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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1735**

Daniel J. Engstrom,
Appellant,

vs.

Whitebirch Inc., et al.,
Respondents.

**Filed November 28, 2022
Affirmed
Kirk, Judge***

Crow Wing County District Court
File No. 18-CV-17-2657

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Minnesota (for appellant)

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Considered and decided by Larson, Presiding Judge; Smith, Tracy M., Judge; and
Kirk, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

KIRK, Judge

Appellant, Daniel J. Engstrom, challenges the district court's grant of summary judgment on his claims under the Minnesota Consumer Fraud Act, Minn. Stat. § 325F.69, subd. 1 (2020), and the Minnesota Real Estate Sales Regulations Act, Minn. Stat. § 83.44 (2020). We affirm.

FACTS

This is the second appeal in this matter. The facts relevant to the instant appeal are as follows: Debra Engstrom—mother of appellant Daniel Engstrom—purchased a timeshare from respondents, Whitebirch Inc., then added appellant as a joint owner. The timeshare deed granted ownership to Debra Engstrom and Daniel Engstrom as joint tenants with right of survivorship. Appellant did not receive a copy of the deed and questions the deed's validity.¹

After Debra Engstrom's death, respondents sent a series of letters to Engstrom stating that his mother had added Engstrom's name to the timeshare deed, that the deed had been recorded with the county, that Engstrom owed late dues, and that if Engstrom did not wish to keep the timeshare, he could send a copy of his mother's death certificate, and sign and notarize a quitclaim deed and an affidavit of identity and survivorship. However, after inquiry from Engstrom's counsel, respondents contradicted their earlier statement that

¹ More thorough discussions of the facts are available in our first decision, *Engstrom v. Whitebirch, Inc.*, No. A18-0366, 2018 WL 4290056 (Minn. App. Sept. 10, 2018), *rev'd*, 931 N.W.2d 786 (Minn. 2019); and the supreme court's decision in *Engstrom v. Whitebirch, Inc.*, 931 N.W.2d 786 (Minn. 2019).

the deed had been recorded, and stated that they sent Debra Engstrom the deed and that “it’s up to the timeshare owner to file [the deed] with the county,” which Debra Engstrom did not do. Respondents later offered to release Engstrom from this debt if he sent respondents an original death certificate for his mother and returned a signed and notarized quitclaim deed and affidavit of identity and survivorship.

Engstrom sued respondents, alleging that, in violation of the Minnesota Consumer Fraud Act (CFA), respondents created invalid deeds with rights of survivorship when owners of timeshares died, and used those deeds to either induce the decedent’s family members to pay timeshare fees or to grant ownership back to the respondents, avoiding probate and foreclosure.

The parties stipulated that, because the deed was never recorded, Engstrom had no right to or interest in the timeshare. On respondents’ motion, the district court dismissed Engstrom’s complaint for failure to state a claim.

Engstrom appealed and this court affirmed the dismissal. *Engstrom*, 2018 WL 4290056, at *4. The supreme court reversed and remanded to the district court deciding only the narrow issue of “whether appellant Daniel Engstrom’s payments to an attorney to investigate what appellant contends were fraudulent demands constitute an ‘injury’ under the statute.” *Engstrom*, 931 N.W.2d at 787.

On remand, Engstrom amended his complaint to also assert a claim under the Minnesota Real Estate Sales Regulations Act, Minn. Stat. § 83.44. The district court limited discovery to the issue of the disciplinary proceedings against the notary utilized by respondents on timeshare deeds at the relevant time. After the close of that limited

discovery, the district court granted summary judgment in respondents' favor on both of Engstrom's claims. Engstrom appeals.

DECISION

Engstrom argues that the district court erred by sua sponte limiting discovery to one issue on remand. We decline to reverse the district court's decision on that ground because, in this case, summary judgment was nevertheless proper. Engstrom had failed to provide any information relative to his claim that would justify further discovery because he was unable to point to any specific support of his claims of fraud.

Courts "shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. "To forestall summary judgment, the nonmoving party must do more than rely on 'unverified or conclusionary allegations' in the pleadings or postulate evidence which might be produced at trial." *W.J.L. v. Bugge*, 573 N.W.2d 677, 680 (Minn. 1998) (quoting *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995)). We review a grant of summary judgment de novo. *Montemayor v. Sebright Prod., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017).

Under the CFA,

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined. . . .

Minn. Stat. § 325F.69, subd. 1 (2020). Private parties injured by violations of the CFA may bring a private action under the private attorney general statute, Minn. Stat. § 8.31, subd. 3a (2020). That statute “applies only to those claimants who demonstrate that their cause of action benefits the public.” *Ly v. Nystrom*, 615 N.W.2d 302, 314 (Minn. 2000).

In *Ly*, the “[a]ppellant was defrauded in a single one-on-one transaction in which the fraudulent misrepresentation, while evincing reprehensible conduct, was made only to appellant.” *Id.* at 314. The supreme court determined that prosecution of the appellant’s claim “d[id] not advance state interests and enforcement ha[d] no public benefit, and [wa]s not a claim that could be considered to be within the duties and responsibilities of the attorney general to investigate and enjoin.” *Id.*

In order to survive summary judgment on his claims, Engstrom “must present *specific facts* which give rise to a genuine issue of material fact for trial.” *Bugge*, 573 N.W.2d at 680 (emphasis added). Engstrom claims that he alleges a public benefit because respondents’ notary’s commission was once suspended and, therefore, he claims he has asserted sufficient evidence that respondents “concocted or forged or improperly notarized documents.” He continues that his own “underlying transaction documents themselves constitute violations of the CFA” such that this court cannot assume that respondents have not acted similarly in other situations. However, Engstrom concedes that he could have, but did not, investigate his claim by contacting other timeshare owners to inquire into whether any situations like his own had occurred. Because he does not present any specific facts that show the CFA claim benefits anyone beyond himself—to the extent Engstrom alleges fraud at all, which this court does not reach—his claim is similar to the “one-on-

one” transaction in *Ly* and does not establish a public benefit. *Ly*, 615 N.W.2d at 314. The district court therefore did not err in granting summary judgment on the CFA claim in respondents’ favor.

Engstrom also argues that the district court erred by granting summary judgment for respondents on Engstrom’s claim under the Minnesota Real Estate Sales Regulations Act, Minn. Stat. § 83.44. Under that statute, in relevant part:

It is unlawful for any person, in connection with the offer or sale of any subdivided land or interests therein, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

. . . .

Minn. Stat. § 83.44. However, Engstrom does not allege any sale under which this statute could apply. Engstrom was not a party to the initial timeshare sale to Debra Engstrom, and because the parties stipulated that Engstrom has no interest in the timeshare, there could not have been an offer to sell land related to respondents’ offer to forgive Engstrom’s past-due fees in exchange for his signature of a quitclaim deed. The district court therefore did not err in granting summary judgment on Engstrom’s claim under Minn. Stat. § 83.44 in respondents’ favor.

Finally, respondents filed a motion to strike an argument in Engstrom’s appellate brief. However, because we affirm without considering that argument, we deny the motion to strike as moot. *See Justice v. Marvel, LLC*, 979 N.W.2d 894, 903 n.9 (Minn. 2022).

Affirmed.