

STATE OF MICHIGAN
COURT OF APPEALS

JAMES B. RASOR,

Plaintiff-Appellant,

v

RE/MAX IN THE HILLS and CINDY PARSONS,

Defendants-Appellees.

UNPUBLISHED

May 9, 1997

No. 194388

Oakland Circuit Court

LC No. 95-500778

Before: McDonald, P.J., and Reilly and O'Connell, JJ.

MEMORANDUM.

Plaintiff appeals the circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10), and dismissing plaintiff's second amended complaint. We affirm.

A motion for summary disposition is an appropriate mechanism to test plaintiff's proofs to possibly avoid the necessity of trial. *Morganroth v Whitall*, 161 Mich App 785, 788-789; 411 NW2d 859 (1987). We agree with the trial court that there was no issue of fact. The court did not err by granting summary disposition.

Plaintiff first argues that the circuit court erred by dismissing his claim under the Michigan Consumer Protection Act, MCL 445.903; MSA 19.418(3). We disagree. It is undisputed that plaintiff was aware of the correct square footage. Therefore, he was not misled or deceived by any alleged misrepresentation in the real estate listing. Summary disposition on this count was appropriate.

Plaintiff also alleged a claim of malpractice. Even if we were to assume that a malpractice action may be brought against real estate agents under MCL 600.2912(1); MSA 27A.2912(1), defendants served as the seller's agent and thus owed no duty to the plaintiff buyer. *Andrie v Chrystal-Anderson & Assoc Realtors, Inc*, 187 Mich App 333; 466 NW2d 393 (1991). The trial court properly granted summary disposition of this count as well.

Affirmed.

/s/ Gary R. McDonald
/s/ Maureen Pulte Reilly
/s/ Peter D. O'Connell