

STATE OF MICHIGAN
COURT OF APPEALS

SALEM FURRHA,

Plaintiff-Appellant,

v

PIZZA PRIDE, INC.,

Defendant-Appellee.

UNPUBLISHED

May 1, 2008

No. 276282

Washtenaw Circuit Court

LC No. 06-000376-CB

Before: Bandstra, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting summary disposition to defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The parties entered into an investment and participation agreement through which plaintiff purchased interests in three pizza stores. That agreement, and its amendment, entitled plaintiff to share in profits, and additionally provided defendant with the option, after any of the stores had been open for two years, to buy plaintiff's interest in that store, for a price calculated on the basis of the store's earnings for the previous year.

Defendant maintained that all three stores continuously lost money through the term of the agreement, and then exercised its option to purchase plaintiff's interest, tendering a price based on defendant's accounting, thus terminating the agreement. Suspecting that defendant had exaggerated some of the operating expenses, plaintiff asked his accountant to investigate. The latter received from defendant's accountant what plaintiff himself describes as a "voluminous" quantity of records. Plaintiff's accountant developed suspicions over those records as they related to the many of the costs of operating the stores.

Plaintiff filed suit, demanding a recalculation of his interest in the venture. Plaintiff submitted an affidavit from his accountant, in which the accountant attested that he had reviewed the books and records and had "questions concerning the costs indicated on those documents," then specified "the costs for coupons, the cost of utilities, the cost of food and paper, and the large percentage increase in utilities and group insurance indicated in the records." The accountant offered the conclusion, "It appears to me that these costs were grossly overstated and may be an attempt to hide or reduce profits."

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10) (lack of evidentiary support). During oral argument, defendant protested that plaintiff only raised questions, putting forward no assertion of any specific fact to counter defendant's position. The trial court agreed, explaining, "it would be your burden to show that these numbers are absolutely incorrect either because they were taken from other stores or because of other reason, not just the conclusion of an expert that they don't seem right."

We review a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

Plaintiff argues that his accountant's affidavit itself establishes a genuine question of material fact. But, as the trial court noted, the accountant only raised questions, offering no concrete, specific conclusions. Discovery is complete, and plaintiff expressed satisfaction with the detailed information provided by defendant's accountant, yet plaintiff has nowhere offered any evidence in support of any specific factual assertion to challenge defendant's accounting.

"[P]arties opposing a motion for summary disposition must present more than conjecture and speculation to meet their burden of providing evidentiary proof establishing a genuine issue of material fact." *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993). Because plaintiff's accountant only raised questions, and did not assert facts according to which plaintiff is entitled to collect damages, that affidavit fails to satisfy the requirements for defending a motion for summary disposition.

Plaintiff additionally asserts that the trial court cut off his attorney before that advocate was able to spell out his case adequately. However, we note that counsel accepted the court's ruling with grace, with no protestation that there was more to say. We further note that, in the brief on appeal, plaintiff offers no argument, and points to no evidence, that could be considered materially supplemental to what was before the trial court.

For these reasons, we conclude that the trial court properly granted defendant's motion for summary disposition.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey