

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

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SHAHROKH MANSOORI,

Plaintiff/Counterdefendant-  
Appellant,

v

BIRMINGHAM IMPORTS, INC. and GREGORY  
MARTIN,

Defendants-Appellees,

and

HUNTINGTON NATIONAL BANK,

Defendant/Counterplaintiff-  
Appellee.

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UNPUBLISHED

March 28, 2006

No. 257949

Oakland Circuit Court

LC No. 2004-055198-CK

Before: Owens, P.J., and Kelly and Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's judgment awarding defendant Huntington National Bank \$25,336.36 on its counterclaim against plaintiff. We affirm.

This case arises from the execution of an open-end lease agreement between plaintiff, the lessee, and Huntington Bank, the lessor. Defendant Birmingham Imports, Inc. is the dealer that supplied the vehicle, and defendant Gregory Martin is the sales employee who handled the transaction for Birmingham Imports. When the lease term ended, there was a deficiency and plaintiff still owed money to Huntington Bank.

Plaintiff filed this action alleging claims of fraud, negligence, and violations of the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.* Plaintiff sought damages in an amount equal to the deficiency claimed by Huntington Bank, as well as exemplary damages and other damages. Huntington Bank filed a counterclaim for the balance owed under the lease agreement. The parties filed cross motions for summary disposition. The trial court dismissed all of plaintiff's claims, granted Huntington Bank's motion for summary disposition on its counterclaim, and awarded Huntington Bank judgment in the amount of \$25,336.36.

Plaintiff first argues that the trial court erred in dismissing his fraud claim pursuant to MCR 2.116(C)(8). We disagree.

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. This Court reviews de novo a trial court's decision regarding a motion under MCR 2.116(C)(8) to determine whether the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery. All factual allegations supporting the claim, and any reasonable inference or conclusions that can be drawn from the facts, are accepted as true. [*Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998) (citations omitted)].

Plaintiff alleged fraud in the inducement. "Fraud in the inducement is a defense to the formation of a contract." *46th Circuit Trial Court v Crawford Co*, 266 Mich App 150, 160; 702 NW2d 588 (2005). "Fraud in the inducement occurs where a party materially misrepresents future conduct under circumstances in which the assertions may reasonably be expected to be relied upon and are relied upon." *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995).

Plaintiff did not state a claim for fraud in the inducement upon which relief may be granted. First, the alleged fraud was not predicated on misrepresentations concerning future conduct or performance that induced plaintiff to enter into the agreement. Rather, the alleged misrepresentation involved the nature of the contract signed, i.e., that it was a closed-end lease, not an open-end lease. Second, plaintiff did not allege reasonable reliance to support a claim for fraud in the inducement. The lease agreement<sup>1</sup> clearly states on the first page that it is "open end" and that its preprinted provisions could not be changed by any representatives of the dealer or leasing company. Plaintiff's signature appears beneath the clause indicating that he "read both sides of this lease" and "received a complete copy of this lease."

"This Court has many times held that one who signs a contract will not be heard to say, when enforcement is sought, that he did not read it, or that he supposed it was different in its terms." [*Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 567; 596 NW2d 915 (1999), quoting *Komraus Plumbing & Heating, Inc v Cadillac Sands Motel, Inc*, 387 Mich 285, 290; 195 NW2d 865 (1972).]

See also *Clark v DaimlerChrysler Corp*, 268 Mich App 138, 144-145; 706 NW2d 471 (2005). While this general rule is not applicable when the neglect to read the document is due to fraud, *id.* at 144, there can be no fraud where the means of knowledge regarding the truthfulness of the representation are available to the plaintiff and the degree of their utilization has not been prohibited by the defendant, *Webb v First of Michigan Corp*, 195 Mich App 470, 474; 491 NW2d 851 (1992). Although plaintiff alleged that Martin "kept the material terms of the lease

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<sup>1</sup> Because Huntington Bank attached a copy of the lease agreement as an exhibit to its answer to plaintiff's complaint, the lease agreement is considered part of the pleading for all purposes. MCR 2.113(F)(2).

covered,” plaintiff did not allege that he was prevented from uncovering the terms, or asking Martin to uncover the terms so he could see what he was signing. Because plaintiff did not allege fraud that may vitiate the presumption that he read and understood the lease agreement that he signed, the trial court properly dismissed plaintiff’s fraud claim.

Plaintiff also contends that the trial court erred in dismissing his MCPA claim. We disagree. The MCPA does not apply to “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.” MCL 445.904(1)(a). In determining if a transaction or conduct is exempt from the scope of the MCPA, “the relevant inquiry is not whether the specific misconduct alleged by the plaintiffs is ‘specifically authorized.’ Rather, it is whether the general transaction is specifically authorized by law, regardless of whether the specific misconduct alleged is prohibited.” *Smith v Globe Life Ins Co*, 460 Mich 446, 465; 597 NW2d 28 (1999).

Plaintiff alleged that defendant concealed that this was an open-end lease. The “general transaction,” however, is the lease agreement. There is no dispute that Huntington Bank is a national banking organization that is regulated by the United States Office of the Comptroller of Currency under the National Bank Act, 12 USC 21, and that federal law authorized it to engage in personal property lease financing transactions. Because the transaction at issue is specifically authorized under laws administered by a regulatory board acting under federal law, the trial court properly dismissed plaintiff’s MCPA claims.

Plaintiff also argues that the trial court erred by granting Huntington Bank’s motion for summary disposition, which was brought pursuant to MCR 2.116(C)(9) and (C)(10), on Huntington Bank’s counterclaim of breach of contract. In response to Huntington Bank’s motion, plaintiff requested that the trial court allow him to amend his affirmative defenses to add the defense of unconscionability and for additional time, after the discovery period had elapsed, to conduct discovery in support of this claim. At oral argument, the trial court did not explicitly address plaintiff’s request, but it granted Huntington Bank’s motion stating that there was no genuine issue of material fact as to whether the lease agreement required plaintiff to pay termination liability. Plaintiff has stated his issue on appeal as whether the trial court erred in granting defendant’s motion pursuant to MCR 2.119(C)(9). However, plaintiff solely argues that the trial court erred in denying his request to conduct discovery on unconscionability after the discovery period had elapsed. Yet plaintiff does not contend that the trial court erred in denying his motion to amend his affirmative defenses to add a claim of unconscionability. Because neither the issue stated on appeal nor the issue presented in the argument is properly or adequately addressed, we considered them abandoned on appeal. *Houghton ex rel Johnson v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003).

Affirmed.

/s/ Donald S. Owens  
/s/ Kirsten Frank Kelly  
/s/ Karen M. Fort Hood