

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTOPHER DINSDALE and ROBYN
DINSDALE,

UNPUBLISHED
October 7, 2021

Plaintiffs/Counter-Defendants-
Appellees,

v

No. 353964
Clinton Circuit Court
LC No. 2019-011931-CH

CHRISTOPHER LANCE STAGGS, also known as
CHRISTOPHER STAGGS,

Defendant/Counter-Plaintiff-
Appellant,

and

JP MORGAN CHASE AND COMPANY,

Defendant-Appellee,

and

ADAM Q. BREWER, AQB RENTALS, LLC,
INTEGRATED VEHICLE LEASING, INC.,
ALECIA KELLY, RACHEL KELLY, and
UNIFUND CCR, LLC,

Defendants.

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

PER CURIAM.

Defendant Christopher Staggs (Staggs) appeals as of right the trial court's order granting summary disposition to plaintiffs Christopher Dinsdale and Robin Dinsdale (the Dinsdales) under MCR 2.116(C)(8) (failure to state a claim) and (C)(10) (no genuine issue of material fact). We affirm.

I. BACKGROUND

In 2018, the Dinsdales purchased property in Lansing, Michigan from Staggs by land contract. The contract required, among other things, that Staggs perform certain improvements on the property within a prescribed time period and not incur any additional incumbrances against the property. The Dinsdales sought out Staggs when the improvements were not made. Contemporaneous with the search for Staggs to discuss the failure to make the improvements, the Dinsdales learned that the mortgage on the property was delinquent and there were other outstanding bills which could become liens against the property. The Dinsdales met Staggs at the jail and presented him with a proposed addendum. The addendum relieved Staggs of his duty to improve the property and lowered the purchase price, down payment, and monthly payments. It also contained provisions for the Dinsdales to pay the outstanding bills directly from their monthly payment and deposit any overage into an account that Staggs shared with his mother. Staggs signed the addendum.

After the execution of the addendum, the Dinsdales learned of additional liens against the property which in the aggregate exceeded the land contract price. Upon his release from jail, Staggs repudiated the addendum claiming among other things that he was duped into signing it. The Dinsdales filed a complaint alleging claims of breach of contract and seeking declaratory relief to quiet title. Staggs filed both a notice of forfeiture and a counterclaim. In his counter-claim, he too claimed breach of contract. Additionally, Staggs claimed any addendum was void due to duress and misrepresentation. Finally, Staggs sought a judgment of forfeiture for the Dinsdales' failure to make certain payments.

The parties filed cross motions for summary disposition. The Dinsdales argued pursuant to MCR 2.116(C)(8) and (10). Chief among their arguments were the assertions that Staggs failed to plead facts in support of his fraud claims and that to the extent he pled appropriately, he failed to preserve a material question of fact regarding those claims. Staggs filed over 10 motions for dismissal, arguing that the Dinsdales had not complied with certain statutes and reasserted his claim of duress. However, he failed to notice any of his motions for hearing. At a hearing on the Dinsdales' motion, the court granted summary disposition to the Dinsdales and dismissed Staggs' counterclaim. We note that while Staggs initially appeared in pro persona he was represented by counsel when the hearing on the summary disposition was held.

On appeal, Staggs argues that the court erred in granting the Dinsdales summary disposition because the court required Staggs to submit evidence beyond his pleadings and did not consider evidence Staggs attached to his pleadings.

II. STANDARD OF REVIEW

“This Court reviews de novo the grant or denial of a motion for summary disposition to determine if the moving party is entitled to judgment as a matter of law.” *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 5–6; 890 NW2d 344 (2016). The Dinsdales sought summary disposition under Subrules (C)(8) and (C)(10). The parties treat the dismissal of Staggs' counterclaim as having been under MCR 2.116(C)(8).

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v. Dep't of Corrections*, 439 Mich. 158, 162, 483 N.W.2d 26 (1992). 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.” *Id.* at 163, 483 N.W.2d 26. When deciding a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5). [*Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999)].

Summary disposition under MCR 2.116(C)(8) is appropriate when “[t]he opposing party has failed to state a claim on which relief can be granted.”

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4). *Quinto v. Cross & Peters Co.*, 451 Mich. 358, 547 N.W.2d 314 (1996). [*Maiden*, 461 Mich at 120].

“A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ.” *Johnson v Vanderkooi*, 502 Mich 751, 761; 918 NW2d 785 (2018) (quotation marks and citations omitted).

III. ANALYSIS

We address the MCR 2.116(C)(8) motion first. Staggs argues that under MCR 2.116(C)(8), the trial court erred in looking beyond well-pled allegations in the counterclaim for admissible evidence in support of those claims.

At the motion hearing, the trial court held:

The only issues asserted by the Defendant are disingenuous, and they’re disingenuous and self-serving without foundation, without evidentiary support or substantiation, without conformity to the requirements of the pleading rules in the Michigan Court Rules, and specifically, the rules that require that we have admissible evidence by way of affidavit submitted in opposition to the Plaintiff’s motion. This litigation has been pending far too long, and needs to come to an end for the benefit of all parties.

Staggs is correct to assert that in deciding a motion under (C)(8), the court only considers the pleadings and those documents attached to the pleadings. However, the court’s consideration of such evidence was permitted under MCR 2.116(C)(10).

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other

documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. [*Quinto*, 451 Mich at 362-363 (internal citations omitted)].

The Dinsdales offered, among other evidence, the affidavit of Robyn Dinsdale and text messages between Robyn and Staggs' mother, Marilyn Staggs, to support the Dinsdales' position that Staggs was a willing participant in drafting and a benefactor of the July 2018 addendum. In her affidavit, Robyn averred that the addendum was entered into because Staggs was unable 1) to pay outstanding mortgage and utility payments, and homeowner association's dues; and 2) to perform improvements on the property promised in the land contract. Robyn further averred that at no time during the addendum's execution did Staggs express an inability to understand the document and that Staggs provided information to fill in the addendum's blanks, including (a) the down payment, (b) the purchase price, (c) the monthly payment, and (d) that he wanted any extra money sent to Marilyn Staggs. Text messages between Robyn and Marilyn evidenced Robyn acting in accordance with the addendum by, for example, paying outstanding bills and depositing overages into an account shared between Marilyn and Staggs. Under a (C)(10) analysis, the admission of this evidence caused the burden of proving a genuine issue of material fact existed to shift to Staggs. Staggs admits he did not file an affidavit and did not submit evidence in opposition to Robyn's affidavit. Staggs argues that he was not required to present anything beyond his pleadings. However, with a (C)(10) motion, the nonmoving party "must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Quinto*, 451 Mich at 362-363. Staggs failed to offer anything additional, leaving the Dinsdales' evidence uncontroverted, and making summary disposition of Staggs' counterclaim under MCR 2.116(C)(10) appropriate.

Staggs next argues that the trial court erred in granting the Dinsdales summary disposition under MCR 2.116(C)(10) because the court failed to consider Staggs' pleadings, including his answer and counterclaim, and the exhibits attached to those pleadings. Staggs failed to illuminate which of the 31 exhibits contained materials that preserved a material question of fact. Additionally, the court specifically wrote that it was fully apprised of the entire record, including Staggs' filings. Staggs focuses on a certain June 2019 email to support his argument that the court could not have really considered the full record. Ignoring the requirements that a party must present more than pleadings to prevail against a (C)(10) motion, we note that the email in question, at best, supports the fact that after release from jail, Staggs repudiated the addendum. The email asserts economic duress and silent fraud, both non-viable claims under Michigan law against the Dinsdales who were not in any special relationship warranting a duty to disclose. See *Allard v Allard*, 308 Mich App 536, 551; 867 NW2d 866 (2014), rev'd in part on other grounds 499 Mich 932; 878 NW2d 888 (2016) ("[T]he fear of financial ruin alone" does not demonstrate "economic duress; it must also be established that the person applying the coercion acted unlawfully.") and *Lucas v Awaad*, 299 Mich App 345, 364, 830 NW2d 141 (2013) ("in order for the suppression of information to constitute silent fraud there must exist a legal or equitable duty of disclosure.")

As discussed, when the Dinsdales offered evidence to support their claim that the addendum was enforceable, the burden shifted to Staggs to show that a genuine issue of material fact existed. Staggs had not submitted any additional evidence, and at the motion hearing, Staggs chose to rest on his pleadings, leaving the affidavit uncontroverted.

Affirmed.

/s/ Stephen L. Borrello

/s/ Deborah A. Servitto

/s/ Cynthia Diane Stephens