

STATE OF MICHIGAN
COURT OF APPEALS

EDDIE BEAL and ORA BEAL,

Plaintiffs-Appellants,

v

AMERCO REAL ESTATE, parent company of U-
HAUL INTERNATIONAL, INC., d/b/a NOVI
MANUFACTURING COMPANY and DAVE
SHADY,

Defendants-Appellees.

UNPUBLISHED

January 28, 2000

No. 210396

Oakland Circuit Court

LC No. 97-536899 NI

Before: Doctoroff, P.J., and Holbrook, Jr. and Kelly, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition in favor of defendants. We affirm.

Plaintiffs' complaint alleged that plaintiff Eddie Beal was kicked at work by a supervisor. Plaintiffs sued under the theories of battery, intentional infliction of emotional distress, racial discrimination, wrongful discharge and breach of contract. Defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). After a hearing, the trial court granted defendants' motion, but failed to specify under which subrule of MCR 2.116 it granted the motion. However, because the trial court referred to facts beyond the pleadings, we presume that defendants' motion was granted pursuant to MCR 2.116(C)(10). See *Gibson v Neelis*, 227 Mich App 187, 190; 575 NW2d 313 (1997). On appeal, plaintiffs assert that the trial court erred in granting summary disposition in favor of defendants. We disagree.

A trial court's decision to grant a motion for summary disposition is reviewed de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; ___ NW2d ___ (1999); *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition brought under MCR 2.116(C)(10), the trial court must consider the affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties in the light most favorable to the party opposing the motion. *Smith, supra*; *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d

314 (1996). The motion should be granted if the affidavits or other documentary evidence show that there is no genuine issue with respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Smith, supra* at 454-455; *Quinto, supra*.

Here, defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) was properly supported with documentary evidence. MCR 2.116(G)(3)(b); *Richardson v Michigan Human Society*, 221 Mich App 526, 527; 561 NW2d 873 (1997). When faced with a properly supported motion for summary disposition under MCR 2.116(C)(10), an adverse party may not rest upon the mere allegations or denials of his or her pleadings, but must, by affidavits or other documentary evidence, set forth specific facts showing that there is a genuine issue for trial. MCR 2.116(G)(4); *Smith, supra* at 455. If the adverse party does not present documentary evidence establishing the existence of a material factual issue, the motion should be granted. *Id.*

Plaintiffs failed to submit any affidavits or other documentary evidence in support of their response to defendants' motion to establish a genuine issue of fact for trial. Thus, pursuant to MCR 2.116(G)(4), the trial court properly granted defendants' motion.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly