

STATE OF MICHIGAN
COURT OF APPEALS

CITIBANK WEST FSB, successor by merger to
CALIFORNIA FEDERAL BANK, f/k/a
CALIFORNIA FEDERAL BANK FSB,

Plaintiff-Appellee,

v

NEIL P. LUND and DENISE LUND,

Defendants-Appellants,

and

EMIGRANT MORTGAGE COMPANY,

Defendant-Appellee,

and

RICK HERBERT, CHARLES BROWN, and
UNITED STATES OF AMERICA,

Defendants.

Before: Meter, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Defendants Neil and Denise Lund, in propria persona, appeal as of right from a circuit court order granting summary disposition to plaintiff pursuant to MCR 2.116(C)(10) in this action for judicial foreclosure. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, the Lunds argue that the trial court “should have granted Defendant’s/Appellant’s request for Trial and Nul Tiel Record Plea evidentiary hearing as required.”

“Nul tiel record” is “[a] plea denying the existence of the record on which the plaintiff bases a claim.” Black’s Law Dictionary (7th ed). The Lunds did not plead “nul tiel record”

below and did not request a “nul tiel record plea evidentiary hearing.” Because this issue was not raised before and considered by the trial court, it is not preserved for appeal. *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992). This Court may review an issue if the question is one of law and the facts necessary for its resolution have been presented. *Id.*, pp 98-99. However, the Lunds do not adequately brief the issue. They do not identify what aspect of the record does not exist, and they do not cite any authority, much less Michigan authority, that addresses the showing necessary for a “nul tiel record plea evidentiary hearing.”

“It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow.” [*Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).]

The issue is unpreserved and inadequately briefed, and this Court will not examine it further.

The Lunds’ brief also includes portions of their arguments from the motion that they filed in opposition to plaintiff’s motion. Arguably, they are contesting the trial court’s grant of plaintiff’s motion for summary disposition.

Summary disposition may be granted under MCR 2.116(C)(10) when “there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law.” A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). The moving party must specifically identify the matters that it believes have no disputed factual issues, *id.*; MCR 2.116(G)(4), and has the initial burden of presenting affidavits, depositions, admissions, or other documentary evidence in support of the motion, *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996); MCR 2.116(G)(5). Once the moving party has met this burden, the burden shifts to the opposing party to show that a genuine issue of material fact exists. *Quinto, supra*, p 362. This Court reviews a trial court’s decision on a motion for summary disposition de novo. *Maiden, supra*, p 118.

In response to plaintiff’s properly supported motion, the Lunds did not present any evidence showing that there was an issue of fact for trial. At most, they indicated that expert testimony would be presented at trial to support their position. Because the Lunds did not present evidence, but merely asserted that they would do so if there were a trial, the trial court properly granted plaintiff’s motion. “A litigant’s mere pledge to establish an issue of fact at trial cannot survive summary disposition under MCR 2.116(C)(10).” *Maiden, supra*, p 121.

Affirmed.

/s/ Patrick M. Meter
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood