STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2046

Tyler Holdings, Inc., et al.,
Appellants,

vs.

JJT, LLC, et al.,
Respondents,

Michael R. Roess, et al.,
Respondents.

Filed December 9, 2008
Affirmed
Johnson, Judge

Hennepin County District Court
File No. 27-CV-06-16531

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Considered and decided by Johnson, Presiding Judge; Peterson, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

Appellants signed agreements to purchase two renovated condominium units in a 78-year-old building before the renovation of those units was underway. The city later withheld approval of the renovation plans and would not allow the units to be built as originally designed. Appellants sued the owners, developers, contractors, and brokers involved in the project, alleging 18 different theories of relief. The district court granted summary judgment to respondents on all counts. We conclude that the district court did not err in granting summary judgment and, therefore, affirm.

FACTS

The Sexton Building is located in downtown Minneapolis at the corner of South Seventh Street and Portland Avenue. In 2004, JJT, LLC, began to renovate the building and convert it into condominium units. JJT assigned ownership of the building to Sexton Lofts, LLC. Brett Thielen was the Chief Manager of JJT and the Vice President of Sexton Lofts. Regency Commercial Services, L.C. and Regency Commercial Services of Minnesota, LLC were the general contractors overseeing work on the project. Michael Roess, an agent of Coldwell Banker Burnet and iMetroProperty.com, Inc., entered into an exclusive sales agreement with JJT.

In early December 2004, appellants entered into agreements to acquire two units on the ground floor of the building, Unit 115 and Unit 124. Tyler Holdings, Inc. and the law firm of Ward & Ward, LLC, a related entity, each entered into a reservation agreement with JJT stating that the purchase agreement "will identify price, terms, and

conditions of purchase" and that the reservation agreements were contingent upon the city approving the conditional use permit for the project. Also in early December 2004, Tyler Holdings entered into purchase agreements. The purchase prices for Unit 115 and Unit 124 were $311,562 and $220,567, respectively; Tyler Holdings paid $7,546 and $6,617, respectively, in earnest money at the time of the purchase agreements. Cassandra Ward Brown, an officer of Tyler Holdings and a member of Ward & Ward, signed the agreements on behalf of the two companies.

On January 14, 2005, JJT received a building permit from the city to construct Unit 123, a model unit. In one part of the unit, the space was divided vertically so that there was a mezzanine level above, accessible by stairs, and additional useful space below the mezzanine floor.

In April 2005, JJT submitted plans for the entire project, including mezzanines in the ground-floor units, to the city for review. On August 15, 2005, the city approved the plans generally but withheld approval of the mezzanines because the vertical dimensions of the ground-floor units would not allow a ceiling height both above and below the mezzanine that would comply with the city's seven-foot height requirement. In December 2005, JJT applied for an exception that would reduce the requirement to six feet, eight inches. Later that same month, the city provided preliminary approval of the revised application, but problems with the lower height requirement soon came to light. In July 2006, a city inspector met with representatives of Regency, Coldwell Banker, and the architects for the project, and explained that mechanical pipes running along the ceiling of the ground-floor units would prevent the mezzanines from meeting even the

modified height-clearance requirements. Brown also attended the meeting. JJT could have made modifications that would have allowed a permit to be issued but declined to make them because it deemed the costs to be "prohibitive." JJT offered either to return Tyler Holdings's earnest money or to allow Tyler Holdings to close on the units "as is." Tyler Holdings demanded that JJT reduce the purchase price. The parties did not agree on a resolution of their dispute.

In September 2006, Tyler Holdings, along with Brown and Ward & Ward (collectively described herein as appellants), commenced this action against JJT; JJT Development, LLC; Sexton Lofts; Thielen; Regency Commercial Services; Regency Commercial Services of Minnesota; Roess; Coldwell Banker Burnet Realty; and iMetroProperty.com (collectively described herein as respondents). Appellants alleged 18 causes of action in their second amended complaint. In two separate motions, Roess, Coldwell Banker Burnet Realty and iMetroProperty.com (collectively described herein as broker defendants) and JJT, JJT Development, Sexton Lofts, Thielen, Regency Commercial Services, Regency Commercial Services of Minnesota (collectively described herein as JJT defendants) moved for summary judgment. In September 2007, in a 39-page order and memorandum, the district court granted both motions and entered summary judgment in favor of all defendants. Tyler Holdings, Brown, and Ward & Ward appeal with respect to most of the claims alleged in the second amended complaint.

D E C I S I O N

"A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the

affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). No genuine issue of material fact exists "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (alteration in original) (quotation omitted). On a summary judgment appeal, we review de novo whether a genuine issue of material fact exists and whether the district court erred in applying the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002).

I. Timing of Summary Judgment Hearing

Appellants argue that the district court erred by not postponing the hearing on respondents' summary judgment motions to allow appellants to conduct additional discovery. Respondents argue in response that appellants had ample time to conduct discovery between September 2006, when they commenced their suit, and May 2007, when they were required to respond to the summary judgment motions. Respondents also argue that appellants failed to comply with Minn. R. Civ. P. 56.06 because they failed to submit an affidavit describing the necessary discovery that remained to be done.

A party may bring a motion for summary judgment "at any time after the expiration of 20 days from the service of the summons." Minn. R. Civ. P. 56.01. The fact that discovery is not complete does not make summary judgment premature. *McCormick v. Custom Pools, Inc.*, 376 N.W.2d 471, 477 (Minn. App. 1985), *review denied* (Minn. Dec. 30, 1985). A court may deny a motion for summary judgment or order a continuance if it appears "from the affidavits of a party opposing the motion that

the party cannot for reasons stated present, by affidavit, facts essential to justify the party's opposition." Minn. R. Civ. P. 56.06. "A rule 56.06 affidavit must be specific about the evidence expected, the source of discovery necessary to obtain the evidence, and the reasons for the failure to complete discovery to date." *Alliance for Metro. Stability v. Metropolitan Council*, 671 N.W.2d 905, 919 (Minn. App. 2003).

Respondents are correct that appellants did not submit an affidavit pursuant to rule 56.06. Furthermore, approximately nine months elapsed between the commencement of the lawsuit and respondents' motion for summary judgment, during which time discovery was stayed for less than one month. Thus, we conclude that the district court did not abuse its discretion by ruling on respondents' summary judgment motions without allowing appellants to conduct additional discovery. *See Meany v. Newell*, 367 N.W.2d 472, 476 (Minn. 1985) (holding that district court did not abuse its discretion by ruling on summary judgment motion after discovery period totaling eight months).

II. Claim of Fraudulent Misrepresentation

Appellants argue that the district court erred by granting summary judgment on their claims of fraudulent misrepresentation against all respondents. The district court reasoned that appellants failed to present evidence sufficient to prove that respondents knew that the alleged representations were false, that appellants reasonably relied on the alleged representations, and that appellants suffered damages.

To prevail on a claim of fraudulent misrepresentation, a plaintiff must prove that:

> (1) there was a false representation by a party of a past or existing material fact susceptible of knowledge; (2) made with knowledge of the falsity of the representation or made as

> of the party's own knowledge without knowing whether it was true or false; (3) with the intention to induce another to act in reliance thereon; (4) that the representation caused the other party to act in reliance thereon; and (5) that the party suffer[ed] pecuniary damage as a result of the reliance.

Hoyt Props., Inc. v. Production Res. Group, L.L.C., 736 N.W.2d 313, 318 (Minn. 2007). When a plaintiff pleads a fraud claim, "the circumstances constituting fraud . . . shall be stated with particularity." Minn. R. Civ. P. 9.02; *see also Westgor v. Grimm*, 318 N.W.2d 56, 58 (Minn. 1982); *Hay v. Dahle*, 386 N.W.2d 808, 811 (Minn. App. 1986). At the summary judgment stage, a plaintiff must produce particular evidence of all material facts for which it bears the burden of proof at trial. *Goward v. City of Minneapolis*, 456 N.W.2d 460, 464 (Minn. App. 1990). A failure to either plead fraud with particularity or to be particular in the production of evidence "justifies summary judgment against the party alleging it." *Berke v. Resolution Trust Corp.*, 483 N.W.2d 712, 717 n.3 (Minn. App. 1992), *review denied* (Minn. May 21, 1992).

Here, appellants make two general allegations of fraud. First, they allege that the JJT defendants "falsely represented the authority they had to build mezzanines with stair access for habitable space, and never revealed to Appellants that it did not have this authorization" and that all respondents were "not forthright about the situation." Second, they allege that all respondents represented that the basement of Unit 115 was usable as office space.

Appellants' contentions concerning these alleged misrepresentations are phrased in a very general manner. Appellants frequently refer to respondents in the collective sense without being specific as to which person made an allegedly fraudulent statement.

Appellants also fail to provide precise dates of the alleged misrepresentations. The general nature of appellants' arguments is unhelpful to the court and unhelpful to appellants' case. For example, with respect to appellants' contention that respondents misrepresented that the basement of Unit 115 was usable as office space, the district court pointed out that appellants presented no evidence that respondents knew, at the time of the alleged misrepresentation, that the basement was not habitable. Furthermore, when arguing that respondents misrepresented that Units 115 and 124 would include mezzanines "[t]hrough various documents, e-mails, personal conversations, and viewing exemplars and models," appellants support their assertion by referring to 60 pages of e-mail messages that were sent between August 29, 2005, and August 1, 2006. Some of these e-mail messages do not contain any reference to the mezzanines.

Counsel submitting briefs to this court are required to provide specific citations to factual materials in the appendix and the district court record. Minn. R. Civ. App. P. 128.03; *see Cole v. Star Tribune*, 581 N.W.2d 364, 371-72 (Minn. App. 1998) (addressing importance of providing cites to record). Appellants' conclusory arguments are insufficient because they do not identify evidence "with particularity," *Hay*, 386 N.W.2d at 811, and fail to "produce specific facts to create a factual issue for trial," *Dixon v. Depositors Ins. Co.*, 619 N.W.2d 752, 756 (Minn. App. 2000) (holding that summary judgment was proper because appellant failed to produce facts related to fraud claims). Particularity is especially important in this case because the status of the city's position with respect to the mezzanines fluctuated over time. Respondents' understanding of the lawfulness of mezzanines in the ground-floor units changed,

justifiably, at several points in the process. To prove that respondents knowingly made a false representation of past or present material fact, appellants must pinpoint not only the date of the representation but also the dates on which respondents received information concerning the mezzanines. Appellants have failed to identify particular evidence that any of the respondents made a statement of a past or existing material fact at a time when the speaker knew the statement to be false.

To establish the first element, appellants are required to show that "there was a false representation by a party of a past or existing material fact susceptible of knowledge." *Hoyt Props., Inc.*, 736 N.W.2d at 318. The district court pointed out that appellants proffered only two pieces of evidence specifically directed at the issue whether respondents knew they were making a false representation that they had a permit to build mezzanines on the first floor: (1) a building permit printed from a webpage on May 6, 2007, containing the words, "Mezzanines on First Floor Not Approved"; and (2) a copy of building plans containing the handwritten comment, "1st floor mezz. not included." The May 6, 2007, document was printed long after all parties were well aware that the city was withholding approval of the mezzanines. There is no evidence concerning when the document was created or when respondents became aware of it. Thus, the document cannot prove that respondents knowingly made false misrepresentations. With respect to the building plan, the evidence does not sufficiently indicate when the words "1st floor mezz. not included" were written on the document. At the earliest, the note was written in October 2005, in which case appellants cannot prove that respondents made false

representations to appellants about the mezzanines before the purchase agreements were executed in December 2004.

Appellants also are required to prove that they reasonably relied on the alleged misrepresentations. *See Hoyt Props., Inc.*, 736 N.W.2d at 318. The applicable caselaw provides that a plaintiff alleging fraud cannot prove reasonable reliance on an alleged oral representation if the oral representation was "directly contradictory to the terms of" a written agreement. *Dahmes v. Industrial Credit Co.*, 261 Minn. 26, 35, 110 N.W.2d 484, 490 (1961). Reliance on oral representations is unjustifiable as a matter of law "if [a] written contract provision explicitly stated a fact completely contradictory to the claimed misrepresentation." *Johnson Bldg. Co. v. River Bluff Dev.*, 374 N.W.2d 187, 194 (Minn. App. 1985), *review denied* (Minn. Nov. 18, 1985). "When a promise is not in plain contradiction of a contract or, if contradictory, when it is accompanied by misrepresentations of other material facts in addition to the contradictory intent, the question of reasonable reliance is for the trier of fact." *Id.*

Here, the purchase agreements for Units 115 and 124 include the following disclaimers:

> (b) Seller makes no representation or warranty that the Unit will conform to any model shown to Buyer or that items shown in the model are included in the Purchase Price.
>
> (c) Seller makes no representation or warranty that items shown in the drawings and pictures contained in any sales brochure or literature are included in the Purchase Price or that the Unit will conform to the drawings and pictures.

Because these disclaimers are unambiguous and are "directly contradictory" to the alleged representations at issue, appellants' reliance on respondents' alleged misrepresentations was unreasonable. *Dahmes*, 261 Minn. at 35, 110 N.W.2d at 490.

Thus, the district court did not err by entering summary judgment on appellants' claim of fraudulent misrepresentation.

III. Contract Claims

Appellants argue that the district court erred by granting summary judgment on their contract-based claims against respondents.

A. Claim of Breach of Contract

Appellants summarily argue that the district court erred by concluding that there is no genuine dispute as to whether the JJT defendants breached the purchase agreements. As the district court pointed out, appellants have not identified any term of the purchase agreements that was breached. They fail specifically to explain why a change in the mezzanines or the basement is a breach of the purchase agreements. Appellants contend that respondents failed to perform acts they allegedly promised to perform in oral conversations. The purchase agreements provide, "This Agreement and the matters expressly referred to herein and the matters contained in the Disclosure Statement constitute the entire agreement between the parties." But "the terms of a final and integrated written expression may not be contradicted by parol evidence of previous understandings and negotiations . . . for the purpose of varying or contradicting the writing. *Apple Valley Red-E-Mix Inc. v. Mills-Winfield Eng'g Sales, Inc.*, 436 N.W.2d 121, 123 (Minn. App. 1989) (quotation omitted), *review denied* (Minn. Apr. 26, 1989).

Thus, the district court did not err by entering summary judgment on appellants' breach of contract claim.

B. Claim of Anticipatory Breach of Contract

Appellants argue that the district court erred by granting summary judgment on their claim of anticipatory breach and repudiation of contract by the JJT defendants. The district court reasoned that appellants failed to identify any term in the purchase agreement that was repudiated and that appellants did not produce evidence that the JJT defendants were unable to perform any obligation required by the purchase agreements.

An unconditional repudiation of a contractual obligation before performance is due is an anticipatory breach of contract. *In re Haugen*, 278 N.W.2d 75, 79 n.6 (Minn. 1979). Appellants cannot prove anticipatory repudiation because it is undisputed that respondents were willing to go forward with the contract by conveying the two units to Tyler Holdings. Because appellants did not "take title to the Unit[s] in accordance with the terms and provisions" of the purchase agreements, respondents had the "right to cancel and terminate" the purchase agreements and retain the earnest money, pursuant to the purchase agreements' remedies provisions. Nonetheless, respondents offered to refund appellants' earnest money. Thus, the district court did not err by entering summary judgment on appellants' claim of anticipatory breach of contract.

C. Claim of Breach of Covenant of Good Faith and Fair Dealing

Appellants argue that the district court erred by granting summary judgment on their claim of breach of the implied covenant of good faith and fair dealing against the

JJT defendants. Appellants base this claim on the JJT defendants' alleged misrepresentations regarding their ability to build mezzanines with stair access.

"Under Minnesota law, every contract includes an implied covenant of good faith and fair dealing requiring that one party not 'unjustifiably hinder' the other party's performance of the contract." *In re Hennepin County 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 502 (Minn. 1995). The covenant "does not extend to actions beyond the scope of the underlying contract." *Id.* at 503. JJT offered either to return Tyler Holdings's earnest money or to allow Tyler Holdings to close on the units "as is." Because appellants do not point to any hindrance to appellants' performance of the contract caused by respondents, the evidence is insufficient to prove appellants' claim. Thus, the district court did not err in granting summary judgment on appellants' claim of breach of the implied covenant of good faith and fair dealing.

IV. Claims Under Warranty Statutes

Appellants argue that the district court erred by granting summary judgment on their claims of breach of express and implied warranties under chapter 515A of the Minnesota Statutes. The district court reasoned that appellants did not produce any evidence that respondents made specific promises about the units, that any representations made by respondents about the mezzanines did not apply to Units 115 and 124, and that neither express nor implied warranties could have transferred to appellants because the units never were conveyed to appellants.

The Uniform Condominium Act provides that "any model or description of the physical characteristics of the condominium, including plans and specifications of or for

improvements, creates an express warranty that the condominium will conform to the model or description." Minn. Stat. § 515A.4-111(a)(2) (2006). But a "notice prominently displayed on a model or description" prevents reasonable reliance on the express warranty. *Id.* Here, although the model condominium included a mezzanine with stairs, the purchase agreements contain the disclaimers discussed above, stating that JJT made no representation or warranty that the units would conform to the model or that the units would conform to the drawings and pictures. These disclaimers make clear that the model unit did not necessarily depict the other units to be constructed.

Furthermore, even if express warranties did exist, they did not transfer to Tyler Holdings. The Uniform Condominium Act provides that "any conveyance of a unit transfers to the purchaser all express warranties made by a declarant or an affiliate of a declarant." Minn. Stat. § 515A.4-111(4)(c) (2006). Respondents never conveyed Units 115 and 124 to appellants, which means that the warranties never transferred. Because no express warranties ever transferred to appellants, they cannot maintain an action for breach of those warranties.

Under Minnesota law, the sale of a condominium unit includes implied warranties that the unit will (1) be in "at least as good condition" at the time of conveyance as at the time of contracting; (2) be "structurally suitable" for ordinary uses and free from defective materials and constructed in accordance with law; and (3) not violate applicable law at time of conveyance or possession. Minn. Stat. § 515A.4-112(a)-(c) (2006). Appellants have not made allegations that satisfy the statute. Although the model unit included a mezzanine that may have violated applicable law, the model unit was not one

of the units covered by the purchase agreements and, thus, was not under an implied warranty. In addition, an implied warranty transfers to a purchaser only upon a "conveyance of a unit." Minn. Stat. § 515A.4-112(f) (2006). No implied warranties transferred to appellants because the units were never conveyed to them.

Thus, the district court did not err in granting summary judgment on appellants' breach of express and implied warranties claims.

V. Claims Under Consumer-Protection Statutes

Appellants argue that the district court erred by granting summary judgment on their claims under the Consumer Fraud Act (CFA), the False Statement in Advertising Act (FSAA), and the Deceptive Trade Practices Act (DTPA). The district court reasoned that appellants' action did not give rise to a public benefit, as required under the Private Attorney General Act, Minn. Stat. § 8.31 (2006), and that appellants failed to present evidence of damages.

With respect to each act, appellants have a private cause of action only if they can "demonstrate that their cause of action benefits the public." *Ly v. Nystrom*, 615 N.W.2d 302, 314 (Minn. 2000) (considering claim under CFA); *see also Group Health Plan, Inc. v. Philip Morris Inc.*, 621 N.W.2d 2, 8-11 (Minn. 2001) (considering claim under FSAA and other statutes); *Collins v. Minnesota Sch. of Bus.*, 636 N.W.2d 816, 820 (Minn. App. 2001) (considering claim under DTPA), *aff'd*, 655 N.W.2d 320 (Minn. 2003). In *Ly*, the supreme court held that because the appellant was defrauded in a "one-on-one transaction" in which the fraudulent misrepresentation was made only to the appellant, the claim was not one "that could be considered to be within the duties and

responsibilities of the attorney general to investigate and enjoin." 615 N.W.2d at 314. Similarly, in *Jensen v. Duluth Area YMCA*, 688 N.W.2d 574 (Minn. App. 2004), where the appellant challenged the termination of his YMCA membership, this court held that he could not bring a claim under the Private Attorney General Act because it was a "one-on-one incident that affected only him." *Id.* at 578. Thus, a private cause of action under the CFA, FSAA, and DTPA exists only when a plaintiff takes on the function of a private attorney general in order to obtain a public benefit.

Appellants' claims arise from contractual relationships between private parties. The alleged statements on which appellants' claims are based were communicated, if at all, solely to appellants; they were not communicated on a broader scale, such as through mass media. Although respondents sought to market other units within the building, appellants have pointed to no evidence demonstrating that they did so in the same manner with respect to other potential buyers. Furthermore, appellants appear to be uniquely situated in that they entered into purchase agreements before a model unit had been built and before city approvals had been obtained. The record does not reveal that appellants' prosecution of their claims arising under the three consumer-protection statutes would have a larger benefit to the public. *See Jensen*, 688 N.W.2d at 578.

Thus, the district court did not err by granting summary judgment on appellants' claims purportedly arising under these consumer-protection statutes.

VI. Common Law Tort Claims Against Broker Defendants

Appellants argue that the district court erred by granting summary judgment on their tort claims against Roess, Coldwell Banker, and iMetroProperty.com, Inc.

A. Claim of Breach of Fiduciary Duty

Appellants alleged that Roess breached a fiduciary duty toward them and that Coldwell Banker and iMetroProperty.com, Inc., are vicariously liable. The district court reasoned that Roess did not have a duty to investigate building permits and plans and that appellants failed to present evidence that Roess knew that the city would not approve mezzanines for the ground-floor units but failed to inform appellants of that fact.

To prevail on this claim, appellants must show the existence of a fiduciary duty, a breach of that duty, that they suffered damages as a result of the breach, and that the breach was the proximate cause of the damages. *State Farm Fire & Cas. v. Aquila, Inc.*, 718 N.W.2d 879, 887 (Minn. 2006) (stating elements of negligence claim); *Padco, Inc. v. Kinney & Lange*, 444 N.W.2d 889, 891 (Minn. App. 1989) (noting that negligence claim alleges same elements as breach-of-fiduciary-duty claim), *review denied* (Minn. Nov. 15, 1989). We agree with the district court that, in light of the summary judgment record, Roess did not have a duty to investigate whether the developer could obtain city building permits for the mezzanines. Appellants presented no expert evidence to support such an argument. *See City of Eveleth v. Ruble*, 302 Minn. 249, 254-55, 225 N.W.2d 521, 525 (1974) (noting that expert testimony is ordinarily required to establish scope of duties and whether professional used appropriate care, skill, and diligence).

Accordingly, appellants can withstand summary judgment only by producing evidence that Roess failed to disclose "all facts within his knowledge affecting the rights or interests of the principal in the sale." *See Olson v. Penkert*, 252 Minn. 334, 342, 90 N.W.2d 193, 200 (1958). A fiduciary has a duty to disclose material facts and may be

held liable for remaining silent. *Murphy v. Country House, Inc.*, 307 Minn. 344, 350, 240 N.W.2d 507, 511-12 (1976). Here, Roess, as a real estate agent, owed a duty to appellants to keep them informed of material facts known to him. *See Olson*, 252 Minn. at 342, 90 N.W.2d at 200 (stating that real estate agent "is always bound to make a full and fair disclosure to his principal of all facts within his knowledge affecting the rights or interests of the principal in the sale").

Appellants allege that Roess failed to disclose to Brown information about the availability of mezzanines with stair access on the first floor. Appellants allege that, before the purchase agreements were signed in 2004, Roess knew that mezzanines would not be approved. But appellants have not cited any evidence to support that allegation. The evidence in the record indicates that Roess learned in the summer of 2005 that the city might not issue permits for the mezzanines, and appellants have asserted that Roess did not share that information with them. Appellants claim that they first learned about the problem with the mezzanines in May 2006, when reading the appraisal report for Unit 124. Roess disputes that claim, stating that he had many conversations and exchanges of e-mail messages with Brown about the mezzanines in mid-2005. There appears to be a factual dispute as to whether Roess discussed the mezzanine issues with Brown before May 2006.

To prevail, however, appellants must prove that they sustained damages and that Roess's breach was the proximate cause of those damages. *See Padco*, 444 N.W.2d at 891; *see also State Farm Fire & Cas.*, 718 N.W.2d at 887. Appellants cannot prove that Roess's conduct induced them to enter into the purchase agreements because they have

no evidence of a breach of his fiduciary duty occurring before December 2004, when appellants signed the purchase agreements. Also, appellants cannot prove that Roess's conduct induced them to take any other action with negative consequences between mid-2005 and May 2006. They claim only that they incurred damages because Ward & Ward incurred expenses related to advertising its new location, re-routing a telephone line, and storing furnishings and equipment. Appellants also claim that Brown was "unable to launch a new business for which thousands of dollars of preparation funds have been spent" and have been unable to find an alternative location. But the evidence supporting these alleged damages is very vague, especially as to when appellants incurred the expenses at issue. The evidence comes from general statements in the affidavits of Brown, which make no mention of dates. Appellants have not cited any documentary evidence in the record that would prove when they incurred the alleged damages. Without evidence of the relevant dates, appellants cannot prove that their damages were proximately caused by Roess's alleged breach of his fiduciary duty to appellants.

Thus, the district court did not err by granting summary judgment on appellants' claims of breach of fiduciary duty.

B. Claim of Tortious Interference

Appellants alleged a claim of tortious interference with prospective contractual relations. Appellants allege that Roess interfered with Brown's attempts to obtain financing for the purchase of the condominium units by statements he made in a conversation with John Thwing, appellants' loan officer at Wells Fargo. Thwing's deposition testimony, however, does not support appellants' claim. Thwing denied that

Roess had made the statement alleged by appellants. More importantly, Thwing testified that Wells Fargo did not reject appellants' loan applications. Appellants also claim that Roess prevented them "from being able to relocate to suitable office/business space to engage in its business and marketing opportunities and strategies." But appellants point to no evidence in the record to support their claim of a reasonable expectation of business advantage or that Roess interfered with their ability to relocate to alternative space.

Thus, the district court did not err by granting summary judgment on appellants' claim of tortious interference with prospective business advantage.

C. Claim of Defamation

Appellants allege a claim of defamation against Roess based on three alleged statements. First, appellants allege that, during a telephone conversation, Roess told Thwing that Brown had obtained an inflated appraisal in support of a wrongful scheme. Second, appellants allege that Roess sent an e-mail to various parties making accusations that Brown's brother, Thomas Ward, had obtained inflated appraisals in support of a wrongful scheme. Third, appellants allege that Roess left a voice-mail message for Brown in which he accused her and her brother of wrongdoing.

The elements of a defamation claim are (1) a false statement, (2) communication of the false statement to someone other than the plaintiff, and (3) harm to the plaintiff's reputation caused by the false statement. *Special Force Ministries v. WCCO Television*, 584 N.W.2d 789, 794 (Minn. App. 1998), *review denied* (Minn. Dec. 15, 1998). A claim of defamation must be pleaded with particularity regarding the specific statements made.

Id. (citing *American Book Co. v. Kingdom Pub. Co.*, 71 Minn. 363, 366, 73 N.W. 1089, 1090 (1898)).

With respect to the first alleged statement, the district court reasoned that appellants did not produce evidence sufficient to prove the alleged defamatory statement. Thwing testified that he does not recall Roess ever saying that appellants had obtained an inflated appraisal or ever having suggested any other wrongful conduct. Roess does not admit to making such statements. Roess and Thwing are the only two persons with first-hand knowledge of the conversation. Appellants have not pointed this court to any other evidence tending to create a genuine issue of fact regarding the alleged statements.

With respect to the second alleged statement, the district court reasoned that the alleged statement related to a person who is not a plaintiff in this lawsuit. Because Thomas Ward is not a party to this case, appellants cannot establish a claim based on that statement.

With respect to the third alleged statement, the district court reasoned that there is no evidence that the alleged statement, which concerned Brown, was published to a person other than Brown. The district court is correct; the record does not show that Roess's voice-mail message was "communicated to someone other than the plaintiff," as required for a defamation claim. *Special Force Ministries*, 584 N.W.2d at 794.

Thus, the district court did not err by granting summary judgment on appellants' claim of defamation.

Affirmed.