

STATE OF MICHIGAN  
COURT OF APPEALS

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ROSATI MASONRY COMPANY, INC.,

Plaintiff-Appellant,

v

GREAT AMERICAN INSURANCE  
COMPANIES and AMERICAN  
NATIONAL FIRE INSURANCE  
COMPANY,

Defendants-Appellees.

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UNPUBLISHED

August 26, 1997

No. 196171

Oakland Circuit Court

LC No. 96-513721-NZ

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell\*, JJ.

MEMORANDUM.

Plaintiff appeals by right summary disposition under MCR 2.116(C)(8), failure to state a claim on which relief may be granted, granted by the Oakland Circuit Court in this action for tortious interference with business relationships and breach of contract. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's claim for breach of defendants' insurance contract with defendants' insured, Jonna Construction Company, is barred by § 3030 of the Insurance Code. Plaintiff, having sued Jonna Construction Company for breach of contract and lost, is not a judgment creditor of Jonna Construction Company seeking garnishment against Jonna's insurer, and any direct claim under the insurance policy is barred by the statute, even on a third-party beneficiary theory. *Lieberthal v Glens Falls Indemnity Co of Glens Falls, New York*, 316 Mich 37; 24 NW2d 547 (1946).

Plaintiff's claim for tortious interference with a contractual relationship is barred because, in plaintiff's suit against Jonna Construction Company, it was determined that there was no enforceable contract. *Weitting v McFeeters*, 104 Mich App 188, 196; 304 NW2d 525 (1981). However, a legally enforceable contract is not required for suit based on the concept of tortious interference with a

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

business relationship. *Northern Plumbing & Heating, Inc v Henderson Brothers, Inc*, 83 Mich App 84, 93; 268 NW2d 296 (1978).

Nonetheless, plaintiff must establish that any interference with that relationship was intentional and improper. Defendants' act of refusing to pay its insured's claim under a policy, on grounds that the policy did not apply because any damage was caused by plaintiff's improper performance under its subcontract for masonry services rather than by natural causes within the policy coverage, is neither per se wrongful nor a lawful act done with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of plaintiff. *Feaheny v Caldwell*, 175 Mich App 291, 303; 437 NW2d 358 (1989). Plaintiff's complaint identifies no acts corroborative of a purpose to interfere improperly with plaintiff's contractual rights or business relationship or expectancy. *Hutton v Roberts*, 182 Mich App 153, 157; 451 NW2d 536 (1989). Defendants' refusal to pay a policy claim reflects only pursuit of a legitimate business interest which per se shields them from liability in a tortious interference action. *Wood v Herndon & Herndon Associates*, 186 Mich App 495, 500-501; 465 NW2d 5 (1990). Summary disposition was therefore properly granted.

Affirmed.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Edward A. Quinnell