

STATE OF MICHIGAN
COURT OF APPEALS

COMMISSIONER OF THE OFFICE OF
FINANCIAL AND INSURANCE SERVICES,

UNPUBLISHED
November 4, 2004

Petitioner-Appellee,

v

No. 249109
Ingham Circuit Court
LC No. 02-000451-PR

NEW CENTURY BANK,

Respondent-Appellant.

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

MEMORANDUM.

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

Petitioner filed a verified petition seeking the appointment of the Federal Deposit Insurance Corporation (FDIC) as receiver for respondent. The petition, filed pursuant to MCL 487.12402(1) and supported by numerous exhibits, alleged that respondent was in an unsafe and unsound condition. The trial court issued an order appointing the FDIC as receiver for respondent and authorizing the FDIC to liquidate respondent's assets.

Subsequently, petitioner moved for summary disposition pursuant to MCR 2.116(C)(1), (5), and (10), arguing that the trial court lacked jurisdiction over the FDIC, that respondent lacked the legal capacity to respond to the petition, and that no genuine issue of fact existed. The trial court granted the motion, reasoning that if respondent had objections to the petition, those objections should have been raised in a timely manner.¹

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

¹ Subsequently, respondent filed an action against the State of Michigan in the Court of Claims, seeking damages for an alleged breach of a purported agreement in principle it negotiated with petitioner and the FDIC. That matter is pending in the Court of Claims.

Respondent argues that the trial court erred or abused its discretion by granting petitioner's motion for summary disposition, noting that MCL 487.12402(2) does not specify the time frame in which a bank subject to receivership proceedings must seek a hearing to present evidence in opposition to a petition for receivership. We affirm. Respondent presents no argument regarding the trial court's decision on the motion pursuant to MCR 2.116(C)(1) and (5). We conclude that those issues have been abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Moreover, when responding to petitioner's motion for summary disposition brought pursuant to MCR 2.116(C)(10), respondent failed to submit admissible documentary evidence in order to establish that a genuine issue of fact existed for trial. *Karbel v Comerica Bank*, 247 Mich App 90, 97; 635 NW2d 69 (2001); MCR 2.116(G)(4). Respondent did not carry the burden of supporting its position that the receivership was improperly granted. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). Respondent has not established that the trial court's interpretation of MCL 487.12402(2) was erroneous. Summary disposition was correct.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Michael R. Smolenski