STATE OF MICHIGAN

COURT OF APPEALS

THOMAS MCWILLIAMS, Plaintiff-Appellant,	UNPUBLISHED August 17, 2026 9:16 AM
v	No. 374594 Sanilac Circuit Court
TRI-COUNTY BANK, Defendant-Appellee.	LC No. 2024-040710-NZ

Before: LETICA, P.J., and O'BRIEN and REDFORD, JJ.

PER CURIAM.

Plaintiff, Thomas McWilliams, appeals a February 5, 2025 order granting defendant, Tri-County Bank's motion for summary disposition under MCR 2.116(C)(8) and dismissing his complaint. Because the allegations of the complaint fail to establish any legal or equitable duty recognizable under Michigan law, the circuit court's order is affirmed.

I. BACKGROUND

Because summary disposition was granted under MCR 2.116(C)(8), our review is limited to the facts alleged in the complaint. See *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019). Plaintiff operates a farming business under the name of Tom McWilliams Farms. Since 2013, defendant served as the agricultural lender for this business. As of 2023, the agricultural loans that plaintiff held with defendant totaled approximately $654,000 and were secured by a mortgage, farm equipment, and other assets. These loans had a maturity date of May 23, 2023. Plaintiff sues defendant under a theory of respondeat superior for the alleged actions or inactions of its agricultural specialist, Paul Burgess.

In 2022, plaintiff approached Burgess to discuss renewal of the existing loans and the possibility of obtaining additional funds for the spring crop inputs and purchase of additional feeders. He allegedly made numerous inquiries, and Burgess told him that he would get back with him. Burgess did not respond in time for the 2023 planting season, and plaintiff secured financing from an alternative source at a higher interest rate. Burgess was informed of this. Plaintiff met with Burgess again later in 2023 to discuss renewal of the existing loans and the need for additional financing and received no response. In 2024, plaintiff planted a limited crop. In its complaint, plaintiff alleged an alternative lender was not an option because his assets were encumbered by the loans held by defendant.

In February 22, 2024, defendant renewed the existing loans at a higher interest rate, and in June 2024, Burgess informed plaintiff that defendant would not lend the requested additional funds.

Plaintiff's complaint includes two counts, one for negligence and the other for silent fraud. With respect to the negligence claim, plaintiff alleges that defendant owed him a duty to respond fully, fairly, accurately, and timely to his requests for lending; to use due care not to cause harm in the performance of an undertaking, and to act in a nonnegligent manner. Plaintiff alleged that defendant breached this duty by, among other things, waiting until February 2024 to renew the outstanding loans, and failing to respond to the request for additional funding until well beyond the date that the crops could be planted. Plaintiff alleged that as an agricultural lender, defendant was aware of weather deadlines and the fact that if funds necessary for planting a crop were not available by May or early June, he would not be able to plant in the year 2024. It was highly foreseeable that without being fully informed, plaintiff would suffer financial loss to his business, which in fact he did.

With respect to the silent fraud claim, plaintiff alleges that Burgess never intended to loan the additional funds, but waited to disclose this decision to prevent plaintiff from obtaining loans from other sources. Plaintiff alleges that defendant was "duty-bound" to timely disclose whether additional loans would be made, and Burgess's failure to respond created an assumption that the loans would be available.

The injuries suffered, which were allegedly foreseeable by defendant, included loans issued at a higher interest rate, loss of crops in 2024, loss of cattle sales because of the inability to sufficiently replenish the herd upon sale, and mental anguish.

II. ANALYSIS

A. STANDARD OF REVIEW

We review a grant of summary disposition de novo. *Peters v Dep't of Corrections*, 215 Mich App 485, 486-487; 546 NW2d 668 (1996). In this case, the circuit court granted defendant's motion for summary disposition under MCR 2.116(C)(8). A motion under MCR 2.116(C)(8) "tests the *legal sufficiency* of a claim based on the factual allegations in the complaint." *El-Khalil*, 504 Mich at 159. Our analysis begins by "accept[ing] as true all factual allegations contained in the complaint." *Bailey v Schaaf*, 494 Mich 595, 603; 835 NW2d 413 (2013). "A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999) (quotation marks and citation omitted).

B. NEGLIGENCE

To survive summary disposition on the claim of negligence, plaintiff must allege facts demonstrating that defendant owed a legal duty to plaintiff that it breached or violated, and that plaintiff suffered damages as a proximate cause of that breach. *Schultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993). The circuit court appropriately dismissed plaintiff's complaint because the allegations fail to demonstrate a legal duty that defendant owed to plaintiff, which was violated in the context of the activities alleged in the complaint.

The existence of a legal duty is a question of law. *Valcaniant v Detroit Edison Co*, 470 Mich 82, 86; 679 NW2d 689 (2004). "Duty is actually a 'question of whether the defendant is under any obligation for the benefit of the particular plaintiff' and concerns 'the problem of the relation between individuals which imposes upon one a legal obligation for the benefit of the other.' " *Buczkowski v McKay*, 441 Mich 96, 100; 490 NW2d 330 (1992), quoting *Friedman v Dozorc*, 412 Mich 1, 22; 312 NW2d 585 (1981). It is not "sacrosanct in itself, but is only an expression of the sum total of those considerations of policy which lead the law to say that the plaintiff is entitled to protection." *Id*. at 100-101 (quotation marks and citation omitted). Factors that Michigan courts consider include foreseeability of the alleged injury that the plaintiff suffered, the relationship between the parties, and whether statements made by the defendant were incomplete or untruthful so as to warrant a duty to disclose. *Samson v Saginaw Prof Bldg, Inc*, 393 Mich 393, 406; 224 NW2d 843 (1976); *Mercurio v Huntington Nat'l Bank*, 347 Mich App 662, 683; 16 NW3d 748 (2023).

We agree with the trial court that no legal duty exists between defendant and plaintiff on the basis of the allegations in the complaint. Plaintiff identifies no regulation, statute, provision in a contract, or other basis for finding a fiduciary relationship between himself and defendant. On appeal, he cites to two duties recognized under law—neither of which are triggered by the facts in the complaint. Specifically, while Michigan law recognizes a legal duty to act with due care when one assumes to act on another's behalf, see *Ray v Transamerica Ins Co*, 10 Mich App 55; 158 NW2d 786 (1968), there is no allegation that Burgess or any other representative did this. Plaintiff does not allege that Burgess took any action or made any statement, gratuitous or otherwise, that indicated that defendant intended to renew the loans at the existing interest rate or to provide additional financing. The complaint alleges only that he had several loans with defendant, that he requested renewal of these loans as well as additional financing, and that Burgess told him that he would provide a response to his request—which Burgess did. The fact that Burgess's response was not what plaintiff hoped to hear does not support the finding that defendant assumed a legal duty to act otherwise when the complaint lacks any allegation of a statement or action by defendant indicating that it planned to act on plaintiff's behalf.

This lack of any alleged statement or action evidencing a commitment on defendant's part to renew the loans at the existing rates or to issue additional financing is fatal to plaintiff's second purported legal duty. Michigan courts recognize a legal duty to make a disclosure "where inquiries are made by the plaintiff, to which the defendant makes incomplete replies that are truthful in themselves but omit material information." *Hord v Environmental Research Institute of Mich*, 463 Mich 399, 412; 617 NW2d 543 (2000). Plaintiff does not allege that Burgess made any disclosure of any information that was truthful and incomplete. Burgess allegedly told plaintiff that he would get back to him with respect to his inquiries, and he did. At best, plaintiff's allegation is that defendant unduly delayed in notifying him of a decision as to his eligibility for a loan. This Court previously determined that no legal duty exists to exercise reasonable care in determining eligibility for a loan. *Ulrich v Fed Land Bank of St Paul*, 192 Mich App 194, 199-200; 480 NW2d 910 (1991). This analysis applies here as well. We affirm the circuit court's grant of summary disposition under MCR 2.116(C)(8) on plaintiff's negligence claim.

C. SILENT FRAUD

The lack of a legal duty is also problematic with respect to plaintiff's claim for silent fraud. "Michigan has long recognized silent fraud . . . when the truth has been suppressed with the intent to defraud because suppression of the truth can be just as prejudicial as that which arises from the assertion of a falsehood." *Mercurio*, 347 Mich App at 681. A claim of silent fraud requires the allegation of a more complex set of proofs than that of traditional fraud claims, which are based upon alleged affirmatively stated false representations of material fact. *M&D, Inc v WB McConkey*, 231 Mich App 22, 28; 585 NW2d 33 (1990). It is insufficient to allege mere nondisclosure of material information, even if the defendant was allegedly aware of it. *Hord*, 463 Mich at 412. Rather, plaintiff must show "some type of representation by words or actions that was false or misleading and was intended to deceive" and, also, that there "exist[s] a legal or equitable duty of disclosure." *Roberts v Saffell*, 280 Mich App 397, 404; 760 NW2d 715 (2008), aff'd 483 Mich 1089 (2009).

The allegations in the complaint fall short of providing the necessary elements for a claim of silent fraud. As discussed earlier, plaintiff fails to identify any basis for finding that defendant had a legal or ethical duty to disclose information. At best, Burgess was negligent in failing to timely respond to plaintiff's inquiries for a renewal of his loans and for additional financing, but Burgess did not owe a legal duty toward plaintiff with respect to the loan application. Nor does plaintiff identify any misrepresentation. Burgess did what Burgess apparently told plaintiff that he would do—he responded to plaintiff's request for an answer as to whether plaintiff's business qualified for renewal of the existing loans and with respect to plaintiff's request for additional financing. There is no allegation that defendant made any statement or took any action that would have reasonably led plaintiff to believe that a different outcome was inevitable.

III. CONCLUSION

Plaintiff has not demonstrated any error by the circuit court warranting reversal. The circuit court's order granting summary disposition in defendant's favor is affirmed.

/s/ Anica Letica
/s/ Colleen A. O'Brien
/s/ James Robert Redford