

NOTICE

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FILED

December 13, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 180246-U

NO. 4-18-0246

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

ANDREW PRESCOTT,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
FLANAGAN STATE BANK, a Corporation,)	No. 17L19
Defendant-Appellee.)	
)	Honorable
)	Robert M. Travers,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the circuit court properly granted defendant’s motion for summary judgment and denied plaintiff’s motion for summary judgment.

¶ 2 Plaintiff, Andrew Prescott, appeals the judgment of the circuit court denying his motion for summary judgment and granting summary judgment in favor of defendant, Flanagan State Bank. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Property and Loan Application

¶ 5 In January 2016, plaintiff—a veteran of the United States military—purchased property in Florida. The property required significant renovations to pass inspection and become habitable. Prior to purchasing the property, plaintiff contacted Lynwood Smith, a mortgage broker with Mortgage Banking Associates (MBA), about obtaining a Veterans Affairs (VA)

cash-out refinancing loan on the property. Plaintiff relied on Smith's representations regarding the availability of a VA loan and purchased the property. Plaintiff secured personal loans and credit card debt to purchase the property.

¶ 6 In April 2016, plaintiff—in conjunction with MBA—applied for a residential mortgage with defendant, a VA-approved lender. On his application, plaintiff indicated the property had a first mortgage. After plaintiff submitted his application, defendant requested further information, including verification of plaintiff's income and verification of the title to the property. Defendant suspended the underwriting process for plaintiff's application when plaintiff failed to submit the requested information. In May 2016, plaintiff withdrew his application. Ultimately, plaintiff failed to obtain a mortgage from another lender because his credit score fell below the minimum score necessary to secure a mortgage.

¶ 7 B. Relevant Proceedings in the Circuit Court

¶ 8 In January 2018, plaintiff filed, *pro se*, his third amended complaint against defendant alleging defendant (1) violated the Illinois Consumer Fraud and Deceptive Business Practices Act (Fraud Act) (815 ILCS 505/2 (West 2016)) (count I), (2) violated the Uniform Deceptive Trade Practices Act (815 ILCS 510/2(a)(2), (3), (5), (12) (West 2016)) (count II), (3) caused personal injury to plaintiff by ruining his credit (count III), and (4) intentionally inflicted emotional distress (IIED) on plaintiff (count IV). In his complaint, plaintiff alleged the property did not qualify for a VA cash-out refinancing loan where the property lacked any existing liens or mortgages, as required by VA home loan guaranty guidelines. Thus, plaintiff asserted defendant failed to notify MBA or plaintiff of the illegitimacy of the loan based on the guidelines. Plaintiff also asserted he wrote letters to defendant requesting immediate assistance to help alleviate his debt and never received responses, resulting in emotional distress.

¶ 9 On February 21, 2018, plaintiff filed an amended motion for summary judgment. On March 7, 2018, defendant filed a cross-motion for summary judgment along with the affidavit of Wayne Pierce. In defendant's cross-motion for summary judgment, defendant referred to the counts in plaintiff's third amended complaint as (1) fraud (count I), (2) an alleged violation of the Fraud Act (815 ILCS 505/2 (West 2016)) (count II), (3) personal injury for ruined credit (count III), and (4) IIED (count IV).

¶ 10 In March 2018, the circuit court granted defendant's motion for summary judgment on counts I, III, and IV of plaintiff's third amended complaint. The court denied plaintiff's motion for summary judgment.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Plaintiff appeals the judgment of the circuit court denying his motion for summary judgment and granting summary judgment in favor of defendant. For the following reasons, we affirm.

¶ 14 In cases involving cross-motions for summary judgment, as here, the parties agree that no factual issues exist and that the disposition of the case turns only on the resolution of purely legal issues. *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 432, 930 N.E.2d 999, 1003 (2010) (citing *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 285, 917 N.E.2d 899, 911 (2009)). Accordingly, our review is *de novo*. *Id.*

¶ 15 Plaintiff argues defendant filed its summary judgment motion two days after the deadline set by a scheduling order in violation of the Federal Rules of Civil Procedure, local rules for the United States district courts in Illinois, and Illinois Supreme Court Rules 182 and 183. We do not find plaintiff's argument compelling where the Federal Rules of Civil Procedure

and the local rules of the United States district courts in Illinois do not apply to state court actions. See Fed. R. Civ. P. 1; CDIL-LR 1.1.

¶ 16 The circuit court properly exercised its discretion under Supreme Court Rule 183 when it granted leave to defendant—at the hearing on the summary judgment motions—to file its pleadings late. Specifically, the court stated, “I’m granting leave to both parties to file their submissions late.” Under Supreme Court Rule 183, “[t]he court, for good cause shown on motion after notice to the opposite party, may extend the time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period, either before or after the expiration of the time.” Ill. S. Ct. R. 183 (eff. Feb. 16, 2011). While the record fails to reveal a motion seeking an extension, the court did address the issue with both parties present after plaintiff questioned the timeliness of defendant’s pleadings. The court acted within the authority given to it by Supreme Court Rule 183. Moreover, the determination of what constitutes good cause rests within the discretion of the circuit court. *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 353, 875 N.E.2d 1065, 1079 (2007). So, while some technical requirements were missed, that does not mean the circuit court failed to consider whether there existed good cause for an extension of time. Thus, where the court properly exercised its discretion in granting the extension, we decline to find otherwise.

¶ 17 We now address the merits of this appeal. First, we note that in his briefs, plaintiff blends his arguments alleging consumer fraud and deceptive trade practices. We decline to address count II—an alleged violation of the Uniform Deceptive Trade Practices Act—because the circuit court allowed count II of the third amended complaint to stand.

¶ 18 A. Count I—Fraud

¶ 19 Plaintiff argues the circuit court erred in denying his motion for summary judgment and granting defendant's motion for summary judgment as to count I. Specifically, plaintiff asserts the subject property did not have an existing lien at the time of the mortgage application process. Thus, the property failed to qualify for VA financing. Plaintiff alleges defendant knew of this issue and concealed this fact from him during the mortgage application process, resulting in confusion and misunderstanding by plaintiff as to the possibility of approval of his loan.

¶ 20 We disagree with plaintiff and find defendant concealed no material fact and made no false statement of material fact in its handling of the mortgage application. Plaintiff failed to establish the following elements of common law fraud: "(1) a false representation of a material fact; (2) by a party who knows or believes it to be false; (3) with the intent to induce a plaintiff to act; (4) action by a plaintiff in reliance on the statement; and (5) injury to the plaintiff as a consequence of that reliance." *Washington Courte Condominium Association-Four v. Washington-Golf Corp.*, 267 Ill. App. 3d 790, 814-15, 643 N.E.2d 199, 216 (1994).

¶ 21 We conclude defendant properly relied on the application plaintiff reviewed and signed before submitting it to defendant through MBA on April 1, 2016. The application indicates on multiple pages the existence of a first mortgage on the property. Plaintiff initialed every page of the application. The application also informed plaintiff of his duty to provide accurate information, and that defendant intended to rely on the accuracy of the information and representations made by plaintiff.

¶ 22 While plaintiff conceded the application inaccurately showed a first mortgage on the property, he asserts defendant, as the lender, ultimately shouldered the responsibility of verifying all information contained in the application before proceeding with the loan analysis.

Therefore, plaintiff argues defendant should have known of the absence of a first mortgage on the property and informed plaintiff of his ineligibility for the loan. However, the record shows that defendant requested further information from plaintiff, including verification of plaintiff's income and verification of the title to the property. Plaintiff failed to submit the requested information and subsequently withdrew his application. Therefore, defendant never finished processing the loan application and a contractual relationship never formed between the parties.

¶ 23 Plaintiff blames MBA for the mistakes on his application, but he initialed and signed all the pages of the application. Moreover, MBA is not defendant's agent but has a contractual business relationship with defendant. *Mills v. State National Bank*, 28 Ill. App. 3d 830, 834-35, 329 N.E.2d 255, 258-59 (1975). Defendant manages no MBA employees, lacks oversight over MBA policies, and is not responsible for the representations of MBA employees. See *id.*

¶ 24 Based on the plain terms of the application and the absence in the record of any indication that defendant made false representations to plaintiff, we find, as to count I, the circuit court properly granted defendant's motion for summary judgment and denied plaintiff's motion for summary judgment.

¶ 25 B. Count III—Personal Injury for Ruined Credit

¶ 26 Plaintiff argues the circuit court erred in denying his motion for summary judgment and granting defendant's motion for summary judgment on count III. Specifically, plaintiff argues defendant caused injury to plaintiff's credit score where plaintiff's credit score "continued falling each month that the [d]efendant failed to secure a legitimate Cash-Out Refinance mortgage according to [p]laintiff's situation at the time." Plaintiff describes his credit score as, "very good to excellent," at the beginning of the application process.

¶ 27 We find (1) defendant did not cause injury to plaintiff's credit score and (2) Illinois does not recognize through any statute or case law a cause of action for a tort of ruined credit. At no point did defendant report information concerning plaintiff's creditworthiness to any credit agency. Rather, plaintiff's credit score decline resulted from plaintiff taking on debt. At the hearing on the cross-motions for summary judgment plaintiff explained the reason for his credit score dropping as follows.

“When I took out the personal loans and credit cards, the monthly payments on all of those were well above what my income was at the time of my job; so, my debt to income ratio was too high. So, that took my credit score down. But a legitimate debt-consolidation loan would have paid all those off and that would have wrapped it up in just the mortgage. Then my debt-to-income would have come back to where it should be with a regular mortgage.”

¶ 28 Defendant continued to process plaintiff's loan application—requesting additional information and relying on representations in the application. Plaintiff failed to supply additional information defendant needed to finish the loan application process, thus resulting in a delay. Plaintiff's credit score declined not because of defendant's actions, but due to plaintiff taking on additional debt. Accordingly, we conclude the circuit court properly granted defendant's motion for summary judgment and denied plaintiff's motion for summary judgment on count III.

¶ 29 C. Count IV—IIED

¶ 30 Plaintiff argues the circuit court erred in denying his motion for summary judgment and granting defendant's motion for summary judgment on count IV. Specifically,

plaintiff asserts IIED by defendant where (1) defendant requested paperwork over a three-month period, affecting plaintiff's time, energy, and credit score while working toward a loan for which he did not qualify and (2) defendant failed to respond to plaintiff's letters requesting immediate assistance to alleviate his debt load, resulting in more emotional distress, aggravation, and mental anguish. Plaintiff argues he has a legitimate claim for IIED because defendant stood in a position of power over him. See *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 273, 798 N.E.2d 75, 82 (2003).

¶ 31 IIED requires (1) extreme and outrageous conduct; (2) where the actor either intended his conduct to inflict severe emotional distress, or knew there was at least a high probability that his conduct would cause severe emotional distress; and (3) that the conduct in fact cause severe emotional distress. *Id.* at 269.

¶ 32 Plaintiff cites *Feltmeier* to support his argument that IIED frequently involves a defendant who stands in a position of power or authority relative to the plaintiff. *Id.* at 273. In *Feltmeier*, the former spouse physically and emotionally abused his wife for over a decade. *Id.* at 275. The court held that, while abuses of power generally involve employers, creditors, or financial institutions, the former spouse fell into the same category. *Id.* at 273. The court found the former spouse's actions constituted extreme and outrageous behavior and held the abused spouse met the elements of IIED. *Id.* at 274, 287.

¶ 33 This case is distinguishable from *Feltmeier* because defendant's conduct did not amount to extreme and outrageous behavior. Here, while defendant arguably holds a position of authority over an applicant, defendant did not intentionally inflict emotional distress on plaintiff. Defendant requested proof of income and title to the property in processing plaintiff's loan

application. Plaintiff did not provide all the information necessary. Plaintiff then withdrew his application. This does not amount to extreme and outrageous behavior by defendant.

¶ 34 We find plaintiff borrowed substantial amounts of money to improve the property prior to submitting an application to defendant, meaning the distress plaintiff now faces is a direct result of his actions, not those of defendant. Accordingly, we conclude that as to count IV, the circuit court properly granted defendant's motion for summary judgment and denied plaintiff's motion for summary judgment. Thus, we affirm the court's judgment.

¶ 35 III. CONCLUSION

¶ 36 For the following reasons, we affirm the circuit court's judgment

¶ 37 Affirmed.