

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES H. SHIPP,

Plaintiff-Appellant,

v

BROSSEAU HUNTING CLUB and JOHN
BAIER,

Defendants-Appellees.

UNPUBLISHED

October 16, 2003

No. 241334

Wayne Circuit Court

LC No. 00-002363-CB

Before: Fitzgerald, P.J., and Zahra and Hood, JJ.

PER CURIAM.

Plaintiff, a shareholder of defendant corporation, appeals as of right the order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10) in this action in which plaintiff sought to revoke a Certificate of Renewal of Corporate Existence or, in the alternative, to dissolve the corporation and liquidate the assets. We affirm.

In 1949, defendant Brousseau Hunting Club (BHC), a Michigan non-profit corporation, was formed. BHC was incorporated for the maximum statutory term at the time of thirty years. The corporation was formed for the purpose of “bringing friends together to enjoy each other’s company.” That same year, BHC purchased approximately 720 acres of land in Alcona County. The corporation also has an interest in a gas and mineral lease.

The BHC by-laws initially limited membership in BHC to eight members. Membership was increased to ten persons by a vote of the members at the 1967 annual meeting. At the same meeting, on a motion by plaintiff’s father, Herschel Shipp, it was decided that the price for membership in BHC would remain at \$1,000. In 1979, the corporate existence was extended to a perpetual term. Defendant John Baier, the secretary/treasurer of BHC, filed the Certificate of Renewal after discussion of the matter with the president of BHC.

Plaintiff became a member of BHC in 1968 when his father purchased the share of a deceased member for \$1,000. Plaintiff no longer wants to remain a member of BHC, and brought this action on January 25, 2000, to force the dissolution of BHC and a distribution of its assets to the individual members. Plaintiff alleged that the Certificate of Renewal of Corporate Existence was filed without notice to plaintiff and without knowledge or consent of the requisite number of members. Plaintiff also alleged that defendants caused financial harm to the corporation by negotiating an oil and gas lease of BHC real estate at prices less than market

value. Plaintiff further alleged that the voting members of BHC could not agree on material matters requiring the management of the corporate affairs, thereby frustrating the corporate purpose. He also alleged that defendants denied plaintiff the right to bring guests on BHC property.

Defendants filed a motion for summary disposition, arguing that plaintiff's claims seeking dissolution of BHC were time-barred because the corporate actions complained of occurred decades ago. Defendants also argued that the corporate purpose was not frustrated, and that plaintiff did not have dissenter's appraisal rights because no such rights exist for shareholders who dissent to an extension of the corporate life to a perpetual term. They contend that plaintiff has the option of selling his membership back to defendant for \$1,000 if plaintiff no longer wishes to remain a member of BHC. Following a hearing on defendants' motion, the trial court granted summary disposition in favor of defendants. This Court reviews de novo a trial court's decision to grant a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). The moving party must initially support its position by affidavits, depositions, admissions, or other documentary evidence. *Id.* at 455. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* If the nonmoving party would bear the burden of proof at trial, that party may not merely rely on the allegations or denials in the pleadings but must set forth specific facts demonstrating the existence of a genuine issue of material fact. *Smith, supra* at 455. The trial court must view the affidavits and other documentary evidence submitted by the parties in the light most favorable to the nonmoving party. *Id.* at 454. A party faced with a motion for summary disposition brought under MCR 2.116(C)(10) is, in responding to the motion, required to present evidentiary proofs creating a genuine issue of material fact for trial. If the opposing party fails to establish the existence of a material factual dispute, summary disposition is appropriate. MCR 2.116(G)(4); *Id.* at 455.

Here, plaintiff submitted only his own affidavit as documentary evidence to support his claim. An affidavit submitted in opposition to a motion must state with particularity facts admissible as evidence. MCR 2.119(B)(1); *Regents of the University of Michigan v State Farm Mut Ins Co*, 250 Mich App 719, 728, 650 NW2d 129 (2002). An affidavit containing "a general allegation without explanation" is insufficient to rebut a motion for summary disposition. *Gamet v Jenks*, 38 Mich App 719, 726-727; 197 NW2d 160 (1972).

A review of plaintiff's affidavit reveals that plaintiff merely reiterated allegations without providing any specific factual details to support the allegations. An affidavit that provides "mere conclusory allegations and is devoid of detail" is insufficient to avoid summary disposition under MCR 2.116(C)(10). Because plaintiff failed to produce sufficient documentary evidence to support his claims, the trial court properly granted summary disposition in favor of defendants.

Plaintiff also argues that summary disposition was improper because the affidavit submitted by defendants in support of their motion was conclusory and therefore failed to support the motion. As plaintiff correctly notes, MCR 2.116(G)(3) requires that a party moving for summary disposition provide the trial court with "[a]ffidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted in the motion" "(a) when the

grounds asserted do not appear on the face of the pleadings or” “(b) when judgment is sought based on subrule (C)(10).”

A review of defendants’ motion for summary disposition and brief in support of the motion indicates that defendants asserted that plaintiff’s claims were untimely, that the corporate purpose was not being frustrated, and that the remedy plaintiff was seeking was not an option under the corporate bylaws. Defendants provided specific facts and evidence to support the assertions. Thus, the trial court had sufficient documentary evidence to rule on defendant’s motion.

But, more importantly, while plaintiff challenges the substance of defendants’ documentary evidence, he fails to recognize that he did not meet his own evidentiary obligation:

Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. [*Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).]

As noted previously, plaintiff presented no documentary evidence to support his claims, which led to critical deficiencies in his effort to demonstrate that a question of fact existed concerning his claims.

Plaintiff also contends that the trial court erred by denying his motion to amend the complaint. This court reviews a trial court’s decision to deny a motion to amend to determine whether the trial court abused its discretion. *Phiney v Perlmutter*, 222 Mich App 513, 523; 564 NW2d 532 (1997).

In his brief in opposition to defendants’ motion for summary disposition, plaintiff stated in his conclusion that, “Even if the Complaint did not set forth a factual dispute, or is otherwise inadequate, the court is required to allow amendment of the Complaint to correct the deficiencies.” The court briefly referred to this statement at the hearing on defendant’s motion for summary disposition, but nothing more was discussed on the issue, and there is no indication in the record that plaintiff brought a motion to amend the complaint. Under these circumstances, because the trial court did not make a ruling on a motion to amend the complaint, this Court does not have a ruling to review.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Brian K. Zahra
/s/ Karen M. Fort Hood