STATE OF MICHIGAN

COURT OF APPEALS

CHARLES F. GLASS and SUSAN G. GLASS, Plaintiffs-Appellants, v MARY ANN VAN LOKEREN, MICHAEL G. VAN LOKEREN, LITTLE TRAVERSE CONSERVANCY, INC., and LITTLE TRAVERSE CONSERVANCY CONSERVATION TRUST, Defendants-Appellees.	UNPUBLISHED March 25, 2014 No. 302385 Emmet Circuit Court LC No. 09-002049-CZ

Before: SAAD, P.J., and FITZGERALD and GLEICHER, JJ.

PER CURIAM.

Charles and Susan Glass owned ten acres of Lake Michigan shoreline property. At the behest of the Little Traverse Conservancy, the Glasses created three conservation easements on their land, pledging that these areas would remain forever free from development. In return for voluntarily encumbering their property, the Glasses claimed substantial federal tax deductions.

The Internal Revenue Service disallowed the Glasses' deductions, launching more than a decade of litigation culminating in this lawsuit. The circuit court summarily dismissed the Glasses' claims. We affirm.

I. UNDERLYING FACTS AND PROCEEDINGS

Soon after the Glasses purchased their property, locally known as "Pineyrie," the Little Traverse Conservancy proposed that the Glasses contribute a conservation easement to the Little Traverse Conservancy Trust. The Conservancy is a nonprofit organization dedicated to protecting the scenic beauty of northern Michigan. The Trust is a land trust affiliated with the Conservancy. The organizations' officers and directors overlap. We use the acronym "LTC" when referring to the two entities jointly, and individually call them the Conservancy and the Trust.

A conservation easement is one of the LTC's land preservation tools. The Conservancy encourages landowners to grant conservation easements to the Trust, which maintains the donated land in its pristine, natural state. The Internal Revenue Code provides that a taxpayer

may claim a charitable deduction for the value of a "qualified conservation easement." 25 USC § 170(a)(1). To obtain a charitable deduction a taxpayer must demonstrate that the easement satisfies several IRS criteria, including that it was contributed "exclusively for conservation purposes." *Glass v Comm'r of Internal Revenue*, 471 F3d 698, 706 (CA 6, 2006) (quotation marks and citations omitted). In 1990, the Glasses donated to the Trust a conservation "greenbelt" easement preserving a slice of their property abutting M-199, a state scenic highway.

In 1992 and 1993, the Glasses donated two lakefront conservation easements to the Trust. According to the deeds, the 1992 easement covered the northern 150 feet of Pineyrie's shoreline, inward 120 feet from the high water mark. The 1993 easement encumbered the southern 260 feet of shoreline, similarly running 120 feet inward from the high water mark. The Glasses and the LTC believed that the easements burdened the entirety of a bluff overlooking Lake Michigan and a portion of the lawn above the bluff. An appraiser recommended by the LTC calculated the fair market value of the two easements as $340,800. The Glasses subsequently claimed charitable deductions in that amount on their tax returns.

The Commissioner of Internal Revenue disputed that the 1992 and 1993 easements met IRS requirements for charitable deduction. Specifically, the Commissioner disagreed that the easements were granted "exclusively for conservation purposes." In 1999, the IRS issued to the Glasses a notice of deficiency for tax years 1992 through 1995. The IRS further claimed that the Glasses had inflated the easements' market values. The Glasses challenged the Commissioner's determination by filing a petition in the United States Tax Court.

A survey of the Glasses' property obtained during the tax litigation revealed that the deeds' descriptions of the 1992 and 1993 easements inaccurately described their boundaries, resulting in a substantial overstatement of their values. According to the survey, the easements extended only part way up the bluff. In 2004, the Glasses commenced an action against the Conservancy in the Emmet circuit court seeking reformation of the conveyances to describe new eastern boundaries. The Glasses never served the LTC with their complaint and voluntarily dismissed it pursuant to MCR 2.504(A)(1)(a) after learning that this belated reformation could not change their tax liability for the 1992-1995 period.

In 2005, the Tax Court ruled that the Glasses' conservation easements met all IRS requirements. The Commissioner pursued an appeal in the Sixth Circuit Court of Appeals, which affirmed the Tax Court. *Glass*, 471 F3d 698. The value of the easements, however, remained in dispute. The Glasses and the IRS eventually agreed that the easements were not worth as much as the Glasses claimed on their returns, resulting in a determination that the Glasses had substantially underpaid their federal income taxes. Interest, penalties, and legal fees added to the Glasses' financial woes. In an effort to relieve some of their debt, the Glasses offered to sell a southern section of Pineyrie to their neighbors to the immediate south, defendants Mary Ann and Michael Van Lokeren.

Mary Ann Van Lokeren informed the Glasses that before discussing a sale, the Van Lokerens "would like to see an up to date survey showing all property lines, easements and how far the current guest cabin would be from the edge of this property line." After reviewing an updated survey, Mary Ann Van Lokeren told Charles Glass that she was not interested in buying

a parcel of the Glasses' land, but might be interested in purchasing the entire 10 acres. The Glasses then listed only the parcel for sale.

Meanwhile, Mary Ann Van Lokeren contacted Thomas Bailey, the Conservancy's executive director, to express concern that the Glasses' sale parcel included a portion of a conservation easement, which would preclude any buyer from building on it. Bailey advised Charles Glass that the listed parcel had been split for sale in a manner "that violated the easement." Bailey relayed the same information to the real estate broker handling the sale of the Glasses' property, and the broker withdrew the listing.

The Glasses then developed a preliminary condominium site plan dividing Pineyrie into four lots, maintaining the conservation easements as originally recorded. During the summer of 2007, a real estate broker listed Pineyrie for sale as a single parcel or up to four lots, with the easements serving as common areas.

Notwithstanding the common area plan, Mary Ann Van Lokeren maintained her view that Pineyrie's proposed division violated the conservation easements. As a member of the Conservancy's board of directors, Mary Ann Van Lokeren encouraged the LTC to take legal action against the Glasses. In September 2007, the Conservancy's board voted to enter into negotiations with the Glasses, and to file a lawsuit if discussion failed to resolve the dispute. According to the Glasses, a potential settlement was reached and reduced to writing, but was ultimately rejected by the Conservancy's board. In April 2008, the Trust sued the Glasses seeking to reform the easements. The Trust's complaint averred that the parties made a "mutual mistake" by legally describing the second and third easements as "cover[ing] less property than intended by the parties," and sought an amendment of the easements' legal descriptions. With their complaint, the Trust placed a notice of lis pendens.

The Glasses counterclaimed and filed a third-party complaint naming as defendants Bailey, the Conservancy, and others not involved in the instant case. The Glasses' "Third Amended Counter/Third Party Complaint" asserted four counts. The first, breach of contract, applied only to the LTC. "Libel slander defamation," "business defamation," and "tortious interference with business/economic relationships conspiracy" were pleaded against all defendants. The gravamen of the Glasses' claims was that the LTC had interfered with the Glasses' ability to sell Pineyrie by "threatening meritless litigation," and that Bailey and others on the LTC board had quashed the settlement

> as part of a common scheme and design constituting a conspiracy to wrongfully and tortiously interfere with an economic business interest of the Glasses, with the purpose and intent to destroy the marketability of the Glasses[,] property and/or to drive down its price in order to benefit both the LTC and a single member or members of its Board of Trustees.

The Glasses admit that the countercomplaint's "single member" reference described Mary Ann Van Lokeren.

The Glasses moved for summary disposition of the LTC's reformation complaint, and the LTC and the counterdefendants moved for summary disposition of the Glasses' counterclaims.

The circuit court granted summary disposition in the Glasses' favor, dismissed the lis pendens, and granted the counterdefendants partial summary disposition of all claims raised in the Glasses' countercomplaint other than for breach of contract. In September 2008, the parties voluntarily dismissed the breach of contract claim pursuant to a stipulation reciting that "the above case (meaning all of the primary claims previously adjudicated by the court and the remaining count of Defendant/Counter-Plaintiffs claims), including any appeal of any such claims" would be dismissed with prejudice. Meanwhile, Pineyrie went into foreclosure and in January 2009, was purchased at a sheriff's sale.

In July 2009, the Glasses filed the present case, naming as defendants Mary Ann and Michael Van Lokeren, the Conservancy, and the Trust. The first 61 paragraphs of the Glasses' amended complaint detail the events surrounding the creation of the three conservation easements, the Glasses' dispute with the IRS, their offer to sell a portion of the property to the Van Lokerens, the unsuccessful efforts to negotiate a settlement of the easement dispute, and the Trust's easement reformation lawsuit. The Glasses concede that these paragraphs describe events that occurred before the first wave of litigation between the Glasses and the LTC concluded. According to the Glasses, this "background" information informs their eight post-September 2008 legal claims, which the Glasses contend arise from defendants' allegedly unrelenting and concerted efforts to interfere with the Glasses' sale of their property. The Glasses' 2009 complaint further charged that the LTC and the Van Lokerens conspired to maliciously prosecute the 2008 case and to abuse process by placing and maintaining the lis pendens.

The amended complaint characterizes Mary Ann Van Lokeren as a driving force for Trust's 2008 lawsuit, alleging that she:

> was in repeated contact with LTC employees and selected Board members, urging them to support litigation against the Glasses, and to otherwise delay and obstruct the Glasses' attempts to sell their property, in part because it would benefit the Van Lokerens by keeping a house from being built within their sight lines, and would place a cap on their real estate taxes should they become the owners. The scheme of litigation and delay would result in driving down the value of the Glasses' property for the Van Lokerens' personal benefit, and would ultimately force the Glasses to default on their obligation to the IRS and their mortgagee, thus enabling the Van Lokerens to buy the property in foreclosure at a greatly depressed price.

Additionally, the amended complaint avers that defendants tortiously interfered with the Glasses' relationship with their realtor, conspired to engage in tortious interference, and conspired to slander the Glasses' title.[1]

[1] The Glasses also alleged intentional infliction of emotional distress, defamation, and violations of the Nonprofit Corporation Act, MCL 450.2101 *et seq*., but have conceded the dismissal of these claims by failing to address them in their brief on appeal.

The LTC moved for summary disposition pursuant to MCR 2.116(C)(7), (C)(8) and (C)(10), contending that the Glasses' 2009 suit arose from the "the same series of connected transactions upon which Plaintiffs' 2008 [counter]complaint [was] based," and was barred by the doctrine of res judicata. The Van Lokerens also sought summary disposition. They contended that res judicata and collateral estoppel barred the Glasses' suit and that the Glasses lacked evidence supporting their allegations.

The circuit court granted summary disposition of most of the Glasses' claims against the LTC on res judicata grounds, while also invoking MCR 2.116(C)(10) to dismiss the malicious prosecution and abuse of process claims. As to the Van Lokerens, the circuit court ruled that "all matters occurring prior to September 15, 2008" were subject to summary disposition based on res judicata or collateral estoppel, and denied summary disposition "as to all matters occurring after September 15, 2008." After permitting discovery regarding the Glasses' claims against the Van Lokerens, the circuit court granted the Van Lokerens' second motion for summary disposition. The Glasses now appeal.

II. ANALYSIS

A. The Claims Against the LTC

We first consider whether the circuit court erred by summarily dismissing the Glasses' claims against the Trust and the Conservancy. We review de novo a circuit court's summary disposition decision. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). The circuit court granted the LTC summary disposition under MCR 2.116(C)(7), ruling that the Glasses' 2009 amended complaint stated claims that had been litigated to a conclusion in the 2008 case. Summary disposition may be granted under MCR 2.116(C)(7) when a claim is barred "because of . . . prior judgment . . . or other disposition of the claim before commencement of the action."

The Glasses contend that although their amended complaint summarized background facts that arose before the 2008 case was filed or while it pended, the 2009 lawsuit involved post-2008 conduct not subject to dismissal under subrule (C)(7). According to the Glasses' brief on appeal, the post-2008 conduct consisted of:

> [C]ontacts by both [the] LTC and the Van Lokerens with the Emmet County Planning Commission; Mary Ann Van Lokeren's contact with a member of the Heritage Highway Commission that put on hold the Commission's plan to give approval for widening the driveway; the maintenance of the notice of lis pendens for five months after the September 15, 2008 dismissal; and the Van Lokerens' post-dismissal browbeating and threats of suit directed at the Kidd Leavy realtors with whom the Glasses had listed the property.[2]

[2] The Glasses articulated the same evidentiary limitations during oral argument before the circuit court.

The Glasses further assert that their malicious prosecution and abuse of process averments were not subject to dismissal on res judicata grounds, as these claims did not accrue until the 2008 litigation concluded.

We disagree with the circuit court's decision to invoke the res judicata doctrine to summarily dismiss the Glasses' 2009 suit against the LTC, as none of the post-2008 claims could have been raised in the earlier litigation. Nevertheless, summary disposition was properly granted to the LTC because the Glasses' amended complaint failed to state any claims upon which relief could be granted.

A motion under MCR 2.116(C)(8) "tests the legal sufficiency of the complaint on the basis of the pleadings alone to determine if the opposing party has stated a claim for which relief can be granted." *Begin v Mich Bell Tel Co*, 284 Mich App 581, 591; 773 NW2d 271 (2009). "We must accept all well-pleaded allegations as true and construe them in the light most favorable to the nonmoving party." *Zaher v Miotke*, 300 Mich App 132, 139; 832 NW2d 266 (2013). The motion should be granted only where no factual development could possibly justify recovery. *Dalley v Dykema Gossett, PLLC*, 287 Mich App 296, 305; 788 NW2d 679 (2010). Because the Glasses cannot prevail based on the facts alleged in their complaint, their case should have been summarily dismissed on the basis of subrule (C)(8).

The amended complaint's pertinent factual allegations involving the LTC state:

> 51) The [Conservancy] and/or the [Trust] took no action to dismiss the lis pendens until five months after the dismissal of the [Trust] lawsuit, knowing that it would impede the sale of the Glasses' property, if not make it impossible to sell.
>
> * * *
>
> 55) The Glasses contacted [the Conservancy] by letter, asking what, if anything was inappropriate about the manner in which they were listing their property. The [Conservancy's] Executive Director had had a copy of the Glasses' proposed site plan in his possession for more than 15 months, but he had never stated an objection. Instead, in furtherance of the conspiracy being promoted by [Mary Ann Van Lokeren], he sent a long list of obtuse, obscure and clearly burdensome instructions of what the [Conservancy] would need to determine whether the Glasses' proposed land division would violate the terms of their conservation easements. This was done to further delay and damage the Glasses' ability to sell their property.
>
> * * *
>
> 61) The [Conservancy] and the [Trust] knowingly and in furtherance of its conspiracy with the Van Lokerens failed and refused to withdraw its lis pendens against the Glasses' property until February 11, 2009, even though their suit had been dismissed on September 15, 2008, thereby maliciously and intentionally abusing process, all in furtherance of its conspiratorial agreement with [Mary Ann Van Lokeren] to use civil litigation for the ulterior and malicious purpose of interfering with the Glasses' efforts to sell their property, and to drive down the

> price of Pineyrie, for the joint benefit of [Mary Ann Van Lokeren] and some elements of the [Conservancy] in return for substantial gifts from [Mary Ann Van Lokeren] in the future.

According to the Glasses, these actions on the part of the LTC constitute tortious interference with business/economic relationships, conspiracy to tortiously interfere with business/economic relationships, slander of the Glasses' title, and abuse of process.

We dispense first with the slander of title claim. A notice of lis pendens warns prospective purchasers that the property is the subject of ongoing litigation. *Ruby & Assocs, PC v Shore Fin Servs*, 276 Mich App 110, 113; 741 NW2d 72 (2007) (quotation marks and citations omitted), vacated in part on other grounds 480 Mich 1107 (2008). The Glasses raise no complaint regarding the initial placement of the notice of lis pendens, but assert that the LTC's failure to timely remove it slandered the Glasses' title and constituted an abuse of process. However, the Glasses themselves could have removed the lis pendens by simply presenting the circuit court's September 15, 2008 order to the Emmet County clerk. The Glasses' inability to prove slander of title damages dooms their claim.[3]

Nor do we find merit in the Glasses' assertion that the LTC tortiously interfered with their economic interests, or conspired to do so. The two facts offered by the Glasses in support of their tortious interference claims against the LTC involve communications between the LTC and various public bodies, in which representatives of the LTC expressed concern whether the conservation easements limited the Glasses' ability to divide their property for sale. We find nothing tortious about these communications.

> "The elements of tortious interference with a business relationship are 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 resultant damage to the plaintiff." [*Dalley*, 287 Mich App at 323-324, quoting BPS Clinical Laboratories v Blue Cross & Blue Shield of Mich (On Remand), 217 Mich App 687, 698-699; 552 NW2d 919 (1996).]

"A civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means." *Admiral Ins Co v Columbia Cas Ins Co*, 194 Mich App 300, 313; 486 NW2d 351 (1992). Proof of a civil conspiracy requires evidence of "a separate, actionable tort." *Early Detection Ctr, PC v New York Life Ins Co*, 157 Mich App 618, 632; 403 NW2d 830 (1986).

To fulfill the third element of tortious interference, "a plaintiff must show not only that the defendant acted intentionally, but further that he acted improperly or without justification."

---

[3] Because our evaluation of this claim includes consideration of the September 15, 2008 order, summary disposition is appropriate under MCR 2.116(C)(10). The Glasses have offered no evidence or argument that they lacked the ability to request removal of the lis pendens.

Bonelli v Volkswagen of America, Inc, 166 Mich App 483, 498; 421 NW2d 213 (1988). "[T]he plaintiff must demonstrate, with specificity, affirmative acts by the defendant that corroborate the improper motive of the interference." *BPS Clinical Laboratories*, 217 Mich App at 699. Actions "motivated by legitimate business reasons" will not give rise to a tortious interference claim. *Id.* "[I]n order to succeed under a claim of tortious interference with a business relationship, the plaintiffs must allege that the interferer did something illegal, unethical or fraudulent." *Early Detection Ctr*, 157 Mich App at 631.

The LTC's contact with the Emmet County Planning Commission does not constitute tortious interference with a business relationship. The conservation easements' boundaries were the subjects of two lawsuits. Despite that a survey determined that the recorded dimensions of the lakeshore easements did not fully correspond to the parties' understandings of the easements' locations, the deeds remained unchanged. We find nothing "illegal, unethical or fraudulent" about the LTC's expression of concern to the Planning Commission that the Glasses' proposed land division was inconsistent with the easements. Even assuming that the LTC acted to assist the Van Lokerens, "the ulterior purpose alleged must be more than harassment, defamation, exposure to excessive litigation costs, or even coercion to discontinue business." *Id.* at 629-630. The Glasses' amended complaint fails to allege any act of improper conduct sufficient to demonstrate that the LTC had engaged in tortious interference. The circuit court correctly dismissed this claim.

Nor does the Glasses' amended complaint set forth an actionable claim for conspiracy to commit malicious prosecution. The elements of malicious prosecution of civil proceedings are: "(1) prior proceedings [that] terminated in favor of the present plaintiff, (2) absence of probable cause for those proceedings," (3) a malicious purpose rather than "securing the proper adjudication of the claim in which the proceedings are based," and (4) special injury. *Friedman v Dozorc*, 412 Mich 1, 48; 312 NW2d 585 (1981) (quotation marks omitted).

Here, the prior proceedings terminated in a stipulated order of dismissal. "Generally, courts have held that where termination results from a compromise or settlement . . ., there is no favorable termination that will serve as a basis for a cause of action for malicious prosecution." *Cox v Williams*, 233 Mich App 388, 394; 593 NW2d 173 (1999). This Court reiterated this principle in *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 21-22; 672 NW2d 351 (2003), holding that a "dispositive stipulation" ending the case "[did] not amount to a favorable termination." The Glasses' stipulation to dismiss the 2008 case and to forgo any appeals eliminated their ability to successfully pursue a malicious prosecution claim.

Furthermore, the Glasses failed to factually support that they had sustained a special injury resulting from the prior litigation. "[It] is not enough that the prosecution of the action entails a greater hardship than that which would flow from an ordinary civil action. The hardship must also be greater than that which ordinarily results from the prosecution of *similar* causes." *Barnard v Hartman*, 130 Mich App 692, 696; 344 NW2d 53 (1983) (quotation marks and citation omitted, emphasis and alteration in original). In *Kauffman v Shefman*, 169 Mich App 829, 836-837; 426 NW2d 819 (1988), this Court held that filing notice of lis pendens was insufficient to show a special injury. The Court reasoned:

> [T]he filing of notice of lis pendens did not interfere with the Kauffmans' possession of the subject property. Their complaint does not allege that they attempted to convey the property during the relevant time period; but *even had they done so, the lis pendens would not have prevented the conveyance*. While a notice of lis pendens may, as a practical matter, inhibit the alienation of the property in that it warns prospective purchasers that they take subject to the judgment rendered in litigation concerning the property, the lis pendens does not prohibit alienation. . . .
>
> Notice of lis pendens serves an important public purpose by protecting the right to litigation involving real property and protecting prospective purchasers by apprising them of disputes regarding rights in the land. These policies should not be thwarted by allowing the filing of a notice of lis pendens by an ultimately unsuccessful litigant to constitute grounds for a malicious prosecution action. [*Id*. (citation omitted, emphasis added).]

The Glasses failed to allege any concrete special harm arising from the first lawsuit and the recording of lis pendens, such as an actual potential purchaser frightened off by the 2008 suit, or the loss of an almost-consummated sale. The existence of the lis pendens alone is not sufficient. Accordingly, summary disposition of the malicious prosecution claim was warranted under MCR 2.116(C)(8).

The Glasses' abuse of process claim fares no better. The elements of abuse of process are: "(1) an ulterior purpose and (2) an act in the use of process which is improper in the regular prosecution of the proceeding." *Vallance v Brewbaker*, 161 Mich App 642, 645; 411 NW2d 808 (1987) (quotation marks and citation omitted). Additionally, "the improper ulterior purpose must be demonstrated by a corroborating act; the mere harboring of bad motives on the part of the actor without any manifestation of those motives will not suffice to establish abuse of process." *Id*. at 646. To succeed in its 2008 suit to reform the conveyance, the LTC was required to show by "clear and satisfactory" evidence that a mutual mistake had resulted in the conveyance of easements that did not express the true intent of the parties. See *Johnson Family Ltd Partnership v White Pine Wireless, LLC*, 281 Mich App 364, 379; 761 NW2d 353 (2008). Given that the Glasses had filed a suit seeking precisely the same relief as that sought in the 2008 case, we are hard-pressed to attribute an improper motive to the LTC. Moreover, filing the 2008 suit and recording a lis pendens do not constitute "improper" acts, and the Glasses have identified no other procedural irregularities. Thus, we discern no merit in the Glasses' abuse of process claim.

B. The Claims Against the Van Lokerens

The amended complaint asserts that the Van Lokerens tortiously interfered with the Glasses' "business/economic relationships," and conspired with the other defendants to do so, by: (1) urging the Glasses' realtor not to market the property because its division violated the easements, (2) loudly and angrily threatening to disrupt a different listing held by the Glasses' broker, (3) vigorously voicing numerous objections directed to realty personnel regarding Pineyrie's division into four parcels, and (4) contacting Michigan's Heritage Highway Commission to express displeasure with the Commission's approval of the Glasses' driveway

revision plan. None of these acts constitutes tortious interference with the Glasses' business or economic relationships.

As we previously explained in relation to the tortious interference claim against the LTC defendants, the elements of this tort are: "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 resultant damage to the plaintiff." *Dalley*, 287 Mich App at 323. To satisfy the third element, a plaintiff must allege an intentional impropriety on the defendant's part. *Id.* at 323-324.

We initially observe that the Van Lokerens harbored legitimate personal reasons for objecting to the division of Pineyrie. Those reasons included the disruption of their lake view by new building, and the potential for violation of the conservation easements. These motivations simply do not qualify as malicious or improper. But regardless of the Van Lokerens' motivations or the stridency of their campaign, the Glasses' amended complaint fails to satisfy the fourth element of tortious interference of an economic or business relationship: that a business relationship was, in fact, disrupted.

The only "business relationship" mentioned in the amended complaint involved the Glasses and their realtor, the Kidd Leavy agency. Nowhere in the amended complaint do the Glasses allege that the Van Lokerens' interventions succeeded in disrupting or destroying the Glasses' relationship with Kidd Leavy, or with any potential purchaser of the property. Accordingly, their amended complaint fails to state a claim for tortious interference with a business/economic relationship.

Michigan law recognizes two forms of tortious interference: tortious interference with a contract or a contractual relationship, and tortious interference with a business relationship or expectancy. *Health Call of Detroit v Atrium Home & Health Care Servs, Inc*, 268 Mich App 83, 89-90; 706 NW2d 843 (2005). The Glasses pleaded that the Van Lokerens tortiously interfered with "business/economic relationships." The amended complaint provides in paragraph 63 that the Van Lokerens "were aware of the Glasses' desire and effort to sell their property . . . [and] that the Glasses had entered into contracts with various realtors," and that the Glasses' dispute with the Conservancy regarding the easement boundaries had been resolved. In paragraph 76, the amended complaint sets forth the tortious interference conspiracy claim in relevant part as follows:

> The Van Lokerens, [the Conservancy] and [the Trust], individually and together with those in concert with them, acting illegally, maliciously and wrongfully, conspired with one another to delay and prohibit the Glasses from selling their property *by interfering with the contractual relations between the Glasses and their sales agents and brokers*, by threatening them with withdrawal of their business, making false assertions about title to the Glasses' land, claiming erroneous boundaries for the conservation easements, telling the Heritage Highway Committee that the Glasses had lied to them, failing to withdraw a lis pendens, and making frivolous objections to the Glasses' efforts to sell their property. [Emphasis added].

Other than the "sales agents and brokers," the amended complaint contains no information concerning the Glasses' "business/economic relationships." Because the amended complaint is silent as to any actual breach of that relationship, summary disposition of the Glasses' tortious interference claims was required under MCR 2.116(C)(8).

The Glasses' complaint does not overcome this deficiency by asserting that as a result of the Van Lokerens' actions, "the Glasses were unable to sell or market their property." To satisfy the elements of tortious interference with a business expectancy, a plaintiff must plead the existence of an actual relationship or expectancy. "The expectancy must be a reasonable likelihood or probability, not mere wishful thinking." *Trepel v Pontiac Osteopathic Hosp*, 135 Mich App 361, 377; 354 NW2d 341 (1984). Moreover, "[a] plaintiff asserting a cause of action has the burden of proving damages with reasonable certainty, and damages predicated on speculation and conjecture are not recoverable." *Health Call of Detroit*, 268 Mich App at 96. The amended complaint omits any allegation that the Van Lokerens' acts damaged the Glasses' relationship with an actual buyer. That the Glasses' property remained unsold simply does not supply a factual predicate for their tortious interference claim.

Lastly, we turn to the allegations of malicious prosecution, slander of title, and abuse of process. These claims against the Van Lokerens do not survive scrutiny under MCR 2.116(C)(8) and (C)(10) for the reasons we described in affirming their dismissal against the LTC defendants. By way of brief review, the Glasses failed to allege a special injury arising from the previous lawsuit, eliminating their malicious prosecution count. Similarly, the mere existence of the notice of lis pendens does not suffice to demonstrate abuse of process. As to the slander of title averment, the Van Lokerens' expressions of legitimate concerns about the easement boundaries do not constitute malice, and the Glasses have failed to set forth any special damages.[4]

We affirm.

/s/ Henry William Saad
/s/ E. Thomas Fitzgerald
/s/ Elizabeth L. Gleicher

[4] Given our conclusion that summary disposition of all but the slander of title claim was proper under MCR 2.116(C)(8), a ground based on the pleadings alone, we need not address the Glasses' various arguments concerning the circuit court's limitation of discovery.