STATE OF MICHIGAN

COURT OF APPEALS

ROLAND McKIND,

Plaintiff-Appellant,

v

PALMS INVESTMENTS, L.L.C.,

Defendant-Appellee,

and

JUDEH & ASSOCIATES,

Defendant.

UNPUBLISHED
May 8, 2007

No. 273138
Wayne Circuit Court
LC No. 05-506796-CK

Before: Smolenski, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of Defendant Palms Investments, L.L.C.'s ("PI's") motion for summary disposition. We affirm.

PI purchased the building at issue, the Palms apartment building located at 1001 East Jefferson in Detroit, in 2003 for $1.25 million. A deed stating the purchase price was recorded in February 2004. According to plaintiff's affidavit presented below, prior to any agreement to purchase the Palms, plaintiff had a series of meetings with representatives of the seller, PI. During one of the meetings, Mr. Daoud, a PI representative, made representations to plaintiff, who had only seen the outside of the building, concerning the price paid by PI to acquire the building, the investment amount made by PI in renovations, and the condition of various features of the building.

Plaintiff agreed to purchase the Palms from PI in May or June of 2004 at a purchase price of $2.3 million. The parties agreed that plaintiff was to deposit $50,000 and that the transaction would close on or before September 15, 2004. The parties' agreement further provided: "*The Deposit shall be non-refundable, and shall either be applied toward the Purchase Price at the time of Closing, or forfeited to the Seller as liquidated damages*." (Emphasis added.) Plaintiff testified in his deposition that he read and understood the agreement of sale and that he did not have a lawyer assisting him in the transaction.

The agreement provided that plaintiff had an adequate opportunity to enter the property and make inspections and investigations:

> 24. **Waiver**. *Purchaser acknowledges that Purchaser has made or has had an adequate opportunity to enter upon the property and to make all inspections and investigations of the records relating to the Property and . . . of the physical condition of the Property, which Purchaser has deemed necessary. Purchaser acknowledges that Purchaser is completely satisfied with the review of all books and records relating to the Property . . . and the physical condition of the Property, and Purchaser is not relying on any information, documents representations or warranties which may have been provided or made by the Seller* or any of its shareholders, officers, directors or agents. . . . [Emphasis added.]

Plaintiff testified that at the time he agreed to purchase the Palms, he was satisfied, from what he had seen by the time, that he could finance the purchase.

Thereafter, a first amendment to the agreement was executed. The amended agreement provided that plaintiff would deposit an additional $25,000, that "*The Deposit shall be nonrefundable*" (emphasis added), that the closing date was accelerated to occur on or before July 17, 2004, and that plaintiff had rights to institute first and second extensions of the closing date. The first extension allowed plaintiff to extend the closing date to August 17, 2004, by increasing the deposit by an additional $25,000. The amendment provided that if plaintiff did not close by August 17, 2004, "*the entire $50,000.00 deposit shall be forfeited to the Seller as liquidated damages* in full termination of the Agreement, and neither party shall have any further obligation."[1] (Emphasis added.) The second extension allowed plaintiff to extend the closing date to September 17, 2004, by increasing the deposit by an additional $25,000, for a total deposit of $75,000. This money would be applied toward the purchase price at closing, or if plaintiff failed to close by September 17, 2004, "*then the entire $75,000.00 deposit shall be forfeited to the Seller as liquidated damages* in full termination of the Agreement, and neither party shall have any further obligation." (Emphasis added.)

In or around July 2004, defendant Judeh & Associates[2] issued an appraisal report for the Palms, finding it to be worth $2.31 million as of July 5, 2004. A rent roll dated July 14, 2004, and attached to the appraisal report indicated that 34 of 69 units were occupied.

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[1] Assuming that plaintiff actually made the initial $50,000 deposit, the $50,000 amount stated in this sentence should have been $75,000 rather than $50,000. Neither party confirms whether the initial $50,000 deposit was in fact made; however, there is no dispute that the total amount of the deposits at issue is $200,000.

[2] Judeh & Associates settled with plaintiff below and is not a party to this appeal.

An addendum to purchase agreement was executed in or around September 2004. This addendum provided, in relevant part:

> 1. **Extension of Purchase Agreement**. If this extension is accepted by the Seller, the Purchaser agrees to complete the sale on or before October 7, 2004[,] or be subject to additional fees.
>
> 2. **Additional Fees**. If not closed or scheduled to close by October 7, 2004, Purchaser agrees to pay Seller $1,000.00 per day retroactively from September 15, 2004 until closing of said loan.
>
> 3. **Expiration of Contract**. This contract expires on November 1, 2004.
>
> 4. Bueyr [sic] must bring another 25000.00 Deposit on Oct 7 2004, if not closed yet.

Thereafter, the parties executed another agreement of sale (the "second agreement"). The purchase price was $2 million. Plaintiff agreed to make another deposit of $75,000, and the agreement provided: "*The Deposit shall be non-refundable, and shall either* be applied toward the Purchase Price at the time of Closing, *or forfeited to the Seller as liquidated damages*." (Emphases added.) This second agreement of sale provided for a closing on or before January 10, 2005, and provided that "*In the event that Purchaser does not close [by] that date, this Agreement shall automatically terminate, and Seller shall retain the deposit as liquidated damages*." (Emphasis added.) Paragraph 24, entitled waiver, is identical to paragraph 24 of the original agreement.

According to plaintiff, his first "tour" of the interior of the Palms was in December 2004, with a representative of PI ("Jane Doe") and a representative of U.S. Capital ("John Doe"), which was considering financing the purchase. The purpose of the tour was to confirm the value of the building. During the tour, plaintiff was told by Jane Doe that some units could not be viewed because they were occupied. John Doe nevertheless opened the door of one such unit, and plaintiff observed that such unit was unoccupied, and that the ceiling was caved in, exposing a hole in the ceiling through which water was leaking down from the allegedly renovated roof.

Plaintiff had trouble obtaining financing to close on the purchase. Plaintiff admitted in his deposition that entities from whom he sought financing turned him down. As a result, plaintiff was unable to close on the purchase. Plaintiff requested a return of his deposits, but PI refused. Plaintiff then commenced this action, seeking a return of his deposits.

Plaintiff first argues that the lower court erred in granting summary disposition of his fraudulent misrepresentation claim. We disagree. We review summary disposition decisions de novo. *Willett v Waterford Charter Twp*, 271 Mich App 38, 45; 718 NW2d 386 (2006). To the extent that this dispute requires us to interpret the parties' agreements, the proper interpretation of a contract is a question of law, *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003), reviewed de novo, *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005).

Fraud must be established by clear and convincing evidence, rather than by a preponderance of the evidence, and must never be presumed. *Foodland Distributors v. Al-Naimi,* 220 Mich App 453, 457-458, 459; 559 NW2d 379 (1996). A plaintiff claiming fraudulent misrepresentation must establish that: (1) the defendant made a material representation; (2) the representation was false; (3) the defendant knew the representation was false when it was made, or made it recklessly without any knowledge of its truth, and as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act on it; (5) the plaintiff acted in reliance on the representation; and (6) the plaintiff suffered injury due to his reliance on the representation. *Hord v Environmental Research Institute of Michigan (After Remand),* 463 Mich 399, 404; 617 NW2d 543 (2000).

Here, the foregoing elements cannot be met. Plaintiff expressly stated in the first purchase agreement:

> 24. **Waiver**. Purchaser acknowledges that Purchaser has made or has had an adequate opportunity to enter upon the property and to make all inspections and investigations of the records relating to the Property and . . . of the physical condition of the Property, which Purchaser has deemed necessary. Purchaser acknowledges that Purchaser is completely satisfied with the review of all books and records relating to the Property . . . and the physical condition of the Property, and Purchaser is not relying on any information, documents representations or warranties which may have been provided or made by the Seller or any of its shareholders, officers, directors or agents.

Thus, plaintiff expressly stated that he was satisfied with his opportunity to enter onto the property. Given this admission, there is no genuine issue of material fact regarding the first element. Plaintiff also expressly stated that he had an adequate opportunity to inspect the records relating to the property. Therefore, there can be no genuine issue of material fact regarding his claim that PI misrepresented the rent rolls, the occupancy rate, the amount PI paid for the property, or the amount PI invested in renovating the property. Plaintiff also expressly stated that that he was not relying on any information or representations provided or made by PI. Therefore, there is no genuine issue of material fact regarding the fifth element (reliance). Given these unequivocal admissions in the purchase agreement, plaintiff fails to raise a genuine issue of material fact regarding several elements of a misrepresentation claim (viz., at least the first, second, third and fifth elements).

In addition, to recover in an action for misrepresentation, a party's reliance on false statements must have been reasonable. *Novak v Nationwide Mut Ins Co,* 235 Mich App 675, 690-691; 599 NW2d 546 (1999); *Nieves v Bell Industries, Inc,* 204 Mich App 459, 464; 517 NW2d 235 (1994). Here, plaintiff's reliance on verbal representations made by a seller was not reasonable. "An action for fraud may not be predicated upon the expression of an opinion or salesmen's talk in promoting a sale, referred to as puffing." *Van Tassel v McDonald Corp,* 159 Mich App 745, 750; 407 NW2d 6 (1987). As a buyer, plaintiff should have done his due diligence. Plaintiff should have inspected the property and relevant records *before* signing any agreement. Under these circumstances, plaintiff's alleged reliance on Daoud's alleged statements was unreasonable.

Plaintiff argues that PI's fraud renders the agreements voidable at his option. Actionable fraud must be predicated on a statement relating to a past or existing fact. *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). Fraud in the inducement, or intrinsic fraud, occurs where a party materially misrepresents future conduct under circumstances in which the assertions may reasonably be expected to be relied upon and are relied upon. *Id.* Here, plaintiff's allegations do not amount to claims of intrinsic fraud because they are predicated on statements relating to existing facts (vacancy rates, amounts paid for the property, and amounts invested for renovations) rather than future conduct.

This Court recently considered the issue of whether a fraud claim can be brought in the face of a contract between the same parties. In *Custom Data Solutions, Inc v Preferred Capital, Inc*, ____ Mich App ____, ____; ____ NW2d ____ (2006), this Court reviewed the relevant law:

> "In general, actionable fraud must be predicated on a statement relating to a past or an existing fact." *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). However, "Michigan also recognizes fraud in the inducement . . . [which] occurs where a party materially misrepresents future conduct under circumstances in which the assertions may reasonably be expected to be relied upon and are relied upon." *Id*. To establish a fraud in the inducement, a party must show:
>
> > (1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth and as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage. [*Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 477; 666 NW2d 271 (2003).]
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> "Fraud in the inducement to enter a contract renders the contract voidable at the option of the defrauded party." *Samuel D. Begola Services, supra* at 640.
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> Calamari & Perillo, The Law of Contracts, states regarding the effect of merger clauses:
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> > Written contracts frequently contain merger clauses stating that the writing contains the entire contract and that no representations other than those contained in the writing have been made. Despite the existence of a merger clause, parol evidence is admissible for purposes of demonstrating that the agreement is void or voidable or for proving an action for deceit. *Fraus omnia corrumpti:* fraud vitiates everything it touches. [§ 9.21, Disclaimers of Representations; Merger Clauses; "As Is", pp 340-341.]
>
> "[W]hen a contract contains a valid merger clause, the only fraud that could vitiate the contract is fraud that would invalidate the merger clause itself, i.e., fraud relating to the merger clause or fraud that invalidates the entire contract including the merger clause. *UAW-GM Human Resource Ctr v KSL Recreation*

Corp, 228 Mich App 486, 503; 579 NW2d 411 (1998), citing 3 Corbin, Contracts, § 578.

Here, the contracts at issue do not contain express merger or integration clauses. Therefore, plaintiff is not precluded from asserting a fraud in the inducement claim. However, because of plaintiff's admissions in the waiver provisions of the agreements, plaintiff's misrepresentation claim fails to raise a genuine issue of material fact.

Plaintiff next argues that the lower court erred in granting summary disposition of his innocent misrepresentation claim. We disagree.

The elements of innocent misrepresentation are: False and fraudulent misrepresentations made by one party to another (1) in a transaction between them, (2) any representation which are false in fact, (3) and actually deceive the other (4) are relied on by him to his damage are actionable, irrespective of whether the person making them acted in good faith in making them, (5) where the loss of the party deceived inures to the benefit of the other. *Phillips v Gen Adjustment Bureau,* 12 Mich App 16, 20; 162 NW2d 301 (1968).

Here, plaintiff's innocent misrepresentation claim must fail, for the same reasons that the fraudulent misrepresentation claim fails. Plaintiff cannot prove reliance, for instance, because plaintiff clearly stated in the first purchase agreement that he was not relying on any representations of PI. Because of this admission that there was no reliance, plaintiff's innocent misrepresentation claim fails to raise a genuine issue of material fact.

Plaintiff next argues that the trial court erred in granting summary disposition of his silent fraud claim. We disagree.

A claim based on silent fraud is established when there is a suppression of material facts and there is a legal or equitable duty of disclosure. *Bergen v Baker,* 264 Mich App 376, 382; 691 NW2d 770 (2004). "Further, 'there must be some type of misrepresentation, whether by words or action, in order to establish a claim of silent fraud.' " *Id.* (citation omitted).

Here, plaintiff fails to satisfy these elements. Plaintiff fails to establish that PI failed to disclose any fact that it had a legal duty to disclose. In addition, once again, plaintiff cannot establish the reliance that is necessary for a silent fraud claim,[3] because plaintiff affirmatively represented in the purchase agreements that he was not relying on any representation of PI.

Plaintiff next argues that the trial court erred in granting summary disposition of his breach of contract claim. Again, we disagree.

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[3] *Hamade v Sunoco Inc (R & M),* 271 Mich App 145, 171; 721 NW2d 233 (2006) ("Therefore, plaintiff's claims based on silent fraud, fraudulent misrepresentation, and innocent misrepresentation, *all of which require reliance* on a misrepresentation, see *id.*, must also fail" (emphasis added)).

Contracts are enforced according to their terms as a corollary of the parties' liberty of contract. *Rory, supra* at 468. This Court examines contractual language and gives the words their plain and ordinary meanings. *Wilkie, supra* at 47. "[A]n unambiguous contractual provision is reflective of the parties' intent as a matter of law," and "[i]f the language of the contract is unambiguous, we construe and enforce the contract as written." *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003). Courts may not impose an ambiguity on clear contract language. *City of Grosse Pointe Park v Michigan Muni Liability & Prop Pool*, 473 Mich 188, 198; 702 NW2d 106 (2005). A contract is ambiguous when two provisions "irreconcilably conflict with each other," *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003), or "when [a term] is equally susceptible to more than a single meaning." *City of Lansing Mayor v Michigan Pub Service Comm*, 470 Mich 154, 166, 680 NW2d 840 (2004). Whether a contract is ambiguous is a question of law. *Wilkie, supra* at 47. Only when contract language is ambiguous does its meaning become a question of fact. *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996).

Here, the purchase agreement documents provide that plaintiff's deposits are nonrefundable, and that if plaintiff failed to close by the closing date, the deposits would be forfeited as liquidated damages. For example, the first purchase agreement provided: "The Deposit shall be non-refundable, and shall either be applied toward the Purchase Price at the time of Closing, or forfeited to the Seller as liquidated damages." Plaintiff testified in his deposition that he read and understood the agreement of sale. There is nothing ambiguous about this contract term.

The amendment provided that plaintiff would deposit another $25,000. The amendment provided: "*The Deposit shall be nonrefundable*." The closing date was changed also, to occur on or before July 17, 2004. The first extension allowed plaintiff to extend the closing date to August 17, 2004, by increasing the deposit by an additional $25,000. The amendment provided that if plaintiff did not close by August 17, 2004, "*the entire $50,000.00 deposit shall be forfeited to the Seller as liquidated damages* in full termination of the Agreement, and neither party shall have any further obligation." (Emphasis added.) The second extension allowed McKind to extend the closing date to September 17, 2004, by increasing the deposit by an additional $25,000, for a total deposit of $75,000. This money would be applied toward the purchase price at closing, or if plaintiff failed to close by September 17, 2004, "*then the entire $75,000.00 deposit shall be forfeited to the Seller as liquidated damages* in full termination of the Agreement, and neither party shall have any further obligation." (Emphasis added.) There is nothing ambiguous in the amendment.

Similarly, the second agreement of sale provided for a closing on or before January 10, 2005, and provided that "*In the event that Purchaser does not close [by] that date, this Agreement shall automatically terminate, and Seller shall retain the deposit as liquidated damages*." (Emphasis added.) This term, too, is unambiguous. Plaintiff clearly and repeatedly agreed to forfeit his deposits if he failed to close on time.

This Court is obliged to enforce the contract as written. *Quality Products & Concepts Co, supra* at 375. Unless a traditional contract defense applies,[4] this Court must enforce an unambiguous contract. *Rory, supra* at 470. Because it is unambiguous, there is no need to look to extrinsic evidence to ascertain its terms. Plaintiff has failed to raise a genuine issue of material fact regarding any element of a breach of contract claim. The trial court correctly granted summary disposition.

Plaintiff argues that the agreements are not fully integrated. But plaintiff only uses this argument to contend for "admitting [extrinsic] evidence of the true meaning of the parties' contract[s] . . . ." But here, there is no need to admit extrinsic evidence of the parties' intent or of the true meaning of the terms of the agreements, because the agreements are unambiguous in the liquidated damages provisions.

Even if extrinsic evidence is considered, to try to establish the "true meaning" of the terms of the parties express contracts, plaintiff's argument cannot succeed. Even considering plaintiff's extrinsic evidence, *plaintiff has presented no evidence that the parties meant anything other than what they said*: viz., that the deposits were nonrefundable. Although plaintiff contends that "Evidence of the parties' prior oral agreement is . . . admissible to show that the written . . . contracts, are not an accurate, complete expression of the parties agreement," plaintiff has presented no evidence of any "prior oral agreement." He has only presented evidence of representations allegedly made by Daoud. Therefore, even if extrinsic evidence is considered, it fails to prove that the parties agreed to anything other than nonrefundable deposits as liquidated damages. There is no genuine issue of material fact regarding the terms of the parties' bargains, and the trial court correctly granted summary disposition.

Plaintiff next argues that the trial court erred in failing to consider extrinsic evidence. We disagree. We review de novo whether the parol evidence rule was properly applied to a contract term. *In re Kramek Estate,* 268 Mich App 565, 573; 710 NW2d 753 (2005).

The parol evidence rule bars the admission of "evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary the written contract," where that contract is "clear and unambiguous." *In re Kramek Estate, supra* at 573-574 (internal quotation marks and citations omitted). In *UAW-GM Human Resource Ctr v KSL Recreation Corp,* 228 Mich App 486, 492-493; 579 NW2d 411 (1998), this Court stated the reasons behind the parole evidence rule:

> This rule recognizes that in "[b]ack of nearly every written instrument lies a parol agreement, merged therein." *Lee State Bank v McElheny,* 227 Mich 322, 327, 198 NW 928 (1924). "The practical justification for the rule lies in the stability that it gives to written contracts; for otherwise either party might avoid his obligation by testifying that a contemporaneous oral agreement released him from the duties that he had simultaneously assumed in writing." 4 Williston,

[4] Traditional contract defenses include fraud, duress, unconscionability and waiver. *Rory, supra* at 489. Plaintiff's fraud claims are considered above.

> Contracts, § 631. In other words, the parol evidence rule addresses the fact that "disappointed parties will have a great incentive to describe circumstances in ways that escape the explicit terms of their contracts." Fried, *Contract as Promise* (Cambridge: Harvard University Press, 1981) at 60.

There are, however, exceptions to the rule. First, it is a prerequisite to application of the parol evidence rule that there be a finding that the parties intended the written instrument to be a complete expression of their agreement with regard to the matters covered; for this reason, "[e]xtrinsic evidence of prior or contemporaneous agreements or negotiations is *admissible as it bears on this threshold question* of whether the written instrument is such an 'integrated' agreement." *Hamade v Sunoco Inc (R & M)*, 271 Mich App 145, 167-168; 721 NW2d 233 (2006) (citations omitted; emphasis added).

Here, because the parties' agreements did not contain an express provision stating that they were fully integrated, extrinsic evidence was admissible *on the threshold question*, i.e., to determine whether the parties intended the agreements to be a complete expression of their agreement with regard to the matters covered. *Hamade, supra* at 167-168. However, plaintiff only presented evidence that Daoud made representations regarding the condition of the property, the rent roll, and the amounts of money PI paid and invested in the property. Plaintiff never presented parol evidence that the parties intended those representations to be included as terms of their agreements. Therefore, that threshold question must be decided based on the written agreements alone.

Both the first and second agreements contain the following provision:

> 24. **Waiver**. Purchaser acknowledges that Purchaser has made or has had an adequate opportunity to enter upon the property and to make all inspections and investigations of the records relating to the Property and . . . of the physical condition of the Property, which Purchaser has deemed necessary. Purchaser acknowledges that Purchaser is completely satisfied with the review of all books and records relating to the Property . . . and the physical condition of the Property, and Purchaser is not relying on any information, documents representations or warranties which may have been provided or made by the Seller or any of its shareholders, officers, directors or agents. . . .

This provision suggests that the parties' written agreements represented the whole of the parties' bargain. In other words, this provision suggests that the parties were not relying on any prior representations concerning the condition of the property or the content of the records relating to the property. This is really the only evidence on the question of whether the parties intended the written agreements to be the whole of the parties' bargain. Therefore, we hold that the parties intended the written agreements to be the whole expression of their bargain.

Given that the parties intended the written agreements to be the whole expression of their bargain (i.e., intended their written agreements to be fully integrated), extrinsic evidence is not admissible on the substantive question of what terms the parties agreed to. *Hamade, supra* at 167-168. As concluded above, the terms of the parties' express written bargain are unambiguous: the deposits were nonrefundable, and would be forfeited as PI's liquidated damages if plaintiff failed to close on time.

Accordingly, although the trial court may have been obliged to consider extrinsic evidence on the threshold question, the parties presented no extrinsic evidence on the threshold question, and therefore the trial court did not err in failing to consider extrinsic evidence. Even if the trial court's failure to consider extrinsic evidence on the threshold question was error, it was harmless, because the parties did not present extrinsic evidence on the threshold question. This Court will not reverse on the basis of harmless error. *Ypsilanti Fire Marshal v Kircher*,273 Mich App 496, ____; ____ NW2d ____ (2007).

Finally, plaintiff argues that the trial court erred in granting summary disposition of his negligence claim. We disagree. The existence of a duty in a negligence action is a question of law reviewed de novo. See *Dyer v Trachtman*, 470 Mich 45, 49; 679 NW2d 311 (2004).

To sustain a negligence claim, a plaintiff must establish duty, breach, causation, and damages. *Henry v Dow Chem Co*, 473 Mich 63, 71-72; 701 NW2d 684 (2005). "It is axiomatic that there can be no tort liability unless defendants owed a duty to plaintiff." *Fultz v Union-Commerce Assoc*, 470 Mich 460, 463; 683 NW2d 587 (2004) (citation omitted). Here, plaintiff fails to establish that PI had a duty to insure that plaintiff would not make an unwise decision to make several nonrefundable deposits when he had repeatedly failed to do his due diligence.

"In a contractual setting, a tort action must rest on a breach of duty distinct from the contract; the mere failure to perform an obligation under a contract cannot support a negligence claim." *Siecinski v First State Bank of East Detroit*, 209 Mich App 459, 465; 531 NW2d 768 (1995). Here, plaintiff's complaint asserts that PI "owed a duty to Plaintiff to accurately represent information to Judeh for its appraisal." Thus, plaintiff adequately pleads a duty distinct from the contract. However, even if PI breached this duty (to give Judeh accurate information), plaintiff cannot show such a presumed breach caused his damages, because plaintiff did not receive the appraisal until after he had signed the first purchase agreement.

Even assuming PI owed a duty to plaintiff (e.g., a duty to give plaintiff accurate information about the property, vacancy rates and PI's investment in the building), plaintiff's claim lacks merit. Plaintiff cannot establish that a presumed breach by PI caused plaintiff's damages, because plaintiff affirmatively represented in the purchase agreements that he had not relied on any representations by PI. If plaintiff did not rely on any representations by PI in deciding to purchase the property, then plaintiff's damages could not have been caused by a breach of a duty to give accurate information. The trial court correctly granted summary disposition of the negligence claim.

Affirmed.

/s/ Michael R. Smolenski
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra