

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JERICO CONSTRUCTION, INC.,

Plaintiff-Counterdefendant-Appellant,

v

QUADRANT, INC.,

Defendant-Counterplaintiff-Appellee,

and

D & R COMPANY, L.L.C.,

Defendant-Appellee.

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UNPUBLISHED

March 26, 1999

No. 206026

Oakland Circuit Court

LC No. 95-510679 NZ

Before: Markman, P.J., and Jansen and J. B. Sullivan\*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's orders granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(8) and denying plaintiffs' motion to amend the complaint. We reverse and remand for further proceedings.

Jerico Construction, Inc. is in the steel construction business. In 1995, Quadrant, Inc., as the general contractor, and Jerico, the subcontractor, entered into several contracts relating to the construction business. In September 1995, Quadrant offered higher wages (apparently far above union-scale wages) to four of plaintiff's ironworkers, thus enticing them away from plaintiff's employ. At about the same time, the shareholders of Quadrant created a new company called D & R Company, LLC and instructed the four former employees of plaintiff to work for D & R. According to plaintiff's allegations, plaintiff and Quadrant had entered into several oral contracts in September and October of 1995 where plaintiff would be the subcontractor on different projects and Quadrant was also the general contractor. However, because plaintiff lost four of its most highly trained and specialized employees, plaintiff claims that it could not meet the future projects that it had agreed to undertake with

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

Quadrant. Plaintiff then filed suit, alleging, among other allegations,<sup>1</sup> a claim of tortious interference with a business relationship. The trial court granted defendants' motion for summary disposition under MCR 2.116(C)(8) on this claim, and later denied plaintiff's motion to amend its complaint (as a second amended complaint), ruling that the allegations were too conclusory and, thus, amendment would be futile.

A trial court's ruling on a motion for summary disposition is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). MCR 2.116(C)(8) tests the legal sufficiency of the claim on the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted. *Speik, supra*, p 337. All well-pleaded allegations are accepted as true and construed most favorably to the nonmoving party. *Wade v Dep't of Corrections*, 439 Mich 158, 162-163; 483 NW2d 26 (1992). The motion must be granted if no factual development could justify the plaintiff's claim for relief. *Spiek, supra*, p 337.

A trial court's ruling on a motion to amend a complaint is reviewed for an abuse of discretion. *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997). The relevant court rule here, MCR 2.118(A)(2), provides that leave to amend a pleading shall be freely given when justice so requires. A motion to amend should ordinarily be granted, and should be denied only for the following particularized reasons: (1) undue delay, (2) bad faith or dilatory motive on the part of the movant, (3) repeated failure to cure deficiencies by amendments previously allowed, (4) undue prejudice to the opposing party by virtue of allowance of the amendment, and (5) futility. *Weymers, supra*, p 658. An amendment is futile where, ignoring the substantive merits of the claim, the claim is legally insufficient on its face. *McNees v Cedar Springs Stamping Co*, 184 Mich App 101, 103; 457 NW2d 68 (1990).

We hold that the trial court abused its discretion in denying plaintiff's motion to amend because plaintiff has properly pleaded the elements of tortious interference with a business relationship in the second amended complaint. Whether plaintiff can factually support its allegations is a matter not now before this Court and may be addressed by the parties below. We emphasize that this case is before us on the pleadings alone and that we must accept plaintiff's allegations as being true.

The elements of tortious interference with a business relationship are (1) the existence of a valid business relationship or expectancy, (2) knowledge of the relationship or expectancy on the part of defendant, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resultant damage to the plaintiff. *BPS Clinical Labs v Blue Cross and Blue Shield of Michigan (On Remand)*, 217 Mich App 687, 698-699; 552 NW2d 919 (1996). One who alleges tortious interference with a 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. *Feldman v Green*, 138 Mich App 360, 369; 360 NW2d 881 (1984). To establish that a lawful act was done with malice and without justification, the plaintiff must demonstrate, with specificity, affirmative acts by the defendant that corroborate the improper motive of the interference. *Id.*, pp 369-370. Improper means illegal, unethical, or fraudulent. *Weitting v McFetters*, 104 Mich App 188, 197; 304 NW2d 525 (1981).

Plaintiff's allegations in the second amended complaint in support of these elements are: plaintiff and Quadrant had worked together on several projects before October 1995; they were engaged in a project (the Alvan Terminal project) when the alleged tortious acts occurred; Quadrant hired ironworkers Michael Rosier, Jeffrey Rosier, Andreas Thiele, and Harold Good, plaintiff's core work force, in September and October 1995 by offering wages far in excess of the union pay scale or market rate<sup>2</sup>; Quadrant, having worked with plaintiff, was well aware that the four employees constituted plaintiff's core workforce and that such employees were highly trained and of a very limited pool of employees; at the same time that Quadrant hired away plaintiff's four employees, Quadrant orally promised that plaintiff would be the subcontractor on two future projects (The Wayne Aquatics and Taylor Turning projects); Quadrant's shareholders formed D & R Company on October 11, 1995 and directed that the four employees work for D & R on the Wayne Aquatics and Taylor Turning projects that had been promised to plaintiff; and that it was Quadrant's intent to drive plaintiff out of business and appropriate plaintiff's future profits for itself.

We find that plaintiff's allegations, as accepted as true, are sufficient to set forth the elements of tortious interference with a business relationship. Further, we reject Quadrant's contention that its act of hiring away plaintiff's four employees is lawful and can never be considered to be done with malice and without justification. This Court has held that there can be interference with an employment contract that is terminable at will. *Prysak v R L Polk Co*, 193 Mich App 1, 12; 483 NW2d 629 (1992); *Feaheny v Caldwell*, 175 Mich App 291, 302-303; 437 NW2d 358 (1989). Moreover, plaintiff has alleged more than Quadrant's mere hiring away of plaintiff's former employees at higher wages. Plaintiff also alleges that Quadrant enticed the employees while the two companies were working on a project together, that Quadrant offered wages far in excess of the market rate, that Quadrant's officers formed D & R and had the employees work for D & R on projects that had originally been promised to plaintiff, and that plaintiff was incapable of competing with Quadrant and completing future projects because Quadrant stripped plaintiff of its veteran workers. These allegations evidence something more than a mere act in furtherance of legitimate business interests and are sufficient to allege that Quadrant acted lawfully but with malice and without justification for the purpose of invading the business relationship of another. See, e.g., *Wilkinson v Powe*, 300 Mich 275, 283; 1 NW2d 539 (1942) ("No categorical answer can be made to the question of what will constitute justification, and it is usually held that this question is one for the jury."); *Hutton v Roberts*, 182 Mich App 153, 158-159; 451 NW2d 536 (1989); *Jim-Bob, Inc v Mehling*, 178 Mich App 71, 96-97; 443 NW2d 451 (1989); *Tata Consultancy Services v Systems Int'l, Inc*, 31 F3d 416, 422-427 (CA 6, 1994).

Accordingly, the trial court abused its discretion in denying plaintiff's motion for a second amended complaint because the allegations in that complaint are sufficient to set forth the elements of tortious interference with a business relationship.

Reversed and remanded for further proceedings.

/s/ Kathleen Jansen

/s/ Joseph B. Sullivan

<sup>1</sup> In its first amended complaint, plaintiff alleged claims of tortious interference with business relationships, two counts of breach of contract, and promissory estoppel. Apparently, the claim of promissory estoppel has been settled and the other claims were dismissed with prejudice.

<sup>2</sup> Although not alleged in the second amended complaint, but stated in plaintiff's appellate brief, the four workers were never actually paid the wages offered by Quadrant. This allegation would greatly strengthen plaintiff's allegation that Quadrant acted with malice and without justification when it hired away plaintiff's four former employees.