

STATE OF MICHIGAN
COURT OF APPEALS

LATONYA INGE and JODY HOLMAN,

Plaintiff-Appellant,

v

ROCK FINANCIAL CORPORATION, d/b/a
ROCK FINANCIAL CORP., d/b/a ROCK
FINANCIAL, d/b/a BOULDER FINANCIAL,
d/b/a FRESH START LOAN CENTER, a Division
of ROCK FINANCIAL, d/b/a FRESH START
LOAN CENTER, d/b/a MOVEEASY,

Defendant-Appellee.

UNPUBLISHED

August 10, 2004

No. 227749

Kent Circuit Court

LC No. 98-012969-CP

Before: Gage, P.J. and O'Connell and Zahra, JJ.

PER CURIAM.

Plaintiffs, Latonya Inge and Jody Holman, appeal as of right from the trial court's order summarily dismissing their claims against defendant, Rock Financial Corporation. The claims were primarily based on defendant's practice of charging a document preparation fee in residential mortgage loan transactions. We affirm.

Plaintiffs filed their cause of action on behalf of themselves and a class of similarly situated individuals, who had obtained mortgage loans from defendant in the six-year period before the date of the filing of the complaint. They alleged violations of the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.*, replevin, unjust enrichment, innocent misrepresentation, and negligent misrepresentation. With respect to the pleaded claims, plaintiffs generally alleged that defendant's conduct of preparing "final legal papers" for the mortgage loans, and charging a fee for document preparation, constituted the unauthorized practice of law and violated both the MCPA and Michigan common law.

The trial court entered an order dismissing plaintiffs' complaint with prejudice for failure to state a claim upon which relief could be granted pursuant to MCR 2.116(C)(8). Plaintiffs subsequently filed their claim of appeal, which was held in abeyance pending the Supreme Court's decision in *Dressel v Ameribank*, 468 Mich 557; 664 NW2d 151 (2003). Thereafter, the *Dressel* Court held that a bank does not engage in the unauthorized practice of law when it completes standard mortgage forms and charges a fee for the service. *Id.* at 569. Two of

plaintiffs' four issues on appeal were dismissed by order of this Court after the Supreme Court issued its opinion in *Dressel, supra*.¹

The primary issue remaining to be resolved involves whether the residential mortgage loans made by defendant are exempt from the MCPA. MCL 445.904(1)(a) exempts transactions or conduct “specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States.”² In determining if a transaction or conduct is “specifically authorized,” the relevant inquiry focuses on whether the general transaction, not the specific misconduct alleged, is authorized by law. *Smith v Globe Life Ins Co*, 460 Mich 446, 465; 597 NW2d 28 (1999); *Kraft v Detroit Entertainment, LLC*, ___ Mich App ___; ___ NW2d ___ (Docket No. 241405, issued April 13, 2004). In *Newton v Bank West*, ___ Mich App ___; ___ NW2d ___ (Docket No. 228903, issued 2004), we recently held that residential mortgage loan transactions by a bank were exempt from the MCPA. In this case, we are called upon to decide whether residential mortgage loan transactions by a licensed or registered mortgage lender are transactions that are similarly exempt from the provisions of the MCPA. We find that they are exempt.

Plaintiffs do not dispute that defendant is licensed or registered under the Mortgage Brokers, Lenders, and Servicers Licensing Act (MBLSLA), MCL 445.1651 *et seq.* Plaintiffs also do not dispute that defendant is authorized by law to engage in mortgage loan transactions. A license under the MBLSLA permits the licensee to “act as a mortgage broker, mortgage lender, or mortgage servicer.” MCL 445.1653. Defendant is authorized by statute to collect charges in connection with the making of mortgage loans, MCL 445.1673, and mortgage loans under the act are subject to all applicable state laws. MCL 445.1676. The MBLSLA outlines conduct that is prohibited or considered violative of the Act. MCL 445.1672; MCL 445.1677; MCL 445.1679. We particularly note that it is a violation of the Act to engage in fraud, deceit, or material misrepresentation in connection with any transaction governed by the Act. MCL 445.1672(b). The Commissioner of the Office of Financial and Insurance Services has general supervision and control over mortgage brokers, lenders and servicers doing business in Michigan. MCL 445.1651a(b); MCL 445.1661(1). The commissioner has the power to promulgate reasonable rules necessary to implement and administer the MBLSLA, to conduct examinations and investigations necessary for the efficient enforcement of the Act, to advise the Attorney General or appropriate prosecuting attorney if he believes an entity operating under the

¹ In their statement of the questions presented, plaintiffs raised the issue whether a nonlawyer is engaged in the unauthorized practice of law when it prepares legal documents and charges a fee for doing so. In a separate question presented, plaintiffs raised the issue whether a mortgage lender is specifically authorized by law to charge a fee for preparation of legal documents such as a note and mortgage. The latter question is not separately addressed or adequately briefed by plaintiffs on appeal. Thus, even if it should properly be considered apart from the unauthorized practice of law issue, it is abandoned. *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003) (an appellant’s failure to properly address the merits of an assertion of error constitutes abandonment of the issue).

² Certain exceptions to the exemption are set forth in MCL 445.904(2). The exceptions outlined in § 4(2) are not at issue in this case.

Act is violating the Act, to bring an action on behalf of the state against an entity operating under the Act if the entity is engaged in unsafe or injurious acts or practices in violation of the Act or rules promulgated under it, to bring an action on behalf of the state to enjoin an entity from participating in or continuing violative practices or acts, to issue a cease and desist order for a violation of the Act or the rules promulgated under it, to suspend or revoke a license or registration, to require restitution, to assess civil fines, and to censure a licensee or registrant. MCL 445.1661(2)(a)-(j). Statutes govern the suspension or revocation of licenses under the Act, MCL 445.1662; the filing of complaints with, or by, the commissioner alleging violations of the Act, MCL 445.1663; investigations of violations of the Act, MCL 445.1664; summary suspensions of licenses or registrations under the Act, MCL 445.1665; and the issuance of cease and desist orders, MCL 445.1666. Based on our review of the statutory provisions governing the conduct of defendant when engaged in the business of mortgage lending, we are convinced that defendant's residential mortgage loan transactions are "specifically authorized" under laws administered by an officer acting with statutory authority of this state. Therefore, we conclude that the residential mortgage loan transactions are exempt from the MCPA. MCL 445.904(1)(a).

On appeal, plaintiffs additionally argue that, in granting summary disposition, the trial court ignored their well-pleaded allegations related to MCL 445.1673. Plaintiffs argue that their statutory allegations "inform" their unjust enrichment and MCPA claims. The argument is abandoned because plaintiffs fail to explain or rationalize the position that their unjust enrichment and MCPA claims were viable if based on a pleaded statutory violation. An appellant may not merely announce a position and leave it for this Court to discover and rationalize the basis for the claims, nor may an appellant give only cursory treatment with little or no citation of supporting authority. *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003). More importantly, assuming, without deciding, that plaintiffs properly pleaded a violation of MCL 445.1673 in relation to their MCPA and unjust enrichment claims, the claims were properly dismissed on defendant's motion for summary disposition. The mortgage transactions were exempt from the MCPA as discussed, *supra*. Further, plaintiffs' unjust enrichment claim fails as a matter of law. The parties entered into an express written contract, which included a provision for the payment of the document preparation fee. Where a written agreement governs the parties' transaction, a contract will not be implied under the doctrine of unjust enrichment. *King v Ford Motor Credit Co*, 257 Mich App 303, 327-328; 668 NW2d 357 (2003). See also *Noel v Fleet Finance, Inc*, 971 F Supp 1102 (ED Mich, 1997) (there cannot be an express and implied contract covering the same subject matter at the same time).

Affirmed.

/s/ Hilda R. Gage
/s/ Peter D. O'Connell
/s/ Brian K. Zahra