

STATE OF MICHIGAN
COURT OF APPEALS

MICHAELANN I. REIS,

Plaintiff-Appellant,

v

QUICKEN LOANS, INC.,

Defendant-Appellee

and

DEON B. DWYER,

Defendant.

UNPUBLISHED
September 16, 2014

No. 316939
Oakland Circuit Court
LC No. 2012-129787-CZ

Before: HOEKSTRA, P.J., and WILDER and FORT HOOD, JJ.

PER CURIAM.

In this case involving a claim of fraudulent misrepresentation, plaintiff appeals as of right the order granting summary disposition to defendant Quicken Loans, Inc. under MCR 2.116(C)(8). Because plaintiff's complaint failed to state a claim on which relief can be granted, we affirm.

In this case, plaintiff filed suit against Deon Dwyer and his employer, Quicken Loans, alleging two counts: fraudulent misrepresentation and conversion. In response, Quicken Loans moved for summary disposition under MCR 2.116(C)(7) and (C)(8), arguing that plaintiff had failed to state a claim on which relief could be granted in regard to both claims against Quicken Loans, and that plaintiff's conversion claim was untimely. Plaintiff thereafter withdrew her conversion claim against Quicken Loans and the trial court then granted summary disposition to Quicken Loans under MCR 2.116(C)(8) in relation to plaintiff's claim of fraudulent misrepresentation. Plaintiff now appeals as of right, challenging the trial court's grant of summary disposition in regard to her fraudulent misrepresentation claim.¹

¹ In its brief on appeal, Quicken Loans asserts that this Court lacks jurisdiction because claims remain outstanding against Dwyer and thus there was no final order as defined in MCR

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Henry v Dow Chem Co*, 473 Mich 63, 71; 701 NW2d 684, 688 (2005). A motion under MCR 2.118(C)(8) tests the legal sufficiency of the plaintiff's claim based on the pleadings alone, and is properly granted where the claim is "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Clohset v No Name Corp*, 302 Mich App 550, 558; 840 NW2d 375, 380 (2013) (citation omitted). Under this subrule, "[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Liggett Rest Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2d 633 (2003) (citation omitted). However, it is also true that a pleader's "[c]onclusory statements, unsupported by factual allegations, are insufficient to state a cause of action." *Churella v Pioneer State Mut Ins Co*, 258 Mich App 260, 272; 671 NW2d 125 (2003). Further, a plaintiff alleging claims of fraud must plead those claims with particularity, MCR 2.112(B)(1), as "a viable fraud claim may not be inferred," even when viewing a complaint in the light most favorable to the plaintiff. *Cummins v Robinson Twp*, 283 Mich App 677, 695; 770 NW2d 421 (2009). See also *LaMothe v Auto Club Ins Ass'n*, 214 Mich App 577, 586; 543 NW2d 42 (1995) ("General allegations will not suffice to state a fraud claim. . . . [and] mere speculations are not sufficient to overcome a motion for summary disposition.").

Plaintiff labeled her claim in the present case as one of "fraudulent misrepresentation," which refers to a claim of fraud based on an affirmative misrepresentation. *Barclae v Zarb*, 300 Mich App 455, 476; 834 NW2d 100 (2013). A plaintiff claiming fraudulent misrepresentation must show that:

- (1) the defendant made a material representation;
- (2) the representation was false;
- (3) when the representation was made, the defendant knew that it was false, or made it recklessly, without knowledge of its truth, and as a positive assertion;
- (4) the defendant made it with the intention that the plaintiff should act upon it;
- (5) the plaintiff acted in reliance upon the representation; and
- (6) the plaintiff thereby suffered injury. [*Roberts v Saffell*, 280 Mich App 397, 403; 760 NW2d 715 (2008), *aff'd* 483 Mich 1089 (2009).]

A plaintiff must also show that any reliance on the defendant's representations was reasonable. *Foreman v Foreman*, 266 Mich App 132, 142; 701 NW2d 167 (2005). Apart from the affirmative assertion of a falsehood, a claim of fraud might also be established where the defendant engages in "silent fraud," which is "essentially the same" as fraudulent misrepresentation, "except that it is based on a defendant suppressing a material fact that he or she was legally obligated to disclose, rather than making an affirmative misrepresentation." *Alfieri v Bertorelli*, 295 Mich App 189, 193; 813 NW2d 772 (2012). Accordingly, necessary to a

7.202(6)(a)(i) from which plaintiff could appeal as of right pursuant to MCR 7.203(A)(1). However, the lower court record gives no indication that claims remain pending against Dwyer, or that such claims were pending at the time summary disposition was entered. In the absence of any indication that claims remain pending, or were pending at the time summary disposition was granted, the grant of summary disposition was a final order, i.e., the first judgment disposing of all claims and adjudicating the rights and liabilities of all the parties. See MCR 7.202(6)(a)(i). Thus, this Court has jurisdiction over plaintiff's appeal as of right. MCR 7.203(A)(1).

claim of silent fraud is a legal or equitable duty of disclosure. *Id.*; *Roberts*, 280 Mich App at 404.

In this case, relative to Quicken Loans, plaintiff's complaint includes the allegation that Dwyer is, "upon information and belief" a "principal employee/agent" of Quicken Loans. She indicates without providing context or specific factual details that she was "introduced" to Dwyer. She then alleges that, "acting in his capacity as an employee," Dwyer undertook numerous acts, including completing a loan application as plaintiff's co-borrower, and that, particularly relevant to her claim of fraudulent misrepresentation, he "intentionally made false representations or alternatively, failed to disclose to Plaintiff that strict Fannie Mae lending requirements do not allow or consider a nonoccupying a [sic] co-borrower for refinancing when the primary borrower does not otherwise qualify for a loan."

Obviously missing from plaintiff's complaint, however, are any specific facts to support the assertion that Dwyer undertook the acts in question on behalf of Quicken Loans in his role as a Quicken Loans employee such that his actions should be attributed to Quicken Loans. Specifically, as noted, plaintiff's complaint details numerous alleged wrongdoings by Dwyer. But, relative to Quicken Loans, plaintiff alleges, at most, that Dwyer is an employee of Quicken Loans, and she offers the conclusory claim that he acted in "his capacity as an employee." Considering these allegations in a light most favorable to plaintiff, her complaint clearly includes claims of wrongdoing by Dwyer, but she fails to provide sufficient factual allegations to connect Dwyer's actions to Quicken Loans. In particular, what plaintiff fails to allege is the role Dwyer purportedly performed on behalf of Quicken Loans in relation to her transaction, or how his actions were that of a Quicken Loans employee. For instance, plaintiff alleges that she was "introduced" to Dwyer at some unspecified time and place, but she offers no indication that she met Dwyer in his professional capacity at Quicken Loans, that he was the Quicken Loans representative involved with her loan application, or that there was any other indication he was acting on Quicken Loans' behalf in relation to her transaction. Indeed, the loan documents attached to plaintiff's complaint in fact show that Dwyer was not the employee representing Quicken Loans in regard to plaintiff's loan. In short, Dwyer may be an employee of Quicken Loans, but it does not follow—in the absence of additional factual allegations—that he acted in this capacity when he personally completed a loan application as plaintiff's co-borrower.

Overall, even when viewing the pleadings in a light most favorable to plaintiff, fraud will not be inferred, and plaintiff's conclusory, general assertion that Dwyer acted in his capacity as a Quicken Loans employee, unsupported by factual allegations to connect his actions to Quicken Loans, is not sufficient to plead a claim of fraudulent misrepresentation against Quicken Loans. See *Churella*, 258 Mich App at 272; *LaMothe*, 214 Mich App at 586. Because plaintiff has failed to plead a claim of fraudulent misrepresentation against Quicken Loans, summary disposition was properly granted under MCR 2.116(C)(8).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood