

Court of Appeals, State of Michigan

ORDER

ALBERT BEST V PARK WEST GALLERIES INC

Docket No. 293502

LC No. 2008-096952-CZ


Pat M. Donofrio
Presiding Judge

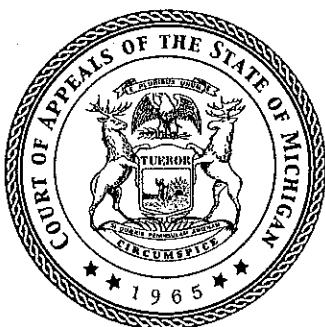
E. Thomas Fitzgerald

Henry William Saad
Judges

In lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2), the Court orders that the Oakland Circuit Court's July 22, 2009 opinion and order denying plaintiffs' motion to amend their complaint to add claims against defendant-appellee Royal Caribbean Cruises, Ltd is hereby REVERSED. Leave to amend "should be freely given when justice so requires" and ordinarily should be granted absent a specific reason. *Cole v Ladbroke Racing Michigan Inc*, 241 Mich App 1, 9-10; 614 NW2d 169 (2000). Plaintiffs' amended complaint includes sufficient allegations of fact which, if proven, could establish an agency relationship between defendant Park West, auctioneer Dobrata, and defendant-appellee Royal Caribbean Cruises. *St Clair Intermed School Dis v Intermed Ed Ass'n/Mich Ed Ass'n*, 458 Mich 540, 557; 581 NW2d 707 (1998); *Vargo v Sauer*, 457 Mich 49, 69; 576 NW2d 656 (1998). The facts before the circuit court also indicate the existence of binding contractual relationships between Park West, Dobrata, and defendant. Since plaintiffs' amended claims would survive a motion for summary disposition brought under MCR 2.116(C)(8) and would likely survive summary disposition under MCR 2.116(C)(10) the circuit court erred by refusing to permit the amendment based on futility.

The Court retains no further jurisdiction.



Presiding Judge

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

DEC 11 2009
Date



Chief Clerk