

STATE OF MICHIGAN
COURT OF APPEALS

MERLYN E. KUEHNLEIN,

Plaintiff-Appellant,

v

MONROE BANK AND TRUST, WILLIAM
SUNDERLAND, TRACY OBERLEITER, and
ROBERT NEELY,

Defendants-Appellees.

UNPUBLISHED

October 5, 1999

No. 209649

Monroe Circuit Court

LC No. 97-006488 CK

Before: Bandstra, C.J., and Whitbeck and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's orders granting summary disposition to defendants on plaintiff's claims of implied contract and tortious interference with an advantageous business relationship. We affirm.

Plaintiff first argues that the trial court erred in dismissing his claim of implied contract and granting summary disposition in favor of defendants. Even assuming, as argued by plaintiff, that the trial court erred in stating that the statute of frauds, MCL 566.132; MSA 26.922, barred plaintiff's claim of implied contract to lend money, we conclude that summary disposition was properly granted on other grounds.¹ "[T]his Court will not reverse where the trial court reached the right result for the wrong reason." *Lane v KinderCare Learning Centers, Inc.*, 231 Mich App 689, 697; 588 NW2d 715 (1998).

This Court reviews de novo an order granting summary disposition. *Weisman v US Blades, Inc.*, 217 Mich App 565, 566; 552 NW2d 484 (1996). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone; the motion may not be supported with documentary evidence. *Simko v Blake*, 448 Mich 648, 654; 532 NW2d 842 (1995); *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). All factual allegations in support of the claim are accepted as true. *Simko, supra*; *Wade, supra* at 162-163. The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Simko, supra*; *Wade, supra* at 163.

In the present case, we conclude that plaintiff has failed to state a claim upon which relief can be granted because he has failed to allege all the elements for an implied contract. An implied contract must satisfy the elements of mutual assent and consideration. *Pawlak v Redox Corp*, 182 Mich App 758, 765; 453 NW2d 304 (1990), quoting *Lowery v Dep't of Corrections*, 146 Mich App 342, 359; 380 NW2d 99 (1985); *Mallory v Detroit*, 181 Mich App 121, 127; 449 NW2d 115 (1989).

Here, plaintiff has failed to make allegations sufficient to satisfy the element of mutual assent.² Mutual assent means that there has been a “[m]eeting of the minds.” *Kamalnath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 548-549; 487 NW2d 499 (1992). A meeting of the minds must occur on all the material facts. *Id.* at 548, quoting *Stanton v Dachille*, 186 Mich App 247, 256; 463 NW2d 479 (1990), quoting *Heritage Broadcasting Co v Wilson Communications, Inc*, 170 Mich App 812, 818; 428 NW2d 784 (1988). To determine whether mutual assent has occurred, an objective test is used to examine “the expressed words of the parties and their visible acts,” and the question should be asked whether a reasonable person could have interpreted the conduct or words in the alleged manner. *Rood v Gen'l Dynamics Corp*, 444 Mich 107, 119; 507 NW2d 591 (1993), quoting *Rowe v Montgomery Ward & Co Inc*, 437 Mich 627, 640; 473 NW2d 268 (1991), quoting *Goldman v Century Ins Co*, 354 Mich 528, 535; 93 NW2d 240 (1958); see, also, *Kamalnath, supra*.

In his complaint, plaintiff states that the words and deeds of defendants Sunderland, Oberleiter, and Neely led plaintiff to believe that they would continue to loan him money so that he could develop his real estate development business. However, plaintiff's allegations regarding these defendants' words and deeds in no way suggest that defendants were going to continue to lend money to plaintiff. In fact, the allegations in the complaint establish that defendants were repeatedly resistant to loaning money to plaintiff. Further, even if defendants had discussed the issue of loaning money to plaintiff in the future, mere discussions and expression of intention do not make a binding contract. *Eerdmans v Maki*, 226 Mich App 360, 364; 573 NW2d 329 (1997); *Kamalnath, supra* at 549. A reasonable person could not have interpreted the conduct and words of defendants Sunderland, Oberleiter, and Neely as alleged by plaintiff to mean that an implied contract existed whereby defendants would continue to loan money to plaintiff in the future. *Rood, supra*. Summary disposition was properly granted to defendants on this claim.³

Plaintiff also argues that the trial court erred in granting summary disposition on his claim of tortious interference with advantageous business relationships. We disagree. In granting defendant's motion, the court went beyond the pleadings; therefore, we will address this issue pursuant to MCR 2.116(C)(10). *Espinoza v Thomas*, 189 Mich App 110, 114-115; 472 NW2d 16 (1991). With regard to a motion brought pursuant to MCR 2.116(C)(10),

the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists.

If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. [*Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996) (citations omitted); see, also, *Maiden v Rozwood*, 461 Mich 109, 119-121; 597 NW2d 817 (1999).]

Specifically, plaintiff claims that defendants interfered with his business relationships with Barbara Stroupe, Patricia Sprenger, Henry Banas, and Dr. Pahodie and Mr. Pakideh (Pahodie's husband).⁴ We disagree. To establish a claim of tortious interference with a business relationship, the plaintiff must show "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." *BPS Clinical Laboratories v Blue Cross and Blue Shield of Mich (On Remand)*, 217 Mich App 687, 698-699; 552 NW2d 919 (1996). "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.* at 699. Further, if the defendant's actions were motivated by legitimate business reasons, its actions would not constitute improper interference. *Id.*

Plaintiff has failed to establish the elements of a tortious interference claim. In support of their motion for summary disposition, defendants presented affidavits from Stroupe, Sprenger, and Banas establishing that defendants had not tortiously interfered in their relationships with plaintiff. With respect to Dr. Pahodie and Mr. Padikeh, defendant Oberleiter testified that, while he did call Pahodie and Padikeh to confirm that plaintiff was working for them, he did not interfere with their relationship with plaintiff. The deposition excerpt does not establish the existence of any genuine issue of material fact regarding plaintiff's claim for tortious interference with advantageous business relationships. Plaintiff has failed to otherwise go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *Quinto, supra* at 362. Plaintiff did not depose Pakideh or Pahodie or attach their affidavits to support his claim of tortious interference. Plaintiff's affidavit, for the most part, contains his rendition of the facts of this case and presents nothing more than his speculation that there was interference. Further, plaintiff may not rely on mere allegations or his complaint to establish a genuine issue of material fact. *Id.* Plaintiff has failed to demonstrate, with specificity, that defendant Oberleiter's contact with Padikeh and Pahodie resulted from an improper motive. *BPS Laboratories, supra*.

We affirm.

/s/ Richard A. Bandstra

/s/ William C. Whitbeck

/s/ Michael J. Talbot

¹ To the extent that the trial court granted summary disposition to defendants on the basis of the existence of express contracts, we conclude that this was error. Although defendants are correct that an implied contract cannot be enforced where the parties have made an express contract covering the same subject matter, see *Scholz v Montgomery Ward & Co, Inc*, 437 Mich 83, 93; 468 NW2d 845 (1991), this is not plaintiff's argument. Plaintiff does not dispute that written contracts exist that cover

loans previously made to him, but rather plaintiff asserts that, through the words and actions of defendants, an implied contract was created such that defendants agreed to loan money to plaintiff on a continual basis in the future for his real estate development business.

² We also question whether plaintiff has established the element of consideration; however, we will not address this element because, in any event, without mutual assent, there is no contract.

³ To the extent that plaintiff suggests in his complaint that he incurred damages and a loss of business opportunity because he detrimentally relied on defendants' implied contract to loan him money, we further conclude that this claim is without merit because no evidence existed regarding the material terms of the alleged future loan. "For a promise to loan money in the future to be sufficiently clear and definite, some evidence must exist of the material terms of the loan, including the amount of the loan, the interest rate, and the method of repayment." *State Bank of Standish v Curry*, 442 Mich 76, 88; 500 NW2d 104 (1993).

⁴ To the extent that plaintiff is also claiming that defendants tortiously interfered with his relationship with Ben Medica and Maryann and Ed Campbell, plaintiff has failed to present any evidence to support his allegation.