

STATE OF MICHIGAN
COURT OF APPEALS

EDWARD RUSH,

Plaintiff-Appellant,

v

MGM GRAND DETROIT, LLC,

Defendant-Appellee.

UNPUBLISHED
February 15, 2005

No. 248861
Wayne Circuit Court
LC No. 02-225878-CZ

Before: Cavanagh, P.J., and Jansen and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's orders granting defendant's motion for summary disposition and denying plaintiff's motion to amend his complaint. We affirm.

On August 3, 1999, plaintiff requested a \$5,000 credit limit from defendant casino. The credit applicant authorized the casino to verify any credit information to determine the propriety of approving the credit line. The credit application contained the following statement: "We will cancel or reduce your credit line upon your request." On August 25, 2000, plaintiff prepared a credit change form, requesting that his credit be cancelled. This form contained the following statement:

I understand that it is the policy of the MGM Grand Hotel/Casino [defendant] that when I cancel my line of credit, I may not have it re-established for thirty (30) days. If I reduce my line of credit, I may not have it raised for three (3) days. I also understand that if MGM Grand Detroit/Casino fails to follow such policies, I will still be liable for satisfying whatever debt is outstanding.

Plaintiff was able to modify his credit status within the periods delineated by the above stated policy. For example, plaintiff cancelled his line of credit on January 27, 2002, and reinstated his credit line to \$5,000 on February 3, 2002. Over a two-year period, plaintiff cancelled, reinstated, and modified his credit limit on several different occasions. Because the transactions occurred despite the policy statement contained in the credit change form, plaintiff filed this litigation, alleging negligence. In response to the litigation, defendant moved for summary disposition, asserting that any breach of duty arose from the contract for a line of credit, not negligence. Defendant also asserted that the language of the credit change form, advising plaintiff of his continued responsibility for payment of debt even if defendant failed to follow it policy,

precluded the litigation. The trial court granted the motion for summary disposition, but on reconsideration, gave plaintiff the opportunity to submit a proposed amended complaint.

Plaintiff submitted an amended complaint, alleging violations of the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq*, fraud and misrepresentation, silent fraud, fraud based on bad faith promise, innocent misrepresentation, promissory estoppel, and breach of oral and written promises. The trial court denied the motion for reconsideration and motion to amend, concluding that the language of the agreement signed by plaintiff precluded his claims.

We review summary disposition decisions de novo. *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004). The construction and interpretation of a contract presents a question of law that is subject to de novo review. *Bandit Industries, Inc v Hobbs Int'l, Inc (After Remand)*, 463 Mich 504, 511; 620 NW2d 531 (2001). The terms of a contract must be interpreted in accordance with the commonly used meanings. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). The use of the term “shall” denotes mandatory action, *Browder v Int'l Fidelity Ins Co*, 413 Mich 603, 612; 321 NW2d 668 (1982). However, the use of the term “may” indicates discretionary action. See *Howard v Bouwman*, 251 Mich App 136, 145; 650 NW2d 114 (2002).

The trial court properly dismissed the claim of negligence. The parties entered into a contract for a line of credit, and defendant did not breach the agreement wherein it retained the right to engage in discretionary action. See *Howard, supra*. Because plaintiff did not allege a breach of duty separate and distinct from any contract obligation, *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 47-48; 649 NW2d 783 (2002), plaintiff could not maintain the negligence action. Allegations of fraud must be pleaded with specificity, MCR 2.112(B)(1), and the failure to do so is fatal to the complaint. *Zimmerman v Merrill Lynch, Pierce, Fenner & Smith, Inc*, 151 Mich App 566, 574; 391 NW2d 353 (1986). Moreover, an action in fraud must be predicated on a past or an existing fact, and future promises are contractual and cannot constitute actionable fraud. *Eerdmans v Maki*, 226 Mich App 360, 366; 573 NW2d 329 (1997). Thus, the trial court properly dismissed the claims based on fraud.

With regard to the claims of promissory estoppel, the parties' agreement was based on a written contract, and therefore, this claim is precluded. See *Barber v SMH, Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993). Lastly, the trial court properly dismissed the MCPA claim of a regulated industry.¹ *Kraft v Detroit Entertainment, LLC*, 261 Mich App 534, 540-543; 683 NW2d 200 (2004).

¹ We recognize that gambling may become an addiction, and corporate interests do not align with an individual struggling with addiction. However, individuals may also seek relief from permissive policies by voluntarily excluding themselves from gambling facilities, see MCL 432.225.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Karen M. Fort Hood