

MAY 12 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STEVEN J. KOMIE,

Plaintiff - Appellant,

v.

**JAMES C. SAXTON; KIRK
SCHERER; MELODY J. SULLIVAN,**

Defendants - Appellees.

No. 07-15764

D.C. No. CV-00-01521-JCM

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Argued and Submitted April 17, 2008
San Francisco, California

Before: **KOZINSKI**, Chief Judge, **WALLACE** and **N.R. SMITH**, Circuit
Judges.

1. As to the alleged misrepresentations regarding the Taylor Ranch property, the two loans and the loans' interest payments, plaintiff hasn't alleged that these misrepresentations caused him an economic loss. Plaintiff does claim

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

that he paid an “artificially inflated” price for stock, but an inflated purchase price, without more, isn’t sufficient to plead loss causation. Dura Pharm., Inc. v. Broudo, 544 U.S. 336, 347 (2005). And although plaintiff alleges that the stock price fell when the company revealed its “true financial condition,” he does not further allege that this poor financial condition was caused by the loans and interest payments. This complaint isn’t like the complaint in In re Daou Systems, Inc., 411 F.3d 1006, 1025–27 (9th Cir. 2005), which alleged that defendant’s parlous financial state was “the direct result” of the accounting practices concealed by defendant’s misrepresentations. Id. at 1027. Therefore, though plaintiff claims he “suffered damages in excess of \$1.4 million,” his complaint “nowhere . . . provides the defendants with notice of what . . . the causal connection might be between that loss and the misrepresentation[s].” Dura, 544 U.S. at 347.

2. As to the misrepresentations of the TCPs’ value, we held that plaintiffs’ first complaint failed to “meet the heightened PSLRA pleading requirement for scienter.” In re Saxton, Inc. Sec. Litig., 156 F. App’x 917, 920 (9th Cir. 2005). The amended complaint does not allege any new facts relevant to defendants’ scienter in overstating the TCPs’ value, so we are bound by our previous ruling. See Leslie Salt Co. v. United States, 55 F.3d 1388, 1392 (9th Cir. 1995).

AFFIRMED.