

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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EARL KRUPP, d/b/a KRUPP AUTO SALES, and  
FRED KRUPP,

UNPUBLISHED  
February 12, 2009

Plaintiffs-Appellants,

v

PRO-TECH AUCTION, INC., and  
PROGRESSIVE MICHIGAN INSURANCE  
COMPANY,

No. 281066  
Genesee Circuit Court  
LC No. 06-084114-CK

Defendants-Appellees.

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Before: Wilder, P.J., and Cavanagh and Murray, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order of judgment in favor of defendants. The order of judgment resulted from the court's order granting a motion for summary disposition in favor of defendant, Progressive Michigan Insurance Company ("Progressive"), on all counts, and an order granting defendant, Pro-Tech Auction, Inc.'s ("Pro-Tech"), motion in limine to exclude evidence on all counts. We affirm.

This case arises out of a dispute between Fred Krupp and Pro-Tech. Krupp tried to sell a 2003 Chevrolet Trailblazer through an auction at Pro-Tech. Krupp had originally purchased the Trailblazer through a Pro-Tech auction, from Progressive, an automobile insurer. Progressive sold the vehicle with a clear title even though it had declared the vehicle a "total loss" and purchased it from one of its insureds. Krupp paid Progressive \$2,600 for the vehicle, made \$5,400 in repairs and eventually sold it for a profit of \$1,500. Progressive discovered the titling mistake when the individual who attempted to purchase the vehicle from Krupp attempted to insure it with Progressive. When the buyer discovered that the Trailblazer was titled incorrectly – it should have had a salvage title, instead of a clear title – he returned the vehicle to Pro-Tech and was reimbursed. Pro-Tech also paid Krupp for the purchase because Krupp did not cause the titling mistake. The sale price was \$9,500. When Pro-Tech inspected the vehicle, it discovered what it considered to be faulty workmanship done by Krupp in repairing the vehicle and was only able to resell the vehicle, with a salvage title, for \$4,000. Pro-Tech then requested that Krupp help make up the difference and pay Pro-Tech \$4,500. Krupp refused and, as a result, Krupp and his company, Krupp Auto Sales, were banned from participating in Pro-Tech's auctions.

After Pro-Tech banned Krupp, plaintiffs sued both Progressive and Pro-Tech, alleging breach of contract, misrepresentation, fraud, tortious interference with business relations, as well as seeking relief under the theories of promissory estoppel and revocation of the contract. As noted, through several orders the trial court dismissed the entire case prior to trial.

On appeal, plaintiffs first argue that the trial court erred in granting Progressive's motion for summary disposition pursuant to MCR 2.116(C)(10). We disagree.

A decision to grant a motion for summary disposition is reviewed de novo. *Hines v Volkswagen of America, Inc.*, 265 Mich App 432, 437; 695 NW2d 84 (2005). When reviewing a motion for summary disposition under MCR 2.116(C)(10), this Court must consider the record in the same manner as the trial court. *Id.* Thus, we must consider all the pleadings and evidence in a light most favorable to the nonmoving party, *id.*, as the motion tests whether there exists a genuine issue of material fact. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). "Summary disposition is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Brown v Brown*, 478 Mich 545, 552; 739 NW2d 313 (2007).

The issue underlying most of the trial court's ruling on Progressive's motion is the existence of damages. Progressive argued in its motion that any damages incurred by plaintiffs could not be causally linked to any action by Progressive. Plaintiffs argue on appeal that Pro-Tech's ban of Krupp and Krupp Auto Sales from their auction was a foreseeable consequence of Progressive's titling mistake and cost plaintiffs future income which they should recover as damages. The trial court, however, primarily focused on the sale and resale of the Trailblazer and whether plaintiffs suffered any direct loss from those transactions. We note that the trial court failed to address plaintiffs' argument regarding damages. Nevertheless, we review a decision to grant a motion for summary disposition de novo. *Hines, supra* at 437.

With respect to plaintiffs' breach of contract claim, "damages recoverable for a breach of contract are those that arise naturally from the breach or those that were in contemplation of the parties at the time the contract was made." *Lawrence v Will Darrah & Associates, Inc.*, 445 Mich 1, 6; 516 NW2d 43 (1994) (quotation and citation omitted). Clearly, the ancillary dispute between Krupp and Pro-Tech was not in contemplation of the parties at the time the contract was made. The only question is whether this dispute "arises naturally" from the alleged breach. The only connection between the two actions is that the original transaction provided the vehicle which is the subject of the disputed transaction. Pro-Tech did not ban Krupp because the title on the Trailblazer was faulty; rather, the parties disagreed regarding Krupp's repair work on the vehicle. Plaintiffs did not offer any basis from which a reasonable factfinder could conclude that a dispute involving a transaction between Pro-Tech and Fred *arose* out of the faulty title, simply because the faulty title is the reason that they engaged in the transaction. There was no genuine issue of material fact regarding whether plaintiffs suffered recoverable damages as a result of Progressive's alleged breach of contract.<sup>1</sup>

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<sup>1</sup> Plaintiffs voluntarily dismissed their "revocation of contract" count, with respect to (continued...)

With respect to plaintiffs' tort claims, damages are recoverable if they result directly from the wrongful act and the damages are "the legal and natural consequences of the wrongful act, and are such as, according to common experience and the usual course of events, might reasonably have been anticipated." *Ensink v Mecosta Co Gen Hosp*, 262 Mich App 518, 524-525; 687 NW2d 143 (2004) (quotation and citation omitted). Additionally, the question of whether damages might reasonably have been anticipated is generally a question for the factfinder. *Id.* at 525. Further, "[t]his Court is liberal in finding a genuine issue of material fact." *Benton v Dart Properties*, 270 Mich App 437, 444; 715 NW2d 335 (2006).

Nevertheless, the question of damages does not present a genuine issue of material fact. There is no conflicting evidence upon which the question of damages rests; the question is only whether the eventual ban by Pro-Tech, assuming it resulted in injury to plaintiffs, was a reasonably anticipated consequence of Progressive's alleged titling mistake. *Hines, supra* at 437 ("if the evidence . . . is conflicting, summary disposition is improper." [Emphasis in original]). The dispute between Krupp and Pro-Tech resulted from their own conduct and inability to resolve a business disagreement, regardless of the disagreement's subject matter. There is no evidence that Progressive had any hand in the relationship between the Krupps and Pro-Tech, either before the sale of the Trailblazer or afterward. Reasonable minds could not differ on the question of whether Krupp's future income through Pro-Tech could have reasonably been anticipated as damages flowing from Progressive's alleged titling mistake. Thus, the trial court did not err in granting summary disposition with respect to plaintiffs' claims of fraud, misrepresentation, and tortious interference of a business relationship on the ground that plaintiffs had not demonstrated any genuine issue of material fact regarding recoverable damages from Progressive. See *Lumley v Univ of Michigan Bd of Regents*, 215 Mich App 125, 130; 544 NW2d 692 (1996) (damages are an essential element of a tort claim).

Plaintiffs argue, in the alternative, that Pro-Tech was acting as an ostensible agent of Progressive when it transacted business with and eventually banned Krupp from its auctions, and thus Progressive is liable for the damages wrought by Pro-Tech's actions. Although we conclude, *infra*, that Pro-Tech's actions did not result in recoverable damages, there is also no basis for plaintiffs' contention that Pro-Tech was acting under the apparent authority of Progressive. In order to establish such apparent authority, plaintiffs must demonstrate that Progressive's conduct induced plaintiffs' reasonable belief that it could rely on Pro-Tech's authority to act on behalf of Progressive. *VanStelle v Macaskill*, 255 Mich App 1, 9-10; 662 NW2d 41 (2003). Although Pro-Tech was actually authorized to sell the Trailblazer on Progressive's behalf, there is no indication of any continuing relationship between Progressive and Pro-Tech after the completion of the sale. Plaintiffs do not offer any evidence to indicate why Krupp would have a *reasonable* belief that Pro-Tech was acting on Progressive's behalf in the course of their private business dispute months after the completion of the sale.

Plaintiffs' claim of promissory estoppel requires proof of: "(1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee, (3) which in fact produced reliance or forbearance of that nature, and (4) in circumstances such that the promise must be enforced if injustice is to be avoided."

(...continued)

Progressive, at the motion hearing.

*Zaremba Equip, Inc v Harco Nat'l Ins Co*, 280 Mich App 16, 41; \_\_\_ NW2d \_\_\_ (2008). As the trial court noted, the only promises made by Progressive were with respect to the title and sale of the Trailblazer. Plaintiffs have not demonstrated any injury for which the enforcement of these promises – specifically, the title of the Trailblazer – would provide a remedy. Plaintiffs do not seek a correctly titled Trailblazer. Thus, there was no genuine issue of material fact with respect to plaintiffs’ claim of promissory estoppel, and the trial court did not err in granting Progressive’s motion for summary disposition on all counts.

Plaintiffs next argue that the trial court erred in granting Pro-Tech’s motion in limine to exclude all evidence on all counts. We hold that the trial court’s procedural errors were harmless and that the court did not abuse its discretion in granting the motion.

The first argument presented by plaintiffs is that the trial court erred in hearing Pro-Tech’s motion because it was dispositive of the entire case and it was not timely filed.<sup>2</sup> Interpretations of court rules are questions of law that are reviewed de novo. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008). Plaintiffs first contend that the motion was actually a motion for summary disposition, which must be filed 21 days before the date of the hearing on the motion, MCR 2.116(G)(1)(a)(i). It is true that the motion was functionally identical to a motion for summary disposition under MCR 2.116(C)(10). Whether the motion should be characterized as a motion for summary disposition is not essential, however. MCR 2.119(C)(1) dictates that *any* written motion be filed and served nine days before the time set for the hearing, or seven days if hand-delivered. This motion was filed on the morning of trial and heard by the trial court immediately.

Nevertheless, the error was harmless as upholding the judgment would not be “inconsistent with substantial justice.” MCR 2.613(A). Plaintiffs argue that the evidence *must* be argued in front of a jury in order that the jury make factual determinations necessary to the case. Plaintiffs fail to demonstrate, however, any conflicts in the evidence that need to be resolved. The parties agree on the events; they disagree regarding whether the loss of income through Pro-Tech’s auctions constitutes recoverable damages arising out of the Trailblazer’s mistaken title. Plaintiffs’ plea to present this evidence to a jury is empty without an explanation regarding what factual determinations would be made by a jury. Pro-Tech’s motion in limine did not challenge the veracity of any of this evidence, but asserted that the undisputed facts required judgment in its favor. Further, as we conclude later on in this opinion, the trial court did not abuse its discretion in granting Pro-Tech’s motion on the merits. Plaintiffs have not demonstrated any prejudice in the trial court’s untimely hearing of Pro-Tech’s motion.

Plaintiffs also argue that the trial court erred in excluding all evidence pertaining to each of plaintiffs’ claims. We disagree. A trial court’s decision to exclude or admit evidence is

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<sup>2</sup> Although plaintiffs argue that a motion in limine may not result in the final order of the case, the case law cited by plaintiffs does not support their contention. Further, the final order in this case was the order of judgment dismissing the case pursuant to MCR 2.116(I)(1), because evidence pertaining to all of plaintiffs’ claims had been excluded pursuant to Pro-Tech’s motion in limine to exclude evidence.

reviewed for an abuse of discretion. *Taylor v Mobley*, 279 Mich App 309, 315; \_\_\_ NW2d \_\_\_ (2008). A trial court abuses its discretion where its decision falls outside the range of principled outcomes. *Id.*

Our discussion of damages with respect to Progressive’s motion for summary disposition is broadly applicable here, as well. We will briefly discuss any further arguments with respect to each count.

Plaintiffs argue that they have an “expectancy to continue to do business with” Pro-Tech, which they lost when Pro-Tech breached their contract. The trial court relied upon two long-standing cases that hold that a private business has the right to exclude whomever it chooses from transacting business with it. See *Flanigan v Chase*, 291 Mich 463, 467; 289 NW 216 (1939); *Breitenbach v Trowbridge*, 64 Mich 393, 397-398; 31 NW 402 (1887). Plaintiffs have not countered these citations, and the trial court did not abuse its discretion in excluding the loss of an expected future business relationship evidence as damages for a breach of contract.<sup>3</sup>

Plaintiffs’ fraud and misrepresentation claims also fail for want of damages, as there is no evidence that the ban “might reasonably have been anticipated” from the title mistake at the original sale through Pro-Tech. *Ensink, supra* at 524-525. The trial court did not abuse its discretion.

With respect to the count of tortious interference with business relations, the trial court held that this tort requires that plaintiffs demonstrate that Pro-Tech was a third-party to the business relationship in question, citing *Reed v Michigan Metro Girl Scout Council*, 201 Mich App 10, 13; 506 NW2d 231 (1993). Indeed, this Court has stated, “[a] plaintiff, who is party to a contract, cannot maintain a cause of action for tortious interference against another party to the contract.” *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 382; 689 NW2d 145 (2004). The business relationship from which plaintiffs allege interference was with Pro-Tech. Plaintiffs have not provided any authority to dispute this conclusion. Thus, the trial court did not err with respect to this count.

Finally, with respect to plaintiffs’ count of promissory estoppel, plaintiffs have not demonstrated any injury for which the enforcement of a promise by Pro-Tech would provide a remedy. *Zaremba, supra* at 13. The trial court did not err in granting Pro-Tech’s motion in limine to exclude evidence.

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<sup>3</sup> With respect to the “revocation of contract” claim, the trial court correctly concluded that there was no basis for revoking the contract because plaintiffs did not want to undo the sale and resale of the Trailblazer, from which they made a profit. Plaintiffs have not provided any comprehensible theory for this claim. The trial court did not abuse its discretion.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Mark J. Cavanagh

/s/ Christopher M. Murray