

STATE OF MICHIGAN
COURT OF APPEALS

JFK INVESTMENT COMPANY, LLC,

Plaintiff-Appellee,

v

CONTRACT INTERIORS,

Defendant,

and

STEELCASE, INC.,

Defendant-Appellant.

UNPUBLISHED

August 24, 2001

No. 224200

Oakland Circuit Court

LC No. 98-003245-CK

Before: Fitzgerald, P.J., and Gage and C. H. Miel*, JJ.

PER CURIAM.

This matter is before the Court for consideration as on leave granted from a circuit court order denying defendant Steelcase's motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

The elements of fraud are (1) the defendant made a material representation to the plaintiff; (2) the representation was false; (3) the defendant knew the representation was false or

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

made it recklessly as a positive assertion without knowledge of its truth; (4) the defendant intended that the plaintiff rely on the representation; (5) the plaintiff acted in reliance on the representation; and (6) the plaintiff was injured as a result of such reliance. *Hord v Environmental Research Inst of Michigan (After Remand)*, 463 Mich 399, 404; 617 NW2d 543 (2000). These elements must be proved by clear and convincing evidence. *Foodland Distributors v Al-Naimi*, 220 Mich App 453, 457; 559 NW2d 379 (1996). The misrepresentation must be predicated on a statement of past or existing fact. *Michaels v Amway Corp*, 206 Mich App 644, 652; 522 NW2d 703 (1994). A fraud claim may be predicated on a promise made in bad faith without intention of performance, *Phinney v Perlmutter*, 222 Mich App 513, 525; 564 NW2d 532 (1997), but a broken promise is itself neither fraud nor evidence of fraud. *Michaels, supra*. Because fraud requires a false representation by the defendant, “[a] plaintiff’s subjective misunderstanding of information that is not objectively false or misleading” is insufficient to prove fraud. *Hord, supra* at 411.

The evidence showed that defendant’s director negotiated a fee for the termination of Contract Interiors’ lease with plaintiff because he was responsible for the real estate deals for Steelcase and its subsidiaries and a Steelcase subsidiary was operating Contract Interiors. That officer never expressly represented that Steelcase would pay the fee and plaintiff’s officer admitted that “no one said one way or the other” who would pay the fee; he simply assumed that Steelcase would sign the termination agreement because Contract Interiors was under the control of a Steelcase subsidiary and he was dealing with a Steelcase director. That assumption is insufficient to prove fraud, *id.*, and thus the trial court erred in denying defendant’s motion for summary disposition as to plaintiff’s fraud claim.

The elements of tortious interference with contractual relations are “(1) a contract, (2) a breach, and (3) an unjustified instigation of the breach by the defendant.” *Mahrle v Danke*, 216 Mich App 343, 350; 549 NW2d 56 (1996). The third element requires proof of “the intentional doing of a per se wrongful act or the intentional doing of a lawful act with malice and unjustified in law for the purpose of invading plaintiff’s contractual rights” *Feldman v Green*, 138 Mich App 360, 369; 360 NW2d 881 (1984). “A wrongful act per se is an act that is inherently wrongful or an act that can never be justified under any circumstances.” *Prysak v R L Polk Co*, 193 Mich App 1, 12-13; 483 NW2d 629 (1992). If the plaintiff relies on the intentional doing of a lawful act done with malice and unjustified in law, he “necessarily must demonstrate, with specificity, affirmative acts by the interferor which corroborate the unlawful purpose of the interference.” *Feldman, supra* at 369-370. In addition to being intentional, the interference must be improper, i.e., illegal, unethical, or fraudulent. *Trepel v Pontiac Osteopathic Hosp*, 135 Mich App 361, 374, 376; 354 NW2d 341 (1984). The fact that the defendant is motivated by legitimate business interests is a factor to be considered in determining the propriety of the defendant’s conduct. *Prysak, supra* at 13.

There is no dispute that plaintiff had a lease with Contract Interiors and Contract Interiors breached the lease. The crux of plaintiff’s claim is that Steelcase induced Contract Interiors to breach the lease when a Steelcase subsidiary, which was temporarily managing Contract Interiors, determined that Contract Interiors could not afford the lease and should negotiate a buyout. There is no claim that defendant’s conduct was wrongful per se and clearly it is not illegal or inherently wrong to seek a buyout of a contract. While plaintiff contends that the

interference was unjustified, the evidence shows that Contract Interiors was heavily in debt and was hardly in a position to be able to renovate and pay for the space it had leased. Even assuming the assessment of Contract Interiors' financial situation were not a legitimate business decision, there is no evidence to show that defendant was motivated by an unlawful purpose. Therefore, the trial court erred in denying defendant's motion for summary disposition as to plaintiff's tortious interference claim.

Reversed.

/s/ E. Thomas Fitzgerald

/s/ Hilda R. Gage

/s/ Charles H. Miel