STATE OF MICHIGAN

COURT OF APPEALS

AUTO ENTERPRISES SALES, INC.,

Plaintiff-Appellant,

v

GENERAL MOTORS ACCEPTANCE CORPORATION OF CANADA and GIANCARLO FANTECHI,

Defendants-Appellees.

UNPUBLISHED
November 16, 2004

No. 248894
Wayne Circuit Court
LC No. 01-107608-CZ

Before: Wilder, P.J., and Hoekstra and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order dismissing General Motors Acceptance Corporation of the United States as an improper party and from an order granting defendants summary disposition pursuant to MCL 2.116(C)(10). We affirm.

This case arose when several of defendants' vehicles leased in Canada were illegally transferred by the lessees without permission. Plaintiff, apparently with no knowledge of any ownership defects, purchased those vehicles and resold them to retailers in the United States. Defendants subsequently recovered their vehicles, but in the process informed the retailers that the vehicles were stolen. Plaintiff filed suit, alleging business defamation, injurious falsehood, tortious interference with a business expectancy, slander of title, and conversion. Plaintiff does not appeal the trial court's dismissal of its conversion claim.

The grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When reviewing a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, this Court considers all evidence submitted by the parties in the light most favorable to the non-moving party and grants summary disposition only where the evidence fails to establish a genuine issue regarding any material fact. *Id*. at 120. "When addressing defamation claims, appellate courts must make an independent examination of the record to ensure against forbidden intrusions into the field of free expression." *Kevorkian v American Medical Ass'n*, 237 Mich App 1, 5; 602 NW2d 233 (1999). "This Court likewise reviews de novo the legal question whether a court possesses personal jurisdiction over a party." *WH Froh, Inc v Domanski*, 252 Mich App 220, 225; 651 NW2d 470 (2002). The plaintiff has the burden of establishing jurisdiction over a defendant, but must only

make a prima facie showing to defeat a summary disposition motion. *Id*. at 226. However, we review a trial court's decision to drop a party from an action for an abuse of discretion. *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 95; 535 NW2d 529 (1995).

Plaintiff first argues that the court improperly dismissed its business defamation suit. We disagree.

Defamation requires proof of four elements: "'(1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged communication 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 . . . or the existence of special harm caused by publication . . .'" *Kefgen v Davidson*, 241 Mich App 611, 617; 617 NW2d 351 (2000), quoting *Kevorkian, supra* at 8-9. Furthermore, a corporation that operates for profit may assert a defamation action if "the matter tends to prejudice it in the conduct of its business or to deter others from dealing with it." *Northland Wheels Roller Skating Center, Inc v Detroit Free Press, Inc*, 213 Mich App 317, 328; 539 NW2d 774 (1995), quoting *Heritage Optical Center, Inc v Levine*, 137 Mich App 793, 797; 359 NW2d 210 (1984) (emphasis omitted). However, "truth is an absolute defense to a defamation claim." *Porter v City of Royal Oak*, 214 Mich App 478, 486; 542 NW2d 905 (1995). Furthermore, "the common law has never required defendants to prove that a publication is literally and absolutely accurate in every minute detail. . . . [and] Michigan courts have traditionally followed this approach." *Rouch v Enquirer & News of Battle Creek Michigan* (*After Remand*), 440 Mich 238, 258-259; 487 NW2d 205 (1992).

This Court has extended the defense of "substantial truth" to private defendants. *Hawkins v Mercy Health Services, Inc*, 230 Mich App 315, 333; 583 NW2d 725 (1998). The test for substantial truth involves looking "to the sting of the article to determine its effect on the reader; if the literal truth produced the same effect, minor differences were deemed immaterial." *Rouch, supra* at 259. In the context of the substantial truth defense, a defamation defendant "is not responsible for every defamatory implication a reader might draw from his report of true facts, absent evidence that he intended the defamatory implication." *Royal Palace Homes, Inc v Channel 7 of Detroit, Inc*, 197 Mich App 48, 56; 495 NW2d 392 (1992), quoting *Chapin v Greve*, 787 F Supp 557, 566 (ED Va, 1992).

Plaintiff primarily argues that the vehicles were not "stolen" as defendants stated. However, plaintiff conceded that the vehicles were "illegally transferred" without defendants' consent and were "embezzled." Black's Law Dictionary defines "steal" as "1. To take (personal property) illegally with the intent to keep it unlawfully. 2. To take (something) by larceny, embezzlement, or false pretenses." Black's Law Dictionary (7th ed). Furthermore, *Random House Webster's College Dictionary* defines "steal," in relevant part, as "to take (the property of another or others) without permission or right, esp. secretly or by force." *Random House Webster's College Dictionary* (1997). The literal truth, therefore, is that the vehicles were stolen from defendants. There was no evidence that defendants directly accused plaintiff of stealing the vehicles or intended to imply that plaintiff stole the vehicles. The statement that the vehicles were "stolen" was substantially true. Plaintiff argues that, by operation of Canadian law, plaintiff acquired good title to the vehicles. However, presuming plaintiff acquired good title, the truth would remain that the vehicles had been stolen from defendant. Accordingly, the business defamation claim was properly dismissed.

Plaintiff next argues that the court should not have dismissed its injurious falsehood claim. We disagree.

A plaintiff in an injurious falsehood action must prove actual malice, defined as either knowledge that the statement is false or a reckless disregard of whether it is false. *New Franklin Enterprises v Sabo*, 192 Mich App 219, 221-222; 480 NW2d 326 (1991). As discussed, defendants' statements that the vehicles were stolen were not false. Therefore, plaintiff's injurious falsehood claim was properly dismissed.

Plaintiff next argues that its claim for tortious interference with a business relationship was improperly dismissed. We disagree.

"'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), quoting *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan*, 217 Mich App 687, 698-699; 552 NW2d 919 (1996). The defendant must intentionally commit an act that is either wrongful per se or lawful but unjustified and maliciously done for the purpose of invading another's rights. *Formall, Inc v Community Nat'l Bank of Pontiac*, 166 Mich App 772, 779; 421 NW2d 289 (1988). "A 'per se wrongful act' is an act that is inherently wrongful or one that is never justified under any circumstances." *Id*. at 780. "To establish that a lawful act was done with malice and without justification, the plaintiff must demonstrate, with specificity, affirmative acts by the defendant that corroborate the improper motive of the interference." *BPS Clinical Laboratories*, *supra* at 699. "Where the defendant's actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference." *Id*. Therefore, "defendants motivated by legitimate personal and business reasons are shielded from liability against this cause of action." *Formall, Inc*, *supra* at 780. Here, defendants were motivated by a desire to recover their stolen property, which is neither "inherently wrongful" nor "never justified under any circumstances." Thus, summary disposition was properly granted on this claim.

Plaintiff next argues that the court improperly dismissed its slander of title claim. We disagree.

"To establish slander of title at common law, a plaintiff must show falsity, malice, and special damages, i.e., that the defendant maliciously published false statements that disparaged a plaintiff's right in property, causing special damages." *B & B Investment Group v Gitler*, 229 Mich App 1, 8; 581 NW2d 17 (1998). In a similar context with respect to real property, this Court has held that, under MCL 565.108, "[m]alice may not be inferred merely from the filing of an invalid lien; the plaintiff must show that the defendant knowingly filed an invalid lien with the intent to cause the plaintiff injury." *Stanton v Dachille*, 186 Mich App 247, 262; 463 NW2d 479 (1990), citing *Sullivan v Thomas Organization, PC*, 88 Mich App 77, 86; 276 NW2d 522 (1979). The trial court dismissed plaintiff's slander of title claim on the sole ground that plaintiffs had passed title on to other parties at the time of the allegedly-slanderous statements, so plaintiffs did not have title to slander. We do not decide whether a plaintiff must have title contemporaneously with a slanderous statement. We conclude that the trial court reached the

right result because no evidence showed that defendants intended to cause plaintiff injury; thus, the malice requirement was not met.

Plaintiff finally argues that the trial court should not have dismissed GMAC US from the action. Plaintiff treated GMAC US as an interchangeable defendant with the present defendant, GMAC Canada, Ltd. Because summary disposition was appropriately granted on the underlying claims, whether GMAC US should have remained in the suit is moot. *Wiand v Wiand*, 205 Mich App 360, 369; 522 NW2d 132 (1994).

Affirmed.

/s/ Kurt T. Wilder
/s/ Joel P. Hoekstra
/s/ Donald S. Owens