

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

STATE FARM FIRE AND CASUALTY
COMPANY, as subrogee of Ronald
Vanderlaan, Roger Vanderlaan, Elaine
Gordon, and Drake Dominici,

Plaintiff,

vs.

Case No. 14-03282-NZB

HON. CHRISTOPHER P. YATES

GODWIN PLUMBING, INC.; CHARLOTTE
PIPE AND FOUNDRY CO.; WOLVERINE
CONSTRUCTION MANAGEMENT, INC.;
BRIDGEWATER CONDOS, L.C.; K.L.
McCOY AND ASSOCIATES, INC.;
TRAVELERS INDEMNITY COMPANY OF
CONNECTICUT; and THE TRAVELERS
COMPANIES, INC.,

Defendants.

OPINION AND ORDER GRANTING TRAVELERS' MOTION TO
DISMISS PLAINTIFF STATE FARM'S AMENDED COMPLAINT,
BUT GRANTING STATE FARM LEAVE TO AMEND COMPLAINT

Leonardo da Vinci observed that “water is the driving force of all nature.” As it turns out, water is also the driving force behind the largest and most complicated dispute to date in the Court’s Specialized Business Docket. In 2012, and again in 2013, the River House Condominiums sustained significant water damage. In due course, Plaintiff River House at Bridgewater Place Condominium Association (“condo association”) filed suit against a host of companies allegedly responsible for the water incidents, and insurance companies stepped into the shoes – or, in this case, perhaps the rain boots – of River House condominium owners to seek redress for their losses. At this early stage of the case, Defendants Travelers Indemnity Company of Connecticut and The Travelers Companies,

Inc. (collectively “Travelers”) have requested summary disposition against Plaintiff State Farm Fire and Casualty Company (“State Farm”) under MCR 2.116(C)(8). According to Travelers, State Farm has failed to plead viable claims of fraudulent misrepresentation and silent fraud under the standards prescribed by Michigan law.¹ Upon review, the Court must grant summary disposition to Travelers, but afford State Farm one last opportunity to amend its complaint.

I. Factual Background

“A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the complaint[.]” Michigan ex rel Gurganus v CVS Caremark Corp, 496 Mich 45, 62 (2014), so the Court’s review of such a motion is limited to the factual allegations contained in the complaint. See id. at 63. Therefore, the Court must confine its discussion of the facts underlying this dispute to the allegations in State Farm’s First Amended Complaint. This entire case revolves around five six-by-four-inch reducer couplings that were but a small part of the massive plumbing system at the River House condominium building. On April 13, 2012, one of the reducer couplings on the fifth floor of the condominium complex ruptured, causing substantial water damage to the common areas of the condominium complex and several individual units. See State Farm’s First Amended Complaint, ¶ 30. At that time, River House was insured by Travelers, which undertook an investigation of the plumbing failure. Id., ¶ 33. While the investigation was underway, River House began discussions about the potential need to replace the other six-by-four-inch reducer couplings located throughout the plumbing system. Id., ¶ 34. River House voted to replace the ruptured coupling on the fifth floor

¹ After the Court granted summary disposition in favor of Defendant Travelers on the claims in the complaint on July 18, 2014, Plaintiff State Farm filed a first amended complaint setting forth three claims against Travelers for misrepresentation in Count Four, silent fraud in Count Five, and negligence in Count Six. But on August 8, 2014, the Court entered a stipulated order dismissing the negligence claim, so only the fraudulent-misrepresentation and silent-fraud claims remain at issue.

as well as a reducer coupling on the seventh floor, but it postponed its decision to replace the three remaining reducer couplings pending the results of Travelers' investigation. Id., ¶ 35. Eventually, in mid-2012, Travelers informed the condo association (through its property management company, Signature Associates) that Travelers' investigation revealed that the reducer couplings were not the cause of the rupture. Id., ¶ 37. Thus, the condo association chose not to replace the remaining three reducer couplings. Id.

The decision to forgo replacement of the remaining reducer couplings proved catastrophic when a second reducer coupling on the fifth floor ruptured on June 2, 2013, again causing substantial water damage to common areas of the condominium complex and several individual units. See State Farm's First Amended Complaint, ¶¶ 41-42. Plaintiff State Farm contends that Defendant Travelers should be held responsible for that damage based upon fraudulent misrepresentation and silent fraud. Those claims flow from the allegation that Travelers was informed by two experts during the 2012 investigation that the 2012 water damage resulted from failure of a six-by-four-inch reducer coupling and the plumbing system would fail again unless the other couplings were replaced. Id., ¶ 84. State Farm insists that Travelers withheld that information from the condo association and falsely reported the cause of the water damage as undetermined because Travelers insured the coupling manufacturer, *i.e.*, Charlotte Pipe and Foundry Co., and the general contractor for the condominium project, *i.e.*, Wolverine Construction Management, Inc. Id., ¶¶ 87, 93-94. Thus, State Farm alleges that Travelers was driven to misinform the condo association about the cause of the water damage to avoid losses to its other insureds. Id., ¶ 89. State Farm also asserts that Travelers knew the condo association's decision to take further action to replace the remaining reducer couplings depended upon the results of Travelers' investigation, id., ¶ 35, so Travelers had a duty to accurately disclose the results of its investigation to the condo association based upon its insurance relationship. Id., ¶ 92.

Although all of the allegations described above bear upon the establishment of claims for fraudulent misrepresentation and silent fraud, the allegations most significant to this motion involve Plaintiff State Farm's leaps of logic in attributing the representations made by Defendant Travelers to the condo association and the duty owed by Travelers to the condo association and the owners of the individual condominium units that were insured by State Farm. See State Farm's First Amended Complaint, ¶¶ 99, 100. State Farm has made these leaps without sufficient explanation, so Travelers contends State Farm has stretched the law concerning fraudulent misrepresentation and silent fraud beyond the breaking point. Accordingly, Travelers has moved to dismiss each of those claims under MCR 2.116(C)(8).

II. Legal Analysis

A motion for summary disposition under MCR 2.116(C)(8) "is properly granted if '[t]he opposing party has failed to state a claim on which relief can be granted.'" Gurganus, 496 Mich at 62-63. In determining whether Plaintiff State Farm has adequately alleged claims upon which relief may be granted, the Court "must accept all factual allegations in the complaint as true, along with all reasonable inferences or conclusions that can be drawn from them[.]" id. at 63, but "conclusory statements that are unsupported by allegations of fact on which they may be based will not suffice to state a cause of action." Id. Furthermore, State Farm must plead with particularity all allegations of fraud. Id. Applying these well-settled standards, the Court must consider Plaintiff State Farm's claims for fraudulent misrepresentation and silent fraud.

To present a claim for fraudulent misrepresentation, Plaintiff State Farm must allege that Defendant Travelers made "a false representation of material fact with the intention that the plaintiff would rely on it, the defendant either knowing at the time that the representation was false or making

it with reckless disregard for its accuracy, and the plaintiff actually relying on the representation and suffering damage as a result.” See Alfieri v Bertorelli, 295 Mich App 189, 193 (2012). Here, State Farm alleges that Travelers made false representations to the condo association, see State Farm’s First Amended Complaint, ¶¶ 93-94, and that Travelers understood that the condominium residents, some of whom were insured by State Farm, would rely on those statements. Id., ¶ 99. But our Court of Appeals has ruled that “[a]n allegation of fraud based on misrepresentations made to a third party does not constitute a valid fraud claim.”² Int’l Brotherhood of Electrical Workers, Local Union No 58 v McNulty, 214 Mich App 437, 447 (1995). Thus, State Farm cannot base a claim for fraudulent misrepresentation upon statements made to the condo association unless State Farm establishes that the condo association directly represented the interests of the individual residents in their individual units. State Farm has failed to make such an allegation, so the Court must grant summary disposition under MCR 2.116(C)(8) on State Farm’s fraudulent-misrepresentation claim. In doing so, however, the Court must afford State Farm the opportunity to amend its complaint unless such an amendment would be futile. See MCR 2.116(I)(5); see also Ormsby v Capital Welding, Inc., 471 Mich, 45, 52-53 (2004). Here, although it seems unlikely that the condo association represented the interests of the residents with regard to their individual units, the Court nonetheless must allow State Farm to amend its complaint to include an allegation that the condo association directly represented the interests of the individual residents in their individual units.

² A more antiquated decision from our Court of Appeals diametrically opposes the conclusion reached in McNulty. See Oppenhuizen v Wennersten, 2 Mich App 288, 294 (1966) (“[W]here a party makes false representations to another with the *intent or knowledge* that they be *exhibited or repeated* to a third party for the purpose of deceiving him, the third party, if so deceived to his injury, can maintain an action in tort against the party making the false statements for the damages resulting from the fraud.”). But as the first published ruling in this area of law issued after November 1, 1990, the McNulty decision binds the Court. See MCR 7.215(J)(1). Thus, the Court must faithfully apply McNulty in resolving this case.

Similarly, the Court must grant summary disposition under MCR 2.116(C)(8) on Plaintiff State Farm's claim for silent fraud. "To prove silent fraud, also known as fraudulent concealment, the plaintiff must show that the defendant suppressed the truth with the intent to defraud the plaintiff and that the defendant had a legal or equitable duty of disclosure." Lucas v Awaad, 299 Mich App 345, 363-364 (2013). Here, Defendant Travelers insured the condo association, so Travelers likely owed some contractual duty to disclose the results of the investigation to the condo association. But State Farm has not explained how Travelers owed a duty to individual owners of condominium units, so State Farm has failed to plead a viable silent-fraud claim. Thus, the Court must grant summary disposition on the silent-fraud claim under MCR 2.116(C)(8), but the Court must permit State Farm to amend its complaint if State Farm wishes to assert that a duty flowed from Travelers' relationship with the condo association to the individual condominium owners. Although such a claim requires a formidable uphill climb, the Court must permit State Farm to embark upon that journey.

III. Conclusion

For the reasons stated in this opinion, the Court must grant summary disposition to Defendant Travelers under MCR 2.116(C)(8) on Plaintiff State Farm's claims for fraudulent misrepresentation and silent fraud. But based upon MCR 2.116(I)(5), the Court must afford State Farm the opportunity to amend its claims to address the defects identified in this opinion. Thus, the Court shall grant State Farm one last chance to amend its complaint by November 26, 2014.

IT IS SO ORDERED.

Dated: November 13, 2014



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge