

STATE OF MICHIGAN  
COURT OF APPEALS

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ERNEST V. PONTI and DELORES PONTI,

Plaintiffs-Appellants,

v

JOSEPH H. SPIEGEL, JOSEPH H. SPIEGEL,  
P.C., EVEANN PROPERTIES, INC., VINCENT  
FINAZZO, and JANET FINAZZO,

Defendants-Appellees.

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UNPUBLISHED

October 18, 2005

No. 261888

Wayne Circuit Court

LC No. 04-428367-CZ

Before: Cavanagh, P.J., and Smolenski and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's grant of summary disposition in defendants' favor. We affirm.

In the related case of *Eveann Properties, Inc v Ponti*, unpublished per curiam opinion of the Court of Appeals, issued December 12, 2000 (Docket No. 213383), the following relevant background facts were set forth. Then-defendants, the Pontis, owned real property in the city of Taylor and, after they failed to pay the 1986 property taxes on the property, the state acquired a tax lien. *Id.*, slip op at 1. In 1990 title vested in the state. *Id.* After expiration of the second redemption period, in 1991, the state deeded the property to the Michigan Department of Natural Resources (DNR). *Id.* In January of 1992, the Pontis filed for personal bankruptcy under Chapter 13 of the United States Bankruptcy Code, 11 USC 1301 *et seq.* *Id.* In July of 1992, pursuant to MCL 211.131e(2), a show cause hearing was held before the Department of Treasury and the Pontis did not appear. *Id.* In August of 1995, the DNR conveyed the property to then-plaintiff Eveann Properties, Inc. *Id.* Thereafter, in May of 1996, Eveann Properties filed an action to quiet title to the property. *Id.* The Pontis answered and claimed that the state violated the automatic stay provision of the Bankruptcy Code, 11 USC 362, when it proceeded against the property. Eveann Properties moved for summary disposition, arguing that the automatic stay provision did not apply. *Id.*, slip op at 2. The trial court agreed and granted the motion, dismissing the case. This Court reversed the lower court, holding that the automatic stay was in effect at the time of the show cause hearing and that the Pontis retained the right to redeem the property. *Id.*, slip op at 3.

In September of 2004, the Pontis filed this action. They averred that when they attempted to redeem the aforementioned real property by selling it, defendants significantly

interfered with their efforts which caused them to sell their interest for less than its true market value. The Pontis' three-count complaint included (1) a claim of tortious interference with a business relationship as related to defendants' alleged intimidation of the Pontis' realtor, (2) an abuse of process claim arising from Spiegel's alleged attempts to reinstate the previous lawsuit, secure an injunction related to the potential sale of the property, and have an order set aside, as well as his filing of motions that were not heard, and (3) an abuse of process claim arising from Spiegel's defense of a tenant who refused to pay rent to the subsequent land contract purchaser of the subject property on the alleged ground that the purchaser had no interest in the property.

Defendants Eveann Properties and the Finazzos responded to the complaint with a motion for summary disposition, arguing that the action was barred by the doctrine of *res judicata*. Defendant Spiegel also filed a motion for summary disposition, arguing that plaintiffs failed to set forth a claim of tortious interference because they failed to plead a wrongful, illegal, unethical, or fraudulent act or any act corroborating an improper motive. Spiegel also argued that plaintiffs failed to set forth abuse of process claims because they failed to allege an ulterior purpose or a procedurally improper action. Thereafter plaintiffs filed a motion to amend their complaint to clarify their claims.

Following oral arguments on the motions, the trial court agreed with defendant Spiegel and dismissed the case. In its comprehensive opinion that included the partial history of this contentious matter, the trial court rejected the *res judicata* argument. However, the court held that Spiegel's sending of a letter to advise the Pontis' realtor of his client's legal interest in the subject property did not constitute tortious interference. The court further held that Spiegel's representation of the tenant in eviction proceedings did not constitute abuse of process and that Spiegel's use of the legal system with respect to the subject property was legitimate and justified—the purpose of which was to determine ownership of the land—and any procedural irregularities were insufficient to establish the abuse of process claim. After concluding that an amendment to the complaint would be futile, the trial court denied the request and granted defendants' summary disposition. Plaintiffs appeal, arguing that dismissal of all three claims was erroneous. After *de novo* review to determine whether the evidence showed a genuine issue of material fact, we disagree. See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

To establish tortious interference with a business relationship, the plaintiff must show the intentional doing of a *per se* wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the business relationship of another. *Derderian v Genesys Health Care Systems*, 263 Mich App 364, 382; 689 NW2d 145 (2004). The Pontis are, apparently, claiming that defendants did a lawful act with malice that was unjustified in law. But, we agree with the trial court. Eveann Properties had a legal interest in the subject property that was justifiably communicated to the Pontis' realtor by their attorney. Thus, there was no tortious interference and the claim was properly dismissed. See *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan*, 217 Mich App 687, 698-699; 552 NW2d 919 (1996); *Woods v Herndon & Herndon Investigations, Inc*, 186 Mich App 495, 500; 465 NW2d 5 (1990).

To establish an abuse of process claim, the plaintiff must demonstrate “(1) an ulterior purpose, and (2) an act in the use of process that is improper in the regular prosecution of the proceeding.” *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 472; 487 NW2d 807 (1992). Here, the Pontis claim that defendants, particularly Spiegel, abused the legal process first by

representing the tenant of the subject property and, second, through actions directly related to the subject property. However, as the trial court held, Spiegel did not commit an abuse of process merely by representing the tenant of the subject property. Thus there is no “act in the use of process that is improper.” See *id.* And, the Pontis failed to plead and prove an ulterior purpose with respect to that claim. The second abuse of process claim was also properly dismissed. The claim was premised on Spiegel’s attempts to reinstate the previous lawsuit, secure an injunction preventing the sale of the property, and have an order set aside, as well as his filing of motions. Not one of these actions constitute “an act in the use of process that is improper in the regular prosecution of the proceeding.” See *id.* And, again, the Pontis have failed to plead and prove an ulterior purpose. Accordingly, the abuse of process claims were properly dismissed.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Michael R. Smolenski

/s/ Brian K. Zahra