STATE OF MICHIGAN

COURT OF APPEALS

HOLD IT PRODUCTS CORPORATION,

Plaintiff-Counterdefendant-Appellant,

v

TEXTUS INTERNATIONAL, INC. and DAVID SMITH,

Defendants-Appellees,

and

TEXTUS USA, INC.,

Defendant-Counterplaintiff-Appellee.

UNPUBLISHED
July 21, 1998

No. 201847
Oakland Circuit Court
LC No. 95-507260-CZ

Before: Hood, P.J., and Markman and Talbot, JJ.

PER CURIAM.

The trial court granted a directed verdict in favor of defendants on plaintiff's claim for tortious interference with contractual relations[1]. Plaintiff appeals as of right, and we reverse and remand for trial.

> The jury, not the trial judge, is the trier of fact. Whenever a fact question exists, upon which reasonable persons may differ, the trial judge may not direct a verdict. Conversely, when no fact question exists, the trial judge is justified in directing a verdict. In deciding whether or not to grant a motion for a directed verdict, the trial judge must accord to the non-moving party the benefit of viewing the testimony and all legitimate inferences that may be drawn therefrom in a light most favorable to the non-moving party. If the evidence, when viewed in this manner, establishes a prima facie case, the motion for a directed verdict must be denied. [*Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975).]

See also *Locke v Pachtman*, 446 Mich 216, 223; 521 NW2d 786 (1994). If reasonable jurors could honestly reach different conclusions, then the motion should be denied, and the

controverted matter should be decided by jury verdict. *Hutton v Roberts*, 182 Mich App 153, 155; 451 NW2d 536 (1989), citing *Bonelli v Volkswagen of America, Inc*, 166 Mich App 483, 495-496, 514; 421 NW2d 213 (1988). Our review of the trial court's action with regard to the motion for directed verdict is de novo. *Meagher v Wayne State Univ*, 222 Mich App 700, 706; 565 NW2d 401 (1997), lv pending.

The elements of tortious interference with contractual relations are (1) a contract; (2) a breach, and (3) instigation of the breach without justification by the defendant. *Wood v Herndon & Herndon Investigations, Inc*, 186 Mich App 495, 499-500; 465 NW2d 5 (1990); *Jim-Bob, Inc v Mehling*, 178 Mich App 71, 95-96; 443 NW2d 451 (1989).

> [O]ne who alleges tortious interference with a contractual or business relationship must allege the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another. [*Id.*, citing *Formall, Inc v Community National Bank of Pontiac*, 166 Mich App 772, 779; 421 NW2d 289 (1986).]

Citing to the standard jury instructions for this tort, the trial court stated:

> The elements of tortious interference with contractual relations are, one, that the plaintiff had a contract with Cubbison's at the time of the claimed interference; two, that defendant knew of the contract at the time; three, that the defendant intentionally and improperly interfered with the contract; four, the defendant's conduct caused Cubbison's to breach its contract with the plaintiff; and five, that the plaintiff suffered damages as a result of the defendant's conduct.

It then found that plaintiff had a contractual relationship with Mrs. Cubbison's Foods, Inc. (Cubbison's) for the sale of its product, that the defendants knew of the relationship and that defendants interfered with that relationship. It also found that defendants interfered in order to exact revenge for plaintiff having rejected a previous shipment of product from them, causing financial loss. However, the trial court determined that there was not sufficient evidence to allow the jury to decide causation:

> Absent further evidence as to why Cubbison's did not place an order with the plaintiff in 1994, the jury would be left to speculate that the reason was due to [defendant's] contacts as opposed to a business decision to cut costs.

Our review of the record reveals that the following facts were presented to the jury prior to the directed verdict: Plaintiff developed a product, stuffing sacks, and arranged with defendants to make the sacks; plaintiff entered into an exclusive distribution contract with Cubbison's for the sacks; defendants began making the sacks after plaintiff contracted with them for their manufacture; in 1992, a dispute over the sacks caused financial loss to defendants because plaintiff used an alternative supplier and did not accept defendants' sacks; defendants contacted Cubbison's directly, hoping to solve its problem relative to the approximately 200,000 sacks that plaintiff had refused to accept; when defendants contacted Cubbison's they learned of the relationship between it and plaintiff; defendants

continued to contact Cubbison's after this time, knowing of the relationship between it and plaintiff; defendants wrote a letter to Cubbison's in September 1993, stating that defendants would like to begin to sell directly to Cubbison's and that "everything will be the same as you are currently receiving"; Cubbison's and plaintiff had discussed lowering the price of the sacks in prior years, but price had never been a deal breaker; plaintiff consistently charged Cubbison's a price of 56 cents per unit purchased; Cubbison's historically placed orders with plaintiff for the following season's sacks between June and July; Cubbison's did not place an order with plaintiff between June and July of 1994; instead, Cubbison's placed its 1994 order with defendants for similar quantities as it requested in previous years from plaintiff, but with an average price much lower than plaintiff's price; the sacks sold by defendants were substantially similar to those it had previously manufactured for plaintiff to sell to Cubbison's; and, defendants' representative indicated to plaintiff's president that their conduct was prompted in order to retaliate for the financial loss suffered in 1992 because of plaintiff's refusal to accept the shipment of sacks. Viewing this evidence in a light most favorable to plaintiff, we find that a jury could reasonably find that plaintiff had established all of the elements of its prima facie case. We disagree with the trial court that the jury would have had to speculate as to whether Cubbison's ordered from defendants in 1994 because of their cheaper price or because of defendant's wrongful interference.

The issue of causation is generally a question of fact to be decided by the jury. *Teodorescu v Bushnell, Gage, Reizen & Byington*, 201 Mich App 260, 266; 506 NW2d 275 (1993). In negligence cases and malpractice cases, the Supreme Court has stated:

> The plaintiff must introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result. A mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant. [*Skinner v Square D Co*, 445 Mich 153, 164-165; 516 NW2d 475 (1994) (citations omitted).]

See also *Weyners v Khera*, 454 Mich 639, 648; 563 NW2d 647 (1997).

Although this is neither a negligence nor malpractice cause of action, there is no reason that the general standard as set forth in *Skinner, supra*, should not apply. In this case, plaintiff introduced evidence upon which a reasonable jury could conclude that, more likely than not, the conduct of defendants led to the breach of contract between plaintiff and Cubbison's. There was evidence that defendants purposely designed a situation where they would solicit Cubbison's away from plaintiff by contacting it, letting it know that they wanted its business, and offering a lower price, which could be accomplished by cutting out plaintiff, the middle-man and developer of the product. There was evidence that defendants did this in order to make plaintiff suffer for the previous financial loss that defendants had taken. There was also evidence that defendants' purposeful conduct resulted in the desired goal, that being that Cubbison's began ordering sacks directly from them. It was not a matter of pure speculation that defendants' conduct, and not the price issue, was the cause of the destruction of the contractual relationship. This is especially so where there was evidence that a cheaper price was previously discussed between Cubbison's and plaintiff; that plaintiff had consistently charged Cubbison's

the same price; and that price had never been a deal breaker between plaintiff and Cubbison's. Only when defendants interfered with the relationship did Cubbison's fail to order more sacks from plaintiff. Further, as part of its prima facie case, plaintiff was not required to offer evidence to rebut every possible reason why Cubbison's may have ordered from defendants instead from it[2]. Plaintiff clearly offered sufficient evidence as to all of the elements necessary to prove the tort of interference with contractual relations, including the element of causation. Based on the record presented, the jury should have decided the issues in this case. The trial court's grant of a directed verdict was improper.

Reversed and remanded for trial. We do not retain jurisdiction.

/s/ Harold Hood
/s/ Michael J. Talbot

[1] Plaintiff's complaint alleged both tortious interference with contractual relations and tortious interference with business relations. The trial court dismissed plaintiff's claim of tortious interference with business relations, finding that it was redundant to the first claim. Plaintiff does not take issue with the trial court's actions in this regard. It discusses the directed verdict, which was granted on its claim for tortious interference with contractual relations.

[2] As part of its defense, defendants could have called a representative from Cubbison's, assuming that one could have been found, to state that it stopped ordering from plaintiff because of price and not because of defendants' conduct. In the alternative, defendants could have argued to the jury that the inferences shown from the evidence, along with the lack of testimony from anyone at Cubbison's as to why they did not purchase sacks from plaintiff, demonstrated that Cubbison's decision to order from defendant was not based on any improper interference. Plaintiff would then have argued that the evidence and inferences therefrom demonstrated to the contrary, that Cubbison's stopped ordering from plaintiff because of defendants' interference.