

STATE OF MICHIGAN
COURT OF APPEALS

CYROWSKI AND ASSOCIATES,

Plaintiff-Appellee,

v

DENNIS HALL d/b/a HOME PLATE LOUNGE,
d/b/a HOME PLATE LOUNGE INC., STANLEY B.
DICKSON, JR. and JAMES DIETERS,

Defendants-Appellants.

UNPUBLISHED
October 25, 1996

No. 187983
LC No. 92-018398-CK

Before: McDonald, P.J. and Bandstra and C. L. Bosman*, JJ.

PER CURIAM.

Defendants appeal by right from a judgment awarding plaintiff \$23,200 in damages on claims for breach of contract and tortious interference with contract. We reverse.

In 1991, defendant Dennis Hall entered into a listing agreement for plaintiff to sell Hall's business known as the "Homeplate Lounge." On the day the agreement expired, an interested potential buyer, defendant Jim Dieters, came to plaintiff's attention. Plaintiff and Hall entered into a new, "one time, one party" listing, which provided for a ten percent commission if Hall sold the property to "Jim Dieters - or entity thereof." Dieters ultimately withdrew his offer within the terms of the purchase agreement. Hall then sold the property to Dieter's boss, defendant Stan Dickson, who had been reviewing and advising Dieters on the purchase. The extent of Dickson's involvement in the Dieters/Hall contract was a disputed point at trial. Plaintiff contended Dickson was an intended partner, that, the "one time, one party" listing agreement therefore included Dickson and that a full commission was therefore due. Defendants contended Dickson was only involved in Dieters' deal as an advisor and Dickson's subsequent transaction with Hall was unrelated to the Dieters/Hall purchase agreement. The trial court concluded plaintiff had established Hall breached his contract with plaintiff and Dieters' and Dickson's actions constituted tortious interference with plaintiff's contract with Hall. It awarded plaintiff \$23,200 in damages.

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

The term “entity thereof” is ambiguous and whether this was intended to encompass a sale to Dickson is not clear. Although the trial court’s sympathy for plaintiff’s position is understandable, the sale that occurred did not involve Dieters and he did not end up with any sort of ownership interest. Although it appears plaintiff’s efforts facilitated Dickson’s purchase of the property, this alone is insufficient to support recovery. *Craib v Presbyterian Church*, 62 Mich App 617, 625; 233 NW2d 674 (1975). No “entity” of Dieters purchased the property and therefore, the terms of the listing contract were not satisfied and the trial court’s finding Dieters breached the contract was clearly erroneous.

Further, even if Dieters had been functioning in some sort of agency capacity for Dickson, a disputable point, the language of the listing agreement did not address this contingency and could have. If plaintiff expected to collect a commission even if Dieters withdrew and someone with whom Dieters had discussed the prospect took up the torch, plaintiff should have included language in the agreement to cover this circumstance, rather than creating an ambiguous agreement. *Hawkins v Smithson*, 181 Mich App 649; 449 NW2d 676 (1989); *Murphey Real Estate v Barron*, 55 Mich App 210; 222 NW2d 184 (1974).

The trial court’s finding Dickson tortiously interfered with the Dieters/Hall contract was also clearly erroneous. MCR 2.613(C); *Giordan v Markovitz*, 209 Mich App 676; 531 NW2d 815 (1995). The elements of tortious interference with a contract are (1) a contract, (2) a breach, and (3) instigation of the breach without justification. *Admiral Ins v Columbia Ins*, 194 Mich App 300; 486 NW2d 351 (1992). Both the second and third elements were missing. As discussed above, no breach of contract occurred. Further, plaintiff presented no evidence of the third element at trial. Although Dickson took advantage of his position as Dieters’ confidant and advisor, nothing indicated Dickson encouraged Dieters to withdraw his offer. Nor was there evidence Dickson did anything to prevent Hall, who was the potentially responsible party, from paying a commission.

We reverse and remand for entry of a judgment in defendants’ favor in conformity with this opinion. We do not retain jurisdiction. Costs to defendants.

/s/ Gary R. McDonald
/s/ Richard A. Bandstra
/s/ Calvin L. Bosman