

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL ILITCH and MARIAN ILITCH,

Plaintiffs-Appellants,

v

PAUL NORMAN and GENESIS DEVELOPMENT
CORPORATION, a Michigan corporation,

Defendants-Appellees,

and

DR. JEFFREY H. DECLAIRE,

Defendant.

UNPUBLISHED

February 3, 1998

No. 198778

Oakland Circuit Court

LC No. 94-487239-CZ

Before: Hoekstra, P.J., and Wahls and Gribbs, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition in defendants' favor on plaintiffs' claims of tortious interference. Plaintiffs argue on appeal that they have demonstrated that triable issues of fact exist on every element of their claims for tortious interference with contract and advantageous economic relations. We affirm.

To understand the facts of the present case, it is first necessary to briefly summarize a prior lawsuit between the parties. Plaintiffs entered an option contract with defendant Genesis and Genesis Real Estate Corporation to purchase two lots in 1988. Eventually, plaintiffs sold one of those lots to defendant DeClaire with the requirement that DeClaire use defendants to build his home. This subsequent sale breached plaintiffs' contract with defendants because it failed to comply with the terms of the original option agreement. The jury awarded defendant Genesis and Genesis Real Estate Corporation more than \$1,000,000. This Court affirmed the judgment in an unpublished per curiam opinion, finding that plaintiffs had failed to adequately protect Genesis's rights in the property. *Genesis*

Development Corp v Ilitch, unpublished per curiam opinion of the Court of Appeals, issued August 9, 1996 (Docket Nos. 176210 and 176212).

Plaintiffs assert that after the judgment, defendants interfered with the contract between plaintiffs and DeClaire by actively encouraging DeClaire to use another builder to build a home on the property. As alleged in plaintiffs' complaint, defendants' actions included proposing a written agreement between Genesis and DeClaire releasing DeClaire from his obligation to use Genesis, as well as a series of lawsuits filed to attempt to release DeClaire from his obligation. The trial court granted summary disposition in defendants' favor, finding that defendants no longer had a duty to perform once plaintiffs breached the contract.

This Court reviews the grant or denial of a motion for summary disposition de novo. *International Brotherhood of Electrical Workers, Local Union No 58 v McNulty*, 214 Mich App 437, 442; 543 NW2d 25 (1995).¹ A motion pursuant to MCR 2.116(C)(10) tests the factual support for a claim. *Radtko v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). Such motion may be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

The elements of tortious interference with contract are: (1) a contract, (2) a breach, and (3) instigation of the breach without justification by the defendant. *Jim-Bob, Inc v Mehling*, 178 Mich App 71, 95-96; 443 NW2d 451 (1989). The elements of tortious interference with a business relationship are the existence of a valid business relation (not necessarily evidence by an enforceable contract) or expectancy; knowledge of the relationship or expectancy on the part of the interferer; an intentional interference inducing or causing a breach or termination of the relationship or expectancy; and resultant damage to the party whose relationship or expectancy has been disrupted. *Pryor v Sloan Value Co*, 194 Mich App 556, 560; 487 NW2d 846 (1992); *Feaheny v Caldwell*, 175 Mich App 291, 301; 437 NW2d 358 (1989). To rise to the level of tortious interference, the interference must be committed with an illegal, unethical, or improper purpose. *Hutton v Roberts*, 182 Mich App 153, 157; 451 NW2d 536 (1989).

The trial court determined that plaintiffs failed to state a claim because there was nothing wrong with defendants deciding not to contract with DeClaire to build the home after they received the judgment against plaintiffs. Plaintiffs argue that it was not defendants' refusal to build which constituted tortious interference, but the affirmative acts taken by defendants and their attorney after the judgment was issued. We find that the result in this case does not depend upon defendants' conduct, but upon whether plaintiffs can demonstrate the existence of a contract or valid business expectancy.²

Plaintiffs argue that there remained a valid contract or advantageous economic relationship between plaintiffs and DeClaire, and that by inducing DeClaire to use another builder, defendants interfered with plaintiffs' right to require DeClaire to use Genesis. Arguably, this right would have value had DeClaire, in the absence of the prior litigation, refused to use Genesis as his builder. However, plaintiffs breached their contract with defendants by selling the lot to DeClaire instead of giving DeClaire an option to purchase the property, as required by the option contract. Because of the breach, defendants' rights in the property were not fully protected, and a \$1,000,000 judgment was entered in

favor of defendants. This Court affirmed the judgment and noted that the various documents in the chain of title, including the warranty deed and land contract, left Genesis' building rights in serious jeopardy.

We believe that these facts distinguish this case from *Northern Plumbing & Heating, Inc v Henderson Brothers, Inc*, 83 Mich App 84, 92-93; 268 NW2d 296 (1978), in which this Court held that the statute of frauds was not a defense to a tortious interference with contract claim and stated that the tort does not depend upon the enforceability of the contract. In the present case, plaintiffs created this unusual situation by their own actions. We are not convinced that plaintiffs should be paid for their agreement to release DeClaire from a contract obligation that plaintiffs had already breached. If plaintiffs had adequately protected defendants' rights in the sale to DeClaire, DeClaire would never have been placed in such an awkward position. See *Stanton v Dachille*, 186 Mich App 247, 257-258; 463 NW2d 479 (1990). Therefore, we conclude that the trial court properly granted summary disposition in defendants' favor.

Because we have affirmed the decision of the trial court, we find it unnecessary to address defendants' alternative arguments that plaintiffs lacked standing to assert their claims and that the claims were barred by res judicata and collateral estoppel.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Myron H. Wahls

/s/ Roman S. Gibbs

¹ The trial court failed to identify whether it granted defendants' motion pursuant to MCR 2.116(C)(8) or (C)(10). However, because the trial court considered documentary evidence outside the pleadings, we will treat the motion as one granted under MCR 2.116(C)(10).

² Where the lower court reaches the right result for the wrong reason, this Court will not reverse. *Glazer v Lamkin*, 201 Mich App 432, 437; 506 NW2d 570 (1993).