

STATE OF MICHIGAN
COURT OF APPEALS

IF PROPERTIES, L.L.C., IMPRESS
PACKAGING, INC, and ROBERT W.
JOHNSON,

UNPUBLISHED
October 9, 2012

Plaintiffs-Appellants,

v

MACATAWA BANK CORPORATION, and
MACATAWA BANK,

No. 307554
Muskegon Circuit Court
LC No. 11-048004-CK

Defendants-Appellees.

Before: SAAD, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

Plaintiffs IF Properties, L.L.C., Impress Packaging, Inc., and Robert W. Johnson (the borrowers) appeal as of right from the trial court's order granting summary disposition to defendants Macatawa Bank Corporation and Macatawa Bank (the bank). Johnson is a member of IF Properties and the president of Impress Packaging. We affirm.

I. FACTS

On June 28, 2006, the bank loaned the borrowers \$42,000 and \$130,000. A \$172,000 mortgage on the borrowers' Lake Street property secured both loans. The \$130,000 loan is not at issue in this appeal. In October 2009, the bank loaned the borrowers \$280,000, also secured by a future advance mortgage on the borrowers' Lake Street property. The \$280,000 loan matures in October, 2014, and is not at issue in this appeal.

On June 4, 2007, the bank loaned the borrowers \$150,000. A future advance mortgage on the borrowers' Chris Craft Lane property secured the loan. The \$150,000 loan matured on June 5, 2012, after the filing of this suit.

The \$42,000 loan matured on June 30, 2011. At that time, the bank valued the borrowers' Lake Street property at a negative equity of about \$42,000 dollars. The bank valued the borrowers' Chris Craft Lane property at a positive equity of about \$300,000. As a condition of renegotiating the \$42,000 loan, the bank asked the borrowers to use the equity-positive Chris Craft Lane property as collateral for the equity-negative Lake Street property. The borrowers refused to cross-collateralize the properties.

The borrowers filed suit in August 2011, alleging counts of fraud in the inducement, promissory estoppel, unjust enrichment, and interference with business opportunities. The borrowers alleged that the bank intentionally overvalued the properties in 2006 in order to profit from inflated closing fees, and that the loan documents contained fraudulent misrepresentations about the properties' values. The borrowers did not attach the loan documents to their complaint, but attempted to incorporate the documents by reference. The borrowers also alleged that the bank impliedly promised not to require them to cross-collateralize the properties as a term of renegotiating any of their loans.

The bank moved to dismiss the borrowers' claims under MCR 2.116(C)(8) (failure to state a claim on which relief could be granted). The bank argued that (1) the borrowers had not pleaded fraud with particularity, (2) the borrowers could not reasonably have relied on the bank's internal property valuations because the valuations were for the bank's use only and were statements of opinion, and the borrowers could have obtained an independent valuation of their properties, and (3) the borrowers could not enforce the implied promises under the statute of frauds. The bank attached the loan documents to its motion. The loan documents do not contain any statement concerning the properties' values. The borrowers responded that the statute of frauds does not apply to claims of fraud in the inducement, and that the borrowers sufficiently pleaded the elements of fraud.

At the hearing on the motion, the borrowers further argued that the loan documents did not expressly provide for cross-collateralization. The bank agreed that the original loan terms did not require the borrowers to cross-collateralize the properties, but indicated it could not renegotiate the matured loan on the equity-negative property unless the borrowers used the equity-positive property as collateral. The bank noted that the parties made no written agreement that cross-collateralization would not be a term of renegotiating any of the loans.

The trial court dismissed the borrowers' complaint for the reasons stated by the bank. The borrowers moved the trial court for reconsideration, arguing that an appraiser's report is more than just an opinion about a property's value. The trial court denied the motion for reconsideration.

The borrowers now appeal.

II. FRAUD IN THE INDUCEMENT

A. STANDARD OF REVIEW

This Court reviews de novo a trial court's ruling on a motion for summary disposition.¹ A party may move for summary disposition under MCR 2.116(C)(8) if the opposing party has failed to state a claim on which relief can be granted. When the trial court relies on facts outside

¹ *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

the pleadings, we review the motion as though it were granted under MCR 2.116(C)(10) rather than MCR 2.116(C)(8).²

Here, the trial court relied on the loan documents to reach its conclusion. These documents were outside the pleadings and a party may not incorporate statements that are contained in other documents into its pleadings.³ Thus, we will review this motion as though the trial court granted it under MCR 2.116(C)(10).⁴ Under MCR 2.116(C)(10), the trial court must consider all the documentary evidence in the light most favorable to the nonmoving party, and summary disposition will be appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.⁵

B. LEGAL STANDARDS

A plaintiff must plead the elements of fraud with particularity.⁶ A fraud in the inducement occurs when the defendant materially misrepresents its future conduct, reasonably expects the plaintiff to rely on the misrepresentation, and the plaintiff does rely on the misrepresentation by taking a detrimental action the plaintiff would not otherwise have taken.⁷ The difference between fraudulent misrepresentation and fraud in the inducement is that fraudulent misrepresentation involves the defendant's false statement of past or present facts, while fraud in the inducement involves the defendant's false statement of future facts.⁸ We must carefully examine whether the plaintiff has established that the statements were statements of fact instead of future promises or good-faith opinions, and whether the plaintiff has established that the statements were objectively false and misleading.⁹

A fraudulent misrepresentation requires a defendant's *false representation*, not a plaintiff's subjective misunderstanding of information that is not objectively false or misleading.¹⁰ Generally, a statement's value is only that of an opinion; it is not a factual

² *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

³ MCR 2.113(G).

⁴ *Kefgen*, 241 Mich App at 616.

⁵ MCR 2.116(G)(5); *Maiden*, 461 Mich at 120.

⁶ MCR 2.112(B); *Cooper v Auto Club Ins Ass'n*, 481 Mich 399, 414; 751 NW2d 443 (2008).

⁷ *Samuel D Begola Services v Wild Brothers*, 210 Mich App 636, 639; 534 NW2d 217 (1995); *Kefuss v Whitley*, 220 Mich 67, 82-83; 189 NW 76 (1922).

⁸ *Samuel D Begola Services*, 210 Mich App at 639.

⁹ *Cooper*, 481 Mich at 416.

¹⁰ *Hord v Environmental Research Institute of Mich (After Remand)*, 463 Mich 399, 411; 617 NW2d 543 (2000).

statement that can form the basis of fraud.¹¹ This is particularly true when the defendant's statement concerns a property value, and the plaintiff has the opportunity and ability to inspect the property.¹²

C. APPLYING THE STANDARDS

The borrowers argue that they properly pleaded all the elements of fraud in the inducement. We conclude that the trial court properly dismissed the borrowers' fraud claim because the borrowers did not plead any statements of fact.

The borrowers claimed that the bank made a false representation when it overstated the value of the borrowers' properties in the loan documents. Even had the documents—or an appraiser's report, on which the borrowers did not allege they relied—contained a statement of the properties' values, the borrowers could not base their claim on the bank's opinion of the properties' values without also showing that they lacked the opportunity and ability to inspect the properties. Further, though the borrowers also argue that they relied on the bank's implied promises that the bank would not require them to cross-collateralize their properties, implied promises are not *statements* of fact. Thus, the borrowers did not plead any facts to support the borrowers' contention that the bank made a false representation about the properties' values.

Further, the loan documents attached to the bank's motion for summary disposition do not contain any statements about the value of the borrowers' properties. Without some false representation of a material fact, the borrowers have no claim for fraud in the inducement.¹³

Thus, we conclude that trial court did not err by dismissing the borrowers' fraud claim.

III. STATUTE OF FRAUDS

A. STANDARD OF REVIEW

This Court reviews *de novo* the trial court's grant of summary disposition.¹⁴ As noted above, because the trial court relied on documentary evidence outside the pleadings, we review this issue as though the trial court granted the motion under MCR 2.116(C)(10).¹⁵ Under MCR 2.116(C)(10), the trial court must consider all the documentary evidence in the light most

¹¹ *Foreman v Foreman*, 266 Mich App 132, 142-143; 701 NW2d 167 (2005); *Boss v Tomaras*, 251 Mich 469, 473; 232 NW2d 229 (1930).

¹² *Foreman*, 266 Mich App at 142-143.

¹³ *Hord*, 463 Mich at 411.

¹⁴ *Maiden*, 461 Mich at 119.

¹⁵ *Kefgen*, 241 Mich App at 616.

favorable to the nonmoving party, and summary disposition will be appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.¹⁶

B. LEGAL STANDARDS

The statute of frauds applies when a party brings a claim against a financial institution:

(2) An action shall not be brought against a financial institution to enforce any of the following promises or commitments of the financial institution unless the promise or commitment is in writing and signed with an authorized signature by the financial institution:

(a) A promise or commitment to lend money, grant or extend credit, or make any other financial accommodation.

(b) A promise or commitment to renew, extend, modify, or permit a delay in repayment or performance of a loan, extension of credit, or other financial accommodation.^[17]

The statute's ban on bringing "an action" is both broad and unqualified.¹⁸ A party may not attempt to enforce the terms of an oral promise concerning a loan, no matter what the party labels its claim.¹⁹

C. APPLYING THE STANDARDS

The borrowers primarily argue that the statute of frauds does not apply to their claims because the bank obtained the loan contracts by fraud. Since we have concluded that the borrowers did not sufficiently plead the elements of fraud and the trial court properly dismissed the borrowers' fraud claim, we must reject this argument.

The borrowers also argue that the statute of frauds will not bar equitable claims. The borrowers based this argument on the bank's implied promises that it accurately valued the properties in 2006, would not require the borrowers to cross-collateralize the properties, and would comply with state and federal banking regulations. However, the statute of frauds bars a party from bringing *any* action to enforce an oral agreement concerning a loan.²⁰ We must apply this ban broadly, and may not excuse implied promises from the statute of frauds even if a

¹⁶ MCR 2.116(G)(5); *Maiden*, 461 Mich at 120.

¹⁷ MCL 566.132.

¹⁸ *Crown Technology Park v D&N Bank, FSB*, 242 Mich App 538, 550; 619 NW2d 66 (2000).

¹⁹ *Id.*

²⁰ *Id.* at 552.

plaintiff brings a claim in equity rather than in law.²¹ Thus, we conclude that the trial court properly determined that the statute of frauds bars the borrowers' equitable claims.

IV. CONCLUSION

The borrowers raise other arguments in their brief on appeal, including that they properly pleaded unlawful interference with business opportunities and that the statute of limitations does not bar that claim. However, the borrowers did not include these issues in their statement of questions presented—the borrowers' only question presented is whether the trial court properly applied the statute of frauds. We will not review issues that are not included in the appellant's statement of questions presented for appeal.²² Further, the borrowers do not provide any legal authority to support their assertions. We will not search for authority to support a party's insufficiently supported position on appeal.²³ A party's failure to cite sufficient authority abandons the issue.²⁴ Thus, the borrowers have abandoned these claims because they have not properly presented them for our review or provided sufficient supporting authority.

We conclude that the trial court properly determined that the borrowers did not sufficiently plead the elements of fraud in the inducement and that, therefore, the statute of frauds barred the borrowers' claims as a matter of law.

We affirm.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Michael J. Kelly

²¹ *Id.*

²² MCR 7.212(C)(5); *Busch v Holmes*, 256 Mich App 4, 12; 662 NW2d 64 (2003).

²³ *Hughes v Almena Twp*, 284 Mich App 50, 71; 771 NW2d 453 (2009).

²⁴ *Id.* at 72.