

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

---

SAMUEL KALLABAT,

Plaintiff-Appellant,

v

SOHAIL GIRGIS,

Defendant-Appellee.

---

UNPUBLISHED

December 11, 2003

No. 242529

Wayne Circuit Court

LC No. 01-119169-CZ

Before: Saad, P.J., and Markey and Meter, JJ.

PER CURIAM.

Plaintiff appeals the trial court's grant of summary disposition to defendant, and we affirm.

**I. Facts and Procedural History**

In February 2001, defendant entered a Membership Interest Purchase Agreement with Fiaz Ayar and Nick Najjar for the sale of a business, Retirement House of America, LLC, located at 1901 Southfield Road in Lincoln Park. Despite contract language to the contrary, on the date set for closing, May 1, 2001, plaintiff's counsel sent a facsimile transmittal to defense counsel and demanded that (1) defendant extend the closing date, and (2) defendant consent to the assignment of Ayar and Najjar's interest in the purchase agreement. Plaintiff's counsel also faxed a one-page document entitled "Assignment of Purchaser's Interest in Membership Interest Purchase Agreement." The document states that Ayar and Najjar assigned their interest in the purchase agreement to plaintiff, Samuel Kallabat. Kallabat did not sign the "assignment" document, but the document indicates that Ayar and Najjar signed it on May 1, 2001.

Defendant apparently did not consent to the assignment and no sale took place. On June 7, 2001, plaintiff filed this action and alleged that defendant unfairly withheld his consent to the assignment and tortiously interfered with plaintiff's business relationships and expectancies. Plaintiff requested a declaratory judgment, specific performance and exemplary damages. On March 27, 2002, defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). Following oral argument, the trial court granted defendant's motion in a written order entered on June 14, 2002.

**II. Analysis**

Plaintiff claims that the trial court erred by summarily dismissing this case because (1) defendant was obligated to consent to the assignment under a requirement of good faith and fair dealing, (2) defendant raised a genuine issue of material fact that defendant tortiously interfered with Ayar and Najjar's financing through Comerica Bank, and (3) discovery was not complete because plaintiff wanted to take the deposition of another Comerica employee.<sup>1</sup>

As noted, plaintiff maintains that the trial court should have enforced the assignment to Kallabat because defendant breached an implied covenant of good faith and fair dealing by declining to consent to the assignment. At the outset, we note that any implied covenant in the purchase agreement applies to the parties to the agreement, defendant, Ayar and Najjar. Kallabat was not a party to the purchase agreement, he denies that he was a third party beneficiary to the agreement, and he does not have standing to enforce its terms. See *Krass v Tri-County Sec, Inc*, 233 Mich App 661, 665; 593 NW2d 578 (1999). We further observe that Michigan does not recognize an independent action for breach of an implied covenant of good faith and fair dealing. *Belle Isle Grill Corp v City of Detroit*, 256 Mich App 463, 476; 666 NW2d 271 (2003).

Those issues aside, it is well settled that "[a] lack of good faith cannot override an express provision in a contract." *Eastway & Blevins Agency v Citizens Ins Co of America*, 206 Mich App 299, 303; 520 NW2d 640 (1994). The purchase agreement states, in pertinent part:

3. The closing shall take place on or before May 1, 2001 ("Closing Date"). Time is of the essence.

4. This Purchase Agreement may not be assigned by either party in whole or in part without the express written consent of the other party.

\*\*\*

9. . . . If the closing does not occur on the Closing Date for any reason whatsoever, and provided that the Seller is not in default hereunder, then this

---

<sup>1</sup> As this Court explained in *Ormsby v Capital Welding, Inc*, 255 Mich App 165, 172-173; 660 NW2d 730 (2003):

We review the grant or denial of a motion for summary disposition de novo. *Haliw v Sterling Hts*, 464 Mich 297, 301-302; 627 NW2d 581 (2001). In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), the court must consider the affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion. *Haliw, supra* at 302. Summary disposition may be granted if the evidence demonstrates that there is no genuine issue with respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Id.* Summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone; the motion may not be supported with documentary evidence.

Purchase Agreement shall be deemed automatically terminated, and the Seller shall have no further liability or obligation to the Purchaser.

It is “the bedrock principle of American contract law that parties are free to contract as they see fit, and the courts are to enforce the agreement as written absent some highly unusual circumstance, such as a contract in violation of law or public policy.” *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 51; 664 NW2d 776 (2003). Under the plain terms of the purchase contract, the parties agreed that (1) the contract may not be assigned without defendant’s written consent, and (2) the contract automatically terminates if, “for any reason whatsoever,” closing does not occur on or before May 1, 2001. The record is devoid of evidence regarding any alleged “bad faith” in defendant’s apparent lack of consent but, were we to discern any, the plain contract terms provide that any “assignment” not agreed to in writing was patently invalid and the purchase agreement automatically terminated. Dismissal was clearly appropriate.

Plaintiff also contends that he established an issue of fact regarding his tortious interference claim and that summary disposition was premature because testimony by a bank employee will show that defendant interfered with financing through Comerica Bank. “The elements of tortious interference with a business relationship are the existence of a valid business relationship or expectancy, knowledge of the relationship or expectancy on the part of the defendant, an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and resultant damage to the plaintiff.” *Mino v Clio School Dist*, 255 Mich App 60, 78; 661 NW2d 586 (2003). In his complaint, plaintiff alleged that defendant interfered with his business relationship with Comerica. Defendant presented evidence (plaintiff’s own testimony), that plaintiff never attempted to obtain financing through Comerica. Plaintiff then argued that defendant interfered with the *Ayar and Najjar’s* relationship with Comerica by interfering with their attempt to obtain financing.

“[A]n action must be prosecuted in the name of the real party in interest.” *City of Kalamazoo v Richland Twp*, 221 Mich App 531, 534; 562 NW2d 237 (1997). “A real party in interest is the one who is vested with the right of action on a given claim . . .” *Id.* Plaintiff has failed to show he had a valid business relationship with Comerica and he has established no right to litigate Ayar and Najjar’s alleged claims against defendant. For these reasons, and regardless whether further discovery might produce additional evidence from Comerica, the trial court correctly granted summary disposition to defendant.

Affirmed.

/s/ Henry William Saad  
/s/ Jane E. Markey  
/s/ Patrick M. Meter