

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

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RICHARD W. PARRY,

Plaintiff-Appellant,

V

TOWNSHIP OF GROVELAND, VINCE  
FERRERI, PAM QUE, HAL COXON, WAYNE  
BROSSEAU, JEAN SOVA, LYNNE SCHANK,  
and DAVID AX,

Defendants-Appellees,

and

VILICAN LEMAN & ASSOCIATES, INC.,

Defendant.

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UNPUBLISHED

December 21, 2001

No. 218821

Oakland Circuit Court

LC No. 98-007644-CZ

Before: Gage, P.J., and Cavanagh and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's orders granting defendants summary disposition on the basis of governmental immunity and dismissing the case.<sup>1</sup> Plaintiff also challenges the trial court's denial of his motion to amend his complaint. We affirm.

**I. Facts and Proceedings**

In July 1998, plaintiff filed the instant complaint against Groveland Township (township) and the individual members of the township's planning commission, alleging that they

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<sup>1</sup> Plaintiff initially appealed from an the order granting summary disposition, but this Court dismissed the appeal for lack of jurisdiction because the order did not dispose of the claims against defendant Vilican Leman & Associates, Inc, a community-planning consulting firm that worked on behalf of Groveland. *Parry v Twp of Groveland*, unpublished order of the Court of Appeals, entered December 30, 1998 (Docket No. 215456). The trial court then entered an order dismissing Vilican Leman by stipulation; thus, it is not a party to this appeal.

intentionally interfered with his ability to sell land that he owned. According to the complaint, in May 1997, plaintiff agreed to sell two and one-half acres of his property to Richard Cianek for \$70,000. However, after Cianek visited the township office to discuss the purchase with the appropriate township officials, he backed out of the deal. Plaintiff also alleged that after Cianek decided not to purchase the land, Craig and Monica Hamilton agreed to purchase the same property at the same price; again, however, this agreement fell through after the Hamilton's attended meetings of the planning commission and discussed the purchase with township officials. Plaintiff claimed that the prospective buyers chose not to buy the land because defendants intentionally placed numerous, unauthorized conditions on his request to subdivide his twenty-three acre parcel, in an effort to interfere with his ability to sell the property.

The complaint further alleged that in May 1998, plaintiff entered into a contractual relationship with a realtor in an effort to sell a separate two and a one-half acres from his twenty-three acre parcel, but that because defendant required him to provide a survey and remove a pole barn from the property as conditions for approval of his June 11, 1998 application to subdivide his property into four smaller parcels, this prevented him from being able to sell this parcel. Plaintiff alleged that these conditions for approval were contrary to local ordinances and motivated by defendants' grudge against plaintiff because he had filed previous lawsuits against the township. Plaintiff's original complaint contained only two counts: intentional interference with a prospective contract and deprivation of rights. However, in August 1998, plaintiff moved to amend the complaint to add as a defendant Charles Cairns, an employee of defendant Vilican Leman & Associates,<sup>2</sup> and to add counts for professional malpractice, fraud and deceit, breach of contract, outrageous conduct, and breach of fiduciary duty. The trial court denied plaintiff's motion without prejudice.

Defendants moved for summary disposition on the basis of governmental immunity, arguing that since township officials were engaged in a governmental function, plaintiff's disagreement with defendants about the conditions for approval of his request for land division was not a basis for liability. Plaintiff opposed the motion, arguing that planning commission officials had extorted money from him, infringed on his property rights, and blatantly violated local ordinances, conduct beyond the scope of their authority and not protected by governmental immunity. Plaintiff also claimed that discovery would provide him with the evidence needed to support these allegations, and that summary disposition was premature.

Following a hearing on defendants' motion, the trial court concluded that because the planning commission's decision whether to grant an application for land division was a governmental function, and that plaintiff failed to plead any facts showing that defendants were not engaged in a legitimate governmental function, summary disposition pursuant to MCR 2.116(C)(7) and (C)(8) was appropriately granted.

## II. Standard of Review

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<sup>2</sup> As stated previously in n 1, Vilican Leman is not a party to this appeal.

This Court's review of a trial court's grant of summary disposition de novo. *Coleman v Kootsillas*, 456 Mich 615, 618; 575 NW2d 527 (1998). In addition, the applicability of governmental immunity is a question of law that we review de novo. *Cain v Lansing Housing Comm*, 235 Mich App 566, 568; 599 NW2d 516 (1999). In reviewing an MCR 2.116(C)(7) motion, we are to consider the pleadings and all documentary evidence presented in the light most favorable to the nonmoving party. *Barrow v Prithard*, 235 Mich App 478, 480; 597 NW2d 853 (1999), and summary disposition should only be granted when the moving party is entitled to judgment as a matter of law. *DeCaminanda v Coopers & Lybrand LLP*, 232 Mich App 492, 496; 591 NW2d 364 (1998). Further, a motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint and allows consideration of only the pleadings. *MacDonald v PKT, Inc*, \_\_\_ Mich \_\_\_; \_\_\_ NW2d \_\_\_ (2001) (Docket No. 114039) slip op p 9, citing *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992); *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). The motion should be granted only when the claim is so clearly unenforceable as a matter of that no factual development could possible justify a right of recovery. *Rozwood, supra*; *Wade, supra* at 163.

### III. Analysis

Plaintiff first argues that defendants intentionally interfered with his ability to sell his property by imposing unlawful conditions on his subdivision application, rendering these actions ultra vires and not protected by government immunity. Thus, plaintiff challenges the trial court's granting of summary disposition to the township and planning commission members pursuant to MCR 2.116(C)(7) and (8).

The governmental immunity statute, MCL 691.1407(1), states, in relevant part:

Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function.

An action is a governmental function, and therefore not ultra vires, when it is "expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(f); See also *Ross v Consumers Power Co (On Remand)*, 420 Mich 567, 620; 363 NW2d 641 (1984).

Townships may regulate land use and land division. See MCL 125.271(1). In addition, townships may establish a planning commission to make recommendations regarding land development and land division. MCL 125.323(1).<sup>3</sup> Here, local ordinances authorized the planning commission to impose conditions on land division. See Groveland Township

<sup>3</sup> MCL 125.323(1) provides:

The township board of any township may create, by resolution, a township planning commission with power to make, adopt, extend, add to or otherwise amend, and to carry out plans for the unincorporated portions of the township as provided in this act.

Ordinance, § 24.200 *et seq.* Thus, the township's regulation of plaintiff's land division was clearly a governmental function. See *Randall v Delta Charter Twp*, 121 Mich App 26, 32; 328 NW2d 562 (1982) (township planning commission's decision whether to enforce zoning ordinances is a governmental function). Therefore, because the township was engaged in a governmental function when it imposed conditions on plaintiff's application for land division, we reject plaintiff's contention that the township's actions were "ultra vires" and conclude that the trial court correctly granted summary disposition to the township on the basis of governmental immunity.

Plaintiff's complaint alleged that the individual planning commission members intentionally interfered with his attempts to sell his property. An individual government officer is not immune to liability for intentional torts. *Sudul v Hamtramck*, 221 Mich App 455, 458; 562 NW2d 478 (1997); see also MCL 691.1407(2)(c) and (3).<sup>4</sup> In order to recover for intentional interference with contractual relations, a plaintiff "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." *Prysak v R L Polk Co*, 193 Mich App 1, 12; 483 NW2d 629 (1992), quoting *Stanton v Dachille*, 186 Mich App 247, 255; 463 NW2d 479 (1990).

Here, the individual defendant's imposition of conditions for granting plaintiff's requested land division was justified by law. See generally, MCL 125.271(1), MCL 691.1401(f) and Groveland Township Ordinance, § 24.100 *et seq.* See also *Parry v Township of Groveland*, Case No 98-008599-AZ, opinion and order of the Oakland Circuit Court upholding the conditions as lawful in plaintiff's appeal from the decision of the township board of appeals. Since the conditions were justified in law, plaintiff failed to state a claim upon which relief can be granted and summary disposition was appropriate pursuant to MCR 2.116(C)(8). See *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 150; \_\_\_ NW2d \_\_\_ (2000).

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<sup>4</sup> MCL 691.1407, provides, in pertinent part:

(2) Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency . . . is immune from tort liability for an injury to a person or damage to property caused by the officer. . . if all of the following are met:

\* \* \*

(c) The officer's . . . conduct does not amount to gross negligence, that is the proximate cause of the injury or damage. As used in this subdivision, "gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(3) Subsection (2) does not alter the law of intentional torts as it existed before July 7, 1986.

Plaintiff also argues that the trial court erred by granting summary disposition before discovery commenced. However, plaintiff made no showing that discovery would create a fair chance of uncovering factual support of the position that the Township was not immune from suit or that the Planning Commission requirements that plaintiff provide a survey and remove a pole barn were unlawful. Since further discovery was futile on the ultimate question of liability, summary disposition was not granted prematurely. *Bauer v Ferriby & Houston, PC*, 235 Mich App 536, 540; 599 NW2d 493 (1999); *Hasselbach v TG Canton, Inc*, 209 Mich App 475, 482; 531 NW2d 715 (1994); see also *Prysak, supra*.

Lastly, plaintiff claims that the trial court erred when it failed to allow him to amend the complaint to add Cairns as a defendant. However, plaintiff filed a separate action against Cairns arguing the same issues he wished to raise in this case, and these claims have been fully considered. See *Parry v Cairns*, unpublished opinion per curium of the Court of Appeals, issued June 12, 2001 (Docket No. 220160). Accordingly, this issue is moot.

Affirmed.

/s/ Hilda R. Gage  
/s/ Mark J. Cavanagh  
/s/ Kurtis T. Wilder