

STATE OF MINNESOTA
COUNTY OF SHERBURNE

DISTRICT COURT
TENTH JUDICIAL DISTRICT

Edward G. Palmer,

Plaintiff,

vs.

William N. Matthews
Solid Rock Church, Inc.

Defendants.

STATE OF MINNESOTA
COUNTY OF SHERBURNE
FILED
MAY 18 2000
ROBEN
ADMINISTRATOR
By *Tracy A. Bussell*
Deputy

ORDER

Court File No. 71-C4-99-1250

The above entitled matter came on for hearing before the Honorable Alan F. Pendleton, Judge of the Tenth Judicial District, on February 9, 2000, at the Sherburne County Government Center, 13880 Highway 10, Elk River, Minnesota, pursuant to Defendants' Motion for Summary Judgment.

William F. Stute, Esq., appeared on behalf of Defendants. Plaintiff Edward Palmer appeared Pro Se.


NOW THEREFORE, having considered all the facts and circumstances surrounding this matter, and the files and arguments of the parties and counsel, the Court makes the following:

ORDER

1. Defendants' Motion for Summary Judgment on all claims is **granted**.
2. The attached Memorandum is incorporated herein.

LET JUDGMENT ENTER ACCORDINGLY.

BY THE COURT:


HONORABLE ALAN F. PENDLETON
Judge of District Court

Dated this 18th
day of May 2000.

MEMORANDUM

STATE OF MINNESOTA } 88
COUNTY OF SHERBURN
FILED

MAY 18 2000

REGISTRAR

By

Deputy

PROCEDURAL HISTORY

Plaintiff Edward G. Palmer attended a business meeting of the Elk River Assembly of God Church on July 1, 1993, as a visitor. (Aff. of Edward Palmer submitted in Opp'n to Defs.' Mot. for Summ. J, at 1). At the July 1, 1993, meeting, members of the Church voted to change the Church's name to the "Solid Rock Church." (Id., see also Pl.'s Answer to Defs.' Interrog. no. 5). Shortly thereafter, on or about July 14, 1993, Plaintiff Palmer formally became a member of the Solid Rock Church. (Aff. of Edward Palmer submitted in Opp'n to Defs.' Mot for Summ. J., at 1). On or about July 18, 1993, Plaintiff Palmer transferred 545,000 shares of Solar Attic common stock to the Solid Rock Church. (Id., at 3). Beginning July 22, 1993, Plaintiff alleges Defendant William N. Mathews began filing amendments to Solid Rock Church's articles of incorporation and bylaws in violation of Minnesota's non-profit corporation act. (Aff. of Edward Palmer submitted in Opp'n to Defs.' Mot. for Summ. J, at 3-6). Plaintiff Palmer claims that the alleged pattern of illegal conduct by Defendant Mathews pertaining to the Church's articles of incorporation and bylaws culminated in Mathews' filing of amendments in October, 1995, which vested all voting control of the corporation in the Church's Board of Trustees. (Id., see also Compl., at ¶ 17). On December 23, 1996, Plaintiff withdrew and severed his membership with the Solid Rock Church. (Defs.' Ex. no. 7).

In July 1999, Plaintiff Palmer filed suit against William Mathews and Solid Rock Church alleging fraudulent misrepresentation. The basis of the Plaintiff's fraud claim appears to be that Defendant Mathews fraudulently induced Plaintiff to donate stock to the Church by not disclosing that he (Mathews) was engaging in a scheme to vest control of Church property in a small group of individuals controlled by Mathews. The complaint also alleges damages in excess of \$50,000, conversion, violations of Minnesota's non-profit corporation act, and seeks a return of the stock, an unwinding of

all changes made to the Church's articles of incorporation or bylaws since July 1993, attorneys' fees and costs, and asks for a criminal investigation.

ANALYSIS

FRAUDULENT MISREPRESENTATION

Summary Judgment Standard

Under Minnesota law, summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, show that there is no genuine issue of material fact and that either party is entitled to judgment as a matter of law. Safeco Ins. Co. of America v. Dain Bosworth Inc., 531 N.W.2d 867, 870 (Minn. Ct. App. 1995); Fabio v. Bellomo, 504 N.W.2d 758, 761 (Minn. 1993). In making this determination, trial courts must view the evidence in the light most favorable to the non-moving party. State by Beaulieu v. City of Mounds View, 518 N.W.2d 567, 571 (Minn. 1994). If any doubt exists as to the existence of a material fact, the doubt must be resolved in favor of finding that a fact issue exists. Rathbun v. W.T. Grant Co., 300 Minn. 223, 229, 219 N.W.2d 641, 646 (1974).

Accordingly, a plaintiff alleging fraud must raise genuine issues of material fact with respect to all elements necessary to sustain a fraud claim in order to survive summary judgment. In order to raise genuine issues of material fact, the record on which the motion is submitted must reveal something more than a metaphysical doubt as to the absence of a factual issue for each element that must be proved. The record must also be sufficiently probative with respect to each essential element of the nonmoving party's case to permit a reasonable person to draw different conclusions. See DLH, Inc. v. Russ, 566 N.W.2d 60, 71 (Minn. 1997). Thus, the party resisting summary judgment must do more than rest on mere averments. Id.

In order for a plaintiff to make out a claim of intentional fraudulent misrepresentation, the plaintiff must prove eleven separate elements:

1. that there was a representation;
2. the representation was false;
3. the representation had to do with a past or present fact;

4. the fact was material;
5. the fact was susceptible of knowledge;
6. the representer knew it to be false or, in the alternative, asserted it as of his own knowledge without knowing whether it was true or false;
7. the representer must have intended the other person to act or be justified in acting upon it;
8. that person must be so induced to act or so justified in action;
9. that person's action must be in reliance upon the representation;
10. that person must suffer damage;
11. that damage must be attributable to the misrepresentation, that is, the statement must be the proximate cause of the injury.

Florenzano v. Olson, 387 N.W.2d 168, 174 n.4 (Minn. 1986); Weise v. Red Owl Stores, Inc., 286 Minn. 199, 175 N.W.2d 184 (1970); see also M.H. v. Caritas Family Servs., 488 N.W.2d 282, 289 (Minn. 1992)(reaffirming these eleven elements as necessary to make out a fraudulent misrepresentation claim).

The Plaintiff has failed to offer evidence that Defendants' made a representation as to present or past material fact on which Plaintiff relied.

Based upon the entire record before the Court, including the Plaintiff's complaint, it is unclear exactly what representation Plaintiff is alleging Defendants' made and upon which Plaintiff relied. After reviewing Plaintiff's affidavits and exhibits, Plaintiff appears to argue that Defendant Mathews' failure to inform Plaintiff in July, 1993, of Mathews' alleged scheme to take control of Church property by illegally amending the Church's articles of incorporation and by-laws, which Plaintiff claims culminated when Mathews allegedly made a falsified filing with the Minnesota Secretary of State in October, 1995, amounts to a fraudulent misrepresentation. As this Court understands Plaintiff's argument, the misrepresentation is in the form of a nondisclosure of a material fact, i.e., that Defendant Mathews was under a legal or equitable obligation to communicate his intentions to surreptitiously consolidate voting control of the corporation in the board of trustees.

To prove a prima facie case of fraud, a plaintiff must show that the "defendant made a false representation of *past or existing* material fact . . ." (emphasis added) Berryman v. Reigert, 286 Minn. 270, 175 N.W.2d 438, 442 (1970); see also Hayes v. Northwood Panelboard Co., 415 N.W.2d 687, 690 (Minn. Ct. App. 1987). A "representation" may take the form of nondisclosure of a material fact, however, before

nondisclosure may constitute fraud, there must be a suppression of facts which one party is under a legal or equitable obligation to communicate to the other, and which the other party is entitled to have communicated to him. Richfield Bank & Trust Co. v. Sjogren, 309 Minn. 362, 365, 244 N.W.2d 648, 650 (1976); Avery v. Solargizer Intern. Inc., 427 N.W.2d 675, 681-82 (Minn. Ct. App. 1988).

As a general rule, one party to a transaction has no duty to disclose material facts to the other, however exceptions exist to the general rule. Richfield Bank & Trust Co. v. Sjogren, 309 Minn. at 366, 244 N.W.2d at 650. Under special circumstances, one party may have a duty to disclose material facts to the other, and these circumstances include may include a situation where one has special knowledge of material facts to which the other party does not have access. Id., (citation omitted). Also, where one party stands in a confidential or fiduciary relation to the other party to a transaction, the party having knowledge of material facts must disclose those facts to the other party. Richfield Bank & Trust Co. v. Sjogren, 309 Minn. at 366, 244 N.W.2d at 650 (citing Well-Dickey Trust Co. v. Lien, 164 Minn. 307, 204 N.W. 950 (1925)).

Applying the foregoing legal standards to the facts of this case viewed in a light most favorable to Plaintiff, the alleged fraudulent representation (or nondisclosure) was not a representation having to do with a past or existing fact. In fact, Plaintiff's own affidavit indicates that the alleged scheme of falsified filings began after he joined the Church and after he transferred the stock. (Aff. of Edward Palmer submitted in Opp'n to Defs.' Mot. for Summ. J, at ¶ 15). Plaintiff alleges that by the time Plaintiff donated the stock to the Church, Defendant Mathews' was already engaged in the alleged illegal scheme to wrest voting control away from the Church's general members. However, Plaintiff offers no evidence other than mere conclusory averments contained in his affidavit to support this position. See DLH, Inc. v. Russ, 566 N.W.2d 60, 71 (Minn. 1997) (a party resisting summary judgment must do more than rest on mere averments).

Additionally, it should be noted that while some authority exists for the proposition that a fraud claim may lie where a party making a promise has no intention of keeping it, such authority arises out of decisions involving contract disputes. See Guy T. Bisbee Co. v. Granite City Investing Corp., 159 Minn. 238, 243-44, 199 N.W.14,

16 (1924) (“... where the period of time between the making of a promissory representation and its repudiation is short and there is no change in the circumstances, it is not unreasonable to suppose that the intention manifested by the subsequent conduct was entertained when the representation was made”). The case at bar involves a wholly gratuitous gift. There is no evidence in the record that suggests Plaintiff made the stock transfer in consideration for a promise on the part of Defendants.

With regard to any allegedly improper or illegal filings that amended the Church’s articles of incorporation or bylaws made by Mathews subsequent to July 22, 1993, any such filings cannot stand as the basis of Plaintiff’s claim because such later filings were not “representations” relating to a past or existing fact at the time Plaintiff transferred the stock.

Plaintiff Edward Palmer has failed to raise a genuine issue of material fact with respect to whether Defendant’s made an actionable representation. Construed in a light most favorable to the Plaintiff, the record is devoid of any evidence that Defendants failed to disclose past or existing material facts to Plaintiff at the time Plaintiff donated the stock to the Church. Accordingly, in absence of evidence other than mere averments that Defendant Mathews was already engaged in the alleged illegal scheme at the time Plaintiff donated the stock to the Church, Plaintiff’s fraudulent misrepresentation claim must fail. Defendants’ Motion for Summary Judgment is granted with respect to Plaintiff’s claim of fraudulent misrepresentation.

Plaintiff’s Complaint Fails to Plead Fraud with Particularity

Defendants also argues that Plaintiff’s fraudulent misrepresentation claim must fail because Plaintiff failed to state with particularity the circumstances of the fraud as required by the Minnesota Rules of Civil Procedure. Under the Minnesota Rules, fraudulent misrepresentation claims must state with particularity the circumstances constituting the alleged fraud. Minn. R.Civ.P. 9.02; see also Stubblefield v. Gruenberg, 426 N.W.2d 912, 914 (Minn. Ct. App. 1988) (affirming dismissal on summary judgment for failure to plead fraud with particularity).

This Court agrees that Plaintiff's Complaint fails to plead with particularity facts necessary to support *each* of the eleven elements of a fraudulent misrepresentation claim. See Seafirst Commercial Corp. v. Speakman, 384 N.W.2d 895, 899 (Minn. Ct. App. 1986); Juster Steel v. Carlson Cos., 366 N.W.2d 616, 619-20 (Minn. Ct. App. 1985). Plaintiff's Complaint fails to allege exactly what fraudulent misrepresentation or nondisclosure Defendants made to Plaintiff. As a result, this Court has been left with the difficult task of identifying exactly what representations or nondisclosures Defendants made that may serve as the basis of the fraud claim. This Court has been forced to speculate that Plaintiff is claiming that Defendant Mathews failed to disclose an allegedly illegal scheme that Mathews was engaged in for the purpose of altering the Church's governance. Generally, a Court cannot engage in such speculation, and therefore Plaintiff has failed to meet the requirements of Minnesota Rule of Civil Procedure 9.02. However, because Defendants did not bring a Motion for Summary Judgment on the Pleadings only, but rather a Summary Judgment Motion that argued inadequate pleadings *and* the merits of Plaintiff's claim based upon the entire record, this Court considered the entire record.

CONVERSION

The elements of a common law conversion claim are: (1) the plaintiff has a property interest, and (2) the defendant deprives the plaintiff of that interest. Lassen v. First Bank Eden Prarie, 514 N.W.2d 831, 838 (Minn. Ct. App. 1994). Plaintiff's complaint fails to allege that he has a property interest in any property currently in possession of the Defendants. See Compl. Moreover, it is not altogether clear from the face of the complaint whether Plaintiff claims Defendants converted common stock once owned by Plaintiff, or that Defendants have converted the Church itself.

Plaintiff admits that the stock transfer he made to Solid Rock Church was a "gift" and refers to the transfer as such in his affidavit. (Aff. of Edward Palmer submitted in Opp'n to Defs.' Mot. for Summ. J, at ¶ 52(5), (11)). Because Plaintiff made a gratuitous transfer of his stock to the Church, Plaintiff's conversion claim fails.

VIOLETIONS OF MINNESOTA'S NONPROFIT CORPORATIONS ACT

Plaintiff's complaint alleges violations of the Minnesota Nonprofit Corporations Act. Minn. Stat. § 317A.001 et. seq. Because Plaintiff voluntarily withdrew his membership from the Church in 1996, Plaintiff has no standing to bring a claim against the Church challenging its actions. See Little Canada Charity Bingo Hall Ass'n v. Movers Warehouse, Inc., 498 N.W.2d 22, 24 (Minn. Ct. App. 1993) (third party has no power to challenge corporation's action based upon bylaws violations, only a member or director has this right); see also Minn. Stat. § 317A.165, subd. 2 (action against corporation can only be brought by 50 members with voting rights or ten percent of members with voting rights, which ever is less).

CRIMINAL INVESTIGATION

This Court has no authority to order a criminal investigation based upon Plaintiff's allegations.

AJB