

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL McCONNELL,

Plaintiff-Appellant,

v

ELTON MIRANDETTE, ROSEMARY
MIRANDETTE, ARCHIE PAUL, and RUTH
PAUL,

Defendants-Appellees.

UNPUBLISHED

July 28, 2000

No. 218948

Lake Circuit Court

LC No. 97-004521-CK

Before: McDonald, P.J., and Neff and Zahra, JJ.

PER CURIAM.

This action involves an alleged agreement between plaintiff and defendants to jointly purchase land from a third party. Plaintiff alleged that defendants breached a fiduciary duty they owed to him by purchasing the land without his involvement. The trial court granted summary disposition pursuant to MCR 2.116(C)(10) in favor of defendants. Plaintiff appeals as of right. We affirm.

I

Plaintiff argues that defendants Archie Paul and Ruth Paul agreed to act as plaintiff's agents in their negotiations with the owners of the purchased property, the Collisons, and they breached this agreement by purchasing the property without plaintiff's involvement. We disagree.

A trial court's grant or denial of summary disposition pursuant to MCR 2.116(C)(10), on the basis of a finding that there is no genuine issue of any material fact, is reviewed de novo. *Markillie v Bd of Co Rd Comm'rs of Co of Livingston*, 210 Mich App 16, 18; 532 NW2d 878 (1995). This Court, like the trial court, must consider the depositions, affidavits and documentary evidence in a light most favorable to the nonmoving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The nonmoving party may not rest on mere allegations or denials in the pleadings. Rather, the party must come forward with documentary evidence setting forth specific facts showing that there is a genuine issue for trial. *Id.*

“An agent, in the broadest sense of the word, is one who acts for or represents another by his authority.” *Mallory v Conida Warehouses, Inc*, 113 Mich App 280, 285; 317 NW2d 597 (1982). The basic test for whether an agency relationship has been created is whether the principal has a right to control the actions of the agent. *Meretta v Peach*, 195 Mich App 695, 697; 491 NW2d 278 (1992). Under the common law of agency, in determining whether an agency has been created, courts consider the relations of the parties as they in fact exist under their agreements or acts. *St Clair Intermediate School Dist v Intermediate Ed Ass’n/Michigan Ed Ass’n*, 458 Mich 540, 557; 581 NW2d 707 (1998). “Strictly speaking, agency is not presumed from conduct or declarations of an alleged agent, but must be established by tracing its source to some word or action of the supposed principal.” 3 Michigan Pleading & Practice (2d ed) § 36.79, p 592.

Agency between the principal and agent is a matter of mutual consent. *Revitzer v Trenton Medical Center, Inc*, 118 Mich App 169, 173; 324 NW2d 561 (1982). In this case, the Pauls’ consent to act as plaintiff’s agents has not been demonstrated by any statement made or action taken by them. In the absence of any indication that the Pauls agreed to represent plaintiff in the negotiations with the Collisons, that plaintiff had the right to control the actions of the Pauls during the negotiations, *Meretta, supra*, or that plaintiff specifically asked the Pauls to represent his interests, 3 Michigan Pleading and Practice, *supra*, the trial court correctly decided that there was no genuine issue of material fact for the claim that the Pauls entered into an agency relationship with plaintiff.

II

Next, plaintiff argues that summary disposition was improper because defendant Rosemary Mirandette owed him a fiduciary duty. Again, we disagree.

A fiduciary relationship arises from the expectation of faith, confidence, and trust, and the reliance of one on the judgment and advice of another. *Ulrich v Federal Land Bank of St Paul*, 192 Mich App 194, 196; 480 NW2d 910 (1991). A person in a fiduciary relationship has a duty to act for the benefit of the other involving matters within the scope of the relation. *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 581; 603 NW2d 816 (1999).

Fiduciary duties may extend to third parties:

Where a person in a fiduciary relation to another violates his duty as fiduciary, a third person who participates in the violation of duty is liable to the beneficiary. If the third person makes a profit through such participation, he is chargeable as constructive trustee of the profit so made. [*In re Goldman Estate*, 236 Mich App 517, 521; 601 NW2d 126 (1999), quoting *L A Young Spring & Wire Corp v Falls*, 307 Mich 69, 106; 11 NW2d 329 (1943), quoting 3 Scott on Trusts, § 506, p 2429.]

Because there is nothing in the record establishing that defendant Rosemary Mirandette knew of any fiduciary duty her husband may have owed plaintiff, or that she was aware of or participated in any violation of that duty, she was not liable to plaintiff. The trial court correctly granted defendants’ motion for summary disposition.

III

Having found that summary disposition was properly granted in favor of defendants, we need not address plaintiff's contention that his claim is not barred by the doctrine of laches.

Affirmed.

/s/ Gary R. McDonald

/s/ Janet T. Neff

/s/ Brian K. Zahra