

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

PAUL STEVEN RESZKA, an individual,

Plaintiff,

v

File No. 03-22601-CK
HON. PHILIP E. RODGERS, JR.

NORTH COUNTRY BANK AND TRUST,
a state chartered banking association, and
AMERICAN FINANCIAL MORTGAGE
CORP., a Michigan corporation,

Defendants.

Craig W. Elhart (P26369)
Attorney for Plaintiff

Donald A. Brandt (P30183)
John M. Grogan (P56577)
Attorneys for Defendants

DECISION AND ORDER
GRANTING DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

This is a civil action for breach of a number of agreements between the parties, tortious interference and fraud and misrepresentation. In lieu of responsive pleadings, the Defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(7), (8) and (10). On March 24, 2003, the Court heard the oral arguments of counsel. The Court gave the Plaintiff until 5 p.m. March 25, 2003 to file an affidavit or documentary evidence in response to the Defendants' motion brought pursuant to MCR 2.116(C)(10). On March 25, 2003, the Plaintiff filed a response to the Defendants' brief in reply to the Plaintiff's response to the motion. There were no affidavits or documents attached to that response.

STANDARD OF REVIEW

MCR 2.116(C)(10) provides that summary disposition may be entered on behalf of the moving party when it is established that, “except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.”

The applicable standard of review for a motion for summary disposition brought pursuant to MCR 2.116(C)(10) was set forth in *Smith v Globe Life Ins Co*, 460 Mich 446; 597 NW2d 28 (1999) as follows:

This Court in *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996), set forth the following standards for reviewing motions for summary disposition brought under MCR 2.116(C)(10):

In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J. Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins. Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

With their motion for summary disposition, the Defendants submitted various documents which they contend establish that there is no genuine issue of material fact and that they are entitled to judgment as a matter of law. MCR 2.116(C)(10). The burden then shifted to the Plaintiff to establish that there is a genuine issue of disputed fact. He failed to present an

affidavit or any documentary evidence establishing the existence of a material factual dispute. Therefore, the motion is properly granted.

The Plaintiff argues that the Defendants rely entirely upon a release that was executed by the parties and therefore their motion should be analyzed as a (C)(7) motion only. This argument ignores the fact that the Defendants' (C)(10) motion is based on their contention and supporting documentary evidence that supports their contention that there is no genuine issue of material fact regarding the validity of the release. The Plaintiff has not presented a controverting affidavit or any documentary evidence that would create a factual issue about the validity of the release. The Plaintiff relies exclusively on the allegations of fraud and misrepresentation contained in his Complaint.

For this reason, the Defendants' motion should be and hereby is granted. The Plaintiff's Complaint is dismissed with prejudice.

IT IS SO ORDERED.

This order disposes of the last pending claim and closes the case.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: _____