

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

NANCY L. ZACHARY,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 181310

LC No. 93-465814

HOWARD EMMER d/b/a ALUMINUM  
CONSTRUCTION CO., and LESLIE LONDON,

Defendants-Appellees,

and

HENRY M. DEPPNER,

Defendant.

---

Before: Michael J. Kelly, P.J., and Hoekstra and E.A. Quinnell,\* JJ.

HOEKSTRA, J. (concurring in part and dissenting in part).

I respectfully dissent from that part of the majority opinion that concludes that defendants are entitled to summary disposition pursuant to MCR 2.116(C)(10). The majority opinion, relying upon *Turner v Peoples State Bank*, 299 Mich 438, 445; 300 NW2d 353 (1941), correctly holds that plaintiff cannot maintain an action for rescission of a mortgage for inadequacy of consideration absent a showing of fraud or bad faith. Without considering whether the facts of this case support a claim of fraud or bad faith, the majority simply finds that the existence of some consideration entitles defendant to summary disposition. Based upon plaintiff's representation that defendant Emmer's construction was shoddy and unable to pass inspection, Emmer's failure to remedy the defects, Emmer's refusal to negotiate a settlement, and Emmer's excessive delay in seeking to enforce his rights under the mortgage, I believe that plaintiff has an actionable claim to seek rescission based on bad faith.

Regarding the issues addressed in sections I and III, I agree with the majority opinion.

---

\* Circuit judge, sitting on the Court of Appeals by assignment.

/s/ Joel P. Hoekstra