

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

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WILLIAM GILLHESPY,

Plaintiff-Appellant/  
Cross-Appellee,

UNPUBLISHED  
June 21, 1996

v

No. 175461  
LC No. 93-029975-NZ

CARL MICHAELS,

Defendant-Appellee/  
Cross-Appellant.

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Before: O'Connell, P.J., and Sawyer and G.R. Corsiglia,\* JJ.

PER CURIAM.

Plaintiff appeals from the trial court's judgment, entered after a jury trial, awarding defendant \$41,802.81 on his counterclaim for slander, misrepresentation and tortious interference with a business relationship. The judgment adjudicated plaintiff's suit which sought to have himself declared the owner of Medforce, Inc., a business founded by defendant, and also provided that he recover nothing on his claim for promissory estoppel. Defendant cross appeals. We affirm.

This case involves a contest as to which party owns Medforce. Defendant testified at trial that he founded Medforce as a medical supply company in 1991 and that he was always looking for investors, but not purchasers, for the business. He maintained that after talking with plaintiff as a potential investor in 1993 and furnishing him with financial data, plaintiff paid one of Medforce's overdue bills and later wrote and signed a number of checks on Medforce's account. When defendant later attempted to oust plaintiff from the company office, plaintiff resisted, claiming that he was the owner.

Plaintiff's testimony was quite different. He averred that after discussions with defendant he paid an overdue invoice, in exchange for which defendant pledged him the company's receivables. He asserted that with defendant's permission he subsequently purchased the company, but that defendant later attempted to change his mind regarding the sale.

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

The jury found no cause of action regarding plaintiff's sole residual claim of promissory estoppel, but awarded defendant \$10,000 damages for slander per se and \$31,802.81 as special damages for slander, the latter constituting the only damage amount now at issue.

Plaintiff first contends that the trial court erred by failing to instruct the jury regarding the difference between gross and net profits when determining special damages for slander. However, we agree with the court's conclusion that jury consideration of lost gross revenue was permissible under these facts. The \$31,802.81 at issue is comprised of expenditures that defendant had to make as the direct result of plaintiff's wrongful interference with company business, and the jury was entitled to consider those costs in computing damages. Our resolution of this question also adjudicates plaintiff's contention that because defendant allegedly failed to introduce evidence indicating the overhead to be deducted before arriving at net profits, the trial court wrongly denied his motion for a directed verdict regarding this claim.

Plaintiff next argues that the court erred by overruling his objection, which was made on the basis of attorney-client privilege, to the admission into evidence of a letter to plaintiff from his then-attorney, tending to impugn plaintiff's assertion that he owned Medforce at the time of the letter. The court concluded that the privilege had been waived because a copy of the letter had been left in Medforce's files (which were in defendant's possession) and because the letter had been produced in response to defendant's pre-deposition discovery request.

We need not decide whether waiver occurred under the convoluted facts of this case. Even assuming arguendo that the letter was improperly admitted, the error was harmless because the letter was merely cumulative of other evidence supporting the purpose for its introduction. MCR 2.613(A); *Temple v Kelel Distributing Co, Inc*, 183 Mich App 326, 329-330; 454 NW2d 610 (1990).

Plaintiff further alleges that the trial court erred when instructing the jury regarding defendant's counterclaim for tortious interference with a business relationship or expectancy. We need not reach this issue because the jury's award for that claim was not included in defendant's judgment.

Plaintiff's final argument is that the jury should have been informed that Medforce had settled its claim with plaintiff. However, because plaintiff's counsel requested at trial that the court not inform the jury of this settlement, plaintiff cannot now predicate error upon the court's compliance with counsel's request.

On cross appeal, defendant avers that the trial court erred by denying his motion for sanctions under MCL 600.2591; MSA 27A.2591 on the ground that plaintiff's complaint was allegedly frivolous. Although the court awarded defendant summary disposition regarding plaintiff's breach of contract/specific performance theory, it denied such relief with respect to plaintiff's claims of promissory estoppel and unjust enrichment. The court made no specific analysis of the frivolousness of the complaint, stating only that defendant's request for sanctions was denied.

We find no error necessitating reversal in the court's action. Unlike the situation in *DeWald v Isola*, 180 Mich App 129; 446 NW2d 620 (1989), upon which defendant relies, plaintiff's entire lawsuit was not premised upon an obviously infirm claim, nor was his complaint frivolous as a whole.

We have considered defendant's remaining allegation of error and find it unpersuasive.

Affirmed.

/s/ Peter D. O'Connell

/s/ David H. Sawyer

/s/ George R. Corsiglia