

STATE OF MICHIGAN
COURT OF APPEALS

ADELL BROADCASTING CORPORATION and
FRANKLIN ADELL,

UNPUBLISHED
December 17, 2002

Plaintiffs-Appellants,

v

JAMES PANAGOS, RUTH PANAGOS, a/k/a R.
ANTOINETTE RILEY, and JOHN DOES 1-5,

No. 230405
Macomb Circuit Court
LC No. 99-000079-NZ

Defendants-Appellees.

Before: Griffin, P.J., and White and Murray, JJ.

PER CURIAM.

Plaintiffs appeal as of right the circuit court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) in this action claiming abuse of process. We affirm.

The elements of abuse of process are "(1) an ulterior purpose and (2) an act in the use of process which is improper in the regular prosecution of the proceeding." *Friedman v Dozor*, 412 Mich 1, 30; 312 NW2d 585 (1981). In this case, the circuit court determined that plaintiffs were unable to show that defendants committed an improper act in their use of process in a prior action by defendants against plaintiffs.¹

Plaintiffs claim that defendants committed an improper act in the use of process in two ways (1) by offering to dismiss the underlying lawsuit in exchange for a "collateral goal," i.e., proposing a settlement involving redemption of Adell Broadcasting Corporation ("ABC") stock, and (2) by abusing discovery in the underlying action.

On appeal, plaintiffs argue that this case is comparable to *Three Lakes Ass'n v Whiting*, 75 Mich App 564; 255 NW2d 686 (1977). In that case, the plaintiff was a non-profit corporation that opposed a condominium project by the corporate defendant and filed an action to enjoin the project. The corporate defendant and individual defendants filed an action ("Action 926")

¹ The facts of the underlying action are set forth in this Court's opinion in *Adell Broadcasting Corp v Panagos*, unpublished opinion per curiam, issued January 16, 2001 (Docket Nos. 216715, 216716).

against the plaintiff, alleging tortious actions in obstructing the development. The plaintiff filed an abuse of process claim against the defendants. The plaintiff alleged that the defendants

had no intention of accomplishing the ostensible purpose of the suit (to recover damages) but rather intended to use Action 926 as a means to coerce plaintiff to give up entirely all opposition to the condominium project. Thus, it is alleged, defendants have abused the discovery process by burdening plaintiff with requests for discovery while at the same time causing delays in complying with legitimate discovery procedures of plaintiff, that defendants at one point agreed to settle the case and subsequently refused to comply with that agreement, and that defendants have conducted that lawsuit in an oppressive manner in various other ways.

It is also claimed that defendants have stated that they would dismiss Action 926 without receiving any damages if plaintiff would agree not to express opposition to or otherwise oppose defendants' proposed condominium project. The gist of plaintiff's complaint thus charges defendants with an abuse of process because they instituted the action for damages for the malicious and ulterior purpose of causing plaintiff so much expense and trouble in defending it that plaintiff would be forced to give up or at least be frustrated in pursuing its legitimate activities in opposition to defendants' condominium project. [*Three Lakes*, *supra* at 570.]

In *Three Lakes*, the Court quoted two treatises for an explanation of the nature of an improper act in the use of process:

“Some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process, is required; and there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions. The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or a club. *There is, in other words, a form of extortion, and it is what is done in the course of negotiation, rather than the issuance of any formal use of the process itself, which constitutes the tort.*” [*Three Lakes*, *supra* at 573, quoting Prosser, Torts (4th ed) § 121, p 857. Emphasis added in *Three Lakes*.]

* * *

“If the process is employed from a bad or ulterior motive, *the gist of the wrong is to be found in the uses to which the party procuring the process attempts to put it.* If he is content to use the particular machinery of the law for the immediate purpose for which it was intended, he is not ordinarily liable, notwithstanding a vicious or vindictive motive. *But the moment he attempts to attain some collateral objective, outside the scope of the operation of the process employed, a tort has been consummated.*” [*Three Lakes*, *supra* at 573-574, quoting Harper & James, The Law of Torts, vol 1, § 4.9, p 331. Emphasis added in *Three Lakes*.]

This Court held that the plaintiffs in that case had stated a cause of action for abuse of process:

Reviewing plaintiff's complaint by the appropriate standards for a summary judgment motion, it is alleged that defendants have actively used Action 926 for the ulterior and collateral purpose of coercing plaintiff to end all opposition to defendants' condominium project. If a specific allegation of an identifiable act be necessary, plaintiff's allegation that defendants offered to dismiss Action 926 in return for an end to all opposition by plaintiff to their condominium project, would be sufficient. The allegation is not that defendants simply offered to dismiss the damage action for tortious conduct upon the ending of such conduct. Rather, the offer was premised on plaintiff ending all opposition to the project, be it proper or tortious, and may be viewed on this motion for summary judgment as a use of Action 926 as a club to obtain a purpose collateral to its proper purpose. [*Three Lakes*, *supra* at 570.]

We agree with the circuit court that the present case is distinguishable from *Three Lakes*. As noted by the circuit court, there was no evidence of coercive conduct by defendants in regard to the settlement discussions involving the stock. Rather, the evidence indicates that defendants' counsel raised the issue of stock in settlement discussions after defendants' cases had been resolved unfavorably to defendants. We cannot accept plaintiffs' position that the dismissed claims were used to coerce settlement. Even if the discussions occurred before dismissal, the undisputed evidence indicates that defendants themselves were not interested in selling the stock. In addition, plaintiffs' characterization of the sale of the stock as a "collateral objective" is questionable. Obtaining monetary recompense from plaintiffs was not "collateral" to defendants' claims arising from the termination of James Panagos' employment. The proposal by defendants' counsel that Ruth Panagos relinquish her stock to achieve the objective does not transform the desire for monetary recompense into a "collateral advantage." Under the circumstances, we agree with the circuit court that the evidence concerning the settlement negotiations did not establish an improper act in the use of process.

We further agree with the circuit court that defendants' failure to comply with discovery in the underlying action was inadequate to establish that defendants committed an improper act in the use of process. As noted in the circuit court's opinion, plaintiffs did not identify a collateral purpose for defendants' obstructing discovery. Although *Three Lakes*, *supra* at 564, *Young v Motor City Apts Ltd Dividend Housing Ass'n No 1 & No 2*, 133 Mich App 671, 681; 350 NW2d 790 (1984), and *Vallance v Brewbaker*, 161 Mich App 642, 646; 411 NW2d 808 (1987), leave open the possibility that, under certain circumstances, discovery abuses could support a cause of action for abuse of process, the facts here do not rise to that level.

Affirmed.

/s/ Richard Allen Griffin
/s/ Helene N. White
/s/ Christopher M. Murray