

STATE OF MICHIGAN
COURT OF APPEALS

RALPH HECT,

Plaintiff-Appellant,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

UNPUBLISHED

March 30, 1999

No. 205548

Saginaw Circuit Court

LC No. 96-013643 NI

Before: McDonald, P.J., and Hood and Doctoroff, JJ.

MEMORANDUM.

Plaintiff appeals of right from the trial court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant and Martin Leasing, the company for which plaintiff worked as a truck driver, operated under a Master Agreement and Addendum for Motor Transportation Services. The agreement provided that prior to leaving a point of origin the carrier was responsible for insuring that the load on an unsealed trailer was properly blocked and secured. Plaintiff picked up a load of transmission gears at defendant's Malleable Iron plant. Defendant's personnel loaded the trailer, pursuant to customary procedure. Plaintiff left the facility without checking the load to insure that it was properly blocked and secured. At one point during plaintiff's trip the load shifted, causing him to be thrown into the steering wheel.

Plaintiff filed suit, alleging that defendant breached its duty to load cargo in a reasonably safe manner so that it would not shift during transit. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the duty to secure the load had been assumed by the carrier under the agreement. The trial court granted the motion, finding that defendant owed plaintiff no duty to insure that the load was secured prior to plaintiff leaving the facility.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

On appeal, plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. Duty is a question of whether the relationship between the plaintiff and the defendant gives rise to any legal obligation on defendant's part for the plaintiff's benefit. Whether a duty exists is a question of law for the court. *Moning v Alfono*, 400 Mich 425, 437-439; 254 NW2d 759 (1977). The agreement between defendant and Martin provided that the carrier was responsible for insuring that the load in an unsealed trailer was properly blocked and secured. Uncontradicted evidence from both defendant's and Martin's employees established that under the agreement, the carrier's employee, the driver, had the responsibility of insuring that the load was properly secured. Defendant's act of loading plaintiff's trailer did not preclude plaintiff from inspecting the load to insure that it was properly secured. The agreement did not create a relationship between defendant and Martin which obligated defendant to act for plaintiff's benefit and to secure a load after it was placed in a trailer. Defendant had no duty to plaintiff. *Moning, supra*.

Affirmed.

/s/ Gary R. McDonald

/s/ Harold Hood

/s/ Martin M. Doctoroff