

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

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LABELLE LIMITED PARTNERSHIP,  
  
Plaintiff-Appellant,

UNPUBLISHED  
August 14, 2012

v

CENTRAL MICHIGAN UNIVERSITY BOARD  
OF TRUSTEES,

No. 305626  
Court of Claims  
LC No. 11-000016-MZ

Defendant-Appellee.

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Before: TALBOT, P.J., and WILDER and RIORDAN, JJ.

PER CURIAM.

LaBelle Limited Partnership (“LaBelle”) appeals as of right the Court of Claims’ grant of summary disposition<sup>1</sup> in favor of the Board of Trustees of Central Michigan University (“the Board”) based on lack of standing. We affirm.

LaBelle owns and operates two hotels, a restaurant and a convention center (“LaBelle facilities”) on two parcels of land it leases from Central Michigan University (“CMU”). Originally, the parcels of land were leased by LaBelle Leasing Company (“LaBelle Leasing”), but the leases were later assigned to LaBelle.<sup>2</sup>

On December 2, 2010, the Board “announced plans to permit [] private developer, Lodgco, LLC [(“Lodgco”)], to construct and operate a 150-room hotel, conference center and restaurant” attached to CMU’s football stadium (“proposed project”). During a meeting on December 2, 2010, the Board also voted to permit CMU to negotiate a contract with Lodgco to lease the land on which the proposed project would be constructed. The lease was to be presented to the Board for approval thereafter.

On January 28, 2011, LaBelle filed a verified complaint for “injunctive and other relief” to “protect its leasehold interest.” The complaint alleged (1) “unlawful use of public property for

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<sup>1</sup> MCR 2.116(C)(10).

<sup>2</sup> On April 18, 2011, LaBelle Leasing Company assigned the ground leases it had with CMU to LaBelle Limited Partnership, which the Board consented to on June 20, 2011.

private benefit” in violation of MCL 213.23, (2) “unlawful creation of a lien on public property” in violation of MCL 390.558, and (3) “violation of applicable zoning” ordinances.

Barton LaBelle, one of LaBelle’s general partners, was deposed on June 15, 2011. When Barton LaBelle was questioned regarding what he was attempting to accomplish with the instant lawsuit, he replied “I’d like to have the Court decide whether it’s legal for the university to build a privately owned and operated hotel on their state property.” While Barton LaBelle admitted that two of LaBelle’s hotels were on state property, he advised that “the world’s changed since we built ours.” When asked to elaborate on his position, Barton LaBelle testified that case law and a “referendum in 2005, 2006, precludes the use of state property for private purposes.” Barton LaBelle explained further that, “My understanding, it was a vote by the people of the State of Michigan to preclude using property acquired through imminent [sic] domain or through taxpayer money for private purposes.” Barton LaBelle further stated that he was unsure which of CMU’s properties were purchased and which were acquired by eminent domain.

The following testimony was elicited from Barton LaBelle regarding the alleged harm LaBelle would suffer as a result of the proposed project.

*Q.* Okay. Now, do you believe that construction of this project that is the subject matter of your lawsuit would be harmful to you?

*A.* Certainly.

*Q.* In what way would it harm you?

*A.* Well, the hotel business industry, as a whole, is a – in economic terms, is an elastic business in that in any given night, any given market, only so many rooms are going to be sold. Somewhat different than the restaurant business. The restaurant business is somewhat elastic in that the more choices people have, the more they’ll actually eat out. That’s not true with hotel rooms, so from that standpoint, there’s only going to be so many hotel rooms sold in this market for a given night, and any intrusion of competition comes in pretty much affects other operations within the same market area.

*Q.* So do you believe that if this project that is the subject of this lawsuit is constructed, that Labelle Limited Partnership will rent fewer hotel rooms?

*A.* Of course. But I might add that we are not objecting to competition. Evidence to that fact is the fact that we were willing to sell land to Lodgco to build the same property – the same type of property a half mile away from us, so the motivation here is not to prohibit competition, even though, in either location, they would be competitive. The issue here is location of the proposed hotel on stadium land – on state-owned land. That is our objection.

*Q.* And why do you object to that?

A. Because taxpayer money is being used – some of our money that we’ve paid in taxes is being used to provide a business location for a private developer.

Q. Just as was done for you in University Park?

A. But it was legal then; it’s not legal now, in our opinion.

When Barton LaBelle was further questioned regarding the harm LaBelle would suffer as a result of the proposed project, the following testimony resulted:

Q. Would the project that is the subject of this lawsuit cause Labelle Limited Partnership any harm other than what you’ve already described to me?

A. In a specific sense or a general sense?

Q. Both. Let’s start with specific and then we’ll go to general.

A. Okay. In a specific sense, not any more harm than what I have described.

Q. Okay.

A. In a general sense, I think it’s a poor precedent to use taxpayer money to allow private development to then turn around and compete with other taxpayers, really in a more subsidized manner, and the people – as far as I know, the legislature, and the people in the state of Michigan have agreed with that premise.

And I might add, too, that the impetus, as I mentioned earlier and I would like to expand on it – the impetus on our development on state land or University Park at the time was because there was a need for hotel rooms at the time, determined by the university at the south end of the town. There weren’t any. That particular need for hotel rooms at the south end of town does not exist now; there are plenty. And as documented in the Smith reports and the other market occupancy publications that are put out monthly, the occupancy in the Mount Pleasant market is under 60 percent, the general hotel occupancy. That corresponds to our evidence – or our history. We are running under 60 percent. The state of Michigan is running under 60 percent, so there isn’t a shortage of hotel rooms like there was when the university induced us to come onto their property and build a hotel. We spent \$3 million.

Barton LaBelle then testified that the leasehold interest that he is attempting to protect as described in the complaint was the “[c]ompetitive nature of the business” of his two hotels, restaurant and conference center. He explained that LaBelle did not “want a competitive venture sitting on state-owned land[.]”

Thereafter, the Board filed a motion for summary disposition “based on lack of standing,” which the Court of Claims granted.<sup>3</sup> The Board asserted that preventing competition was not a valid basis for suit and that LaBelle failed to assert and cannot demonstrate that “it has a substantial interest that will be detrimentally affected in a manner different from the citizenry at large” if the proposed project is completed.

A motion brought pursuant to MCL 2.116(C)(10) tests the factual sufficiency of the complaint.<sup>4</sup> When opposing a motion brought under this section, the plaintiff may not rest solely on its complaint, but must provide testimonial and/or documentary evidence.<sup>5</sup> Summary disposition under this section is proper when considering all of the proffered evidence in the light most favorable to the nonmoving party, it is found that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.<sup>6</sup> This Court reviews the Court of Claims’ decision to grant or deny a motion for summary disposition de novo.<sup>7</sup>

On appeal, LaBelle argues that the Court of Claims erred when it found that LaBelle lacked standing to bring suit for injunctive or declaratory relief to prevent the construction of the proposed project. We disagree.

LaBelle first asserts that it has standing to bring suit for injunctive relief as the proposed project would result in a nuisance per se because it violates the applicable zoning ordinance.<sup>8</sup> MCL 125.3407 provides that “a use of land . . . used, erected, altered, razed, or converted in violation of a zoning ordinance . . . is a nuisance per se.” “[T]he quantity of proofs required of an individual to prove a public nuisance” are reduced when violation of a local ordinance is considered a nuisance per se.<sup>9</sup> A plaintiff seeking injunction of a nuisance per se is, however, required to demonstrate that it suffered “damages of a special character distinct and different from the injury suffered by the public generally.”<sup>10</sup> Thus, contrary to LaBelle’s assertion, standing is not conferred by virtue of a plaintiff’s proximity to the proposed project and demonstration of special damages is necessitated.

Although Barton LaBelle testified that he did not object to the increased competition that would result from the proposed project, he also testified that the leasehold interest that he was attempting to protect was the “[c]ompetitive nature of the business.” Additionally, Barton

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<sup>3</sup> MCR 2.116(C)(10).

<sup>4</sup> *Lakeview Commons LP v Empower Yourself, LLC*, 290 Mich App 503, 506; 802 NW2d 712 (2010).

<sup>5</sup> MCR 2.116(G)(4).

<sup>6</sup> *Coblentz v City of Novi*, 475 Mich 558, 567-568; 719 NW2d 73 (2006).

<sup>7</sup> *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

<sup>8</sup> MCL 125.3407.

<sup>9</sup> *Towne v Harr*, 185 Mich App 230, 232; 460 NW2d 596 (1990).

<sup>10</sup> *Id.* at 232-233.

LaBelle testified that the damages that LaBelle will allegedly suffer if the proposed project proceeds are that LaBelle will rent fewer hotel rooms. Because LaBelle's damages are purely economic in nature and this Court has held that "proof of general economic . . . losses [is insufficient] to show special damages," LaBelle's argument that it has standing to seek injunctive relief for violation of a local zoning ordinance must fail.<sup>11</sup>

LaBelle's assertion that it has standing to bring suit for injunctive relief for the "unlawful use of public property for a public benefit"<sup>12</sup> also lacks merit. LaBelle's complaint states that under "MCL 213.23(1), (2), (3), and (6), CMU is prohibited from transferring private property acquired with state funds for public use to a private entity, such as Lodgco, LLC."

A court has the discretion to determine whether a litigant has standing "[w]here a cause of action is not provided at law."<sup>13</sup>

A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.<sup>14</sup>

LaBelle admits and review of MCL 213.23 reveals that the statute does not specifically confer standing on LaBelle to sue the Board for injunctive relief. Additionally, LaBelle references no "statutory scheme" that "implies that the Legislature intended to confer standing" on a nearby property owner to enforce the statute.<sup>15</sup> Moreover, as the only alleged injury to LaBelle from the proposed project is economic, which is insufficient to prove special damages, LaBelle lacks standing.<sup>16</sup>

LaBelle also unsuccessfully asserts that it has standing to bring suit for injunctive relief for the "unlawful creation of a lien on public property."<sup>17</sup> The statute again fails to confer standing on LaBelle to sue, and LaBelle has not cited a statutory scheme implying that standing under this statute was intended by the Legislature.<sup>18</sup> As such, it is required that LaBelle demonstrate that it "has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large" necessitating injunctive relief.<sup>19</sup>

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<sup>11</sup> *Unger v Forest Home Twp*, 65 Mich App 614, 617; 237 NW2d 582 (1975).

<sup>12</sup> MCL 213.23.

<sup>13</sup> *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010).

<sup>14</sup> *Id.*

<sup>15</sup> MCL 213.23.

<sup>16</sup> *Unger*, 65 Mich App at 617.

<sup>17</sup> MCL 390.558.

<sup>18</sup> *Lansing Sch Ed Ass'n*, 487 Mich at 372.

<sup>19</sup> *Id.*

Because LaBelle's claim is for economic damages due to increased competition, which is not sufficient to show special damages, the Court of Claims properly found that LaBelle did not have standing.<sup>20</sup>

Moreover, standing to seek a declaratory judgment is established when "a litigant meets the requirements of MCR 2.605."<sup>21</sup> MCR 2.605 states that "[i]n a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment[.]" "An actual controversy exists when declaratory relief is needed to guide a plaintiff's future conduct in order to preserve the plaintiff's legal rights."<sup>22</sup> Because our Supreme Court has determined that a plaintiff's desire to prevent increased competition is not an "actual controversy," as the Court of Claims aptly noted, declaratory relief is not warranted.<sup>23</sup>

LaBelle also argues that the Court of Claims erred when it failed to mention the affidavit of Barton LaBelle and found that the affidavit of L. Glen Stanton failed to create a genuine issue of material fact to justify denial of the Board's motion for summary disposition. We disagree. This Court notes that while the Court of Claims' opinion fails to specifically mention the consideration that it gave to the affidavit of Barton LaBelle, Barton LaBelle's affidavit contains the same allegations of damages as Stanton's affidavit, thus any error asserted by LaBelle lacks merit.

Additionally, review of both affidavits reveals that neither affidavit establishes "damages of a special character distinct and different from the injury suffered by the public generally" to confer standing on LaBelle.<sup>24</sup> The affidavits state that the proposed project would: (1) "change the character of the 'neighborhood' now enjoyed by patrons of the LaBelle facilities;" (2) "increas[e] the number of inebriates and those under the influence of alcohol on football Saturdays, to the detriment of the peace and quiet of the 'neighborhood' now enjoyed by patrons of the LaBelle facilities;" (3) cause "congestion and traffic and danger to pedestrians and other motorists in the immediate area, including patrons of the LaBelle facilities;" (4) compromise the personal safety of the LaBelle patrons "by the increased hazard of drinking and driving that will arise from the operation of a hotel, parking structure, and bar on the stadium property;" (5) "impair the architectural purity of the existing oval stadium as viewed by patrons of the LaBelle facilities;" (6) "further saturate the limited local market for transient housing, and thereby diminish the value of the existing LaBelle facilities;" and (7) cause a greater hazard of "fire, earthquake, and like dangers" resulting from the stadium hotel being taller than surrounding structures, "thus importing [additional] risks to LaBelle facilities and patrons." While each of

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<sup>20</sup> *Unger*, 65 Mich App at 617.

<sup>21</sup> *Lansing Sch Ed Ass'n*, 487 Mich at 372.

<sup>22</sup> *Lansing Sch Ed Ass'n v Lansing Bd of Ed (On Remand)*, 293 Mich App 506, 515; 810 NW2d 95 (2011).

<sup>23</sup> See *Anderson v Village of Rochester*, 263 Mich 130, 132; 248 NW 571 (1933).

<sup>24</sup> *Towne*, 185 Mich App at 232.

the allegations of damages are phrased specifically to address how LaBelle will be affected by the proposed project, review of their content reveals that none of the damages are of “a special character distinct and different from the injury suffered by the public generally.”<sup>25</sup> Any damage resulting from the change to the neighborhood, traffic, safety, or architectural purity would also be experienced by the general public and is not specific to LaBelle, thus relief is not warranted.

Affirmed.

/s/ Michael J. Talbot  
/s/ Kurtis T. Wilder  
/s/ Michael J. Riordan

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<sup>25</sup> *Id.*