

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

JAYNE V. KATZ,	:	APPEAL NO. C-170016
	:	TRIAL NO. A-1605744
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
JEFF ROBERTS	:	
	:	
and	:	
GUARDIAN SAVINGS BANK,	:	
	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Guardian Savings Bank (“the Bank”), through its loan officer Jeff Roberts, denied a business loan to Jayne Katz. Katz later sued the Bank and Roberts, alleging negligent misrepresentation and breach of fiduciary duty. The trial court dismissed Katz’s complaint under Civ.R. 12(b)(6). This appeal followed.

In one assignment of error, Katz argues that the trial court erred in dismissing her complaint. We review a Civ.R. 12(B)(6) dismissal de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5. A complaint may be dismissed under Civ.R. 12(B)(6) only when it appears beyond doubt from the complaint that the plaintiff can prove no set of facts that would entitle her to relief. *O’Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975),

syllabus. In making this determination, we must accept all factual allegations in the complaint as true, and draw all reasonable inferences in favor of the nonmoving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988).

According to Katz's complaint, she sought a loan from the Bank in connection with her efforts to purchase a residential investment property from the Department of Housing and Urban Development ("HUD"). She had an existing business relationship with the Bank, presumably from the Bank financing other investment properties she has owned. Katz had not sought parallel financing from another source. Therefore, according to her complaint, the timing of the Bank's denial of Katz's loan application left insufficient time for her to obtain alternative financing before her purchase agreement expired. She alleged that Roberts and the Bank were aware of the deadline she faced, and breached a fiduciary duty to her because Roberts assured her that the loan would be approved in time, and discouraged her from seeking financing from another source.

Katz acknowledges that the Ohio Revised Code provides, "Unless otherwise expressly agreed in writing, the relationship between a bank and its obligor, with respect to any extension of credit, is that of a creditor and debtor, and creates no fiduciary or other relationship between the parties." R.C. 1109.15(E). Nevertheless, Katz alleges that the Bank owed her a fiduciary duty because the loan officer "repeatedly, erroneously advised Plaintiff that the bank would provide her requested loan in time to acquire the HUD property." Katz argues that these assurances constitute "special circumstances" that create a fiduciary duty under *Groob v. Keybank*, 108 Ohio St.3d 348, 2006-Ohio-1189, 843 N.E.2d 1170.

In *Groob*, a loan officer used confidential information obtained from a potential borrower to submit a successful competing bid for the business that the potential

borrower was trying to purchase. The Ohio Supreme Court held that under R.C. 1109.15, no fiduciary duty existed. *Id.* at ¶ 24. Aside from R.C. 1109.15, *Groob* relied in part on *Umbaugh Pole Bldg. Co., Inc. v. Scott*, 58 Ohio St.2d 282, 390 N.E.2d 320 (1979), to determine that a debtor-and-creditor relationship does not generally create a fiduciary relationship. *Id.* at ¶ 17-18. In *Umbaugh*, the court determined that no fiduciary duty existed even when a bank provided business advice to a hog farmer/borrower. *Id.* at ¶ 18, citing *Umbaugh* at 287. The court reasoned that the borrower should have known that the bank was acting in its own interest in obtaining a return on its investment, and not in the interest of the borrower. *Id.*, citing *Umbaugh* at 287.

This case aligns with the holdings in *Groob* and *Umbaugh*. Katz points to no writing where the Bank assumed a fiduciary duty to act in her best interest. The loan officer's puffery was made in his own interest—his desire to originate a loan and not have to compete with other lenders. Accordingly, Katz failed to state a claim upon which relief may be granted, and the trial court correctly dismissed the claim.

Katz's negligent-misrepresentation claim similarly fails. This claim exists only against a professional in the business of rendering opinions to others. *Delman v. Cleveland Hts.*, 41 Ohio St.3d 1, 4, 534 N.E.2d 835 (1989). A loan officer is engaged in an arm's-length transaction and acts in the interest of the bank. Accordingly, a claim of negligent misrepresentation cannot stand against a loan officer. *Logsdon v. Fifth Third Bank*, 100 Ohio App.3d 333, 341, 654 N.E.2d 115 (6th Dist. 1994); *Ford v. New Century Mtge. Corp.*, 797 F.Supp.2d 862, 872 (N.D.Ohio 2011).

We therefore overrule Katz's sole assignment of error, and affirm the trial court's judgment.

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A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

ZAYAS, P.J., MILLER and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on October 13, 2017

per order of the court _____.

Presiding Judge