

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

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ANTHONY TRUPIANO,

Plaintiff-Appellant,

V

RED SPOT WESTLAND, INC.,

Defendant-Appellee,

and

HARVEY A. KIGHTLINGER,

Defendant.

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UNPUBLISHED

November 16, 2001

No. 223040

Wayne Circuit Court

LC No. 98-813840-NO

Before: Holbrook, Jr., P.J., and Cavanagh and Gribbs,\* JJ.

PER CURIAM.

In this intentional interference with contracts and business relationships case, plaintiff appeals from the lower court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff first contends that when defendants decided they would no longer use plaintiff's carrier service, they intentionally interfered with certain oral contracts plaintiff had established with the customers of defendant Red Spot Westland, Inc. (Red Spot) to deliver Red Spot products to those customers. We disagree.

The elements of a claim of tortious interference with a contractual relationship are (1) the existence of a contract, (2) a breach of that contract, and (3) an unjustified instigation of the breach by the defendant. *Mahrle v Danke*, 216 Mich App 343, 350; 549 NW2d 56 (1996). Plaintiff failed to create a genuine issue of fact regarding the existence of any contracts between himself and another party. His deposition testimony does not establish the elements of a contract such as price, the terms under which he would deliver, the names of parties involved in these contracts, the dates of the agreements, the length of the agreements, or any intention of any customer to be bound by an agreement. The assertions in the affidavits simply reiterate plaintiff's claim in the pleadings that he had contracts without providing any documentary

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

evidence of such agreements. The burden to prove the existence of a contract is on the plaintiff. See *Kamalnath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 548-549; 487 NW2d 499 (1992). Further, mere reiteration of allegations contained in pleadings will not create a genuine factual dispute. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Given the absence of proof of a contract, reasonable minds could not differ regarding the existence of a contract, and thus the trial court did not err when it granted defendants' motion for summary disposition.

Plaintiff also asserts that defendants intentionally interfered with his business relationships when they refused to allow plaintiff to pick up Red Spot's products for delivery to the shared customers of plaintiff and Red Spot. We again disagree.

The elements of the tort of intentional interference with a business relationship are (1) the existence of a business relationship, (2) knowledge of the relationship on the part of the defendant, (3) an intentional interference which induces or causes breach or termination of the relationship by the defendant, and (4) resulting damage. *Winiemko v Valenti*, 203 Mich App 411, 416; 513 NW2d 181 (1994). Even assuming that a business relationship existed in this case, plaintiff did not create an issue of fact regarding the third element.

To prove the third element, plaintiff must show that defendants intentionally interfered with the business relationship in order to induce a breach or termination of the relationship. This Court has stated that, in the context of an action for intentional interference with a business relationship, "[o]ne is liable for commission of this tort who interferes with business relations of another, both existing and prospective, by inducing a third person not to enter into or continue a business relation with another or by preventing a third person from continuing a business relation with another." *Valenti, supra*, 203 Mich App at 416. The interference necessary to support the claim "means illegal, unethical or fraudulent" conduct on the part of the interferer. *Dolenga v Aetna Casualty & Surety Co*, 185 Mich App 620, 626; 463 NW2d 179 (1990).

Defendants' actions did not force the end of plaintiff's business relations; in fact, they had no effect on plaintiff's business relationships with customers except to the extent that they limited plaintiff's ability to carry Red Spot products to those customers. Rather than inducing any termination by third parties, Red Spot simply ended its own relationship with plaintiff and his business. This action cannot be said to be the inducement or prevention of a business relationship with a third party. Plaintiff and his customers were free to continue conducting business with each other so long as that business did not involve Red Spot. In fact, all of Red Spot's actions were directed solely at plaintiff's business in relation to Red Spot, rather than actions directed at third parties. Thus, viewing the evidence in the light most favorable to plaintiff, defendants cannot be said to have acted illegally, unethically, or fraudulently to induce a termination of or prevent the continuation of any of plaintiff's business relationships with third parties. Red Spot simply ended its own business relationship with plaintiff. Given the lack of evidence of inducement, reasonable minds could not differ regarding the existence of this

element. Therefore, the trial court did not err when it granted defendants judgment as a matter of law.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Mark J. Cavanagh

/s/ Roman S. Gibbs