

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

PRISCILLA MATTHEWS,

Plaintiff,

Case No. 2:06-cv-11618

Hon. Arthur J. Tarnow

Magistrate Judge Virginia M. Morgan

vs.

MICHAEL BAUMHAFT,
UNIVERSAL HOMES, LLC,
a Michigan company,
MIDWEST EXPRESS FUNDING, INC.,
a Michigan company,
EXACT TITLE, LLC, a Michigan company
BARRY A. ROGOW,
REAL FINANCIAL, LLC, a Michigan company,
JODY KLASK ROGOW,
SAMUEL BELL,
RONALD RAHAL,
MARKET VALUE APPRAISALS, LLC,
a Michigan company,
MARKET VALUE APPRAISAL, INC.,
a Michigan company,
COUNTRYWIDE HOME LOANS, INC.,
a foreign corporation,
and TICOR TITLE INSURANCE COMPANY,
a foreign corporation,

Defendants.

**MOTION FOR SUMMARY JUDGMENT BY
DEFENDANTS MICHAEL BAUMHAFT,
UNIVERSAL HOMES LLC, AND MIDWEST
EXPRESS FUNDING, INC.**

BRIEF IN SUPPORT

PROOF OF SERVICE

ROBERT D. HORVATH (P27633)
Attorney for Plaintiff
3250 W. Big Beaver Road, Suite 342
Troy, MI 48084
(248) 614-4770/(248)649-0316 fax
mjgolabek@aol.com

ISHBIA & GAGLEARD, P.C.
Frank J. LaRocca (P35464)
Attorneys for Defendants
Ronald Rahal, Market Value Appraisals, LLC,
and Market Value Appraisal, Inc., Only
251 Merrill Street, 2nd Floor
Birmingham, MI 48009
(248) 647-8590/(248) 647-8596 fax
fjl@iglawfirm.com

ISHBIA & GAGLEARD, P.C.

David N. Zacks (P34192)
William C. Roush (P23444)
Attorneys for Defendants
Michael Baumhaft, Universal Homes, LLC,
and Midwest Express Funding, Inc., Only
251 Merrill Street, 2nd Floor
Birmingham, MI 48009
(248) 647-8590/(248) 647-8596 fax
dzacks@iglawfirm.com
wcr@iglawfirm.com

MARK L. MENCZER, P.C.

Mark L. Menczer (P43802)
Attorneys for Defendants/
Exact Title, Barry A. Rogow, Real Financial,
Jody Klask Rogow, and Samuel Bell, Only
26500 Northwestern Highway, Suite 240
Southfield, MI 48076
(248)354-9000/(248)354-9775 fax
menczer@comcast.net

**MOTION FOR SUMMARY JUDGMENT BY DEFENDANTS MICHAEL BAUMHAFT,
UNIVERSAL HOMES, LLC, AND MIDWEST EXPRESS FUNDING, INC.**

NOW COME Defendants Michael Baumhaft, Universal Homes, LLC, and Midwest Express Funding, by and through their attorneys, Ishbia & Gagleard, P.C., and hereby move this Honorable Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure for Summary Judgment entering a Judgment in its favor against the Plaintiff Priscilla Matthews. In support of their Motion, the Defendants rely upon the facts, law, Federal Rules of Civil Procedure, and the arguments set forth in the Brief in Support herewith contemporaneously filed.

WHEREFORE, Defendants Michael Baumhaft, Universal Homes, LLC, and Midwest Express Funding, Inc., pray that this Court enter an Order Granting its Motion for Summary Judgment and awarding to it its costs and attorneys' fees so wrongfully sustained.

Respectfully submitted,

ISHBIA & GAGLEARD, P.C.

Dated: January 18, 2008

By: /s/ William C. Roush
ISHBIA & GAGLEARD, P.C.
251 Merrill, 2nd Floor
Birmingham, MI 48009
(248) 647-8590/(248) 647-8596 fax
wcr@iglawfirm.com
P23444

**BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT BY DEFENDANTS
MICHAEL BAUMHAFT, UNIVERSAL HOMES, LLC, AND MIDWEST EXPRESS
FUNDING, INC.**

Concise Statement of Issues Presented

**Must a summary judgment be entered in favor of Defendants Michael Baumhaft,
Universal Homes, LLC, Midwest Express Funding, Inc., dismissing the Complaint?**

The Plaintiff answers, presumably, “No.”

**Defendants Michael Baumhaft, Universal Homes LLC, Midwest Express
Funding, Inc., answer “Yes.”**

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Rule 56(c) of the Federal Rules of Civil Procedure provides that a summary judgment shall be rendered forthwith if the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

FACTS

The Plaintiff has filed a Complaint alleging five Counts against Defendants Michael Baumhaft, Universal Homes LLC, and Midwest Express Funding, Inc.: Count I “RICO;” Count II “Fiduciary Duty;” Count III “Ordinary Care;” Count IV “State Fraud Claims;” and Count V “State Securities Act Violations.” However, Plaintiff’s entire case rests upon two supposedly “bogus” appraisals for the two properties in question: 9250 Trinity and 15858 Robson, each located in Detroit, Michigan.

The Plaintiff’s attorney claims that the appraisals are “bogus” in the sense that one of the Co-Defendants whose name appears upon the two appraisals as the appraiser--Ronald Rahal--denies that he had anything to do with the appraisals.

However, the Complaint must fail--under any theory--because the Plaintiff, during her deposition, testified that she had not relied upon the appraisals. Accordingly, they could not have caused her any harm if she did not rely upon them in her decision to purchase either of the two properties. Indeed, she testified that she has never even seen the appraisals! Additionally, she has offered no proof that the properties were in any way overinflated. See **Exhibit A**, transcript of deposition of Priscilla Matthews on Wednesday, June 27, 2007, pps. 191-209.

ARGUMENT

Summary Judgment Standard

Summary judgment should be granted if there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Parks v. LaFace Records*, 329 F.3d 437, 444 (6th Cir. 2003). “Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial. In such a situation, there can be ‘no genuine issue as to any material fact,’ since

a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323; 106 S.Ct. 2548; 91 L.Ed.2d 265 (1986).

Analysis

The analysis supporting the Motion for Summary Judgment is overwhelmingly simple. A review of the cited pages from the transcript of the Plaintiff's deposition will show that she cannot possibly prevail at trial. **She never saw either of the two appraisals.** Accordingly, even if they are "bogus," they could not have possibly caused her any damage!

As shown by her testimony in **Exhibit A, the Plaintiff cannot prove either causation or reliance upon the allegedly inflated appraisals.** The well-established precedent of this circuit requires that a civil RICO plaintiff alleging fraud plead and prove reliance, that is, that a defendant made fraudulent representations to the plaintiff on which the plaintiff relied. *Brown v. Cassens Transport Co.*, 492 F.3d 640, 643 (6th Cir., 2007); *see also, VanDenBroeck v. CommonPoint Mortgage Co.*, 210 F.3d 696, 701 (6th Cir.2000); *Cent. Distribs. of Beer, Inc. v. Conn*, 5 F.3d 181, 184 (6th Cir.1993); *Blount Fin. Servs., Inc. v. Walter E. Heller & Co.*, 819 F.2d 151, 152 (6th Cir.1987); *Bender v. Southland Corp.*, 749 F.2d 1205, 1216 (6th Cir.1984). Therefore, Plaintiff has no cause of action under RICO or otherwise. She cannot possibly prove causation nor can she prove any damages or injury "by reason of reliance" upon a supposed or alleged violation of RICO.

Regarding 8250 Trinity, Plaintiff plainly testified that she "never saw an appraisal" (**Exhibit A**, p. 196). With Robson, her testimony is even worse: she testified that before she purchased the Robson property, she never even discussed the value or worth of the Robson house with anyone (**Exhibit A**, p. 197). Likewise, she testified that she never saw an appraisal of the Robson house before she signed the documents for the purchase it (**Exhibit A**, p. 199).

Additionally, her testimony makes it clear that she simply did not justifiably rely upon any alleged misrepresentations as to value, nor did she perform any due diligence whatsoever with regard to the purchase of either of the Trinity or Robson properties. For example, she testified that with regard to the Robson property, she never even asked to see an appraisal upon the property (**Exhibit A**, p. 203). Similarly, with regard to Trinity, she testified that she never saw an appraisal until her deposition was taken! (**Exhibit A**, p. 201)

Even more incredibly, she testified at her deposition that until then she never even questioned the values of either the Robson or the Trinity properties (**Exhibit A**, pps. 205-206).

Accordingly, because the Plaintiff cannot possibly prove either reliance upon the appraisals or causation of any damages by them, she cannot prevail at trial and summary judgment must be entered in favor of the Defendants. __

Respectfully submitted,

ISHBIA & GAGLEARD, P.C.

Dated: January 18, 2008

By: /s/ William C. Roush
ISHBIA & GAGLEARD, P.C.
251 Merrill, 2nd Floor
Birmingham, MI 48009
(248) 647-8590/(248) 647-8596 fax
wcr@iglawfirm.com
P23444

PROOF OF SERVICE

I certify that on January 18, 2008, I electronically filed the foregoing instruments with the Clerk of the Court using the ECF System which will send notification of such filing to all attorneys of record and that I caused it to be served upon Magistrate Judge Virginia M. Morgan by causing the same to be inserted into an envelope properly addressed and with appropriate postage affixed thereto, by causing the same to be deposited into a receptacle for the U.S. Mail.

/s/William C. Roush
ISHBIA & GAGLEARD, P.C.
251 Merrill, 2nd Floor
Birmingham, MI 48009
(248) 647-8590/(248) 647-8596 fax
wcr@iglawfirm.com
P23444