

STATE OF MICHIGAN
COURT OF APPEALS

NBD BANK, N.A.,

Plaintiff/Counter-Defendant,

v

HAROLD T. STULBERG and CAPITAL EQUITIES,
INC.,

Defendants/Cross-Defendants,

and

ROBERTA L. STULBERG, RAYMOND P. RINKE,
and PAMELA J. RINKE,

Defendants,

and

R & R DEVELOPMENT GROUP, INC.,

Defendant/Counter-Plaintiff/Cross-
Plaintiff/Third-Party Plaintiff/Appellant,

v

SHOSTAK BROTHERS & COMPANY, INC.,
TOM S. SCHEY, LESLIE SCHEY, and
VERA SCHEY,

Third-Party Defendants/Appellees.

UNPUBLISHED

July 9, 1996

No. 165175

LC No. 91-414509-CK

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

Before: Neff, P.J., and Jansen and G.C. Steeh III,* JJ.

PER CURIAM.

Third-party plaintiff, R & R Development Group, Inc. (R & R) appeals as of right from a May 7, 1993, order granting summary disposition in favor of third-party defendants Tom S. Schey, Leslie Schey, and Vera Schey pursuant to MCR 2.116(C)(8), and an April 9, 1992, order granting summary disposition in favor of third-party defendants Schostak Brothers & Company, Inc. (Schostak) pursuant to MCR 2.116(C)(8). R & R also appeals from the trial court's decision to deny its motion to amend the complaint. We affirm in part and reverse in part.

On November 10, 1989, NBD entered into a loan agreement for over 2.2 million dollars with Seaway Professional Associates Limited Partnership, of which R & R was a general partner, to build a medical facility. The loan was secured by a mortgage and a security agreement. After the building was constructed, Seaway was unable to lease any space in the facility. On May 20, 1991, NBD foreclosed on the loan due to Seaway's default. A foreclosure and sheriff's sale of the property was instituted through which NBD obtained proceeds in the amount of \$1,750,000. Of that amount, \$1,583,770.45 was applied to the principal, but the balance owing was \$1,875,276.90. This left a deficiency of \$291,506.45 on the loan. NBD then brought this action to collect on the deficiency.

Thereafter, R & R brought a third-party tort action against the Scheys and Schostak claiming that they had intentionally interfered with Seaway's business relationship with potential tenants. The Scheys filed a motion for summary disposition claiming that R & R lacked the legal capacity to sue on a claim belonging to Seaway and that R & R failed to state a claim upon which relief could be granted. Schostak also filed a motion for summary disposition claiming that R & R's third-party complaint failed to state a claim for tortious interference with a business relationship against Schostak.

The trial court ruled that R & R failed to state a claim for tortious interference with a prospective business relationship against Schostak. The trial court also ruled that R & R failed to allege a claim of tortious interference with a business relationship as against the Scheys. Thereafter, R & R moved for leave to file a first amended complaint, but the trial court denied the motion stating that the allegations in the amended complaint were not new and that justice would not be served by allowing the amendment. R & R then filed a motion for reconsideration, but that motion was also denied by the trial court.

On appeal, R & R raises three issues. It first argues that the trial court erred in ruling that it had failed to allege a claim for tortious interference with a business relationship as to both the Scheys and Schostak. R & R also argues, in two separate issues, that the trial court erred in denying its motion to amend its complaint. We reverse the trial court's decision to deny R & R's motion to amend the complaint as against the Scheys, and affirm the grant of summary disposition as to Schostak.

First, we find that the trial court did not err when it ruled that R & R failed to state a claim for tortious interference with a business relationship. The elements of tortious interference with a business relationship are: (1) the existence of a valid business relation or expectancy; (2) knowledge of the

relationship or expectancy on the part of the interferer; (3) an intentional interference inducing or causing a breach or termination of the relationship or expectancy; and (4) resultant damage to the party whose relationship has been disrupted. *Lakeshore Community Hosp, Inc v Perry*, 212 Mich App 396, 401; 538 NW2d 24 (1995).

A review of R & R's complaint reveals that it failed to allege sufficiently all of the elements necessary to sustain its claim of tortious interference with a business relationship. Specifically, R & R failed to allege that the third-party defendants had knowledge of Seaway's business relationship or expectancy. R & R only alleged that Tom Schey acted on behalf of Schostak, and, without authority from R & R, in contacting prospective tenants of Seaway. However, R & R failed to allege that either Tom Schey or Schostak had knowledge of R & R's relationship or business expectancy. Further, we reject R & R's argument that a lack of authority from it implies knowledge on the part of Schey or Schostak. Accordingly, the trial court did not err in granting summary disposition in favor of both the Scheys and Schostak pursuant to MCR 2.116(C)(8) because R & R did not allege all of the essential elements of tortious interference with a business relationship.

Next, R & R argues that the trial court abused its discretion in denying its motion for leave to amend the complaint. Pursuant to MCR 2.118(A)(2), leave to amend a complaint shall be freely given as justice so requires. This Court reviews a trial court's decision on a motion to amend a complaint for an abuse of discretion. *Phillips v Deihm*, 213 Mich App 389, 393; 541 NW2d 566 (1995). However, a motion to amend should be denied only for specific reasons such as undue delay, bad faith or dilatory conduct on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, and futility of amendment. *Ben P Fyke & Sons v Gunter Co*, 390 Mich 649, 656; 213 NW2d 134 (1973).

We find that the trial court abused its discretion in denying R & R's motion for leave to amend its complaint with regard to the Scheys. In its first amended complaint, R & R alleged its claim of intentional interference with a business relationship with greater specificity. It alleged that Tom Schey had contact with NBD and interfered with NBD's contract with Seaway. R & R also alleged that Tom Schey had knowledge of the contract between NBD and Seaway. R & R also alleged that Tom Schey acted as an attorney and agent for Leslie Schey and Vera Schey, and that they were vicariously liable. Accordingly, in its first amended complaint, R & R pleaded all of the elements of tortious interference with a business relationship as to the Scheys. We can find none of the reasons set forth in *Fyke* to be applicable here.

Therefore, the trial court abused its discretion in denying R & R's motion to amend its complaint with respect to the Scheys. In its amended complaint, R & R has sufficiently pleaded a cause of action of tortious interference with a business relationship as against the Scheys.

With regard to Schostak, we find that the trial court did not abuse its discretion in denying the motion to amend the complaint because any amendment would have been futile. *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 78; 480 NW2d 297 (1991). Even in the first

amended complaint, R & R failed to allege that Schostak committed any tortious actions. All of the tortious actions alleged in the first amended complaint were by Tom Schey. R & R failed to connect Schostak to Tom Schey, nor did R & R allege that Schey was an agent of Schostak. R & R's failure to connect Schostak to any tortious conduct is determinative, therefore any amendment would be futile.

Accordingly, the trial court did not abuse its discretion in denying R & R's motion to amend the complaint with respect to Schostak.

Finally, R & R argues that the trial court should have allowed it to amend its complaint as a matter of right. We find no abuse of discretion in this regard.

Under MCR 2.118(A)(1), a party may amend a pleading once as a matter of course within fourteen days after being served with the responsive pleading. In this case, the trial court orally granted Schostak summary disposition on January 22, 1992, and the motion to amend was filed on March 17, 1992. The order granting summary disposition to Schostak was entered on April 9, 1992. Schostak did not file a responsive pleading in this case because, after R & R filed its complaint, Schostak filed a motion for summary disposition rather than an answer to the complaint. MCR 2.110(A). However, the Scheys did file an answer to the complaint on October 9, 1991.

We find that R & R was not entitled to amend its complaint as of right for two reasons. First, this Court has held that where there is more than one defendant, if one of the defendants files a responsive pleading to all of the charges, then this acts as a responsive pleading for all defendants under the court rule. *Glowacki v Motor Wheel Corp*, 67 Mich App 448, 454; 241 NW2d 240 (1976). Therefore, the Scheys' responsive pleading would serve to negate R & R's ability to amend its complaint as a matter of right under MCR 2.118(A)(1).

Second, because the trial court had already granted summary disposition in favor of Schostak pursuant to MCR 2.116(C)(8) before R & R attempted to amend the complaint, a fair inference from MCR 2.116(I)(5) is that a party must seek leave to amend the complaint after a motion for summary disposition has been granted. See Martin, Dean, and Webster, *Michigan Court Rules Practice* (3d ed), Rules 1.101 to 2.199, p 469.

Accordingly, we do not find that R & R was entitled to amend its complaint as a matter of course under MCR 2.118(A)(1).

The trial court's grant of summary disposition under MCR 2.116(C)(8) is affirmed. We reverse the court's decision to deny R & R's motion to amend the complaint as to the Scheys only, and we affirm the decision to deny the motion to amend the complaint as to Schostak. R & R is not entitled to amend the complaint as a matter of right. On remand, the trial court is instructed to reinstate the claim against the Scheys.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

/s/ Janet T. Neff
/s/ Kathleen Jansen
/s/ George C. Steeh III