

STATE OF MICHIGAN
COURT OF APPEALS

AUTO DEALERS SERVICES, INC.,

Plaintiff-Appellant,

v

WALKER AUTOMOTIVE RESOURCES,

Defendant-Appellee.

UNPUBLISHED

May 15, 2001

No. 221545

Oakland Circuit Court

LC No. 99-013166-CB

Before: McDonald, P.J., and Smolenski and K. F. Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

Plaintiff first contends that the trial court erred in dismissing its conspiracy claim on the ground that plaintiff had failed to respond to that aspect of defendant's motion. We agree. A review of the record shows that defendant asserted a right to judgment on the ground that it could not conspire to breach a contract of which it had no knowledge, and submitted affidavits supporting that assertion. Plaintiff responded that defendant did have knowledge of the contract, and submitted an affidavit to that effect. Because plaintiff responded to defendant's argument and submitted evidence showing the existence of a genuine issue of fact, the trial court erred in dismissing the conspiracy claim.

Plaintiff next contends that the trial court erred in dismissing its claim for tortious interference with contractual relations on the ground that the evidence did not show that

defendant unjustifiably instigated the breach of plaintiff's contract with a third party. We agree. Because defendant did not plead and submit evidence to prove a right to judgment on the issue of unjustified instigation of the breach, MCR 2.116(G)(4), and thus plaintiff did not have notice that it was contested or an opportunity to address the issue, the trial court erred in granting judgment on that basis. See *Hover v Chrysler Corp*, 209 Mich App 314, 317; 530 NW2d 96 (1995). However, the error was harmless because plaintiff failed to allege in its complaint that defendant's instigation of the breach was unjustified or allege facts from which such a conclusion could be drawn and thus failed to state a claim upon which relief could be granted. This Court will not reverse when the trial court reached the right result for the wrong reason. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000). Because the sufficiency of the pleadings was not raised by defendant or addressed by the trial court and discovery was still open, it cannot be said that plaintiff will be unable to prove a tortious interference claim that is properly pleaded. Therefore, we remand the case to give plaintiff an opportunity to amend its complaint. MCR 2.116(I)(5). *Feliciano v Dep't of Natural Resources*, 158 Mich App 497, 500-501; 405 NW2d 178 (1987).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Gary R. McDonald
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly