

STATE OF MICHIGAN
COURT OF APPEALS

BULLET EXPEDITING, LLC,

Plaintiff/Counterdefendant-Appellant,

v

EDMUND RUSSELL and INNOVATIVE
MANAGEMENT SOLUTIONS, LLC,

Defendants/Counterplaintiffs-
Appellees,

and

INTERMEDIA.NET, INC.,

Defendant.

UNPUBLISHED

August 13, 2020

No. 349655

Macomb Circuit Court

LC No. 2018-000053-CB

Before: MARKEY, P.J., and K. F. KELLY and TUKEL, JJ.

PER CURIAM.

Plaintiff/counterdefendant Bullet Expediting LLC (plaintiff) appeals as of right the trial court order dismissing plaintiff’s case with prejudice against defendants/counterplaintiffs Edmund Russell (Russell) and Innovative Management Solutions, LLC (IMS) (defendants). We affirm. This appeal is decided without oral argument. MCR 7.214(E)(1)(b).

I. BASIC FACTS AND PROCEDURAL HISTORY

Plaintiff is a trucking and delivery company that is owned and operated by Vincent Stanczak (Stanczak). Plaintiff has 16 telephone lines that are directed to one telephone number to allow customers to place trucking orders. Plaintiff contracted with IMS to set up plaintiff’s telephone system and provide plaintiff with additional telephone services. IMS is owned and operated by Russell. Russell sent monthly bills to plaintiff, and Stanczak alleged that timely payments were made for at least three years.

Apparently, plaintiff hired Russell in some capacity in early December 2017.¹ After a personal dispute between Stanczak and Russell, Russell sent email correspondence on December 22, 2017, indicating that phone service through IMS was no longer available as of January 10, 2018, and it directed plaintiff to change service providers before this date. Stanczak learned that Russell improperly made charges on plaintiff's American Express credit card. Consequently, a police report was made, and the credit card charges were reversed.² Stanczak claimed that Russell retaliated against plaintiff by changing the passwords to the phone service and terminating the service. It was alleged that plaintiff did not have telephone service between December 29, 2017, and January 10, 2018. Plaintiff further alleged that it lost business as a result of the termination of the telephone service.

Plaintiff filed a complaint alleging tortious interference with a business relationship.³ Specifically, it claimed that Russell was aware of plaintiff's reliance on the telephone service to conduct business, but wrongfully terminated service because plaintiff did not have an outstanding balance. Stanczak attested that plaintiff lost at least one job valued at \$1500 because of the inability to communicate with its customers. He further claimed that damages were incurred to restore phone service. On the contrary, in his deposition, Russell claimed that plaintiff authorized payment by credit card, reversed the charges, and refused to discuss the account, resulting in termination of the phone service. Russell also denied knowing that the termination of service would result in a disruption to plaintiff's business, contending that the majority of plaintiff's business was conducted by email.

Defendants moved for summary disposition of the claim for tortious interference with a business relationship or expectancy, asserting that plaintiff merely provided backup trucking services to other entities and, therefore, could not demonstrate interference with a business expectancy. Further, it claimed that Russell did not have an improper motive for ending the service, but did so for non-payment. In opposition to this dispositive motion, plaintiff presented affidavits from Stanczak and plaintiff's customer, Ryder Logistics, to demonstrate its damages. During the hearing, the trial court questioned plaintiff's reliance on a tort claim when the action arose from a breach of contract. Ultimately, the trial court granted summary disposition of the tortious interference with a business relationship claim, concluding that plaintiff failed to show that Russell was aware of the business expectancy with Ryder Logistics and failed to present affirmative acts of an improper motive to demonstrate an issue of material fact. Plaintiff agreed

¹ The parties disputed the nature of the hiring, but the employment was apparently unrelated to the telephone service and is not pertinent to the issue raised on appeal.

² There are allegations that Russell pleaded no contest to embezzlement in district court arising from these credit card charges. However, although a police report was submitted in the lower court, documentary evidence pertaining to a criminal complaint and disposition were not submitted.

³ Plaintiff also raised a claim of fraudulent use of a credit card. The trial court dismissed this claim, and it is not an issue in this appeal.

to dismiss the action with prejudice,⁴ but expressly reserved the right to appeal this summary disposition ruling.

II. APPLICABLE STANDARDS OF REVIEW

A trial court's ruling on a motion for summary disposition is reviewed de novo. *Bennett v Russell*, 322 Mich App 638, 642; 913 NW2d 364 (2018). Summary disposition is appropriate pursuant to MCR 2.116(C)(10) where there is "no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10).⁵ When reviewing a motion for summary disposition challenged under MCR 2.116(C)(10), the court considers the affidavits, pleadings, depositions, admissions, and other admissible documentary evidence then filed in the action or submitted by the parties. MCR 2.116(G)(4), (G)(5); *Puetz v Spectrum Health Hosps*, 324 Mich App 51, 68; 919 NW2d 439 (2018).

The documentation offered in support of and in opposition to the dispositive motion must be admissible as evidence. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). "The affidavits must be made on the basis of personal knowledge and must set forth with particularity such facts as would be admissible as evidence to establish or deny the grounds stated in the motion." *SSC Assoc Ltd Partnership v Gen Retirement Sys*, 192 Mich App 360, 364; 480 NW2d 275 (1991). Mere conclusory allegations that are devoid of detail are insufficient to create a genuine issue of material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). "A party opposing a motion for summary disposition must present more than conjecture and speculation to meet its burden of providing evidentiary proof establishing a genuine issue of material fact." *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 192-193; 540 NW2d 297 (1995). When the opposing party provides mere conclusions without supporting its position with underlying foundation, summary disposition in favor of the moving party is proper. See *Rose v National Auction Group*, 466 Mich 453, 470; 646 NW2d 455 (2002).

III. ANALYSIS

Plaintiff contends the trial court erred by granting defendants' motion for partial summary disposition addressing its claim for tortious interference with a business expectancy. We disagree.

To establish a claim of tortious interference with a business relationship or expectancy, the plaintiff must demonstrate: "the existence of a valid business relationship or expectancy, knowledge of the relationship or expectancy on the part of the defendant, an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and resulting damage to the plaintiff." *Puetz*, 324 Mich App at 78 (quotation marks and citation omitted). The third element is satisfied if a plaintiff establishes that the defendant acted both intentionally and either improperly or

⁴ Defendants filed a countercomplaint alleging breach of contract, open account, quantum meruit, and defamation. However, the validity of these claims is not at issue in this appeal.

⁵ Although the trial court did not specify the grounds for summary disposition, we treat the motion as having been decided under MCR 2.116(C)(10) to the extent the trial court considered documentary evidence in addition to the pleadings. *Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 544; 904 NW2d 192 (2017).

without justification. *Id.* “To establish that a defendant’s conduct lacked justification and showed malice, the plaintiff must demonstrate, with specificity, affirmative acts by the defendant that corroborate the improper motive of the interference.” *Dalley v Dykema Gossett*, 287 Mich App 296, 324; 788 NW2d 679 (2010) (quotation marks and citation omitted). However, when the defendant’s actions were motivated by legitimate business reasons, then the actions would not constitute improper motive or interference. *Id.* “Finally, the plaintiff must demonstrate that the defendant did something illegal, unethical, or fraudulent.” *Puetz*, 325 Mich App at 78 (quotation marks and citation omitted). However, there is nothing illegal, unethical, or fraudulent by filing a lawsuit, whether meritless or not. *Early Detection Ctr, PC v New York Life Ins Co*, 157 Mich App 618, 631; 403 NW2d 830 (1986).

Assuming without deciding that plaintiff established the first two elements of the intentional interference claim, we conclude that the trial court nonetheless properly granted summary disposition for the failure to demonstrate the evidentiary proofs for the third element which is fatal to the claim. In order to satisfy the third element, plaintiff had to show that defendants “acted both intentionally and either improperly or without justification.” *Id.* (quotation marks and citation omitted). A lack of justification for the conduct and a showing of malice required that plaintiff present specific affirmative acts by defendants to corroborate the improper motive of the interference. *Dalley*, 287 Mich App at 324. In the present case, plaintiff failed to present affirmative acts, with specificity, that defendants’ actions were designed to improperly interfere with plaintiff’s business relationship as opposed to legitimate business reasons. That is, Russell alleged that any actions taken were for the legitimate business purpose of obtaining outstanding payment for services rendered arising from their contractual relationship. He asserted that he was authorized to charge outstanding balances to the credit card, but plaintiff had the charges reversed. Russell sent an email that the telephone service would terminate on January 10, 2018, but concluded the service early apparently following the fee dispute that was charged to the credit card. Thus, Russell proffered a legitimate justification for his termination of telephone service, and plaintiff nonetheless chose not to pursue a claim for breach of contract for the termination prior to the emailed end date.⁶ Because defendants offered a legitimate business reason for the termination of the phone service, “then the act does not constitute improper motive or interference.” *Puetz*, 324 Mich App at 78. Under the circumstances, plaintiff cannot demonstrate that the actions taken were unlawful. Accordingly, the trial court properly granted summary disposition in defendants’ favor in light of the lack of proofs of the third element to support the tortious interference with a business relationship claim.

Affirmed. Defendants, the prevailing party, may tax costs.

/s/ Jane E. Markey
/s/ Kirsten Frank Kelly
/s/ Jonathan Tukel

⁶ The trial court found that plaintiff had failed to establish defendants were under a continuing obligation to provide plaintiff with telephone services, and that even if defendants were under such an obligation, plaintiff “has not shown how its claim would sound in tort rather than in breach of contract.”