STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH D. BLOUIN,

Plaintiff-Appellee,

v

ROBERT V. YEO, JR., RICARDO DEL VALLE, and AMERICAN SECURITY REAL ESTATE PARTNERS, LLC.,

Defendants,

and

MICHAEL SAYERS,

Defendant-Appellant.

UNPUBLISHED
November 15, 2011

No. 298800
Oakland Circuit Court
LC No. 2009-104935-CZ

Before: SERVITTO, P.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

Defendant, Michael Sayers, appeals as of right from the trial court order granting summary disposition in favor of plaintiff and entering a judgment against Sayers. Because we conclude the trial court abused its discretion when it denied Sayers' motion for leave to amend his answer, we vacate the order of the trial court and remand for further proceedings consistent with this opinion.

This appeal relates to a financial transaction entered into between plaintiff and defendant Robert Yeo. Plaintiff claims that Robert Yeo, Ricardo Del Valle, Michael Sayers, and American Security Real Estate Partners, LLC, acted together to defraud him of $500,000. According to plaintiff, in June 2007, Sayers approached plaintiff and requested that he provide Yeo with $500,000 for the purpose of financing a real estate transaction. Plaintiff asserts that defendants represented that the $500,000 was needed for the "purpose of securing a bridge loan to complete American Security's purchase of two parcels of real property" located in Detroit and Melvindale, Michigan. After meeting with Yeo, plaintiff agreed to loan the money and wired it to an American Security bank account.

On October 26, 2009, after over two years of unsuccessfully attempting to collect payment on the loan, plaintiff filed a multi-count complaint against Yeo, De Valle, Sayers, and

American Security. In general, plaintiff alleged that the $500,000 loan was never used to finance the transaction, and "the [t]ransaction never existed as anything other than a scam to defraud [plaintiff]. . . . Plaintiff alleged that defendants diverted the money to their personal use. Specifically, plaintiff claimed that Yeo used all or part of the $500,000 to flee the county in an attempt to avoid a federal jail sentence.

Sayers filed an answer to plaintiff's complaint on November 24, 2009.[1] After Sayers filed his answer, plaintiff filed a motion for summary disposition against Sayers pursuant to MCR 2.116(C)(9) and (C)(10). Plaintiff argued that Sayers failed to comply with pleading requirements under MCR 2.111(C) and (D). The basis for plaintiff's argument was that Sayers had answered nearly every allegation against him in the following form: "Defendant neither admits nor denies but leaves plaintiff to his proofs." Plaintiff argued that "[b]y repeatedly answering that Sayers 'neither admits nor denies' allegations of which [Sayers] has personal knowledge, [Sayers] has admitted the same." As such, plaintiff argued that Sayers admitted liability and judgment was proper under MCR 2.116(C)(9) and (C)(10).

Sayers responded to plaintiff's motion and denied that he had admitted liability. Sayers submitted an affidavit in which he confirmed that he had introduced plaintiff to Yeo. However, he stated that he had no involvement in the financial arrangement between plaintiff and Yeo. Sayers also produced an affidavit from Yeo which stated that Sayers had no involvement in the financial transaction between Yeo and plaintiff.

A hearing on plaintiff's motion was held on April 14, 2010. At the hearing, Sayers acknowledged plaintiff's argument regarding Sayers' pleadings; however, argued that the affidavits submitted by Sayer and Yeo were sufficient to create a question of fact and defeat plaintiff's motion. In the alternative, Sayers asked that he be allowed fourteen days to amend his answer. After hearing arguments, the trial court granted plaintiff's motion for summary disposition. The trial court stated that after considering Sayers' answers and pleadings; plaintiff had met his burden. The trial court determined that there was "nothing to be gained with delay and new [p]leadings that could not just have easily [] been achieved initially." Plaintiff thereafter submitted a proposed order under MCR 2.602(B)(3) and Sayers objected to the order, arguing that it did not comport with the order of the trial court. After hearing arguments from the parties, the trial court issued an order granting summary disposition in favor of plaintiff and entering a judgment against Sayers. Sayers then filed a motion for reconsideration, which was denied by the trial court.

Sayers now appeals from the trial court order granting summary disposition and entering a judgment against him. Sayers argues that the trial court erred when it granted plaintiff's

[1] Yeo, De Valle, and American Security each filed answers on January 7, 2010; however, they never served a copy of their answers upon plaintiff. Therefore, plaintiff filed a motion strike and a motion for a default judgment against Yeo, De Valle, and American Security. Yeo, De Valle, and American Security never responded to plaintiff's motion for a default judgment. The trial court subsequently entered a default judgment against Yeo, De Valle, and American Security.

motion for summary disposition because his and Yeo's affidavits created a question of fact. We disagree.

A trial court's decision to grant summary disposition is reviewed de novo. *Coblentz v Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). "When deciding a motion under MCR 2.116(C)(9), which tests the sufficiency of a defendant's pleadings, the trial court must accept as true all well-pleaded allegations and properly grants summary disposition where a defendant fails to plead a valid defense to a claim." *Slater v Ann Arbor Pub Schools Bd of Ed*, 250 Mich App 419, 425; 648 NW2d 205 (2002). When reviewing a motion under subrule (C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant record evidence in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists warranting a trial. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

"Decisions concerning the meaning and scope of pleadings fall within the sound discretion of the trial court" and will not be reversed absent an abuse of discretion. *Dacon v Transue*, 441 Mich 315, 328; 490 NW2d 369 (1992). An abuse of discretion occurs when a trial court selects a decision that is outside of a range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

When reviewing the pleadings, we conclude that Sayers' answers were properly viewed as admissions because they failed to comply with the court rules. MCR 2.111 addresses responsive pleadings and provides in part:

> (C) Form of Responsive Pleading. As to each allegation on which the adverse party relies, a responsive pleading must
>
> (1) state an explicit admission or denial;
>
> (2) plead no contest; or
>
> (3) state that the pleader lacks knowledge or information sufficient to form a belief as to the truth of an allegation, which has the effect of a denial.
>
> (D) Form of Denials. Each denial must state the substance of the matters on which the pleader will rely to support the denial.
>
> (E) Effect of Failure to Deny.
>
> (1) Allegations in a pleading that requires a responsive pleading, other than allegations of the amount of damage or the nature of the relief demanded, are admitted if not denied in the responsive pleading.

In this case, Sayers' responses to the plaintiff's complaint failed to comply with MCR 2.111. The majority of Sayers's responses were in the following form: "Defendant neither admits nor denies but leaves plaintiff to his proofs." Although these responses are somewhat common, they are not specifically recognized by the court rule. MCR 2.111; see also *Pitcher v Pitcher*, 314 Mich 648, 649; 23 NW2d 195 (1946). "[T]he primary function of a pleading in Michigan is to give notice of the nature of the claim or defense sufficient to permit the opposite

party to take a responsive position." *Stanke v State Farm Mut Auto Ins Co*, 200 Mich App 307, 317; 503 NW2d 758 (1993), citing Martin, Dean & Webster, Michigan Court Rules Practice, p 186. By failing to either admit or deny the allegations, Sayers failed to give plaintiff notice of the nature of his defense sufficient to permit plaintiff to take a responsive position. Therefore, Sayers responses, "Defendant neither admits nor denies but leaves plaintiff to his proofs." were properly viewed as admissions. *Pitcher*, 314 Mich at 649; MCR 2.111(E)(1).

Additionally, to the extent that Sayers denied some of the allegations in plaintiff's complaint, the majority of these denials were improper. MCR 2.111(D) provides that "[e]ach denial must state the substance of the matters on which the pleader will rely to support the denial." The intent of the rule is that the pleader states why the allegation is untrue. *Stanke*, 200 Mich App at 318. And it serves to provide the opposing party with notice of the nature of the claim or defense. *Id.* at 317. Here, Sayers did make some affirmative denials. However, he failed to explain why he was denying the allegations. Instead, he merely asserted a naked denial with no explanation. Such a denial is prohibited under MCR 2.111(D) and was therefore properly viewed as an admission. Moreover, just as a party may not create a question of fact by using an affidavit to contradict his prior testimony (see, e.g., *Dykes v William Beaumont Hosp*, 246 Mich App 471, 479-480; 633 NW2d 440 (2001), a party cannot raise a factual issue by using an affidavit to contradict admissions in his own pleadings. Because Sayers admitted nearly every allegation contained in plaintiff's complaint, the trial court did not err when it concluded that summary disposition was proper in plaintiff's favor.

Next, Sayers argues that, even if his pleadings were insufficient, the trial court erred when it denied his motion for leave to amend his answer. We agree. A trial court's decision denying a motion to amend under MCR 2.116(I)(5) is reviewed for an abuse of discretion and will be only reversed "if it occasions an injustice." *Boylan v Fifty-Eight LLC*, 289 Mich App 709, 727; __NW2d ___ (2010).

MCR 2.116(I)(5) provides that when a motion is brought under MCR 2.116(C)(9) or (10), "the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified." Pursuant to MCR 2.118(A)(2), "a party may amend a pleading only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires." "A court should freely grant the nonprevailing party leave to amend," and leave should only be denied for particularized reasons, such as futility, undue delay, bad faith, and undue prejudice. *Boylan*, 289 Mich at 728, citing *Casey v Auto-Owners Ins Co*, 273 Mich App 388, 401; 729 NW2d 277 (2006).

In denying Sayers' request, the trial court stated that there was "nothing to be gained with delay and new [p]leadings that could not just have easily [] been achieved initially." Delay alone; however, does not justify denying a motion to amend. *Franchino v Franchino*, 263 Mich App 172, 191; 687 NW2d 620 (2004). In *Stanke*, 200 Mich App at 321, this Court explained:

> . . . It is a fundamental rule of civil procedure in this state that leave to amend pleadings should be given freely. MCR 2.118(A)(2); *Ben P Fyke & Sons v Gunter Co*, 390 Mich 649, 656; 213 NW2d 134 (1973). Although delay is a factor to be considered in granting a motion to amend pleadings, *id.* at 656, delay

> alone does not warrant denial of a motion to amend. *Id.* at 663-664. As the *Fyke* Court noted, amendments of pleadings by necessity must come at a point later in time than the pleading they seek to amend. *Id.* at 664. Thus, there must always be some delay associated with an amendment of a pleading. Delay may give rise to a legitimate basis for denying a motion to amend, such as where the delay was in bad faith or causes actual prejudice to the opponent. *Id.* at 663. Indeed, the longer an amendment is delayed, the greater the risk of substantial prejudice. *Id.* In fact MCR 2.118(C)(2) imposes a substantial restriction on the ability to offer amendments during the course of trial.

Here, although there would have been some delay if the trial court allowed Sayers to amend his answer, there was no showing that the delay was in bad faith or that plaintiff would suffer actual prejudice as a result of the amendment. The motion to amend came during the early stages of litigation. No discovery had yet occurred. And there was no showing that allowing Sayers to amend his answer would have denied plaintiff a fair trial. Accordingly, we vacate the May 25, 2010, order of the trial court granting summary disposition and entering a judgment against Sayers. The matter is remanded for further proceedings. On remand, the trial court shall given Sayers an opportunity to amend his pleadings.

We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens