

STATE OF MICHIGAN
COURT OF APPEALS

LOUIS E. LEONOR and KATHERINE LEONOR,

Plaintiffs-Appellants,

UNPUBLISHED
September 30, 2010

v

TIMOTHY D. ANDRES, BRITTA ANDRES,
EDWARD SUROVELL CO., MARYANNE
TELESE, and LAURA DYKSTRA,

No. 289690
Wayne Circuit Court
LC No. 08-103053-CZ

Defendants-Appellees.

Before: O'CONNELL, P.J., and METER and OWENS, JJ.

PER CURIAM.

Plaintiffs Louis and Katherine Leonor appeal as of right from the trial court's order granting summary disposition to defendants under MCR 2.116(C)(8) and (C)(10) and dismissing plaintiffs' claim for fraudulent misrepresentation. We affirm.

Plaintiffs filed this action in February 2008, seeking recovery for defendants' alleged fraud in connection with a claimed lost opportunity to sell plaintiffs' home.¹ Plaintiffs alleged that defendants fraudulently misrepresented that they had deposited earnest money for the sale of the home and that, as a result, plaintiffs stopped negotiating with another potential buyer, Frank Schafer.

Plaintiffs contend that the trial court erred in granting defendants summary disposition. We review summary disposition rulings de novo. *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 567; 702 NW2d 539 (2005).

A motion for summary disposition under MCR 2.116(C)(8) tests whether a plaintiff's complaint states a claim on which relief can be granted. The motion should be granted only

¹ Defendants Timothy and Britta Andres were the potential buyers, defendant Edward Surovell Co. was a real estate office representing the Andres defendants, and defendants Maryanne Telese and Laura Dykstra were a broker and office manager in the Surovell office.

when the claim is so clearly unenforceable that no factual development could possibly justify recovery. *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006).

Motions for summary disposition under MCR 2.116(C)(10) test the factual sufficiency of the complaint and must be supported by affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3)(b). To survive the motion, the nonmoving party must provide evidence of specific facts that create a genuine issue of material fact. *Slatterly v Madiol*, 257 Mich App 242, 249; 668 NW2d 154 (2003). Granting the nonmoving party the benefit of any reasonable doubt regarding material facts, the court must decide if a factual dispute exists to require a trial. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

We find no basis on which to reverse the trial court's ruling. With regard to the standard under MCR 2.116(C)(8), plaintiffs did not allege that there was an offer from Schafer or any other buyer after plaintiffs' counteroffer to Schafer expired at 9:00 a.m. on September 21, 2005. At that time, defendants still had until September 26 to deposit the earnest-money check to show good faith. Plaintiffs simply failed to allege a reasonable connection between their alleged damages and defendants' failure to deposit the earnest money. While actions for lost opportunity are allowed in the malpractice area, see *Weymers v Khera*, 454 Mich 639, 648-649; 563 NW2d 647 (1997), plaintiffs have failed to set forth any binding Michigan law allowing for such actions in other areas.²

Summary disposition was also appropriate under MCR 2.116(C)(10). A successful fraud claim requires a material misrepresentation, recklessly made or with knowledge of its falsity, and an intention for the plaintiff to rely on it; it also requires that the plaintiff did rely on the misrepresentation and suffered damages as a result. See *Hi-Way Motor Co v Int'l Harvester Co*, 398 Mich 330, 336; 247 NW2d 813 (1976). Moreover, plaintiffs had to present more than conjecture and speculation to show a genuine issue of material fact. *Hall v Consol R Corp*, 462 Mich 179, 187; 612 NW2d 112 (2000). Plaintiffs' claim depended on a showing that Schafer, or another serious buyer, would have been interested in the property after defendants misrepresented that they deposited the earnest-money check, with the intention of inducing plaintiffs to break off negotiations and take the property off the market.

Plaintiffs did not produce sufficient evidence to support their claim.³ There was simply no evidence of damages resulting from any alleged fraud. There was no evidence of an offer from Schafer or any other buyer after plaintiffs' counteroffer to Schafer expired at 9:00 a.m. on

² We reject plaintiffs' reliance on an unpublished opinion. Not only is the opinion not binding on this Court, see MCR 7.215(C)(1), but it also does not contain any persuasive legal reasoning applicable to the present case.

³ Contrary to plaintiffs' assertion, Maryanne Telese's deposition testimony that the first check was not deposited because "all of us were concerned about whether Dr. Leonor would actually allow the inspection" was not evidence of fraud; it was merely a statement of asserted mental state that might have negated the assertion of bad faith.

September 21, 2005, and, at that time, defendants still had until September 26 to deposit plaintiffs' check to show good faith.⁴

Plaintiffs also argue that the trial court erred in denying their motion to amend the complaint. We review this issue for an abuse of discretion. *PT Today, Inc v Comm'r of Fin and Ins Servs*, 270 Mich App 110, 142; 715 NW2d 398 (2006).

Even assuming that plaintiffs' motion to amend was timely, we find no basis for reversal because the amendment would have been futile. See *Weymers*, 454 Mich at 658. An amendment is futile if it merely restates the claims originally pleaded. See *Dowerk v Oxford Charter Twp*, 233 Mich App 62, 76; 592 NW2d 724 (1998). There was nothing materially new in plaintiffs' proposed amended complaint. Deposition testimony was appended, but it failed to raise a genuine issue of material fact. Plaintiffs had yet to find Schafer at the time of the proposed amendment, and plaintiffs again failed to show that they relied on any material misrepresentation to their detriment. Plaintiffs still had not shown that Schafer would have bought, or even was interested in buying, the property after he failed to accept plaintiffs' counteroffer by 9:00 a.m. on September 21, 2005. These defects were fatal to plaintiffs' fraud claim. Consequently, the court did not abuse its discretion in denying plaintiffs' motion to amend.

Affirmed.

/s/ Peter D. O'Connell

/s/ Patrick M. Meter

/s/ Donald S. Owens

⁴ We reject plaintiffs' assertion that the trial court improperly mischaracterized plaintiffs' fraud action as a breach-of-contract suit. Nevertheless, we note that we do not reverse a trial court's decision if the court reached the correct result for the wrong reasons. *Lane v KinderCare Learning Centers*, 231 Mich App 689, 697; 588 NW2d 715 (1998).