

STATE OF MICHIGAN
COURT OF APPEALS

COMERICA BANK,

Plaintiff/Counter-Defendant-
Appellee,

v

AIJ PROPERTY L.L.C., BODI ENTERPRISES,
INC., ISSAM JARJIS, and JAMAL JARJIS,

Defendants/Counter-Plaintiffs-
Appellants.

UNPUBLISHED
November 2, 2010

No. 292464
Wayne Circuit Court
LC No. 08-019007-CK

Before: O'CONNELL, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

Defendants appeal as of right from a trial court order granting plaintiff summary disposition on both its principal claims and defendants' counterclaims, and awarding plaintiff a judgment in the principal amount of \$800,507.65. Only the dismissal of defendants' counterclaims is at issue on appeal. We affirm.

We review a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Plaintiff moved for summary disposition of defendants' counterclaims under MCR 2.116(C)(8) and (C)(10). The trial court did not specify the subrule on which it relied to dismiss the claims. A motion under MCR 2.116(C)(8) tests the legal sufficiency of a complaint by the pleadings alone. *Id.* at 119-120. The motion should be granted "only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* at 120 (citation and internal quotations omitted). Summary disposition may be granted under MCR 2.116(C)(10) when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Id.*

Defendants' contract claim for breach of an implied covenant of good faith and fair dealing was properly dismissed pursuant to MCR 2.116(C)(8) because "Michigan does not recognize a cause of action for breach of the implied covenant of good faith and fair dealing." *Fodale v Waste Mgt of Mich, Inc*, 271 Mich App 11, 35; 718 NW2d 827 (2006). Defendants' reliance on MCL 440.1203 of the Uniform Commercial Code ("UCC) for a contrary conclusion is misplaced. Defendants' amended counter-complaint did not allege that the duty to act in good faith and fair dealing was premised on MCL 440.1203. Further, the obligation of good faith in

the performance or enforcement of a contract prescribed in that statute applies only to a “contract or duty within” the UCC and is not a basis for an independent cause of action. The comment to MCL 440.1203 provides, in relevant part:

This section does not support an independent cause of action for failure to perform or enforce in good faith. Rather, this section means that a failure to perform or enforce, in good faith, a specific duty or obligation under the contract, constitutes a breach of that contract or makes unavailable, under the particular circumstances, a remedial right or power. This distinction makes it clear that the doctrine of good faith merely directs a court towards interpreting contracts within the commercial context in which they are created, performed, and enforced, and does not create a separate duty of fairness and reasonableness which can be independently breached.

See also, *Gen Motors Corp v Dep’t of Treasury*, 466 Mich 231, 240; 644 NW2d 734 (2002) (MCL 440.1203 reinforces a contractual undertaking). Here, defendants improperly rely on MCL 440.1203 as creating a cause of action, independent of any other contractual obligation. The claim was properly dismissed pursuant to MCR 2.116(C)(8) because it is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.

With respect to defendants’ claim for tortious interference with a business relationship, this claim was also properly dismissed under (C)(8). The elements of this claim are (1) the existence of a valid business relationship or expectancy, (2) knowledge of the relationship or expectancy on the part of the defendant, (3) an intentional interference by the defendant *inducing or causing* a breach or termination of the relationship or expectancy, and (4) *resultant* damage to the plaintiff. *BPS Clinical Laboratories v Blue Cross & Blue Shield of Mich (On Remand)*, 217 Mich App 687, 698-699; 552 NW2d 919 (1996) (emphasis added). A claim of intentional interference inducing or causing a breach of a business relationship requires that the plaintiff demonstrate that the defendant acted both intentionally and improperly or without justification. *Dalley v Dykema Gossett, PLLC*, ___ Mich App ___; ___NW2d ___ (Docket No. 289046, issued February 11, 2010). “Where the defendant’s actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference.” *BPS Clinical Laboratories*, 217 Mich App at 699.

Defendants’ counter-complaint does not contain any allegations indicating that plaintiff’s alleged pressuring of AIJ to sell the business, cooperate with their customer, and provide confidential information were done for any improper reason. Defendants assert that plaintiff directed AIJ to share confidential information with plaintiff’s customer in order to encourage a sale of the gas station property and business, but defendants do not explain why plaintiff’s efforts to encourage a sale of the financially troubled business should be considered improper. In the absence of any allegation or contention that plaintiff’s actions were motivated by an improper purpose, dismissal of the tortious interference claim was not improper.

Because we conclude that the trial court properly granted summary disposition of defendant’s counterclaims under (C)(8), we need not consider whether the trial court could have properly granted summary disposition under (C)(10). However, we note that generally, summary disposition under MCR 2.116(C)(10) is premature if granted before discovery on a disputed issue is complete. *Bellows v Delaware McDonald’s Corp*, 206 Mich App 555, 561; 522

NW2d 707 (1994). In this particular case, the motion brought under (C)(10) appears to have been clearly premature, because it was filed on March 13, 2009, 19 days before the scheduling order was entered on April 1, 2009, which set the cutoff for discovery at July 30, 2009.¹ Thus, discovery as to the counterclaim had not even *begun*, let alone been completed. Nevertheless, because summary disposition of the counterclaims under (C)(8) was appropriate, the (C)(10) motion makes no difference in this case.

Affirmed.

/s/ Peter D O'Connell
/s/ Deborah A. Servitto
/s/ Douglas B. Shapiro

¹ We note that summary disposition was granted on April 27, 2009, a mere 18 business days after the scheduling order was entered. Although a (C)(8) motion is perfectly reasonable at that time, we can conceive of few cases where a (C)(10) motion would be appropriate.