

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2014-CA-001699-MR

LOUISVILLE OUTLET SHOPPES, LLC

APPELLANT

v. APPEAL FROM SHELBY COUNTY CIRCUIT COURT  
HONORABLE CHARLES R. HICKMAN, JUDGE  
ACTION NO. 13-CI-00312

PARAGON OUTLET PARTNERS, LLC

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, THOMPSON, AND VANMETER, JUDGES.

CLAYTON, JUDGE: This is an appeal of the dismissal of the Appellant, Louisville Outlet Shoppes, LLC's (LOS), action for tortious interference with contract and tortious interference with business expectancy claims against the Appellee, Paragon Outlet Partners, LLC (Paragon). Based upon the following, we affirm the decision of the trial court.

## FACTUAL SUMMARY

LOS filed an action for tortious interference with a contract against Paragon and Walter Wagner, Jr. Co., LLC. It subsequently amended the complaint to also include interference with business expectancy. The Appellee and Walter Wagner filed a motion with the trial court asserting that LOS had failed to establish a prima facie case of tortious interference with contract and that the action was barred by a Settlement Agreement entered into by LOS in a Shelby County civil action.

LOS had acquired fifty-five acres of property at the Intersection of I-64 and Buck Creek Road in Simpsonville, Shelby County, Kentucky. It acquired the property for the development of an outlet mall. One of the transactions that took place for the acquisition involved 6.88 acres from Redline Properties, LLC (Redline). Redline executed an agreement for the sale of the tract for \$710,000. The purchase agreement was with A.B. Brandon, an agent for Horizon Louisville, LLC, the former name of LOS.

Paragon had purchased eighty-one acres of property across the road from LOS. It had also planned on building an outlet mall on the site. It was determined, however, that the economy could not sustain two outlet malls. LOS came out ahead in the race to secure permits and zoning approval, but contends that Paragon, with the assistance of Walter Wagner, approached Redline with an offer to purchase the 6.88 acre tract for \$1,250,000.

LOS brought an action in Shelby County asserting that Walter Wagner advised the owner of the property to obtain legal counsel in order to be released from his deal with LOS and accept Paragon's offer. On January 14, 2013, a Settlement Agreement was reached between Horizon and Redline. The Settlement Agreement settled all the claims and defenses that had been raised in the action. Horizon paid the agreed upon purchase price and purchased the 6.88 tract of land. LOS then brought the action from which this appeal is taken.

In this action, LOS assert a claim of tortious interference with a contract against Walter Wagner and Paragon. It argued that the two had interfered with and attempted to derail its purchase agreement with Redline.

The trial court granted summary judgment to the defendants finding that LOS could not satisfy the causation requirement for their cause of action. The court explained as follows:

Wagner Realty and Paragon's actions did not result in a breach of Horizon's Agreement with Redline. A breach appeared to be imminent when the Redline Action was filed, but ultimately, the Agreement was consummated and the 6.88 acre tract was purchased by Horizon for the contracted purchase price of \$710,000.00 with a delay of two months from the original closing date. LOS asserts that an additional sum was paid in addition to the contractual purchase price to secure the 6.88 acre tract. The Settlement Agreement executed in the Redline Action contradicts this, as the Settlement Agreement provides that the additional sum was consideration for Redline's dismissal of its claims and defenses in the Redline Action, This statement of the purpose for the payment of the additional sum is unambiguous. If the additional sum was intended as additional consideration for the transfer of the real property, the Settlement

Agreement could have been drafted to reflect that fact. Since the Agreement was consummated, the Court cannot find that Wagner Realty and Paragon secured Redline's breach of the Agreement with Horizon.

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After this order was entered, the trial court allowed LOS to amend its complaint to add the claim of tortious interference with business expectancy. The defendants then moved the trial court to dismiss that claim and, on September 18, 2014, the trial court entered an order dismissing it on the basis that LOS could not establish causation for their claim of tortious interference with business expectancy. Walter Wagner settled his dispute with LOS and is not a party to the appeal. The trial court also denied LOS's request for attorney's fees resulting from the litigation with Redline.

LOS then brought this appeal.

#### STANDARD OF REVIEW

In reviewing the granting of summary judgment by the trial court, an appellate court must determine whether the trial court correctly found "that there [were] no genuine issues as to any material fact and that the moving party [was] entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56.03.

"[A] trial court must view the evidence in the light most favorable to the nonmoving party, and summary judgment should be granted only [when] it appears impossible that the nonmoving party will be able to produce evidence at trial

warranting a judgment in his favor. [While] [t]he moving party bears the initial burden of [proving] that no genuine issue of material fact exists, . . . the burden shifts to the party opposing summary judgment to present ‘at least some affirmative evidence showing that there is a genuine issue of material fact for trial.’” *Community Trust Bancorp v. Mussetter*, 242 S.W.3d 690, 692 (Ky. App. 2007).

Since summary judgment deals only with legal questions as there are no genuine issues of material fact, we need not defer to the trial court’s decision and must review the issue *de novo*. *Lewis v. B&R Corp.*, 56 S.W.3d 432, 436 (Ky. App. 2001).

## DISCUSSION

LOS first asserts that the trial court erred in dismissing the claim for tortious interference with contract. It contends that the trial court viewed Redline as honoring its agreement because it ultimately sold the property at the contractual price, but that the material terms of the Purchase Agreement were breached by the Paragon.

LOS asserts that it suffered damages by (1) incurring legal fees of over \$100,000 seeking to enforce its contractual rights under the Redline Agreement; (2) enduring significant costly delays in the development of the project; and (3) being required to pay Redline additional monies in order to consummate the Redline agreement.

In order to maintain a tortious interference with contract claim, a plaintiff must prove the following elements (1) the existence of a contract; (2) the defendant's knowledge of the contract; (3) that the defendant intended to cause a breach; (4) that the defendant's actions did indeed cause a breach; (5) that damages resulted to the plaintiff, and (6) that the defendant had no privilege or justification to excuse its conduct. *Snow Pallet, Inc. v. Monticello Banking Co.*, 367 S.W. 3d, 1, 5-6 (Ky. App. 2012).

In this case, the Settlement Agreement specifically set forth that the property conveyance would take place pursuant to the previously agreed upon terms. Thus, it was fully consummated and there was no breach.

LOS argues that the trial court's reliance on *Ventas, Inc. v. Health Care Prop. Investors, Inc.*, 635 F.Supp. 2d 612 (W.D. Ky. 2009) and *Institutional Labor Advisors, LLC v. Allied Res., Inc.*, 2013 U.S. Dist. LEXIS 175908 (W.D. Ky. 2013) was misplaced. We disagree.

*Ventas* provides that there is no claim for tortious interference with contract where the contracting parties have met their obligations and completed the deal. In this case, LOS was able to complete its deal with Redline. Thus, the trial court did not err in dismissing its claim for tortious interference with contract.

LOS next argues that the trial court erred in dismissing its claim for tortious interference with business expectancy. In Kentucky, the following elements are necessary to prove a claim of tortious interference with business expectancy: (1) there was a valid business relationship or expectancy; (2) a

defendant's knowledge of this relationship or expectancy; (3) an intentional act of interference; (4) an improper motive; (5) causation; and (6) special damages.

Sections 766B, 767 and 773 of the Restatement (Second) of Torts, *National Coll. Athletic Ass'n v. Hornung*, 754 S.W. 2d 855, 857 (Ky. 1988).

The trial court held that LOS's claim failed because it was not one of the categories of compensable claims in Section 766B of the Restatement. In other words, the court held that LOS could not establish that the Appellees caused Redline not to enter into the Purchase Agreement or to discontinue its relationship with LOS since the purchase agreement was fully performed. We agree with the trial court.

Finally, LOS asserts that the trial court erred in ruling that it could not assert attorney's fees as an element of its damages. In *Kentucky State Bank v. AG Services, Inc.*, 663 S.W. 2d 754, 755 (Ky. App. 1984), a panel of our court held that attorney fees are "not allowable as cost in absence of statute or contract expressly providing therefore". Thus, the trial court did not err in denying the use of attorney fees as an element of its damages.

Based upon the foregoing, we affirm the decision of the trial court.

VANMETER, JUDGE, CONCURS.

THOMPSON, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

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