

# MICHIGAN Lawyers Weekly

## Defendants prevail in commercial real estate dispute

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By: Michigan Lawyers Weekly Staff ■ in Verdicts & Settlements ○ March 7, 2023

In this case of alleged fraud in the sale of commercial real estate, defense counsel achieved both the dismissal of both tort and contract claims in the trial court and a 2-1 affirmance thereof on appeal, securing a complete victory for the defendants.

The factual record established that, on April 30, 2018, the parties entered into a purchase agreement for the sale of commercial real estate in Southfield. After plaintiffs purchased the property, they struggled to secure an occupancy permit for the premises, principally because the physical state of the property did not match the approved site plan on file with the city. For instance, the 1980 site plan showed that the property had 26 parking spots and approximately 4,000 square feet of office space, but the property actually had 45 parking spots and approximately 6,000 square feet of office space. The variances were attributable to improvements that were previously made, allegedly without obtaining permits or approvals from the municipality. The plaintiff alleged that the seller-defendant and its principals had knowledge of these nonconformances and failed to disclose them. In the midst of discovery, the defendants moved for summary disposition and secured the dismissal of all claims, arguing that the record was factually insufficient based on the multiple admissions of plaintiffs' own principals on cross examination.

After dismissal in the trial court, the plaintiffs took the matter up to the Court of Appeals, where they lost again. The appellate court held that the record was insufficient to support plaintiffs' claims and there was no evidence presented to establish that further discovery would have aided them in any way, recognizing that it is out of the ordinary to dismiss cases prior to the close of discovery, but that, in this case, the record confirmed that further discovery would be futile. The appeals court further held that because the misrepresentation claims alleged did not allege conduct extraneous to the contractual obligations, the trial court properly dismissed the claims on the basis that they were indistinguishable from the contract claims, which were likewise without merit. The court also dismissed the civil conspiracy claims.

The law firm for the defendants provided case information.

**Type of action:** Real property; breach of commercial real estate contract; fraudulent inducement

**Injuries alleged:** In excess of \$25,000 / fraudulent inducement

**Name of case:** MD Holdings, LLC, et al. v. R.L Deppmann Company, et al.

**Court/Case no./Date:** Oakland County Circuit Court; 2020-181300-CB; 10/27/2022 and Michigan Court of Appeals No. 357462 (MilW 08-106066, 16 pages)

**Tried before:** Judge

**Names of judges:** Hon. Amy Krause (presiding), Hon. Kathleen Jansen and Hon. Christopher Murray

**Demand:** In excess of \$25,000 / rescission of contract

**Highest offer:** \$0

**Attorneys for defendant:** Linda Roelans Oszust, Taras Garapiak and

Tagged with:

REAL PROPERTY

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