

STATE OF MICHIGAN
COURT OF APPEALS

JANICE A. BREWER and BRAIN STORMING
II, INC.,

UNPUBLISHED
July 1, 2004

Plaintiffs-Counterdefendants-
Appellants,

V

JUNE F. BUCK and CYNTHIA OSTRANDER,

No. 243127
Oakland Circuit Court
LC No. 01-034570-CZ

Defendants-Counterplaintiffs-
Appellees.

Before: Neff, P.J., and Wilder and Kelly, JJ.

PER CURIAM.

Plaintiffs Janice A. Brewer and Brain Storming II, Inc. appeal as of right from an order granting defendants summary disposition pursuant to MCR 2.116(C)(10) as to all of plaintiffs' claims. Plaintiffs had brought suit against defendants alleging defamation, intentional interference with contractual relations, intentional interference with economic expectations, negligence, malicious prosecution, and abuse of process. All of these claims arose out of a loan of \$10,000 made by defendant Buck to Above and Beyond Floors, Inc., a company owned by Brewer, for use in purchasing inventory and equipment, and Above and Beyond Floors, Inc.'s subsequent failure to repay this loan. Defendant Ostrander more or less played the role of go-between in the loan transaction and in Buck's subsequent efforts to obtain repayment of the loan from plaintiffs. We affirm.

Plaintiffs first argue that the trial court erred in granting summary disposition of their defamation claim. We disagree.

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998), and such a motion may be granted as a matter of law when except as to the amount of damages, there is no genuine issue as to any material fact. A motion for summary disposition based on the lack of a material factual dispute must be supported by documentary evidence. MCR 2.116(G)(3)(b); *Meyer v City of Center Line*, 242 Mich App 560, 574; 619 NW2d 182 (2000). The moving party must specifically identify the matters which have no disputed factual issues, MCR 2.116(G)(4); *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999), and has the

initial burden of supporting his position by affidavits, depositions, admissions, or other documentary evidence, *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

The party opposing the motion then has the burden of showing by evidentiary materials that a genuine issue of disputed fact exists, and the disputed factual issue is material to the dispositive legal claims. *State Farm v Johnson*, 187 Mich App 264, 267; 466 NW2d 287 (1990). When the burden of proof at trial would rest on the nonmoving party, the nonmovant may not rest upon mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party, *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999), and all reasonable inferences are to be drawn in favor of the nonmovant, *Hall v McRea Corp*, 238 Mich App 361, 369-370; 605 NW2d 354 (1999).

In order establish a prima facie case of defamation a plaintiff must show: (1) a false or defamatory statement concerning the plaintiff; (2) an unprivileged publication to a third party; (3) fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special harm for defamation per se, or the existence of special harm caused by publication for defamation per quod. *Kefgen v Davidson*, 241 Mich App 611, 617; 617 NW2d 351 (2000). In the business context, a communication is defamatory if it tends to prejudice a corporation in the conduct of its business or to deter third persons from dealing with it. *Michigan Microtech, Inc v Federated Publications, Inc*, 187 Mich App 178, 183; 466 NW2d 717 (1991). Plaintiffs' failure to establish that a genuine issue of material fact exists as to any one of these elements is fatal to plaintiffs' claim.

Plaintiffs assert that defendants made defamatory statements on four separate occasions. Plaintiffs first claim that defendants' September 2000 communications with the Michigan Department of Consumer and Industry Services, Office of Financial and Insurance Services, Division of Securities (hereafter "CIS") were defamatory, but we disagree. In her deposition, Brewer admitted that she had no evidence that defendants' communications with CIS had actually accused her of selling unregistered securities, the alleged defamatory statement. The letter sent to Brewer by CIS on September 19, 2000¹ is not documentary evidence that defendants did in fact make to CIS any statement regarding an alleged sale of unregistered securities.

In response to this first allegation of defamation, Buck states in an affidavit that Ostrander originally contacted CIS on Buck's behalf, and that pursuant to advice received by Ostrander from Pauletta Rosenau, a CIS employee, Buck then filed a complaint with the CIS setting forth the facts as she and Ostrander believed them to exist. Ostrander, in an affidavit,

¹ The letter from CIS states in part that "[i]nformation has come to the attention of the Department indicating securities, namely Promissory notes and/or investment contracts are being offered and/or sold in Michigan" and that "these securities have not been registered in Michigan under the Michigan Uniform Securities Act."

states that she contacted CIS and discussed the transaction between Buck and Brewer with Rosenau, who advised Ostrander that “she [Rosenau] believed Brewer’s actions violated securities laws and constituted a sale of unregistered securities.” Moreover, Buck’s complaint to CIS, attached in its entirety to Buck’s affidavit, contains no mention of any sale by Brewer of any unregistered security. On this record, we find that plaintiffs have failed to meet their burden of showing that a genuine issue of material fact exists as to whether defendants made a false or defamatory statement in their communications with CIS. Therefore, the trial court correctly granted summary disposition of plaintiffs’ first defamation claim.

Plaintiffs next allege that Buck’s October 13, 2000 letter to Terra Securities, a company with which Brewer was then associated, falsely stated that Brewer had sold Buck an unregistered security, and advised Terra Securities that CIS had been informed of this action. Assuming without deciding that this statement was false, the trial court nevertheless correctly granted summary disposition as to this alleged instance of defamation, because plaintiffs have failed to show by documentary evidence that a genuine issue of material fact exists as to whether defendants’ fault in making the allegedly defamatory statement to Terra Securities amounted to at least negligence.

In their affidavits, defendants assert that they sent the letter in question directly pursuant to the advice and instructions of CIS employee Rosenau, and Buck further asserts that she used the specific language Rosenau had advised her to use when sending this letter. Further, Ostrander asserts that it was Rosenau who suggested that plaintiffs’ acts constituted the sale of an unregistered security, rather than defendants informing Rosenau of this fact. In reply, plaintiffs rely on Brewer’s deposition assertion that Ostrander had a securities license in the past and should have known that Terra Securities could not be held liable for the debt that Above and Beyond Floors, Inc. owed to Buck. This evidence is insufficient, however, to establish that defendants actually knew that Terra Securities could not be held liable, or that defendants were either unreasonable in believing the information provided to them by Rosenau or in acting on that information in the manner suggested to them by Rosenau. Therefore, the trial court also correctly granted summary disposition of plaintiffs’ defamation claim involving Buck’s letter to Terra Securities.

Plaintiffs next assert that the criminal complaint for fraud filed by defendants with the Waterford Police Department on January 11, 2001 was defamatory. Again, we find that the trial court correctly granted summary disposition. With respect to this claim, plaintiffs have failed to establish that the complained-of publication of an allegedly defamatory statement was made with malice. At least a qualified privilege attaches to communications made to police officers concerning criminal activity. *Hall v Pizza Hut of America, Inc.*, 153 Mich App 609, 619; 396 NW2d 809 (1986), citing *Shinglemeyer v Wright*, 124 Mich 230, 239-240; 82 NW 887 (1900). The elements of a qualified privilege are (1) good faith, (2) an interest to be upheld, (3) a statement limited in its scope to this purpose, (4) a proper occasion, and (5) publication in a proper manner and to proper parties only. *Bufalino v. Maxon Bros, Inc.*, 368 Mich. 140, 153; 117 NW2d 150 (1962); *Smith v. Fergan*, 181 Mich.App 594, 596-597; 450 NW2d 3 (1989). A plaintiff may overcome a qualified privilege only by showing that the statement was made with actual malice, i.e., with knowledge of its falsity or reckless disregard of the truth. *Id.* at 597. General allegations of malice are insufficient to establish a genuine issue of material fact.

Gonyea v Motor Parts Federal Credit Union, 192 Mich.App 74; 480 NW2d 297 (1991); *Smith*, *supra* at 597.

Plaintiffs fail to present evidence of malice sufficient to overcome defendants' qualified privilege, relying solely on Brewer's unsupported assertions in her deposition that defendants acted in bad faith or with malice in contacting the Waterford Police. Accordingly, this claim of defamation must also fail.

Plaintiffs' final defamation claim is that defendants allegedly informed the Village of Milford that Brewer was conducting business out of her residence. In their respective affidavits, each defendant denies any knowledge of Brewer's tax-paying practices and denies contacting the Village of Milford as asserted by plaintiffs. Plaintiffs offer no more than conclusory assertions that because Buck used to work for the City of Wixom, Brewer was "sure that [Buck knew]" the person with whom the complaint regarding plaintiffs' taxes was filed. Because these assertions clearly do not establish malice, the trial court also correctly granted summary disposition of plaintiffs' defamation claim concerning alleged statements to the Village of Milford.

Plaintiffs next assert that the trial court erred in granting summary disposition of their claim of intentional interference with business relations. We disagree, although we affirm for different reasons than were articulated by the trial court.

In order to establish a *prima facie* case of intentional interference with a business relationship, a plaintiff must show: (1) the existence of a valid business relationship or expectancy; (2) defendant's knowledge of the valid business relationship or expectancy; (3) intentional interference by defendant with malice and without justification causing or inducing a breach or termination of the relationship or expectancy; and (4) damages. *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan (On Remand)*, 217 Mich App 687, 698-699; 552 NW2d 919 (1996), citing *Lakeshore Community Hospital v Perry*, 212 Mich App 396, 401; 538 NW2d 24 (1995). To establish that a lawful act was done with malice and without justification, the plaintiff must demonstrate with specificity some affirmative act by the defendant that corroborates the improper motive of the interference, *BPS*, at 699, citing *Feldman v Green*, 138 Mich App 360, 369; 360 NW2d 881 (1984). However, where the defendant's actions were motivated by legitimate business reasons, such actions will not constitute improper motive or interference. *BPS*, at 699, citing *Michigan Podiatric Medical Ass'n v Nat'l Foot Care Program, Inc.*, 175 Mich App 723, 736; 438 NW2d 349 (1989).

The trial court erred in holding that plaintiff could not prevail on a claim of intentional interference with business relations without first establishing that a defamatory statement had been made. Nonetheless, because plaintiffs failed to present credible evidence of malice, there was no genuine issue of material fact sufficient to avoid summary disposition. This Court will affirm a lower court's ruling when the court reaches the right result, albeit for the wrong reason. *Morosini v Citizens Ins Co of America*, 224 Mich App 70, 86; 568 NW2d 346 (1997).

Plaintiffs alleged that defendants intentionally interfered with Brewer's business relations with Terra Securities by sending Buck's October 13, 2000 letter to Terra Securities. The evidence established that the letter was sent only on the recommendation of CIS employee Rosenau, as an attempt to collect on the debt owed to Buck by Above and Beyond Floors, Inc. Because there is a demonstrated legitimate business reason for sending the letter and no showing

of malice, this claim must fail. Plaintiffs also alleged that defendants interfered with her business relations with Cleary College. Other than Ostrander's admission that she contacted Cleary College to determine whether Brewer was teaching classes and at what times, there is no evidence that defendants made any contacts with or conveyed any information to Cleary College that would establish malice or lack of justification. As such, this claim must fail as well.

Plaintiffs next argue that the trial court erred in granting summary disposition of their negligence claims against each defendant individually. We disagree.

In order to establish a prima facie case of negligence, a plaintiff must show: (1) a duty owed by the defendant to the plaintiff; (2) a breach of that duty; (3) causation; and (4) damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). Duty can arise from a statute or a contract or by application of the basic rule of common law, which imposes an obligation to use due care or to act so as not to unreasonably endanger the person or property of others. *Riddle v McLouth Steel Products*, 440 Mich 85, 95; 485 NW2d 676 (1992). Ordinarily, whether a duty exists is a question of law for the court. *Beaudrie v Henderson*, 465 Mich 124, 130; 631 NW2d 308 (2001). If there is no duty, summary disposition is proper. *Id.*

Plaintiffs allegations that defendants acted negligently in contacting CIS, in contacting Terra Securities, and in contacting Cleary College each must fail because plaintiffs have failed to establish that defendants breached any duty owed to plaintiffs. First, although plaintiffs contend that defendants held both common-law and statutory duties to avoid defaming plaintiffs, to avoid intentional interference with plaintiffs' business relationships, and to collect the debt owed to Buck in accordance with recognized collection procedures, plaintiffs fail to identify any statute specifically giving rise to the duties of care allegedly owed by defendants. Since the plaintiff has failed to support its assertion that there are statutory duties of care owed by defendants, we will not search ourselves for authority to support plaintiff's assertions and this argument is abandoned. *Flint City Council v Michigan*, 253 Mich App 378, 393 n 2; 655 NW2d 604 (2003).

Additionally, plaintiffs do not show that defendants breached any common law duties to plaintiffs. In reply to defendant's motion for summary disposition, plaintiffs provided nothing more than Brewer's unsupported assertions that defendants' attempts to obtain repayment of the money owed to Buck by Above and Beyond Floors, Inc. were not legitimate. Therefore, the trial court correctly granted summary disposition as to plaintiffs' negligence claims.

Finally, plaintiffs argue that the trial court erred in granting summary disposition as to their abuse of process claim. We disagree. To recover on an abuse of process claim, a plaintiff must show that the defendant acted with an ulterior purpose, and that the defendant's act constituted the use of process that is improper in the regular prosecution of the proceedings. *Friedman v Dozor*, 412 Mich 1, 30; 312 NW2d 585 (1981).

In their complaint, plaintiffs fail to state a specific administrative process that defendants allegedly abused. On appeal, plaintiffs appear to assert that defendants' contact with Terra Securities and Cleary College after having filed a complaint with CIS was an abuse of process. As we have already ruled, however, there is insufficient evidence on the record to create a genuine issue of material fact as to whether defendants' contacts with Terra Securities and Cleary College were illegitimate. Because plaintiffs cannot establish that defendants committed

any improper act during the CIS complaint process, the trial court correctly granted summary disposition of plaintiffs' abuse of process claim.

Affirmed.

/s/ Janet T. Neff
/s/ Kurtis T. Wilder
/s/ Kirsten Frank Kelly