STATE OF MICHIGAN

COURT OF APPEALS

NORTHWOODS DEVELOPMENT, LLC,

Plaintiff-Appellant,

v

ROBERT E. FORSTNER, KELLY S. FORSTNER, PORTAGE LAKE MARINA ACQUISITION CORPORATION, and JAMES MROZINSKI,

Defendants-Appellees.

UNPUBLISHED
November 9, 2004

No. 247190
Manistee Circuit Court
LC No. 02-010725-CK

Before: Cooper, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right the orders granting summary disposition to defendants under MCR 2.116(C)(7) and awarding them sanctions. We affirm.

Plaintiff argues that it had a contract with defendants Robert E. Forstner, Kelly S. Forstner, and Portage Marina Acquisition Corporation ("the Forstners") for the purchase of property containing a marina that should be enforced despite the lack of a written instrument embodying the essential terms of the sale. Plaintiff asserts that Michigan law interprets the statute of frauds (MCL 566.108) loosely, finding exceptions wherever possible to avoid inequity, and that defendants behaved inequitably by selling the property to his competitor rather than to him.

It is unnecessary for us to reach the statute of frauds issue because, as the trial court correctly held, the record establishes that the parties never entered a contract, oral or otherwise, for the sale of the marina. A contract for the sale of land requires identification of the property, the parties, and the consideration. *Zurcher v Herveat*, 238 Mich App 267, 277; 605 NW2d329 (1999). The parties apparently reached broad agreement on what the sale price would be had there been a sale. However, according to an affidavit submitted by plaintiff's principal, the parties never determined exactly how the transaction would be structured. They also never reached agreement as to how closing costs and attorney fees would be apportioned, which the Forstners averred without contradiction from plaintiff was a major condition for any agreement. Thus there was never a definitive agreement as to the total consideration, and perhaps also as to the precise property involved, given the uncertainty plaintiff's principal relates over the structure of the transaction. It is also uncontroverted that although the Forstners prepared a draft sale

agreement and sent it to plaintiff, plaintiff never signed it, and in fact proposed changes that the Forstners did not accept. Therefore, at the time the Forstners attempted to sell the property to defendant James Mrozinski three weeks after sending plaintiff the draft sales agreement, there was no contract with plaintiff.

It also should be noted that, contrary to plaintiff's assertion, it appears that the Forstners never actually sold the property to Mrozinski. Although the Forstners attempted to make the sale, they were prevented from doing so when plaintiff placed a lis pendens on the property and they lost the property through foreclosure. Defendant Mrozinski apparently acquired the property thereafter—not from the Forstners but from the foreclosure sale. Thus, even if there had been a contract, plaintiff's claim for equitable relief is considered moot at this point because the Forstners are no longer able to convey the property to plaintiff as it seeks in the complaint. Moreover, it appears that the contemplated transaction between the Forstners and Mrozinski—which serves as the basis of plaintiff's other causes of action—never came to pass.

Plaintiff also asserts that it stated a cause of action for tortious interference with contractual relationships by defendant James Mrozinski because there was a possibility that Mrozinski had improper motivations or acted maliciously in agreeing to buy the land from the Forstners. However, plaintiff presents no evidence of such bad faith or malice on Mrozinski's part, and nothing in the record suggests any. As with the fraud claim against the Forstners, we will not create a judicial rule saying that mere business competition in the market place, when successful, necessarily gives rise to an implication of bad faith or malice. To do so would fundamentally undermine the free enterprise system, and plaintiff has cited no authority that would allow us to so hold. Because there was no evidence of any malice or improper motivation by Mrozinski, the trial court also correctly found that plaintiff's suit against Mrozinski was frivolous, and properly awarded Mrozinski sanctions under MCR 2.114(E) and (F) and 2.625(A)(2). We therefore affirm this sanctions award.

Plaintiff also asks us to vacate the sanctions award to the Forstners. Plaintiff incorrectly asserts that the trial court awarded sanctions to the Forstners because it regarded plaintiff's claim against the Forstners, like its claim against Mrozinski, as frivolous. This was not the basis of the sanctions award to the Forstners. Rather, the trial court awarded sanctions under the mediation rule, MCR 2.403(O)(1), which states in relevant part, "If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation." MCR 2.403(O)(2)(c) defines "verdict" as including "a judgment entered as a result of a ruling on a motion after rejection of the case evaluation." On November 6, 2002, a panel of mediators unanimously found that plaintiff had no cause of action against any of the defendants, and plaintiff proceeded with the suit nonetheless. The court properly awarded mediation sanctions to the Forstners.

Affirmed.

/s/ Jessica R. Cooper
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra