NO. COA01-1246

NORTH CAROLINA COURT OF APPEALS

Filed: 20 August 2002

IT'S PRIME ONLY, INC.,
Plaintiff

v. Dare County
No. 95 CVS 323

KEITH D. DARDEN and wife,
CHARLENE B. DARDEN,
Defendants

ROBERT F. HARRELL,
Plaintiff

v. Dare County
No. 95 CVS 324

KEITH D. DARDEN and wife,
CHARLENE B. DARDEN,
Defendants

JAMES A. SOULES, RUSSELL E. POLAND, DAVID M. IRBY and IT'S PRIME ONLY, INC.,
Plaintiffs

v. Dare County
No. 95 CVS 437

KEITH D. DARDEN and wife,
CHARLENE B. DARDEN,
Defendants

KEITH D. DARDEN and wife,
CHARLENE B. DARDEN,
Plaintiffs

v. Dare County
No. 97 CVS 368

BILLY G. ROUGHTON, NORMAN W. SHEARIN, VANDEVENTER, BLACK, MEREDITH & MARTIN, L.L.P., JAMES SOULES,

RUSSELL POLAND, DAVID IRBY,
and IT'S PRIME ONLY, INC.,
a North Carolina Corporation,
Defendants

Appeal by the Dardens from judgments entered 3 January 2001 and 20 April 2001 by Judge Howard E. Manning, Jr. in Dare County Superior Court. Heard in the Court of Appeals 10 June 2002.

White & Allen, P.A., by Matthew S. Sullivan, for appellants Keith D. Darden and wife, Charlene B. Darden.

Baker, Jenkins & Jones, P.A., by Ronald G. Baker and Amy L. Elliott, for appellees Norman W. Shearin and Vandeventer, Black, Meredith & Martin, L.L.P.

The Twiford Law Firm, by John S. Morrison, for appellees Billy G. Roughton, James A. Soules, David M. Irby, Russell E. Poland, and It's Prime Only, Inc.

WALKER, Judge.

On 14 May 1992, Keith D. Darden and his wife, Charlene B. Darden (Dardens), entered into an exclusive listing agreement with Robert F. Harrell (Harrell) to sell property the Dardens owned in Nags Head for $389,000. James A. Soules (Soules), Russell E. Poland (Poland), and David M. Irby (Irby) became interested in opening a restaurant on this property in early 1993; however, they did not have the financing to convert the property to suit their needs. Harrell introduced them to Billy G. Roughton (Roughton), who agreed to loan the necessary funds to Soules, Poland, and Irby.

On 17 June 1993, the Dardens executed a lease and option to purchase agreement (Agreement) with Prime Only, Inc., Soules, Poland, and Irby, which granted them the exclusive option to purchase the property for $389,000. At the time of the execution

of the Agreement, Prime Only, Inc. was not incorporated; therefore, the signature line on the agreement was left blank. Harrell had procured and induced Soules, Poland, and Irby to enter into the Agreement.

As part of his deal to provide financing to Soules, Poland, and Irby, Roughton received the right to assume the Agreement. After the Agreement was signed, Roughton, Soules, Poland, and Irby incorporated under the name It's Prime Only, Inc. (Prime). Roughton was not a party to the Agreement; however, he was a twenty-five percent shareholder in Prime. Thereafter, a restaurant was opened on the property.

On 31 October 1994, Soules, Poland, and Irby notified the Dardens in writing that they intended to exercise their option to purchase under the Agreement. Prime did not sign the letter exercising the option. Between 31 October 1994 and 28 November 1994, the Dardens learned that Soules, Poland, and Irby could not close on the property within thirty days as called for in the Agreement but could close by the end of the year. The Dardens also learned that the financing for the purchase was dependent on Roughton's participation in the loan.

On 28 November 1994, the Dardens notified Soules, Poland, and Irby that the closing would be on 30 November 1994. However, the Dardens offered an extension until 1 January 1995 provided that Soules, Poland, and Irby signed a "contract for purchase and sale" and that Roughton was included as a purchaser. There was no closing on 30 November 1994 and no "contract for purchase and sale"

was signed. During December of 1994 and into early 1995, the Dardens continued to discuss the sale of the property with Roughton, Soules, Poland, and Irby. The Dardens offered to sell the property in early 1995 for $415,000.

During the first quarter of 1995, Prime and its shareholders attempted to secure a loan to purchase the property. The loan was approved on 30 March 1995. On 3 April 1995, an attorney with the law firm of Vandeventer, Black, Meredith & Martin, L.L.P. (Vandeventer) advised the Dardens in writing that Soules, Poland, Irby, and Prime were not going to pay rents to the Dardens, that they had exercised their option to purchase, and that the rents would be paid into escrow. Ultimately, the rent for April 1995 was paid to the Dardens.

Since then, multiple lawsuits have been initiated. On 10 May 1995, the Dardens instituted a declaratory judgment action in 95 CVS 244 (Case 1) against Soules, Poland, and Irby to declare the purchase option in the Agreement invalid. Soules, Poland, and Irby were represented by Norman W. Shearin (Shearin) at Vandeventer. No effort was made to join Prime as a necessary party.

On 16 June 1995, Prime, also represented by Shearin, filed a lawsuit in 95 CVS 323 (Case 2) against the Dardens, seeking specific performance of the Agreement and alleging claims of unfair and deceptive trade practices, fraud, breach of contract, and breach of good faith and fair dealing. Prime based its claims on the premise that it had adopted the Agreement and "stepped into the

shoes" of Soules, Poland, and Irby. Shearin, on behalf of Prime, filed a notice of *lis pendens* against the property.

On the same day, Harrell, also represented by Shearin, filed a lawsuit in 95 CVS 324 (Case 3) against the Dardens seeking to recover commissions allegedly owed under the listing agreement. Harrell claimed that he had secured Prime as the buyer through Prime's adoption of the Agreement. Furthermore, Prime was ready, willing, and able to purchase the property, but the Darden's wrongfully refused to close.

On 13 July 1995, summary judgment was entered in favor of the Dardens in Case 1, declaring the purchase option "void, unenforceable and of no force and effect as to Soules, Poland and Irby," who gave notice of appeal.

On 15 August 1995, Prime, Soules, Poland, and Irby, represented again by Shearin, filed a declaratory judgment action in 95 CVS 437 (Case 4) against the Dardens seeking to declare that Prime had adopted the Agreement; that Soules, Poland, and Irby no longer had any obligations under the lease; that the Dardens had breached the Agreement; that Prime was to be compensated for the cost of improvements; and that all rents paid to the Dardens since 1 January 1995 be applied to the purchase price of the property.

On 23 August 1995, summary judgment was granted in favor of the Dardens in Cases 2 and 3. The *lis pendens* filed in Case 2 was dissolved. On 29 August 1995, Prime, Soules, Poland, and Irby, represented by Shearin, filed an amended complaint in Case 4, which added a claim for breach of the Agreement. The amended complaint

in Case 4 also sought injunctive relief to prevent termination of the lease and re-entry of the property by the Dardens. A temporary restraining order was sought by Shearin, on behalf of his clients, and was granted *ex parte* by a superior court judge different from the one involved in the litigation up to that stage. On 7 September 1995, the trial court denied the request for a preliminary injunction and dissolved the temporary restraining order. On 10 October 1995, summary judgment was granted in favor of the Dardens in Case 4.

On 15 November 1995, the Dardens filed a summary ejectment action in 95 CVD 626 (Case 5) in small claims court against Soules and Poland. The magistrate found in favor of the Dardens. Soules and Poland, represented by Shearin, appealed to the district court. The district court entered an order granting possession of the property to the Dardens on 2 May 1996. On 9 May 1996, Soules and Poland filed a motion to amend judgment in the case, which was denied on 16 May 1996. Soules and Poland were evicted from the property on 21 June 1996.

During May of 1996, Prime, represented by Shearin, requested that the *lis pendens* filed in Case 2 and dissolved on 23 August 1995 be reinstated because it was improper to dissolve a *lis pendens* when the case was still pending on appeal. The *lis pendens* was re-filed on 3 June 1996. Prior to the request for the *lis pendens* to be reinstated and while Case 5 was pending, the Dardens attempted to refinance the property. The appraiser contacted Roughton and advised him that an appraisal was being conducted.

On 31 May 1996, Soules and Poland appealed the trial court's order in Case 5 and the Dardens filed a motion for Rule 11 sanctions against Shearin for the filing of the motion to amend judgment. On 30 September 1996, the district court granted the motion for sanctions concluding that the motion "was filed for an improper purpose, specifically, to delay" and awarded attorney's fees to the Dardens.

On 19 November 1996, this Court affirmed the orders of the trial court in Cases 1, 2, and 3. This Court further ordered that the *lis pendens* be dissolved. On the same day, this Court affirmed in part and reversed in part the order of the trial court in Case 4. On 4 November 1997, this Court affirmed the award of attorney's fees awarded for Rule 11 sanctions in Case 5.

On 31 October 1997, Harrell, represented by Dan Merrell, filed a lawsuit in 97 CVS 659 (Case 6) against the Dardens, seeking recovery of commissions. The only material difference between Case 3 and Case 6 was that Soules and Poland were now identified as the potential buyer rather than Prime. After learning that inconsistent positions were taken in affidavits previously filed, Merrell voluntarily dismissed the case on behalf of Harrell.

On 23 June 1997, the Dardens brought a lawsuit in 97 CVS 368 (Case 7) against Roughton, Shearin, Vandeventer, Soules, Poland, Irby, and Prime, which was amended on 5 January 1998. The Dardens sued for unpaid rents and taxes due from Soules and Poland, tortious interference with contract and unfair and deceptive trade practices against Roughton, and abuse of process, malicious

prosecution, and punitive damages against all defendants. At the time of the filing of Case 7, motions for Rule 11 sanctions were still pending against Shearin, Vandeventer, and their clients in Cases 2, 3, and 4.

On 3 January 2001, the trial court granted partial summary judgment in favor of Roughton on the claims of tortious interference with contract and unfair and deceptive trade practices based on the determination that Roughton was not an "outsider" as required for a tortious interference with contract claim. On 12 February 2001, the trial court held a hearing on the motions for Rule 11 sanctions along with the motion for summary judgment on the abuse of process and malicious prosecution claims in Case 7. The trial court denied the motions for Rule 11 sanctions and granted summary judgment in favor of defendants on the abuse of process and malicious prosecution claims. Subsequently, the remaining claim for unpaid rents and taxes was voluntarily dismissed.

Before us now are appeals of three separate orders: (1) the grant of summary judgment in Case 7 in favor of Roughton on the tortious interference with contract and unfair and deceptive trade practices claims, (2) the denial of the Rule 11 sanctions in Cases 2, 3, and 4, and (3) the grant of summary judgment in Case 7 in favor of all defendants on the abuse of process and malicious prosecution claims.

We first consider the grant of summary judgment in Case 7 in favor of Roughton on the tortious interference with contract and unfair and deceptive trade practices claims. The Dardens admit

that the unfair and deceptive trade practices claim rises and falls with the tortious interference with contract claim.

A motion for summary judgment should be granted when, taking the evidence in a light most favorable to the non-moving party, there is no genuine issue of fact and the moving party is entitled to judgment as a matter of law. *Carolina Water Service v. Town of Atlantic Beach*, 121 N.C. App. 23, 27, 464 S.E.2d 317, 320 (1995), *disc. rev. denied*, 342 N.C. 894, 467 S.E.2d 901 (1996). A movant can meet its burden "by proving that an essential element of the opposing party's claim is nonexistent, or by showing through discovery that the opposing party cannot produce evidence to support an essential element of his claim[.]" *Id.* (*quoting Varner v. Bryan*, 113 N.C. App. 697, 701, 440 S.E.2d 295, 298 (1994)).

To survive a motion for summary judgment on a claim for tortious interference with contract, a party must show the following:

> First, that a valid contract existed between the plaintiff and a third person, conferring upon the plaintiff some contractual right against the third person. Second, that the outsider had knowledge of the plaintiff's contract with the third person. Third, that the outsider intentionally induced the third person not to perform his contract with the plaintiff. Fourth, that in so doing the outsider acted without justification. Fifth, that the outsider's act caused the plaintiff actual damages.

King v. N.C. Dept. of Transportation, 121 N.C. App. 706, 709, 468 S.E.2d 486, 490, *disc. rev. denied*, 343 N.C. 751, 473 S.E.2d 617 (1996)(citations omitted). An outsider is "one who was not a party to the [breached] contract and who had no legitimate business

interest of his own in the subject matter thereof." *Smith v. Ford Motor Co.*, 289 N.C. 71, 87, 221 S.E.2d 282, 292 (1976). "[O]ne who is a non-outsider is one who, though not a party to the [breached] contract, had a legitimate business interest of his own in the subject matter." *Id.* While a non-outsider is not wholly immune from liability for tortious interference with contract, a non-outsider would only be treated as an outsider when his interference with a contract "has no relation whatever to the source of the non-outsider status." *Id.* at 88, 221 S.E.2d at 292.

In the present case, the trial court found there was no genuine issue of fact as to Roughton being a non-outsider. The trial court stated that "Roughton was an essential and necessary participant in formation of the lease and option to purchase and resulting relationship with the parties." The Dardens admit that Soules, Poland, and Irby were unable to enter into the Agreement without financial assistance. Roughton was introduced to Soules, Poland, and Irby by Harrell, the Dardens' exclusive listing agent, for potential financial backing. The Dardens further admit that "as a result of negotiations between Darden, Soules, and Roughton, Darden entered into a Lease and Option Agreement for the Nags Head property with Soules and Poland." In the Agreement, the Dardens agreed to a provision for Roughton to assume the Agreement.

Further, Roughton was a twenty-five percent shareholder in Prime. When Soules, Poland, and Irby exercised their option to purchase and attempted to get financing, the Dardens discussed with Roughton the intentions of Soules, Poland, and Irby and the timing

of the closing. In their answers to interrogatories, the Dardens admitted "[they] asked whether [the bank's approval of the loan to purchase the property] was with or without Roughton's participation. Roughton stated that at present, it is with his participation but that he had sent it back to the bank to look at it again. Roughton stated he thought that ultimately it would be approved without his participation." The Dardens further admit that "Roughton stated he was concerned about his potential liability on the entire debt and was attempting to structure the 'deal' in a different manner."

We find the undisputed evidence shows that Roughton had a legitimate business interest in the subject matter of the Agreement and thus was a non-outsider to the Agreement. Further, the undisputed evidence shows that any actions taken by Roughton, which might have induced Soules and Poland to interfere with the Agreement, were directly related to his non-outsider status. Thus, we find the trial court did not err in granting summary judgment in favor of Roughton on the claims of tortious interference with contract and unfair and deceptive trade practices.

We next consider the Dardens' contention that the trial court erred in denying their motions for Rule 11 sanctions in Cases 2, 3, and 4. The Dardens moved for Rule 11 sanctions against Shearin and Vandeventer, as the attorney and his law firm in Cases 2, 3, and 4. They also moved for sanctions against Prime, Soules, Poland, Irby, and Harrell as the represented parties. Although separate motions

for sanctions were filed, they were consolidated for hearing along with the summary judgment hearing in Case 7.

This Court reviews the granting or denial of a motion for Rule 11 sanctions under a *de novo* standard. *Twaddell v. Anderson*, 136 N.C. App. 56, 70, 523 S.E.2d 710, 720 (1999), *disc. rev. denied*, 351 N.C. 480, 543 S.E.2d 510 (2000). Our Supreme Court has held that:

> In the *de novo* review, the appellate court will determine (1) whether the trial court's conclusions of law support its judgment or determination, (2) whether the trial court's conclusions of law are supported by its findings of fact, and (3) whether the findings of fact are supported by a sufficiency of the evidence.

Turner v. Duke University, 325 N.C. 152, 165, 381 S.E.2d 706, 714 (1989). "The totality of the circumstances determine whether Rule 11 sanctions are merited." *Williams v. Hinton*, 127 N.C. App. 421, 423, 490 S.E.2d 239, 241 (1997)(citations omitted). "Recognizing the adverse impact of sanctions under this Rule, our appellate courts have encouraged trial judges to act under Rule 11 only after careful consideration. 'Rule 11 should "not have the effect of chilling creative advocacy," and therefore, in determining compliance with Rule 11, "courts should avoid hindsight and resolve all doubts in favor of the signer."'" *Twadell*, 136 N.C. App. at 70, 523 S.E.2d at 719-20 (citations omitted).

N.C. Gen. Stat. § 1A-1, Rule 11 (2001) states the following in part:

> (a) *Signing by Attorney*. -- Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one

> attorney of record in his individual name, whose address shall be stated. . . . The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Thus, sanctions should be imposed upon either the parties or the signer of a legal document or both when there is a finding of legal insufficiency, factual insufficiency, or an improper purpose in filing the documents. *Bumgardner v. Bumgardner,* 113 N.C. App. 314, 322, 438 S.E.2d 471, 476 (1994).

As to Rule 11 sanctions against Vandeventer, unlike the Federal Rule 11, North Carolina's Rule 11 does not provide specifically for sanctions against the law firm which represented the parties. *See* Fed. R. Civ. P. 11(c)(2002)("[T]he court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation"). This State's Rule 11 only provides for sanctions against "the person who signed [the legal paper], a represented party, or both."

N.C. Gen. Stat. § 1A-1, Rule 11. Further, the rule provides that the attorney who signs the paper must sign "in his own name." *Id.* Thus, the trial court did not err in denying the motion for sanctions against Vandeventer.

The Dardens initially contend that the trial court erred in failing to make findings and conclusions in support of its ruling. A careful review of the trial court's order reveals that it contains sufficient findings and conclusions regarding the conduct of Shearin and the represented parties. In its order, the trial court specifically addressed two actions taken by Shearin during the course of this litigation. The first was the *ex parte* temporary restraining order obtained by Shearin in Case 4. In his affidavit, Shearin admitted not only that he knew the Dardens had retained counsel but also that he had been in contact with that counsel regarding the prior litigation. As the trial court noted, the temporary restraining order was ordered to "be served upon the Dardens by mailing or delivering a copy thereof to them or their attorney, Charles B. Aycock, III, in accordance with Rule 5 of the Rules of Civil Procedure." We agree with the trial court that Shearin's actions are not to be condoned; however, they do not rise to the level of Rule 11 sanctions.

In its order, the trial court also addressed the filing and re-filing of the notice of *lis pendens* in Case 2. N.C. Gen. Stat. § 1-116(a)(1) allows for the filing of a notice of *lis pendens* in "Actions affecting title to real property." Shearin, on behalf of Prime, filed a notice of *lis pendens* when he filed the complaint in

Case 2. The complaint alleged that Prime had adopted the Agreement through its actions. Because of the understanding between Roughton and the Dardens, Prime alleged that the Agreement had been modified to allow for closing after 1 January 1995. Prime also alleged that it was prepared to close after 1 January 1995, but that the Dardens refused. Thus, Prime requested specific performance of the option under the Agreement. If specific performance had been granted, this would have required the Dardens to sell the property to Prime, thus affecting title to the property. Although Prime did not prevail on this argument, we cannot conclude the filing of the *lis pendens* was improper.

Further, when the *lis pendens* was dissolved on 23 August 1995, there was an appeal pending in Case 2. N.C. Gen. Stat. § 1-120 states that the trial court may cancel a notice of *lis pendens* "after [the action] is settled, discontinued or abated." This Court has held that the result of a timely appeal is that the "litigation is still pending." *Cowart v. Whitley*, 39 N.C. App. 662, 665, 251 S.E.2d 627, 629 (1979). As the action affecting title to property was still pending, Prime had a basis for requesting the re-filing of the *lis pendens*. Thus, we agree with the trial court that the action by Shearin on behalf of Prime in filing and re-filing the notice of *lis pendens* was not sanctionable.

In its order denying Rule 11 sanctions, the trial court also discussed the volume of litigation involved in the case. The first consideration is whether there was both a sufficient legal and

factual basis for the filing of the multiple lawsuits. In Case 2, Prime alleged that, although it was not a party to the Agreement, it had adopted the Agreement and thus could enforce the option to purchase. Adoption of a contract by a corporation "occurs when the corporation, after coming into existence, accepts the benefits of a contract made prior to incorporation with full knowledge of the contract's provisions." *DeCarlo v. Gerryco, Inc.*, 46 N.C. App. 15, 20, 264 S.E.2d 370, 374, *disc. rev. allowed*, 300 N.C. 555, 270 S.E.2d 106 (1980). Here, the complaint alleged that, at the time of the signing of the Agreement, Soules, Poland, and Irby intended to incorporate for the purpose of operating a restaurant on the property but had not yet done so. Their plan was that the corporation would succeed to their interest in the Agreement. Since incorporation, Prime was the entity which made the rent payments, operated the restaurant, accepted the benefits of the Agreement, and made improvements to the property in reliance on the Agreement. Thus, Prime's complaint was sufficiently based in fact and in law to survive Rule 11 sanctions.

By the time Case 4 was filed, the trial court had already granted summary judgment in Case 1. After summary judgment was granted in Cases 2 and 3, Shearin, on behalf of Prime, Soules, Poland, and Irby, amended the complaint in Case 4. The amended allegations in Case 4 were based on the duties and obligations of all parties in the lease section of the Agreement. Although summary judgment had been granted in favor of the Dardens as to the obligations on the option to purchase, those cases did not involve

the lease in the Agreement. Also, the orders in Cases 1, 2, and 3 were still pending on appeal. Thus, there was a factual and legal basis for the filing of Case 4 even though summary judgment had been granted in the prior cases.

Finally, in considering Rule 11 sanctions, we look at whether, when looked at objectively, the signing and filing were done for an improper purpose. As the trial court noted, "The Court struggled because of Shearin's very aggressive advocacy in these matters which, in the Court's opinion, could and should have been handled in a less litigious, aggressive and expensive manner." However, our Courts have not extended Rule 11 sanctions to this type of conduct on the part of an attorney. The record reflects a great deal of litigation from each side. Of the seven cases, three were filed by the Dardens, two were filed by Harrell, one was filed by Prime alone and one was filed by Prime, Soules, Poland, and Irby. We agree with the trial court that, although aggressive actions were taken, the conduct of Shearin, on behalf of his clients, did not rise to the level of Rule 11 sanctions.

We next turn to the appeal of the order granting summary judgment in Case 7 on the claims for abuse of process and malicious prosecution. "To recover for malicious prosecution the plaintiff must show that defendant initiated the earlier proceeding, that he did so maliciously and without probable cause, and that the earlier proceeding terminated in plaintiff's favor." *Stanback v. Stanback*, 297 N.C. 181, 202, 254 S.E.2d 611, 625 (1979). If the proceedings are civil in nature, then there also must be a showing of special

damages. *Id.* at 203, 254 S.E.2d at 625. The distinction between abuse of process and malicious prosecution is that "malicious prosecution is based upon malice in causing the process to issue, while abuse of process lies for its improper use after it has been issued." *Barnette v. Woody*, 242 N.C. 424, 431, 88 S.E.2d 223, 227 (1955).

Plaintiff first contends that the trial court erred in granting summary judgment on the basis of *res judicata*, election of remedies, or issue preclusion based on the denial of Rule 11 sanctions. While there are similarities between the elements of Rule 11 and the claims of malicious prosecution and abuse of process, the purposes, the standards of review, and the elements create a separate and distinct tort action as opposed to sanctions. While our Courts have not directly addressed this issue, the United States Supreme Court has held that the Federal Rule 11 does not create a federal malicious prosecution tort. *Business Guides*, Inc. *v. Chromatic Comm.*, 498 U.S. 533, 553, 112 L. Ed. 2d 1140, 1160 (1991). "The main objective of the Rule is not to reward parties who are victimized by litigation; it is to deter baseless filings and curb abuses." *Id.* Because of the distinctions, we do not believe that a denial of Rule 11 sanctions precludes a claim for malicious prosecution and abuse of process.

After a careful review of the record, we find there is a genuine issue of fact as to whether the defendants in Case 7 filed and continued to pursue prior claims for an improper purpose, with malice, which resulted in special damages to the Dardens. Thus, we

reverse the trial court's order granting summary judgment in favor of the defendants on the claims of abuse of process and malicious prosecution and remand the case for trial.

In conclusion, we find that the trial court did not err in granting summary judgment in favor of Roughton in Case 7 on the claims of tortious interference with contract and unfair and deceptive trade practices. Further, the trial court did not err in denying Rule 11 sanctions in Cases 2, 3, and 4. Finally, the trial court erred in granting summary judgment in Case 7 on the claims of abuse of process, malicious prosecution, and punitive damages.

Affirmed in part, reversed and remanded in part.

Chief Judge EAGLES and Judge BIGGS concur.

Report per Rule 30(e).