STATE OF MICHIGAN

COURT OF APPEALS

HANTZ GROUP, INC.,

Plaintiff-Appellant,

v

JOSEPH HANEY, PAUL MATTES and STERLING AGENCY, INC.,

Defendants-Appellees.

UNPUBLISHED
November 30, 2010

No. 292954
Wayne Circuit Court
LC No. 08-121562-CZ

Before: O'CONNELL, P.J., and BANDSTRA and MURRAY, JJ.

PER CURIAM.

Plaintiff Hantz Group, Inc., appeals as of right the June 12, 2009, order granting defendants' motions for summary disposition on plaintiff's claims of defamation and tortious interference with a business relationship. We affirm.

I. FACTS

The circumstances giving rise to this case are undisputed. Plaintiff Hantz Group, Inc. is an insurance and financial services company. Plaintiff also owned a professional soccer team known as the Detroit Ignition. Defendant Sterling Agency, Inc., is a property and casualty insurance company, and is one of plaintiff's competitors. Defendants Paul Mattes and Joseph Haney are officers of Sterling, and were, at all relevant times, members of Our Lady Star of the Sea, a Catholic parish and school located in Grosse Pointe Woods.

In October 2007, the Detroit Ignition attended "Harvest Night," a parish gathering at Star of the Sea school. Harvest Night was a school fundraising event, planned by a committee of school parents, to which the parish members were invited. During Harvest Night, surveys were handed out by plaintiff. Mattes testified that:

> At the Harvest Night event, there was [sic] people collecting information on parish members, names, phone numbers, and we had asked those people at the Harvest Night from the Hantz Group if they would be calling, using this information for soliciting financial products and insurance services, at which time they said, "Yes."

Divisha Kapur and Jimmy Mazzola worked for plaintiff and both communicated exclusively with Michelle Hearns, the night receptionist at Star of the Sea. As a result of Hearns's conversations with plaintiff's representative, Patricia Stumb, the principal at Star of the Sea school, approved an upcoming Detroit Ignition "assembly/clinic/game night," which was scheduled for November 2007. In addition, Hearns was in the process of seeking approval for plaintiff to do class presentations for the children at Star of the Sea school, as well as "mini-seminars" for the "parish and/or staff".[1]

Kapur testified that during Harvest Night, she met the pastor, Father Kenneth Kaucheck. Kapur indicated that "I met Father Ken and I asked him about the seminars, would you be interested, does it make sense. And he said anything you need Divisha, we're open." Kapur testified that Kaucheck said "anything you guys want to do, let me know."

On October 23, 2007, shortly after Harvest Night, Hearns sent an e-mail to Kapur indicating that Hearns spoke to Kaucheck after Harvest Night and that Kaucheck thought that plaintiff did a great job. Moreover, Hearns indicated in her e-mail:

> I also brought up [to Kaucheck] the fact that the Hantz Group is coming to do presentations to our students and that you have also agreed to do mini-seminars to our parishioners as well as staff. Once you get the card I think it would be a good idea to follow up with him and talk about any opportunities to do seminars.
>
> * * *
>
> Also, do not hesitate to follow up with Mrs. Patty Stumb, principal at Star. She is somewhat forgetful and she might need a nudge. I will also bring Hantz up to her tomorrow morning if I can get a minute with her. We need to schedule the presentations for the students asap. I would at least like to get a schedule down and if changes need to be made then they can be made to accommodate the teachers.

On October 25, 2007, Haney wrote a letter to Stumb. The letter provided:

> I typically do not write letters to the School, but I thought in this case you were probable [sic] unaware of what was happening with the Hantz Group-Ignition Soccer. Last Friday they were at Harvest Night, we all volunteered and donated items to help out the school. In their case they have a completely different agenda; they are a high pressure insurance agency, financial service, law and accounting firm. They have been brought up on charges a few times and our

[1] It is undisputed that Hearns did not have the authority to determine whether plaintiff could do class presentations and seminars for the parish and school. The evidence showed that Stumb was in charge of making decisions for the school and Father Kenneth Kaucheck, then pastor of Star of the Sea, was in charge of making decisions for the parish.

company personally has caught them impersonating our customers to get their personal information from us, we have the calls recorded if you would like to hear them.

What they are doing with the soccer program is getting everyone's information and soliciting for the above services. They are also offering classes to students about financial planning in order to sell their products to the parents, this is completely unethical. I am sure you did not realize this because they did not present it that way. I assure you if [you] look at more and check with other insurance agents, lawyers, accountants and financial planners who attend Star, they know how their operation works. It is one thing if the school brought someone in for this, they could look at all sort[s] of options to educate without allowing any solicitation of the students or parents, but in their case, Hantz had ten people gathering information so they can call Star parents and solicit those products.

I asked the young ladies walking around that night, they told me all you have to do is sign up for the soccer camp and they are going to solicit you for insurance/financial products . . . . It is one thing to help out the community or schools; this is not the case with the Hantz Group. I do not believe they should be allowed back and other school[] system[s] should be made aware of their actions.

On October 26, 2007, Mattes wrote a letter to Kaucheck. That letter provided:

I wanted to voice my concern for an organization you recently had at the Harvest night function. The Detroit Ignition is a cover for a high pressure sales organization called The Hantz Financial Group. To give you a little background on the company, in 2005 Hantz Financial and its CEO were brought up on charges, censured and fined by the National Association of Securities Dealers (NASD) for Fraud and Misrepresentation to the tune of $700,000.

In my personal dealings, I have caught this company and its employees impersonating as one of my clients to gather personal information on that client's account. We have forwarded that information onto the State of Michigan Insurance and Financial services office for their action. To let you know, this company is actively calling members of our parish and soliciting them for their services. This was made possible when they encouraged people to sign up for their "soccer camps" and "special classroom presentations". Our parish and its members are being preyed upon by their representatives and being exposed to possible financial harm. Please do everything necessary to keep this from happening.

I have enclosed information that was published by the NASD for your perusal.

On November 9, 2007, Hearns sent an e-mail to Kapur and Mazzola. The e-mail provided that Stumb and the assistant principal "decided that they do not want the Hantz Group

doing class presentations at Star of the Sea School." The e-mail also provided that the decision was the result of Stumb receiving "(2) letters (both from the same company) from competitors of the Hantz Group that stated that Hantz is preying upon the parents/parishioners of Star of the Sea, and that Hantz has been fined ~$750,000."

David Shea, an attorney for plaintiff, sent a letter to Haney on November 9, 2007, asking for a retraction of the allegedly defamatory statements and indicating that a lawsuit would be filed over the statements. On November 21, 2007, Mattes wrote a letter to Stumb clarifying his previous statements in his October 26, 2007, letter, which was also sent to Shea. The letter provided:

> You should know that I received a letter from Hantz' [sic] lawyer, David Shea, that was faxed to my office on November 12, 2007, accusing me of making false statements and demanding a retraction. While my only concern was that a Parish family event was being used for marketing purposes, I realize that I should correct and clarify what I said.
>
> I wrote that the "Detroit Ignition is a cover for a high pressure sales organization called The Hantz Financial Group." My statement that the Detroit Ignition is a "cover" is merely my opinion that the team's purpose, in part, is to market and promote Hantz'[s] financial products. My use of the terms "cover" and "high pressure" represent nothing more than my interpretation of one company's marketing program. I certainly have no independent proof that the team is a "cover" for anything, nor did I intend to suggest that Hantz is doing anything wrong by using its soccer team to help market its products. Similarly, whether or not a sales pitch is "high pressure" is subject to multiple interpretations. While I may view one campaign as high pressure, many others may not. I did not intend to suggest that my view is the only interpretation available, nor did I take any pole [sic] or accumulate information on the subject. I was merely stating my opinion.
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> I wrote that "in 2005, Hantz Financial Group and its CEO were brought up on charges, censured and fined by the National Association of Securities Dealers (NASD) for Fraud and Misrepresentation to the tune of $700,000.00[.]" My information came from an August 11, 2005[,] NASD "News Release" (copy enclosed so there can be no misrepresentation). Specifically, per the News Report, Hantz Financial Services was fined $675,000 "for fraud and misrepresentation relating to undisclosed revenue sharing arrangements, [as] well as other violations." The News Report goes on to state that "John Hantz, the firm's President, CEO founder and primary owner, was censured and fined $25,000 for failing to supervise the firm's revenue sharing activities and suspended from action [sic] in a supervisory capacity for 30 days." It is from this report that I derived my $700,000 figure. I am sorry if I misled you or anyone else by using the words "brought up on charges." I am not aware that Hantz or Mr. Hantz ever have been charged with a crime; rather, I was referring to the allegations made by the NASD and the corresponding results as reported by the NASD.

> I wrote that the company was actively calling members of the parish and soliciting them for their services, and that "Our parish and its members are being preyed upon by their representatives and being exposed to possible financial harm." I do not have first-hand knowledge that parishioners are being called, but I believed it to be a safe assumption based on the solicitation efforts of the soccer team representatives. I do regret, however, my comment about being exposed to possible financial harm. The financial harm I referred to is nothing more than the ever-changing markets and the possibility of making a poor investment decision. I am not aware of any person who experienced financial harm as a result of Hantz, and certainly any one is exposed to possible financial harm, through any company, if they purchase financial products or make financial investments. It was wrong of me to single out Hantz suggesting that it is the only company that had a possibility of exposing its clients to financial harm.
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> I hope this letter clarifies any misunderstandings that my October 26, 2007[,] letter may have caused. I also apologize to The Hantz Financial Group for causing it concern, as well.

On December 3, 2007, Stumb and Kaucheck wrote a letter to plaintiff, stating in pertinent part:

> This letter will serve to extend our appreciation to your company, the Hantz Financial Group, for the kindnesses extended to our students here at Star.
>
> We enjoyed meeting members of the Detroit Ignition Soccer Team on Harvest Night in October and just last week welcomed more soccer team members for a school assembly and soccer clinic.
>
> We are sorry about some of the false charges and misinterpretations brought to our attention by school families regarding their concerns that a Parish family event was being used for marketing purposes.
>
> Father Kenneth Kaucheck, Pastor of Our Lady Star of the Sea Catholic Church, has received Paul Mattes' letter of apology and clarification and wanted you to know of his appreciation for all you have done for the students at Our Lady Star of the Sea.

True to its letter from Shea, Hantz Group subsequently filed a complaint against Sterling, Haney, and Mattes alleging defamation and tortious interference with a business relationship or expectancy.

Sterling, Haney, and Mattes eventually moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing, in pertinent part, that plaintiff failed to plead its allegations with particularity, that the statements made by Sterling, Haney, and/or Mattes were substantially true, and that plaintiff's damages claim was too speculative. In addition, it was argued that there was no reasonable likelihood or probability of a business expectancy and plaintiff's damages calculation was faulty.

At the hearing on the motions, the trial court indicated "[y]ou know truth is a defense and opinion isn't actionable. And I think that's what we have here. Substantial truth in what was said and opinion." In addition, the trial court indicated that "[t]here was no business relationship. First of all, this Michelle had no, absolutely no – she was a night receptionist. She had no authority to bind the agreement with the p[a]rish with any kind of business relationship [sic]." Consequently, the trial court granted Sterling, Haney, and Mattes's motions for summary disposition. This appeal followed.

II. ANALYSIS

Plaintiff argues that the evidence presented clearly demonstrated that the statements made by defendants were not true and were not opinions, and therefore the trial court incorrectly held that there was no defamation. We review de novo a trial court's decision to grant summary disposition. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). We review the record in the same manner as the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998).

Defendants moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint. *Dolan v Continental Airlines*, 454 Mich 373, 380; 563 NW2d 23 (1997). All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dep't of Corrections*, 439 Mich 158, 162-163; 483 NW2d 26 (1992). "However, the mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to state a cause of action." *ETT Ambulance Service Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395; 516 NW2d 498 (1994).

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In evaluating a motion for summary disposition brought under this subsection, a reviewing court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. *Coblentz*, 475 Mich at 567-568. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10); MCR 2.116(G)(4); *Coblentz*, 475 Mich at 568.

In *Ledl v Quik Pik Food Stores, Inc*, 133 Mich App 583, 589; 349 NW2d 529 (1984), this Court stated:

> The essentials of a cause of action for libel or slander must be stated in the complaint, including allegations as to the particular defamatory words complained of, the connection of the defamatory words with the plaintiff where such words are not clear or are ambiguous, and the publication of the alleged defamatory words. [Quotation marks and citations omitted.]

Who made the statement and to whom publication was made are included in these requirements. *Wallace v Recorder's Court*, 207 Mich App 443, 447-448; 525 NW2d 481 (1994); *Gonyea v Motor Parts Fed Credit Union*, 192 Mich App 74, 76-78; 480 NW2d 297 (1991).

Plaintiff's complaint provided that "[o]n October 26, 2007, [Paul] Mattes, an agent for [defendant] Sterling [Agency, Inc.],wrote a letter . . . to Our Lady Star of the Sea (a religious institution) which made false statements about" plaintiff. In addition, plaintiff's complaint alleged that the letter stated that "Detroit Ignition is a cover for a high pressure sales organization called the Hantz Financial Group" and the "parish and its members are being preyed upon by their representatives and being exposed to financial harm." The complaint further provided that Mattes made criminal accusations about plaintiff in the letter by indicating that "[i]n 2005, Hantz Financial Group and its [chief operating officer] CEO were brought up on charges, censured and fined by the National Association of Securities Dealers (NASD) for Fraud and Misrepresentation to the tune of $700,000.00." We conclude that these allegations were pled with particularity, but summary disposition as to those allegations was nevertheless warranted under MCR 2.116(C)(10).[2]

"A communication is defamatory if it tends to harm the reputation of another so as to lower that person in the estimation of the community or deter third persons from associating or dealing with that person." *Glazer v Lamkin*, 201 Mich App 432, 438; 506 NW2d 570 (1993).

> The elements of a cause of action for defamation are (1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged publication to a third party, (3) fault amounting at least to negligence on the part of the publisher, and (4) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by the publication (defamation per quod). [*Burden v Elias Bros Big Boy Restaurants*, 240 Mich App 723, 726; 613 NW2d 378 (2000).]

"[T]ruth is an absolute defense to a defamation claim . . . ." *Porter v City of Royal Oak*, 214 Mich App 478, 486; 542 NW2d 905 (1995). Moreover, substantial truth is a defense to a defamation claim. *Kevorkian v American Med Ass'n*, 237 Mich App 1, 10; 602 NW2d 233

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[2] Plaintiff also alleged in its complaint that "Defendants published to third parties statements claiming Hantz is unethical and should have no continued involvement in classroom instruction of Our Lady Star of the Sea students or other involvement with the church." This allegation does not identify the person to whom the statement was made or the place where the statement was published. *Wallace*, 207 Mich App at 448; *Gonyea*, 192 Mich App at 76-78; *Ledl*, 133 Mich App at 589. Hence, this allegation was not pled with particularity as required when pleading defamation claims. *Ledl*, 133 Mich App at 589. Consequently, summary disposition on this allegation was proper. We also note that plaintiff asserted on appeal that defendants made a statement that plaintiff was a law firm and that the statement was defamatory. However, no allegations relating to that statement were set forth and pled with particularity in plaintiff's complaint; therefore, we will not consider this allegation by plaintiff. *Id*.

(1999). In addition, some expressions of opinion, such as subjective assertions that do not demonstrate an objectively identifiable event, are considered protected speech. *Ireland v Edwards*, 230 Mich App 607, 616; 584 NW2d 632 (1998).

Viewing the evidence in a light most favorable to plaintiff, there is no genuine issue of material fact that the assertion that the Detroit Ignition was a "cover for a high-pressure sales organization" was an expression of an opinion because it was a subjective assertion, which cannot reasonably be interpreted as stating actual facts about plaintiff. *Coblentz*, 475 Mich at 567-568; *Ireland*, 230 Mich App at 616-617. What amounts to "high pressure sales" is a subjective assessment that will vary with each individual opinion. In addition, there is no genuine issue of material fact as to whether Detroit Ignition was a "cover" for plaintiff such that the statement was substantially true. *Coblentz*, 475 Mich at 567-568; *Kevorkian*, 237 Mich App at 10. The word "cover" is defined as "a pretense," *Random House Webster's College Dictionary* (1997), and the record supports that plaintiff was using the Detroit Ignition to gain access to Star of the Sea in order to obtain new clients for plaintiff. It is undisputed that plaintiff organized events between Star of the Sea and the Detroit Ignition and gathered information from parishioners that it fully intended to use to solicit business. Hence, the Detroit Ignition being a "cover" for plaintiff at this event was substantially true. *Kevorkian*, 237 Mich App at 10.

There is also no genuine issue of material fact as to whether the assertion that the parish and its members were being "preyed upon" was an expression of an opinion because it was a subjective assertion, which cannot reasonably be interpreted as stating actual facts about plaintiff. *Coblentz*, 475 Mich at 567-568; *Ireland*, 230 Mich App at 616-617. There is also no genuine issue of material fact that Mattes's assertion that the parish and its members were being "exposed to financial harm" and that plaintiff and its CEO were "brought up on charges, censured and fined by . . . NASD[] for Fraud and Misrepresentation to the tune of $700,000.00" were substantially true pursuant to the NASD News Release. *Coblentz*, 475 Mich at 567-568; *Kevorkian*, 237 Mich App at 10. The evidence shows that the NASD referred to the alleged violations as "charges," and that the NASD press release indicated plaintiff and its president were fined $700,000 for, *inter alia*, fraud and misrepresentation. Plaintiff's evidence ignores both the evidence emanating from the NASD, and that Mattes never made statements about *criminal* behavior. Plaintiff's focus on minutia does not negate that the statements were substantially true.

Accordingly, we hold that the trial court correctly concluded that defendants were entitled to summary disposition on plaintiff's defamation claim because plaintiff either failed to state a claim upon which relief could be granted, or there was no genuine issue of material fact that the statements of which plaintiff complained were opinions or substantially true. *Coblentz*, 475 Mich at 567-568; *Henry*, 473 Mich at 71.

Plaintiff also argues that defendants' tortiously interfered with plaintiff's business relationship with Star of the Sea by writing defamatory letters to its pastor and principal. Just as "expressions of opinion are protected from defamation actions," expressions of opinion are also protected from allegations involving tortious interference with business relations. *Lakeshore Community Hosp, Inc, v Perry*, 212 Mich App 396, 402; 538 NW2d 24 (1995). Further, because statements that are true are constitutionally protected, *In re Chmura*, 461 Mich 517, 536; 608 NW2d 31 (2000), to the extent that we have held that Mattes's assertions were substantially true,

those statements cannot be the basis of a tortious interference with business relations claim, *Coblentz*, 475 Mich at 567-568.

Plaintiff's tortious interference with business relations claim also fails because plaintiff cannot meet the elements required to sustain such a claim, which are as follows:

> (1) the existence of a valid business relationship or expectancy that is not necessarily predicated on an enforceable contract, (2) knowledge of the relationship or expectancy on the part of the defendant interferer, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resulting damage to the party whose relationship or expectancy was disrupted. [*Health Call v Atrium Home & Health Care Servs, Inc*, 268 Mich App 83, 90; 706 NW2d 843 (2005).]

In order for there to be a valid business expectancy, "[t]he expectancy must be a reasonable likelihood or probability, not mere wishful thinking." *Trepel v Pontiac Osteopathic Hosp*, 135 Mich App 361, 377; 354 NW2d 341 (1984). Parties that are "motivated by legitimate personal and business reasons are shielded from liability" from a tortious interference with a business relationship or expectancy claim. *Formall, Inc v Community Nat'l Bank*, 166 Mich App 772, 780; 421 NW2d 289 (1988).

In this case, viewing the evidence in a light most favorable to plaintiff, there is no genuine issue of material fact that plaintiffs did not have a valid business relationship or expectancy with Star of the Sea. *Coblentz*, 475 Mich at 567-568; *Health Call*, 268 Mich App at 90. The word, "valid," is defined as "sound; just; well-founded" as well as "legally sound, effective, or binding." *Random House Webster's College Dictionary* (1997). Here, plaintiff exclusively dealt with Hearns, who did not have the authority to bind the parish or the school, a fact that plaintiff does not dispute. Further, no definitive plans had been made to set up or formerly approve seminars given by plaintiff at the parish. The alleged statement by Kaucheck at Harvest Night was merely a vague statement reflecting optimistic hope of the possibility of some future event. Consequently, there was no well-founded, legally sound, or binding relationship or expectancy in place. Rather, the alleged relationship or expectancy had not evolved from mere wishful thinking. *Trepel*, 135 Mich App at 377.

Affirmed.

Defendants may tax costs, having prevailed in full. MCR 7.219(A).

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Christopher M. Murray