

STATE OF MICHIGAN
COURT OF APPEALS

TYRON SCOTT,

Plaintiff-Appellant,

v

PYRATECH SECURITY SYSTEMS, INC.,

Defendant-Appellee.

UNPUBLISHED

October 22, 2002

No. 231657

Wayne Circuit Court

LC No. 99-937703-NO

Before: Murphy, P.J., and Markey and R. S. Gribbs*, JJ.

PER CURIUM.

Plaintiff appeals by right from a circuit court order granting defendant's motion for summary disposition. We reverse and remand.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

Defendant contracted to provide security services at the store where plaintiff worked. Every contract is accompanied by a common-law duty to perform with ordinary care the things agreed to be done. *Osman v Summer Green Lawn Care, Inc*, 209 Mich App 703, 707-708; 532 NW2d 186 (1995), overruled on other grounds by *Smith, supra* at 455 n 2. Those foreseeably injured by the negligent performance of a contractual undertaking are owed a duty of care. *Id.* Pursuant to the contract at issue, defendant agreed to provide security service at the store and to exercise "[r]easonable care . . . in the performance of" the contract. The contract did not specify what the provision of security service entailed. Apparently the specifics of the security guard's duties were covered by a separate document (post orders), which outlined some general rules for

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

the guard to follow. However, the post orders did not indicate that they were comprehensive or exclusive and there is nothing to indicate that the store could not direct the guard to perform other tasks reasonably related to the provision of security services. There was an issue of fact whether defendant negligently performed its contractual duties in this case when the guard failed to count people who entered the store near closing and reported in error that everyone had left the premises.

Reversed and remanded. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Jane E. Markey

/s/ Roman S. Gibbs