STATE OF MICHIGAN

COURT OF APPEALS

VERONA WILLIAMS-THOMAS,

Plaintiff-Appellant,

v

WALTER SAMUELS, and J & W MANAGEMENT, CO.,

Defendants-Appellees.

UNPUBLISHED
November 26, 2002

No. 236079
Wayne Circuit Court
LC No. 99-931350-NO

Before: Murray, P.J., and Cavanagh and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right an order of the trial court granting summary disposition to defendants under MCR 2.116(C)(10). We affirm.

We review a trial court's decision to grant or deny summary disposition de novo. *Muskegon Area Rental Ass'n v Muskegon*, 465 Mich 456, 463; 636 NW2d 751 (2001). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Hazle v Ford Motor Co*, 464 Mich 456, 461; 628 NW2d 515 (2001). After reviewing the evidence in the light most favorable to the nonmoving party, the court may grant summary disposition under MCR 2.116(C)(10) if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

In response to defendant's motion for summary disposition, plaintiff had the obligation to come forth with specific facts showing that there was a genuine issue of material fact as to the elements of her claim. MCR 2.116(G)(4). The trial court determined that no such issue was presented regarding a duty owing by defendants to plaintiff. We agree.

Plaintiff failed to come forward with any evidence to establish that defendants, who did not own the property that plaintiff's employer rented, owed her a duty regarding the removal of the smoke and fumes that she claims caused her physical injury. In her brief on appeal, plaintiff cites *Mobile Oil Corp v Thorn*, 401 Mich 306; 258 NW2d 30 (1977), but that case found a duty on the part of a lessor on the basis of specific contractual language within a lease. Plaintiff came forward with no such contract or provision in response to the motion for summary disposition. Further, *Thorn* is distinguishable because it involved the parties to a lease, not a management entity which contracted with the lessor as is the case here.

Having thus been presented with no evidence or authority upon which to conclude that the owner of the property had a duty regarding the removal of the smoke, the trial court properly rejected plaintiff's further argument that defendants had breached a duty owed by the owner, which they undertook as the owner's agent. In other words, having failed to prove that the owner of the property had a duty, plaintiff also failed to prove that defendants had any duty as the owner's agents.

Plaintiff also argued before the trial court that defendants owed her a contractual duty as a third-party beneficiary to the management contract between defendants and the owner of the strip mall. The trial court correctly concluded that, while such a third-party beneficiary duty might be imposed, see *Rieth-Riley Construction Co, Inc v Dep't of Transportation*, 136 Mich App 425, 429-430; 357 NW2d 62 (1984), there was no evidence to support this theory of liability in this case, plaintiff having failed to come forward with any evidence regarding the management contract.

Plaintiff's main argument on appeal seems to be that we should conclude that defendants were under some legal duty to protect her from the fumes and smoke because they made attempts to do so. Plaintiff presents no authority for that argument and we consider it to be without merit.

We affirm.

/s/ Christopher M. Murray
/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra