintiff hired Adams to work as an independent contractor to facilitate Horizon's efforts at securing loans for additional projects. This does not give rise to a fiduciary relationship and we decline to extend the fiduciary relationship beyond its traditionally recognized contexts. For this reason alone, summary disposition in Adams' favor on this claim was appropriate.

Additionally, plaintiff's theory is founded on Adams's failure to compel GL Funding or GL Factors to pay money allegedly owed to plaintiff. However, there is no evidence that Adams was required to do anything more than assist plaintiff in securing financial loans, which he did. Also, plaintiff has failed to present evidence that GL Funding or GL Factors owed plaintiff money. Although plaintiff has presented a bevy of documentation purporting to demonstrate that he is owed money, he has failed to provide sufficient explanation of the evidence or the accounting principles upon which we can only surmise his conclusions rely upon, and the evidence is not self-explanatory. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then

search for authority either to sustain or reject his position." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Accordingly, plaintiff has also failed to demonstrate a genuine issue of material fact as to whether, even if Adams did owe plaintiff fiduciary duties, he breached them as alleged.

Nor did the trail court err in dismissing plaintiff's breach of fiduciary duty claim against Bielski. It is undisputed that Bielski served as a representative of the companies with which plaintiff signed factoring agreements, GL Funding and GL Factors. Under the circumstances presented, plaintiff has failed to present any evidence to overcome the inference that, as the agent of a disclosed principal, Bielski is not individually liable. *Riddle v Lacey & Jones*, 135 Mich App 241, 246-247; 351 NW2d 916 (1984). Furthermore, the agreements signed by plaintiff and Bielski's companies expressly provide that "neither party is or shall be deemed a fiduciary of or to the other." Therefore, the trial court did not err in granting summary disposition Bielski's favor with respect to this claim.

B. Conversion

"In the civil context, conversion is defined as any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein." *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992) (footnote omitted). "To support an action for conversion of money, the defendant must have an obligation to return the specific money entrusted to his care." *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 111-112; 593 NW2d 595 (1999). Statutory conversion consists of knowingly buying, receiving, or aiding in the concealment of any stolen, embezzled, or converted property. MCL 600.2912a; *Head, supra* at 111.

Plaintiff's conversion claim against defendants is based on the allegation that they, without plaintiff's consent, withdrew a large amount of cash from an account maintained by GL Funding or GL Factors that belonged to plaintiff. Plaintiff has provided extensive documentation, which he asserts demonstrates that the money came from a "reserve" account set aside for plaintiff. Yet, as stated above, plaintiff has failed to present an adequate explanation for this evidence and it is not self-explanatory. *Mitcham, supra* at 203. After reviewing the evidence, we can discern no genuine issue of material fact as to whether the funds belonged to plaintiff in the first place. As such, the trial court did not err in dismissing plaintiff's conversion claims.

C. Dismissal Without Prejudice

Plaintiff also challenges the trial court's denial of plaintiff's request for a voluntary dismissal without prejudice. This Court will not reverse a trial court's decision denying a plaintiff's motion for voluntary dismissal "absent an abuse of discretion." *Mleczko v Stan's Trucking, Inc*, 193 Mich App 154, 155; 484 NW2d 5 (1992). At the outset of the hearing on defendants' motion for summary disposition, plaintiff requested dismissal without prejudice on the basis that he had not been provided certain records from a bank in Ohio. The trial court noted that it had earlier denied plaintiff's motion to compel the non-party bank to provide the records or in the alternative to issue letters rogatory. That ruling is not at issue on appeal. At the time of plaintiff's request, the case was approximately two years old, beyond the discovery phase, and beyond case evaluation. Under the circumstances, we cannot conclude that the trial

court abused its discretion in denying plaintiff's request for a voluntary dismissal without prejudice.

II. Docket No. 266717

Plaintiff's argues that the trial court did not have jurisdiction to award case evaluation sanctions after plaintiff filed its first claim of appeal. However, pursuant to MCR 7.208(I), a trial court is empowered to award case evaluation sanctions while an appeal is pending unless this Court states otherwise. This Court did not direct the trial court to abstain from awarding case evaluation sanctions. Therefore, plaintiff's argument is without merit.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Alton T. Davis
/s/ Deborah A. Servitto