NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-1753

UNITED MOBILE HOMES, INC.

Appellant

v.

ING INVESTMENT MANAGEMENT, LLC

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 00-cv-3375)
District Judge: Honorable William H. Walls

Submitted Under Third Circuit LAR 34.1(a)
February 25, 2002

Before: ROTH and FUENTES, Circuit Judges
GIBSON*, Circuit Judge

(Opinion filed : May 24, 2002)

* Honorable John R. Gibson, Senior Circuit Court Judge for the Eighth Circuit, sitting by designation.

- OPINION -

ROTH, Circuit Judge:

Appellant United Mobile Homes (UMH) appeals the order of the United States District Court for the District of New Jersey, granting appellee ING Investment Management, LLC’s motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6).

We have appellate jurisdiction from a final order of judgment pursuant to 28 U.S.C. 1291. We exercise plenary review over complaints dismissed for failure to state a claim under Fed.R.Civ.P. 12(b)(6). See Ditri v. Caldwell Banker Residential Affiliates, Inc., 954 F. 2d 869, 871 (3d Cir. 1992) and Breyer v. Meissner, 214 F.3d 416, 421 (3d Cir. 2000).

In reviewing a motion to dismiss, the non-moving party is given the benefit of all reasonable inferences that can be drawn from the allegations in the complaint, and the court must accept these allegations as true. Breyer v. Meissner, 214 F. 3d 416, 421 (3d Cir. 2000) citing Lake v. Arnold, 112 F. 3d 682, 642 (3d Cir. 1997) and D.R. v. Middle Bucks Area Vocational Technical Sch., 972 F.2d 1364, 1367 (3d Cir. 1992), cert. denied, 113 S. Ct. 1045 (1993). A court may also consider an undisputedly authentic document that a party attaches as an exhibit to a motion to dismiss for failure to state a claim under

Fed.R.Civ.P. 12(b)(6) if the party's claims are based on that document. See Pension Ben. Guar.Corp. V. White Consol. Ind., 998 F.2d 1192, 1196 (3d Cir. 1993), cert. denied 114 S. Ct. 687 (1994).

In April 1999, UMH applied for a commercial loan from ING and submitted a deposit. ING rejected the loan application and returned the deposit. One year later, UMH brought suit against ING, alleging (1) breach of contract, (2) breach of implied covenant of good faith and fair dealing, (3) misrepresentation, (4) promissory estoppel, (5) quantum meruit, (6) negligent misrepresentation, and (7) tortious bad faith. The District Court granted ING's motion to dismiss all seven counts pursuant to Fed.R.Civ.P. 12(b)(6). We will affirm the judgment of the District Court.

Based upon the provisions of the loan applications and of the New Jersey Statute of Frauds, N.J.S.A. 25-1(f), the District Court found that no enforceable written contract/agreement was formed between UMH and ING. UMH contends, however, that the Statute of Frauds was satisfied because an actual "writing" did exist. This alleged writing was the modified loan application submitted to UMH from ING. UMH returned the completed loan application to ING with a deposit of $75,000. UMH contends that this act of returning the completed loan application with a deposit was its acceptance of ING's "offer" and the completed loan application was the written contract/agreement.

The District Court correctly concluded that for this "writing" to be considered a contract, ING would have had to accept the loan application as the contract. ING, however, denied the loan application. Therefore, no written contract/agreement existed.

In addition, the District Court found that no intentional or negligent misrepresentation had occurred. UMH alleges, however, that ING falsely represented that, if UMH qualified for a multi-million dollar loan, ING would be willing to lend UMH the money. The District Court found this to be a conditional statement that does not misrepresent a presently existing or past fact. It was nothing more than a statement of a possible future conditional event. Thus, this statement fails to meet the requirements of a claim of intentional misrepresentation.

The District Court also found that UMH had failed to meet the elements of the doctrine of promissory estoppel and that UMH's claim for quantum meruit was deficient on its face.

Our review of the record convinces us that the District Court did not err in dismissing the complaint. For the above reasons, we will affirm the judgment of the District Court.

TO THE CLERK:

Please file the foregoing Opinion.

By the Court,

/s/ Jane R. Roth
Circuit Judge