

STATE OF MICHIGAN
COURT OF APPEALS

DOWNRIVER DEVELOPMENT, LLC, and
KATHLEEN A. SINCLAIR,

UNPUBLISHED
May 3, 2002

Plaintiffs/Counter-
Defendants/Appellants,

v

No. 228353
Wayne Circuit Court
LC No. 99-914241-CZ

CITY OF TRENTON, TRENTON CITY
COUNCIL, TRENTON DOWNTOWN
DEVELOPMENT AUTHORITY, WAYNE
SIELOFF, GLENN BOWLES, BOB HOWEY,
JOHN McNALLY, and JOHN THOMAS,

Defendant/Counter-Plaintiffs/Third-
Party Plaintiffs/Appellees,

and

CURT MOLINO, LARRY MASSERANT, BOB
ZIEGLEMANN, and CHARLES E. RAINES,

Third-Party Defendants.

Before: Cooper, P.J., and Hood and Kelly, JJ.

PER CURIAM.

Plaintiffs, Downriver Development, LLC (hereinafter “Downriver”), a Michigan limited liability company, and Kathleen A. Sinclair, one of its principals, appeal as of right an order entered by the trial court granting summary disposition in defendants’ favor. We affirm.

I. Basic Facts and Procedural History

Downriver was one of two developers that submitted a proposal in response to defendant City of Trenton’s Downtown Development Authority’s (hereinafter “DDA”) request for proposals for the development of a riverfront parcel in Trenton. The DDA selected Downriver as its preferred developer and the two entities engaged in contract negotiations. However, DDA and Downriver never solidified any specific contractual terms. During negotiations, the City acquired a second parcel of real estate and at the direction of City Council, the DDA issued a

second request for proposals which revised the parameters of the project. Four developers responded to the DDA's second solicitation including plaintiff. The DDA did not select plaintiff as a preferred developer and eventually negotiated a development contract with another developer.

Downriver filed suit claiming, among other counts, that defendants breached a real estate purchase agreement as well as a development contract, and also tortiously interfered with contractual and/or advantageous business relations. The trial court dismissed plaintiff's claims on defendants' motion for summary disposition.

II. Standard of Review

When granting defendants' motion for summary disposition, the trial court did not indicate upon which subsection of MCR 2.116 it relied. Notwithstanding, it is evident from a review of the trial court's opinion that it considered both the pleadings as well as documentary evidence submitted by the parties. Where a trial court does not specify the subsection upon which it granted summary disposition but where it is clear from the record that its decision was premised upon a plaintiff's failure to create a genuine issue of material fact, this Court may proceed as though the decision were based on MCR 2.116(C)(10). *Progressive Timberlands, Inc v R & R Heavy Haulers, Inc*, 243 Mich App 404, 407; 622 NW2d 533 (2000).

This Court reviews de novo an order granting summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion brought pursuant to MCR 2.116(C)(10) tests the factual sufficiency of the underlying complaint. The inquiry relative to a (C)(10) motion is whether, looking at all of the evidence in a light most favorable to the nonmoving party, there are genuine factual issues presented upon which reasonable minds may differ. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Where the proffered evidence fails to establish a genuine issue of any material fact, the moving party is entitled to judgment as a matter of law. *Id.*

III. Breach of Contract

First, plaintiffs contend that the trial court incorrectly determined that the DDA lacked the requisite authority to enter into a binding contract for the sale and development of the land at issue. We disagree.

The DDA was created on July 1, 1996, by City of Trenton Ordinance number 577. The purpose of the ordinance was as follows:

To create a public body corporation to act in the best interests of the City to halt property value deterioration, increase property tax valuation where possible in the business district of the City, eliminate the causes of that deterioration, and to promote economic growth pursuant to Act 197 of the Public Acts of 1975.

The ordinance gave the DDA "all powers necessary to carry out to the purpose of its incorporation as provided herein and in Act 197 [MCL 125.1651, *et seq.*]." The municipality's power to create a development authority is expressly granted by MCL 125.1652(1). MCL

125.1653 sets forth the procedure for establishing such an authority; its powers are set forth in MCL 125.1657. Among these powers a downtown development authority is authorized to:

(f) Implement any plan of development in the downtown district necessary to achieve the purposes of this act, in accordance with the powers of the authority as granted by this act.

(g) Make and enter into contracts necessary or incidental to the exercise of its powers and the performance of its duties.

(h) Acquire by purchase or otherwise, on terms and conditions and in a manner the authority deems proper or own, convey, or otherwise dispose of, or lease as lessor or lessee, land and other property, real or personal, or rights or interests therein, which the authority determines is reasonably necessary to achieve the purposes of this act, and to grant or acquire licenses, easements, and options with respect thereto.

(i) Improve land and construct, reconstruct, rehabilitate, restore and preserve, equip, improve, maintain, repair, and operate any building, including multiple-family dwellings, and any necessary or desirable appurtenances thereto, within the downtown district for the use, in whole or in part, of any public or private person or corporation, or a combination thereof. [MCL 125.1657.]

The ordinance at issue in this appeal is section 2-276, which essentially vests in the DDA the same powers enumerated in MCL 125.1657, except section 2-276 makes the DDA's decisions conditional upon City Council's approval. Thus, the DDA's ability to "make and enter into contracts necessary or incidental to the exercise of its powers and the performance of its duties" for purposes of section 2-276 is ultimately subject to City Council's approval.

Because of the unfettered authority to make and enter into contacts granted by virtue of MCL 125.1657, plaintiffs maintain that the DDA may create a binding contact regardless of "perfunctory City Council action." In essence, plaintiffs contend that a municipality may not divest a public body corporation of authority conferred by state statute. While it is true that a municipality is prohibited from enacting an ordinance that directly conflicts with a state statute, *Michigan Restaurant Ass'n v City of Marquette*, 245 Mich App 63, 66; 626 NW2d 418 (2001), that does not necessarily prohibit a municipality from adopting additional requirements. See *City of Detroit v Qualls*, 434 Mich 340, 362; 454 NW2d 374 (1990) (quoting 56 Am Jur 2d, Municipal Corporations, § 374, pp. 408 - 409.) Furthermore, a development plan recommended by a downtown development authority is expressly subject to the "governing body's" approval after a properly noticed public hearing on the plan. See MCL 125.1668 and MCL 125.1669(1).

In this case, the Trenton City Council is the "governing body" as that term is defined in MCL 125.1651(o). Thus, the downtown development authority's recommendation on a development plan is subject to the approval of the Trenton City Council after a properly noticed public hearing on the proposed plan. Consequently, section 2-276 of the ordinance and the governing state law are not in conflict. On the contrary, section 2-276 and the applicable state statute are in complete harmony. Section 2-276 of the ordinance specifically provides that the

DDA's recommendations are subject to City Council's approval. Respecting this limitation, the DDA does not have the authority to enter into a binding contract absent final approval from City Council. Upon the record here before us and considering the evidence presented in a light most favorable to plaintiffs, we find that no genuine issues of material fact exist upon which reasonable minds may differ. Accordingly, we find that the trial court did not err by granting defendants summary disposition on this issue.

Because we find that the DDA's decisions are conditional upon City Council's approval, the collective effect of the DDA's request for proposals, Downriver's submitted proposal, and the DDA's decision selecting Downriver as the preferred developer did not result in a binding contract as plaintiffs argue. The DDA did not have the authority to enter into any binding contract absent City Council's final approval.

IV. Tortious Interference with a Contractual/Advantageous Business Relationship

Finally, plaintiffs argue that the trial court improperly granted defendants summary disposition on its claims that the individually named defendants tortiously interfered with Downriver's contractual and/or advantageous business relations with the DDA. We do not agree.

To state a claim for the intentional interference with a contractual relationship, incumbent upon a plaintiff is to first establish the existence of a valid contract. *Safie Enterprises, Inc v Nationwide Mutual Fire Ins Co*, 146 Mich App 483, 496; 381 NW2d 747 (1985). Because plaintiffs did not have an enforceable contract, plaintiff cannot therefore state a claim for intentional interference therewith.

Alternatively, plaintiffs argue that defendants tortiously interfered with its prospective contractual relations or business expectancy. Indeed, liability attaches to one who intentionally and improperly interferes with another's prospective contractual relations by either inducing or causing a third party not to enter into or continue a prospective relation or by preventing the other from acquiring or continuing the prospective relation. *Winiemko v Valenti*, 203 Mich App 411, 417; 513 NW2d 181 (1994) (quoting 4 Restatement Torts, 2d § 766B, p. 20.) However to establish a claim for tortuous interference, plaintiffs must demonstrate that defendants were "third parties" to the contract or business relationship. *Reed v Michigan Metro Girl Scout Council*, 201 Mich App 10, 13; 506 NW2d 231 (1993).

In the case at bar, each of the individually named defendants is either an agent or an employee of the DDA or the City of Trenton. It is well settled that "corporate agents are not liable for tortuous interference with the corporation's contracts unless they acted solely for their own benefit with no benefit to the corporation." *Id.* Consequently, for plaintiffs to state a claim for intentional interference with a prospective contractual relationship, plaintiffs must establish that the individually named defendants were acting solely for their own benefit with no incidental benefit inuring to the DDA or the City of Trenton. Upon review of the record, we cannot find any evidence demonstrating that these defendants were acting for their own benefit by soliciting additional proposals after acquiring an additional parcel of land to include in the project. The DDA would not have recommended and City Council would not have approved the second developer unless its development plan benefited the City. Consequently, when these defendants in their corporate capacity elected not to pursue a relationship with Downriver and to

issue a second request for proposals, their actions benefited both the DDA and the City of Trenton. Accordingly, plaintiffs cannot establish that the individually named defendants were “third parties” acting solely for their own benefit for purposes of setting forth a viable claim for the intentional interference with a prospective business relationship necessary to preclude summary disposition. Considering the evidence in a light most favorable to plaintiff, we find that there exists no genuine factual issue upon which reasonable minds could differ. Thus, the trial court did not err by granting defendants summary disposition and dismissing plaintiffs’ complaint.

Affirmed.

/s/ Jessica R. Cooper

/s/ Harold Hood

/s/ Kirsten Frank Kelly