

STATE OF MICHIGAN
COURT OF APPEALS

DEBORAH K. FOLSON,

Plaintiff-Appellant,

v

WELLS FARGO BANK NA, as Trustee for
FIRST FRANKLIN MORTGAGE LOAN
TRUST,

Defendant-Appellee,

and

SAXON MORTGAGE SERVICE and SUSAN C.
MYERS,

Defendants.

UNPUBLISHED

May 22, 2007

No. 273868

Wayne Circuit Court

LC No. 06-619397-CZ

Before: Meter, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court's order granting defendant's motion for summary disposition for failure to state a claim. MCR 2.116(C)(8). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed a complaint denominated "TRUST FRAUD/DOUBLE FORGERY." The complaint contains allegations against an attorney, a mortgage company, and members of the Wayne County Sheriff's Department, among others. The plaintiff invokes the protection of numerous federal and state constitutional provisions and statutes.

We review the trial court's grant of a motion for summary disposition *de novo*. *Wickens v Oakwood Health Care Sys*, 465 Mich 53, 59; 631 NW2d 686 (2001). A motion brought pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint alone. If the claims made in the complaint do not state a claim on which relief can be granted, when viewed in a light most favorable to the plaintiff, the defendant is entitled to judgment as a matter of law. *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006).

Claims of fraud must be stated in a complaint “with particularity.” MCR 2.112(B)(1). The mere statement that fraud has occurred is legally insufficient. *LaMothe v Auto Club Ins Assn*, 214 Mich App 577, 586; 543 NW2d 42 (1995).

A valid claim for fraud is made by stating facts which show that: (1) the defendant made a material representation, (2) the representation was false, (3) the defendant knew that the representation was false, or that he made it recklessly, without any knowledge of its truth or falsity, and as a positive assertion, (4) the representation was made with the intention that the plaintiff act upon it, (5) the plaintiff acted in reliance upon the representation made, and (6) the plaintiff suffered damages. *Hi-Way Motor Co v Int’l Harvester Co*, 398 Mich 330, 336; 247 NW2d 813 (1976); *Bergen v Baker*, 264 Mich App 376, 382; 691 NW2d 770 (2004).

The plaintiff’s complaint makes no legally cognizable claim for fraud. Summary disposition was proper under MCR 2.116(C)(8).

We note that plaintiff claims the protection of the Federal Truth in Lending Act, 15 USC 1601 *et seq.* The complaint also references 15 USC 1692f and 15 USC 1692g, important notice provisions of the Federal Fair Debt Collection Practices Act (FDCPA), 15 USC 1692 *et seq.* The FDCPA establishes certain rights for consumers whose debts are placed in the hands of professional debt collectors for collection, and requires that debt collectors advise consumers whose debts they seek to collect of specific rights.

An important right given to consumers in the FDCPA is the validation notice requirement of 15 USC 1692g(a). The statute requires that within five days after an initial contact with a consumer in connection with any debt, a debt collector must send a specifically worded notice about the debt, the amount owed, the name of the creditor, and other information giving the debtor a chance to contest the validity of the debt.

Similar to plaintiff’s fraud claim, we lack sufficient facts, from the complaint alone, to determine whether defendant or its agents acted as debt collectors within the FDCPA. We do not know the nature of the foreclosure proceedings or the provisions of the mortgage agreement. Therefore, we conclude that summary disposition was proper as to this claim as well.

Affirmed.

/s/ Patrick M. Meter
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood