

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT BACKIE,

Plaintiff/Counter-Defendant-
Appellant,

V

COMERICA, INC.,

Defendant/Counter-Plaintiff/Third-
Party Plaintiff/-Appellee,

and

ROBERT L. BACKIE LIVING TRUST,

Third-Party Defendant-Appellant.

UNPUBLISHED

November 16, 2010

No. 293602

Oakland Circuit Court

LC No. 2008-094529-CZ

Before: SERVITTO, P.J., and ZAHRA and DONOFRIO, JJ.

PER CURIAM.

Plaintiff and third-party defendant (hereinafter “appellants”) appeal as of right from a circuit court judgment entered in favor of defendant for \$537,488.38 on defendant’s counterclaim for breach of contract based on a guaranty. Because the trial court correctly granted defendant’s motion for summary disposition with respect to plaintiff’s claim for intentional interference with a business relationship and because appellants have presented no grounds for this Court to interfere with the trial court’s judgment, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The relevant facts are set forth in the trial court’s February 19, 2009, opinion and order granting defendant’s motion for summary disposition.

This action arises from two loans (hereinafter the “Ancon Loan” and the “H.E. Services Loan”) that were issued on November 1, 2002 to two companies

owned by Plaintiff. On the same day, Plaintiff,^[1] Third Party Defendant and H.E. Services executed a Guaranty that “unconditionally and absolutely” guaranteed payment to Comerica of all existing and future indebtedness of Ancon to Comerica. A Security Agreement for the Ancon Loan was also executed by Plaintiff. The Security Agreement defines indebtedness to include any and all obligations or liability whether absolute or contingent, direct or indirect, voluntary or involuntary, liquidated or un-liquidated, joint or several, known or unknown. Both loans went into default and Plaintiff and H.E. Services entered into a settlement agreement with Defendant, which required the set up of a [McTevia] Trust [the “Trust”] to dispose of the assets of H.E. Services and use of the proceeds to pay off “any outstanding secured indebtedness” owed by H.E. Services to Comerica, then payments would be made to Plaintiff. Comerica received payments from the Trust that were used to pay, in full, the H.E. Loan. After the H.E. Loan was satisfied, Comerica then applied the payments from the Trust to the Ancon Loan. Plaintiff filed the instant lawsuit alleging tortious [sic] interference with contract and seeking an accounting. Plaintiff argues that Comerica was not entitled to apply the payments to the Ancon Loan because the Ancon Loan was not a secured indebtedness of H.E. Services based on the inadequate description of the collateral in the relevant documents. Comerica filed the Counter/Third Party Complaint alleging breach of the guaranty.

The trial court granted defendant’s motion for summary disposition pursuant to MCR 2.116(C)(10) with respect to plaintiff’s claims and with respect to liability on defendant’s counterclaim and third-party claim. The trial court stated:

The Court finds that the Ancon Guaranty is unambiguous and requires Backie, the Backie Trust and H.E. Services’ repayment of all indebtedness that was guaranteed to Comerica. This guaranteed indebtedness includes the Ancon Loan, which states on its face that it constitutes a “secured” indebtedness. The Court finds that the Security Agreement is further evidence that the Ancon Loan is a secured debt of H.E. Services. Therefore, the Court finds that summary disposition is appropriate on the Counter and Third Party Complaints because there is no defense as to their liability under the Guaranty. The Court finds that Defendant is entitled to dismissal of the Complaint because the elements of tortious [sic] interference cannot be established as there was no breach by Defendant and Comerica has [sic] submitted documents that evidence an accounting was provided to Plaintiff.

Defendant moved for entry of judgment on damages, which the trial court initially denied without prejudice in an order dated March 18, 2009, because discovery was still open. After

¹ The parties do not dispute that plaintiff was a guarantor. The guaranty shows that plaintiff signed the guaranty as C.E.O. of H.E. Services and HES, Co., and as the sole trustee of third-party defendant.

discovery closed, defendant filed a renewed motion for entry of judgment. Following a hearing on July 22, 2009, the trial court granted the motion for entry of judgment against appellants. Appellants now appeal as of right.

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.” This Court reviews a trial court’s decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

In *Dalley v Dykema Gossett, PLLC*, 287 Mich App 296, 323-324; 788 NW2d 679 (2010), this Court recently explained:

The elements of tortious interference with a business relationship are the existence of a valid business relationship or expectancy, knowledge of the relationship or expectancy on the part of the defendant, an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and resultant damage to the plaintiff.

To fulfill the third element, intentional interference inducing or causing a breach of a business relationship, a plaintiff must demonstrate that the defendant acted both intentionally and either improperly or without justification. To establish that a defendant’s conduct lacked justification and showed malice, the plaintiff must demonstrate, with specificity, affirmative acts by the defendant that corroborate the improper motive of the interference. Where the defendant’s actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference. [Citations and internal quotation marks omitted.]

Appellants contend that defendant interfered with the settlement agreement because defendant falsely represented to the McTevia Trust (the “Trust”) that it was a “secured” creditor with respect to monies owing on the Ancon Term Note. Appellants rely on statutory requirements for establishing a security agreement, including the identification of specific collateral, and contend that the Ancon Term Note and the guaranty lacked the specification of collateral necessary to create an enforceable security interest. However, defendant also relied on a separate “Security Agreement.” In that security agreement, H.E. Services granted a “security interest” in specified collateral to secure payment “of all existing and future indebtedness” to defendant of Ancon “and/or” H.E. Services. Appellants do not explain why this security agreement was inadequate for defendant to be deemed a “secured” creditor.

Even if appellants could identify some technical flaw in the creation of a security interest, there was no question of fact concerning intentional interference inducing or causing a breach of a business relationship between appellants and the Trust. “Where the defendant’s actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference.” *Dalley*, 287 Mich App at 324 (citation and internal quotation marks omitted). In light of the applicable agreements, defendant’s identification of itself as a “secured” creditor in pursuit of payment from the Trust for monies owed by H.E. Services to defendant as a result of the guaranty does not constitute interference. The trial court correctly granted defendant’s

motion for summary disposition with respect to plaintiff's claim for intentional interference with a business relationship.

Appellants also have not shown that the trial court erred in granting summary disposition to defendant with respect to the breach of contract counterclaim based on the guaranty. Defendant presented an affidavit stating that the Ancon Term Note was in default and the amount of indebtedness. Defendant also presented a guaranty that applied to "all existing and future indebtedness" to defendant. Appellants do not dispute their liability under the guaranty. Rather, they claim that defendant failed to show a breach because it did not "acknowledge" that defendant "took possession" of an industrial facility in 2004 worth over \$437,000 as payment on the amount owed by Ancon, and defendant's documents did not show that any credit was given for the "transfer" of the property to defendant. However, appellants did not present evidence that the ownership of the property was transferred to defendant. In fact, deposition testimony presented by appellants indicated that although defendant exercised authority with respect to offers made to purchase the property, defendant's authority was because defendant held a note on the property, not because defendant owned it. Thus, appellants did not show that the ownership of the property was transferred to defendant, much less refute the evidence presented by defendant that the Ancon Term Loan was in default and that appellants were liable under the guaranty. We are not persuaded by appellant's argument that defendant's evidence was deficient because it did not show a credit on the Ancon debt for the property.

Also, appellants have not presented a persuasive reason to overturn the judgment entered by the trial court. Appellants' argument focuses on the industrial facility discussed in the previous issue. They claim that the amount of indebtedness was not established because there were questions concerning whether credit was given for the value of the facility. However, questions concerning the value of that facility did not preclude entry of the judgment because, as previously explained, there was no evidence that the ownership of the property had been transferred to defendant. Furthermore, appellants have not provided any legal basis for asserting that defendant's ability to enforce the guaranty against them was limited because of this collateral. As the trial court stated, "Comerica is not obligated to an either or decision. Comerica does not have to sell the property and deduct that amount from what Mr. Backie owes on the guarantee."

Appellants address the effect of a waiver in the guaranty. The guaranty includes a waiver ("to the extent not expressly prohibited by applicable law") of any right to require defendant to "proceed against any person or property . . ." Appellants assert that this waiver applies only to the decision whether to proceed against collateral, not to the disposition of the collateral after the decision. Appellants cite MCL 440.9602 and assert that a secured debtor may not waive his rights to the disposition of collateral.

Appellants' arguments are not persuasive. First, they do not cite any authority to support their position that the waiver only concerns the decision whether to proceed against the collateral. As this Court observed in *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959):

[A] mere statement without authority is insufficient to bring an issue before this Court. It is not sufficient for a party "simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the

basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” Accordingly, we need not address this issue, and therefore, decline to do so.

Second, with respect to their argument that a secured debtor may not waive his rights to disposition of collateral, appellants cite MCL 440.9602. As defendant points out, however, article 9 of the Uniform Commercial Code does not apply to “[t]he creation or transfer of an interest in or lien on real property” with certain exceptions that are not applicable here. MCL 440.9109(4)(k)(i). See *In re Estate of Moukalled*, 269 Mich App 708, 715-716; 714 NW2d 400 (2006) (addressing a similar, predecessor provision in former MCL 440.9104[j]). Third, even if appellants had presented a basis for concluding that the waiver was ineffective, they have not presented any basis for concluding that defendant was obligated to proceed against the collateral before enforcing the guaranty. In sum, appellants have not presented any grounds for this Court to interfere with the trial court’s judgment.

Affirmed. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Deborah A. Servitto

/s/ Brian K. Zahra

/s/ Pat M. Donofrio