STATE OF MICHIGAN

COURT OF APPEALS

MCA FINANCIAL CORPORATION, MCA MORTGAGE CORPORATION, MORTGAGE CORPORATION OF AMERICA, RIMCO REALTY AND MORTGAGE COMPANY, and KRISTEN A. BAUER

Plaintiffs-Appellants,

v

DYKEMA GOSSETT, P.L.L.C., and PAUL RENTENBACH,

Defendants-Appellees.

UNPUBLISHED
August 5, 2004

No. 250810
Oakland Circuit Court
LC No. 2000-028365-NM

Before: Sawyer, P.J., and Gage and Owens, JJ.

PER CURIAM.

Plaintiffs appeal from an order of the circuit court granting defendants' motions for summary disposition. We affirm.

This case arises out of the collapse of plaintiff MCA Financial Corporation and its subsidiaries in early 1999. Those events are set out in more detail in our decision in *MCA Financial Corp v Grant Thornton, LLP*, ____ Mich App ___; ____ NW2d ____ (No. 244972, issued _____, 2004). While that case involved the alleged malpractice of the auditors of plaintiffs, the case at bar involves alleged legal malpractice from plaintiffs' attorneys regarding advice as to the structuring of the investment pools and compliance with securities regulations.

The trial court granted summary disposition to defendants on various grounds, which plaintiffs challenge on appeal. While not all of these issues were present in *Grant Thornton*, one of the issues, the *in pari delicto* issue, was present in *Grant Thornton* and our decision in that case compels the same result in the case at bar.

Plaintiffs argue that summary disposition was inappropriate on the basis of the *in pari delicto* doctrine or the wrongful conduct rule because there existed a genuine issue of material fact regarding whether the corporate wrongdoers' actions benefited the corporation and, thus, whether the adverse interest exception applies. But as we discussed in *Grant Thornton, slip op* at _____, it is the wrongdoers' motives, not the results of their actions, which control on this issue. The following observation in *Grant Thornton, slip op* at ____, applies equally to this case:

> To be able to avoid the imputation of that conduct to the corporations, plaintiffs must show that the wrongdoers were acting adversely to the interests of the corporations. And that determination will be measured by the motives of the wrongdoers, not whether their actions in fact resulted in harm to the corporations. Accordingly, summary disposition to defendants is appropriate if there is no available evidence, when viewed in the light most favorable to plaintiffs, to create a genuine issue of material fact on this point. *J & J Farmer Leasing, Inc v Citizens Ins Co of America* [260 Mich App 607, 610; 680 NW2d 423 (2004)]. While there is evidence to suggest that the wrongdoers were acting under the belief, perhaps misguided, that their actions were benefiting the corporations by keeping them afloat, plaintiffs point to no evidence that the wrongdoers were motivated by self interest to the exclusion and knowing detriment of the interests of the corporations. Defendants argue that the wrongdoers enjoyed no benefit from prolonging the existence of the corporations beyond their own continued employment, a benefit that was shared by nine hundred other employees who were not involved in the wrongdoing; and plaintiffs point to no evidence to dispute this conclusion.

As with *Grant Thornton*, plaintiffs in the case at bar again fail to direct our attention to any evidence upon which a jury could rely to conclude that the wrongdoers were acting entirely in their own self interest. Accordingly, plaintiffs have failed to establish a genuine issue of material fact on the adverse interest exception and, therefore, defendants are entitled to summary disposition.

Because summary disposition was appropriate on this basis, we need not address whether summary disposition was appropriate on the other grounds relied upon by the trial court.

Affirmed. Defendants may tax costs.

/s/ David H. Sawyer
/s/ Hilda R. Gage

Owens, J., did not participate.