

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

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MERCANTILE BANK MORTGAGE  
COMPANY, L.L.C.,

UNPUBLISHED  
November 23, 2010

Plaintiff/Counter-Defendant-  
Appellee,

v

No. 294146  
Kent Circuit Court  
LC No. 08-010976-CK

T. MICHAEL DOYLE,

Defendant/Counter-Plaintiff-  
Appellant,

and

JOHN E. GRIGGS,

Defendant.

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Before: M.J. KELLY, P.J., and K.F. KELLY and BORRELLO, JJ.

PER CURIAM.

Defendant T. Michael Doyle appeals as of right the trial court's order granting plaintiff Mercantile Bank Mortgage Company, L.L.C., summary disposition and dismissing his counterclaim. For the reasons set forth in this opinion, we affirm.

**I. FACTS AND PROCEDURAL HISTORY**

On October 17, 2008, plaintiff filed a complaint against defendants Doyle and John E. Griggs for money damages alleging breach of guaranty as the result of defendants Doyle and Griggs personally guaranteeing a loan to G & D Development for approximately \$1.5 million on which G & D Development was in default. Plaintiff alleged that G & D Development still owed plaintiff \$526,846 including interest and late charges. Plaintiff subsequently released defendant

Griggs from his obligation to repay G & D's debt pursuant to his personal guarantee, and Griggs is not a party to this appeal.<sup>1</sup>

On February 11, 2009, defendant filed a counterclaim alleging promissory estoppel and tortious interference with business relations and prospective advantages. On March 19, 2009, the trial court issued a scheduling order, which provided that the deadline for discovery was October 1, 2009.

On August 11, 2009, plaintiff moved for summary disposition pursuant to MCR 2.116(C)(7), with regard to defendant's counterclaim, alleging that res judicata prohibited defendant from relitigating the same claims in this case which were previously adjudicated in *Mercantile Bank of Michigan v Doyle Group Attorneys, P.C.*, Kent Circuit Court docket no. 08-010636-CK.<sup>2</sup> Plaintiff also moved for summary disposition pursuant to MCR 2.116(C)(10), with regard to its breach of guaranty claim, alleging that it was entitled to judgment as a matter of law because there was no genuine issue of material fact.

At the hearing on plaintiff's motion for summary disposition, the trial court held that res judicata applied and therefore granted plaintiff's motion for summary disposition of defendant's counterclaim. The trial court also indicated that plaintiff was entitled to summary disposition on its breach of guaranty claim because the terms of the promissory note were clear and unambiguous; thus, there was no genuine issue of material fact regarding defendant's remaining obligations under the notes. The trial court subsequently entered an order granting plaintiff's motion for summary disposition in its entirety and dismissing defendant's counterclaim with prejudice.

## II. ANALYSIS

Defendant argues that his tortious interference with a business relationship counterclaim should not have been summarily dismissed because the evidence could have supported a conclusion by a reasonable fact-finder that plaintiff's actions were malicious. Thus, a genuine issue of material fact existed regarding the tortious interference claim, and summary disposition was therefore improper. In addition, defendant argues that summary disposition was premature because several depositions were scheduled, but not yet taken, of witnesses who were involved in the decisions that led to plaintiff's seizure of the assets of Gateway Systems Corporation d/b/a GSC Mobile Systems, Incorporated.

We review de novo a trial court's decision to grant summary disposition. *Coblentz v Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). We review the record in the same manner as

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<sup>1</sup> This opinion will refer to defendant Doyle as "defendant."

<sup>2</sup> In *Mercantile Bank of Michigan v Doyle Group Attorneys, P.C.*, unpublished opinion per curiam of the Court of Appeals, issued [month, day, year] (Docket No. 293260), this Court affirmed the trial court's order granting the plaintiff's motion for summary disposition and dismissing the defendant's counterclaim.

the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998). Here, plaintiff moved for summary disposition under MCR 2.116(C)(7) and (C)(10). “In making a decision under MCR 2.116(C)(7), we consider all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict it.” *Bryant v Oakpointe Villa Nursing Ctr, Inc*, 471 Mich 411, 419; 684 NW2d 864 (2004). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). In evaluating a motion for summary disposition brought under this subsection, a reviewing court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. *Coblentz*, 475 Mich at 567-568. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10); MCR 2.116(G)(4); *Coblentz*, 475 Mich at 568.

As noted above, the trial court held that based on the trial court’s decision in *Mercantile Bank of Michigan v Doyle Group Attorneys, P.C.*, Kent Circuit Court docket no. 08-010636-CK, res judicata precluded defendant’s counterclaim. “[R]es judicata bars a subsequent action between the same parties when the facts or evidence essential to the action is identical to that essential to a prior action.” *Richards v Tibaldi*, 272 Mich App 522, 530-531; 726 NW2d 770 (2006). Defendant’s brief on appeal does not assert that the trial court erred in concluding that res judicata applied. Because defendant does not challenge on appeal the trial court’s decision that res judicata applied, we affirm the trial court’s decision granting summary disposition of defendant’s counterclaim. See *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004) (quoting *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 175; 568 NW2d 365 (1997)), where the Court stated that “[w]hen an appellant fails to dispute the basis of the trial court’s ruling, [t]his Court . . . need not even consider granting plaintiffs the relief they seek.” Moreover, because defendant’s counterclaim was properly dismissed on res judicata grounds, it is irrelevant whether discovery was still open.

Affirmed.

/s/ Michael J. Kelly  
/s/ Kirsten Frank Kelly  
/s/ Stephen L. Borrello