STATE OF MICHIGAN

COURT OF APPEALS

PROFESSIONAL BUSINESS SERVICES, INC., Plaintiff-Appellant,	UNPUBLISHED November 17, 2005
v	No. 254826 Kent Circuit Court
CREDIT BUREAU OF GREATER LANSING, INC., d/b/a MERCHANTS SERVICE BUREAU, INC., Defendant-Appellee.	LC No. 01-009826-CZ

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

In this action alleging violations of the Michigan Antitrust Reform Act (MARA), MCL 445.771 *et seq.*, and tortious interference with a business relationship or expectancy, plaintiff appeals by right from the trial court's order granting the motion of defendant Credit Bureau of Greater Lansing, Inc., d/b/a Merchants Service Bureau, Inc. (CBGL),[1] for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff is a Grand Rapids collection agency engaged in the business of collecting delinquent accounts owed to its customers in western Michigan. Defendant Trans Union is a national credit reporting business. Defendant MSB Services, Inc. (MSB), operated as a collection agency in western Michigan from 1970 to 1998; during this time, MSB additionally operated as a regional credit reporting agency under contract with Trans Union. On April 29, 1998, defendant CBGL purchased MSB's assets, including MSB's interest in the name "Merchants Service Bureau," and it continued to operate as a collection and credit reporting agency under that name.

Plaintiff brought a two-count complaint against CBGL, Trans Union, and MSB, alleging that, every year from 1970 to 1998, it formally requested in writing that MSB allow it to forward

[1] The other named defendants below, Trans Union and MSB Services, Inc. (formerly d/b/a Merchants Service Bureau, Inc.), were dismissed from the action and are not parties to this appeal. Unless otherwise indicated, the term "defendant" as used in this opinion refers only to CBGL.

information as to its clients' delinquent accounts for inclusion in the credit reports prepared by MSB, and that MSB refused its requests. Plaintiff further alleged that on September 30, 1998, it again formally requested in writing that MSB allow it to forward this same information, and that this request went unanswered. Trans Union denied similar requests on the basis that the sole authority to allow such reporting lay with MSB and, later, defendant, as its agents in the relevant market.[2] The exclusion of its clients from these credit reports, plaintiff contended, resulted in substantial pecuniary damage due to lost commissions and lost business. Plaintiff alleged that the named defendants acted with a specific intent to restrain trade and eliminate competition in the relevant market based on their desire to expropriate plaintiff's collection customers for their own benefit, and that these actions constituted (1) an unlawful combination or conspiracy in restraint of trade in violation of MCL 445.772, (2) an attempt to establish a monopoly of trade in the relevant market for the purpose of limiting competition in violation of MCL 445.773, and (3) tortious interference with its business relationships and expectancies.

When, following discovery, defendant moved for summary disposition pursuant to MCR 2.116(C)(10),[3] the primary dispute between the parties concerned a September 30, 1998, letter authored by plaintiff's president and directed to Mr. Jerry Heyboer, vice president of MSB, at a street address in Grand Rapids, Michigan. Defendant presented evidence that Heyboer had resigned from his position with MSB earlier in September and that, on the same day, defendant's offices had been relocated to Ada, Michigan; defendant presented additional evidence, by way of affidavit, that it never received the letter and, in fact, that it was unaware of plaintiff's desire to credit report until shortly before this litigation commenced. Accordingly, defendant contended, it had never engaged in any conduct rejecting plaintiff's advances. Plaintiff, on the other hand, presented the affidavit of its president that, although he had incorrectly addressed the letter, he had personally mailed the letter and had not received it back as undeliverable. Pursuant to the so-called "mailbox rule," plaintiff contended, a presumption arose that the properly mailed letter to Heyboer was received by defendant at its new address.

The trial court granted defendant's motion, noting first that the mailbox rule, under *Lowry v Saginaw Specialty Co*, 128 Mich 246, 248; 87 NW 194 (1901), required that the mail at issue be "*properly addressed*." Because plaintiff's letter was addressed to Heyboer after he had retired and was addressed to the wrong address, the trial court opined, the mailbox rule was inapplicable.

Significantly, the trial court, in granting summary disposition, did not rest solely, or even primarily, on the mailbox rule and on defendant's alleged failure to receive plaintiff's letter. Rather, the court additionally held (1) that plaintiff's antitrust claim failed because, assuming

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[2] The MARA defines "relevant market" as "the geographical area of actual or potential competition in a line of trade or commerce, all or any part of which is in this state." MCL 445.771(b).

[3] The trial court had previously granted partial summary disposition in favor of defendant with respect to successor liability, holding that plaintiff's claim was barred as to any requests for inclusion that occurred prior to defendant's acquisition of MSB on April 29, 1998. This holding is not at issue on appeal.

arguendo that the defendant had acted improperly, plaintiff had failed to come forward with any evidence that defendant did anything in concert with any party, former party, or nonparty as required under MCL 445.772; (2) that, in addition to "serious evidentiary problems" with respect to plaintiff's allegation that defendant rebuffed any request to credit report, there was no showing that defendant had done anything unlawful or tortious, because simply refusing to do business with plaintiff, and thereby putting it at a competitive disadvantage—assuming that these allegations were true—did not constitute illegal or tortious conduct; and (3) that plaintiff's sundry allegations concerning the actions of the predecessor MSB and Heyboer vis-à-vis plaintiff were meaningless in light of the previous dismissal of all pre-1998 claims against defendant.

Plaintiff's *solitary* argument on appeal is that a genuine issue of material fact was presented with respect to defendant's receipt or non-receipt of the September 30, 1998, letter, and that the trial court therefore erred in granting defendant's motion for summary disposition. Plaintiff contends that the mailbox rule creates a presumption that its letter was received by defendant and that, irrespective of application of the mailbox rule, its president's affidavit created a genuine fact issue with respect to whether defendant received the letter.

Defendant, on the other hand, argues that plaintiff's appeal is not only devoid of merit but is *meaningless* because plaintiff has failed to challenge the bulk of the trial court's rulings concerning the two claims against defendant, which were completely unconnected with defendant's receipt or non-receipt of the September 30, 1998, letter.

This Court reviews de novo the grant or denial of a motion for summary disposition. *Lind v Battle Creek*, 470 Mich 230, 238; 681 NW2d 334 (2004). A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Id.* "When a motion under [MCR 2.116(C)(10)] is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial." MCR 2.116(G)(4). The trial court may grant summary disposition under MCR 2.116(C)(10) if, considering the substantively admissible evidence in a light most favorable to the nonmoving party, there is no genuine issue concerning any material fact and the moving party is entitled to judgment as a matter of law. *Lind*, *supra* at 238.

We agree with defendant and hold that the trial court properly declined to apply the mailbox rule to plaintiff's letter. The mailbox rule presumption applies only to documents that are properly addressed. See *Goodyear Tire & Rubber Co v Roseville*, 468 Mich 947; 664 NW2d 751 (2003). Plaintiff's own evidence establishes that its letter was not "properly addressed." Thus, the mailbox rule, upon which plaintiff relies almost exclusively on appeal, is not applicable to this dispute.

Without the benefit of this presumption, plaintiff has failed to establish the existence of a genuine issue of material fact with respect to receipt of its letter. Rather, plaintiff's evidence merely supports the conclusion that plaintiff's president placed in the mail a letter directed to the wrong recipient and bearing the wrong address. Further, the affidavits submitted by defendant establish that defendant did *not* receive the letter. Because defendant's rejection of the letter's proposal constitutes the gravamen of plaintiff's claims and the sole conduct upon which the MARA and tort claims are founded, summary disposition was appropriately granted.

Moreover, it is axiomatic that a party's failure to raise or sufficiently brief an issue on appeal renders the issue abandoned. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 471; 628 NW2d 577 (2001). Because plaintiff's appeal is narrowly limited to the trial court's comments with respect to the September 30, 1998, letter and wholly neglects to address any of the other bases upon which the trial court's judgment rests, any challenges to those additional rationales are deemed abandoned and will not be addressed by this Court.

Affirmed. Defendant may tax costs.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Patrick M. Meter