

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JOSEPH D'SOUZA and MARILYN D'SOUZA,

Plaintiffs-Appellants,

v

DAVID ZOPF and DONNA ZOPH,

Defendants-Appellees.

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UNPUBLISHED

August 21, 2001

No. 223253

Eaton Circuit Court

LC No. 98-001108-CH

Before: Fitzgerald, P.J., and Gage and C. H. Miel\*, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order granting defendants' motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs purchased a home from defendants. The sales agreement contained a provision indicating that plaintiffs were purchasing the home as is. Plaintiffs were given the opportunity to obtain an inspection and void the sale if any defects could not be cured to their satisfaction. After the agreement was signed, defendants provided a disclosure statement that did not identify any known defects.

Plaintiffs discovered a number of defects after taking possession, and brought this action for misrepresentation and negligence. Defendants denied knowledge of any of the alleged defects at the time of sale, and the trial court granted their motion for summary disposition.

A motion under MCR 2.116(C)(10) tests whether there is factual support for plaintiffs' claim. An adverse party may not rest upon the allegations in his or her pleading, but must set forth specific facts showing that there is a genuine issue of fact for trial. MCR 2.116(G)(4). Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358; 547 NW2d 314 (1996). The reviewing court must evaluate a motion under MCR 2.116(C)(10) by considering the substantively admissible evidence actually proffered in opposition to the motion. *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999).

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\* Circuit judge, sitting on the Court of Appeals by assignment.

The seller disclosure act provides that a transferor is not liable for any inaccuracy in a disclosure that was not within the personal knowledge of the transferor. MCL 565.955(1). To support a claim of misrepresentation, the seller must intentionally suppress material facts to create a false impression to the other party. *M&D, Inc v McConkey*, 231 Mich App 22, 25; 585 NW2d 33 (1998).

Plaintiffs failed to submit evidence that would support a finding that defendants fraudulently concealed knowledge of a defect. Defendants denied knowledge of the defects, and plaintiffs did not present any expert testimony that would establish this knowledge. Plaintiffs also failed to establish the necessary element of reliance where they agreed to make the purchase before the disclosure was given. *Clement-Rowe v Michigan Health Care Corp*, 212 Mich App 503, 508; 538 NW2d 20 (1995).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Hilda R. Gage

/s/ Charles H. Miel