

STATE OF MICHIGAN

COURT OF APPEALS

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RONALD SWEATT, LYDIA SWEATT, and  
MOTOR CITY III, L.L.C.,

UNPUBLISHED  
May 30, 2006

Plaintiffs-Appellants,

v

No. 259272  
Oakland Circuit Court  
LC No. 1999-016379-CK

EDWARD GARDOCKI,

Defendant-Appellee,

and

ROBERT KATZMAN,

Defendant.

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Before: Cavanagh, P.J., and Fort Hood and Servitto, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition for defendant Gardocki pursuant to MCR 2.116(C)(8). Because plaintiffs failed to state a claim for tortious interference with contractual relations and there is no genuine issue of material fact with respect to plaintiffs' claim of tortious interference with a business relationship, we affirm.

This case arose after business dealings between plaintiffs and defendant Robert Katzman soured with respect to a business venture in Nevada. Together, plaintiffs Ronald Sweatt and Lydia Sweatt (hereafter "plaintiffs") owned a 50 percent share of plaintiff Motor City III, L.L.C. Katzman owned the other 50 percent. Motor City III purchased property in Las Vegas for \$425,000.00 and made \$400,000.00 or \$500,000.00 in improvements on the property for the purpose of running an adult entertainment business there. However, after Motor City III was denied a liquor license, the project derailed and Katzman and plaintiffs apparently decided to sell the property. Plaintiffs believed that the improved property was worth over \$3 million dollars; Katzman believed it was worth substantially less. This led to discord between plaintiffs and Katzman.

On July 20, 1998, Katzman sold his interests in Motor City III and Noah, Inc. (a separate corporation owned solely by him) to defendant Edward Gardocki. There was a dispute whether

plaintiff Ronald Sweatt was informed about the sale in advance and verbally “welcomed” Gardocki to Motor City III. Regardless, it is undisputed that plaintiffs were formally notified of the sale by letter on July 22, 1998. Plaintiffs believed that the manner in which Katzman’s interests were transferred to Gardocki violated Motor City III’s operating agreement. Katzman and Gardocki were notified of plaintiffs’ position in this regard and plaintiffs informed Gardocki that they would not recognize him as an owner of Motor City III.

On August 12, 1998, plaintiffs filed this action against Gardocki and Katzman in the Wayne Circuit Court. Plaintiffs alleged several claims against Katzman, including breach of fiduciary duty, breach of Motor City III’s operating agreement, intentional misrepresentation, fraudulent concealment, negligent misrepresentation, conversion, conspiracy, tortious interference with contractual and business relations, accounting and constructive trust, and oppression. Plaintiffs also alleged claims against Gardocki, including intentional misrepresentation, tortious interference with contractual and business relations, and conspiracy. While the litigation was ongoing, secondary litigation involving the same parties was taking place in Nevada.

Several years after this litigation began and after venue was changed to Oakland County, plaintiffs and Katzman reached an agreement, and plaintiffs dismissed all of their claims against Katzman. The claims of intentional misrepresentation and conspiracy against Gardocki were later abandoned by plaintiffs because rulings in the Nevada litigation addressed those claims. The only claim remaining, then, was the claim against Gardocki for tortious interference with contractual and business relations. Gardocki sought summary disposition on this remaining claim and the trial court granted Gardocki’s motion, finding plaintiffs had failed to state a claim on which relief could be granted.

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party has failed to state a claim on which relief can be granted. *Radtke v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When deciding a motion brought under this section, a court considers only the pleadings. *Id.* The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Cork v Applebee's Inc*, 239 Mich App 311, 315; 608 NW2d 62 (2000). We review a trial court’s decision on a motion for summary disposition de novo. *Maiden, supra*.

Plaintiffs’ complaint includes general allegations pertaining to their relationship with Katzman and their dealings with the Nevada property. Plaintiffs also generally alleged that, before July 20, 1998, Katzman conspired with Gardocki to “sell” his membership interest in Motor City III without plaintiffs’ knowledge, that written agreements for sale were entered into on July 20, 1998, and that Gardocki was made aware of plaintiffs’ position that the sale was unlawful. With respect to the claim entitled “tortious [sic] interference with contractual and business relations,” plaintiffs alleged that, at all relevant times, Gardocki knew about the operating agreement for Motor City III and knew that plaintiffs had a business relationship and expectancy with Motor City III, Noah, Inc., and Katzman. The remainder of the claim included the following allegations against both Katzman and Gardocki:

74. Defendants, notwithstanding this knowledge, did intentionally interfere with the contractual and business relationships and expectations of Plaintiff Sweatts by entering into their purported “sale” agreement; by leaving Plaintiff Sweatts out of any sale of Noah, Inc., shares; by repudiating and conspiring to repudiate promises made by Defendant Katzman to Plaintiff Sweatts about the split of sale proceeds of the Property; by threatening to cloud the title to the Property by asserting therein Defendant Gardocki’s putative ownership in Motor City; and by taking without authorization or approval money from the checking account of Motor City intended to pay Motor City’s liabilities, which it is now in jeopardy of defaulting upon, even though Defendant Katzman allegedly returned said funds with unlawful and unreasonable conditions on use by Motor City.

75. As a direct and proximate result of the intentional interference with business and contractual relationships, Plaintiff Sweatts are suffering and will continue to suffer the damages set forth in paragraph 48.<sup>1</sup>

Some of the allegations apply to Katzman alone, e.g., leaving plaintiffs out of the sale of Noah, repudiating promises made, and taking money without authorization. The claims related to Gardocki involve his alleged tortious interference with the relationship between plaintiffs and Katzman, which was accomplished by Gardocki’s entering into the purported sale agreement with Katzman, conspiring to repudiate Katzman’s promises, and threatening to cloud title to the Nevada property.

While plaintiffs combined the two into one cause of action, claims of interference with business relations and interference with contractual relations are distinct and require different proofs. *Badiee v Brighton Area Schools*, 265 Mich App 343, 365-367; 695 NW2d 521 (2005). The elements of tortious interference with a contract include the existence of a contract, a breach of that contract, and an unjustified instigation of the breach by the defendant. *Id.* at 366-367.

“[O]ne who alleges tortious interference with a contractual or business relationship must allege 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 contractual rights or business relationship of another.” “A wrongful act per se is an act that is inherently wrongful or an act that can never be justified under any circumstances.” “If the defendant’s conduct was not wrongful per se, the plaintiff must demonstrate specific, affirmative acts that corroborate the unlawful purpose of the interference.” [*Id.* at 367 (citations omitted).]

In this case, plaintiffs pleaded the existence of a contract between themselves and Katzman, specifically the operating agreement for Motor City III, and they alleged that the contract was breached when Katzman sold his interest in Motor City III to Gardocki without plaintiffs’ approval (which violated the operating agreement). Plaintiffs did not allege, however,

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<sup>1</sup> Paragraph 48 of plaintiffs’ verified complaint pleaded that plaintiffs “are exposed to and are suffering irreparable damages and money damages, including the diverting of their time and attention from Motor City business matters, as well as attorney fees and costs to defend their position against Defendants.”

that Gardocki intentionally engaged in an inherently wrongful or unjustifiable act when he purchased Katzman's share of Motor City III. Additionally, they did not plead, and it could not be inferred from the pleadings, that Gardocki committed the lawful act of purchasing Katzman's interests with the malicious intent of invading plaintiffs' contractual right to approve the sale. The pleadings do not even suggest that Gardocki entered the sale with the purpose of invading plaintiffs' contractual rights. Viewing the pleadings alone, plaintiffs' claim for interference with contractual relations was deficient, and was so clearly unenforceable as a matter of law that no factual development could justify recovery. Summary disposition was properly granted pursuant to MCR 2.116(C)(8) on the portion of plaintiffs' claim alleging interference with contractual relations

The elements of tortious interference with a business relationship include 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 damages to the plaintiff. *Badiee, supra* at 365-366; *Mino v Clio School Dist*, 255 Mich App 60, 78; 661 NW2d 586 (2003). To prevail on this theory, a plaintiff must demonstrate specific, affirmative acts by the defendant that demonstrate an improper motive of interference. *Badiee, supra* at 366. If a defendant's actions were motivated by legitimate business reasons, his actions will not constitute an improper motive or interference. *Id.*

In this case, plaintiffs alleged that they had a valid business relationship or expectancy with Katzman related to the Nevada property, that Gardocki knew about the relationship and expectancy, that Gardocki intentionally interfered and caused a breach or termination of the relationship or expectancy, and that plaintiffs were damaged. Although plaintiffs did not plead any specific, affirmative acts by Gardocki that show an improper motive, the claim as pleaded is not "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Cork, supra*. Therefore, the trial court improperly granted summary disposition of this claim pursuant to MCR 2.116(C)(8).

Nevertheless, we may affirm the decision of the trial court where the correct result was reached, even if for the wrong reason. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000). Although the trial court improperly granted summary disposition pursuant to MCR 2.116(C)(8), Gardocki also moved for summary disposition under MCR 2.116(C)(10). Motions under MCR 2.116(C)(10) test the factual support of the plaintiff's claim. *Arias v Talon Development*, 239 Mich App 265, 266; 608 NW2d 484 (2000). The court considers the affidavits, pleadings, depositions, admissions, and other evidence submitted to determine whether a genuine issue of any material fact exists to warrant a trial. *Lockridge v State Farm Mut Automobile Ins Co*, 240 Mich App 507, 511; 618 NW2d 49 (2000). Both this Court and the trial court must resolve all reasonable inferences in the nonmoving party's favor. *Id.*

In opposing a motion for summary disposition, a party must look beyond the pleadings and set forth specific facts showing that a genuine issue of material fact exists. *Bergen v Baker*, 264 Mich App 376, 381; 691 NW2d 770 (2004). Where the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion for summary disposition should be granted. *Id.*

In this case, plaintiffs failed to offer evidence to show the existence of a material question of fact for trial on their claim of tortious interference with business relations. Plaintiffs were required to offer evidence demonstrating, with specificity, affirmative acts by Gardocki that corroborate the improper motive of interference. *Badiee, supra* at 366. Plaintiffs did not do so. Instead, they rely on speculation and innuendo, which is insufficient to overcome a motion premised upon MCR 2.116(C)(10). *Karbel v Comerica Bank*, 247 Mich App 90, 97; 635 NW2d 69 (2001).

The evidence presented to the trial court revealed that Katzman approached Gardocki about purchasing his interests in Motor City III and that Katzman sold his interest because he wanted to be rid of the financial uncertainty that the Nevada project was causing him. Katzman apparently believed that plaintiffs' income tax problems and their overvaluation of the property put him in jeopardy. Gardocki paid a \$100,000 finders fee to Katzman, paid \$300,000 for Katzman's interest, and agreed to assume liabilities for Motor City III.

Lydia Sweatt testified that neither she nor Ronald Sweatt wanted Gardocki as a partner, and that they wanted to sell the property. Plaintiffs claimed they had an oral agreement with Katzman to receive a greater share of the sale proceeds, and Lydia believed that Katzman and Gardocki were trying to cheat plaintiffs on their share of the sale proceeds of the property. Plaintiffs did not present any evidence, however, that Gardocki knew of the alleged oral agreement for the sale of the property and distribution of the proceeds. In fact, Lydia testified that she did not know whether Gardocki was aware of the alleged oral agreement for plaintiffs to receive additional compensation upon the sale of the property. In sum, plaintiffs failed to submit evidence showing that a material question of fact existed regarding whether Gardocki affirmatively acted with the improper motive of interfering with Katzman's alleged promises about the proceeds of the sale of the property.

Plaintiffs also claimed that Gardocki's acts of filing two notices of lis pendens on the property and, later, obtaining appointment of a receiver over the property in the context of the Nevada litigation, interfered with the sale of the property. Plaintiffs allege that those actions clouded the title and made the property undesirable for sale, and their claimed damages relate to their inability to sell the property as desired and planned. Again, however, plaintiffs have not presented evidence that supports, or leads to a reasonable inference, that Gardocki's actions were undertaken in order to interfere with plaintiffs' plans for the property. To the contrary, the evidence revealed that the notices of lis pendens were filed well after the sale between Katzman and Gardocki, and they were filed only after plaintiffs notified Gardocki that they did not consider him as their partner and would not work with him. The only reasonable inference that may be drawn from the timing of the notices of lis pendens and later appointment of the receiver during litigation is that Gardocki sought to protect the business interest he believed he validly purchased from Katzman. The evidence before the trial court demonstrated not only that Katzman approached Gardocki about the sale, but that, before the sale, Gardocki believed Katzman could sell his interest. Gardocki relied on Katzman's representations and those of his attorneys in that regard. Plaintiffs failed to offer evidence to demonstrate, with specificity, any affirmative acts taken by Gardocki that corroborate that he acted with the improper motive of interfering with plaintiffs' business relations related to the property. *Badiee, supra* at 366.

Therefore, summary disposition on plaintiffs' claim for tortious interference with business relations was appropriate pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Karen M. Fort Hood  
/s/ Deborah A. Servitto