

STATE OF MICHIGAN
COURT OF APPEALS

MERCANTILE BANK OF MICHIGAN,

Plaintiff/Counter-Defendant-
Appellee,

v

DOYLE GROUP ATTORNEYS, P.C., and T.
MICHAEL DOYLE,

Defendants/Counter-Plaintiffs-
Appellants.

UNPUBLISHED
November 23, 2010

No. 293260
Kent Circuit Court
LC No. 08-010636-CK

Before: M.J. KELLY, P.J., and K.F. KELLY and BORRELLO, JJ.

PER CURIAM.

Defendants Doyle Group Attorneys, P.C., and T. Michael Doyle¹ appeal as of right the trial court's order granting plaintiff Mercantile Bank of Michigan summary disposition and dismissing defendants' counterclaim. For the reasons set forth in this opinion, we affirm.

I. FACTS AND PROCEDURAL HISTORY

In May 2002, defendant established a line of credit with plaintiff. Defendant T. Michael Doyle was the 100 percent owner of defendant. Over the next several years, plaintiff renewed defendant's line of credit and gradually increased the available credit to as much as \$525,000. Promissory notes were periodically executed by defendant to guarantee the repayment of the debt. The most recent promissory note evidencing defendant's obligation to plaintiff was executed on March 14, 2008, for \$524,968. The promissory note was due on August 31, 2008. Defendant Doyle personally guaranteed the debt.

G & D Development, L.L.C., owned a commercial office building in Okemos, Michigan (hereafter "the building"). Defendant Doyle was a 50 percent owner of G & D Development. John Griggs was also a 50 percent owner of G & D Development. In 2003 and 2004, Mercantile

¹ This opinion will refer to defendant Doyle Group Attorneys, P.C. as "defendant" and will refer to defendant T. Michael Doyle as "defendant Doyle."

Bank Mortgage Company, L.L.C., which was plaintiff's affiliate, loaned approximately \$1.5 million to G & D Development. This loan was secured by a mortgage on the building. Defendant Doyle and Griggs also personally guaranteed repayment of the debt.

G & D Development leased portions of the building to several tenants. Defendant was one of the tenants. Gateway Systems Corporation d/b/a GSC Mobile Systems, Incorporated, was G & D Development's largest tenant, leasing 10,000 square feet (50 percent of the premises) for \$12,900 per month. Griggs was the majority shareholder in GSC. Defendant Doyle and G & D Development were minority shareholders in GSC. In and after 2003, Mercantile BIDCO, Inc., which was also plaintiff's affiliate, loaned GSC more than \$520,000. To secure this obligation, GSC granted BIDCO a security interest in all of its assets. In 2005, BIDCO dissolved and assigned all of its assets, which included the loans to GSC and related security interests, to plaintiff.

On February 8, 2006, GSC's loans matured and became due and payable. GSC, however, then defaulted on the loans with plaintiff. On June 9, 2006, GSC signed a forbearance agreement in which plaintiff agreed to forbear from enforcing its rights for 90 days in order to give GSC an opportunity to market and sell some of its assets to a third party. GSC was not able to find a third-party buyer, however, and on September 26, 2006, after the forbearance period expired, plaintiff exercised its right under the Uniform Commercial Code to take and sell all of GSC's assets. Plaintiff subsequently sold GSC's assets to Jadian Enterprises, Inc., for \$300,000. At the time of the sale, GSC still owed plaintiff more than \$469,000. Plaintiff used the \$300,000 it received from the sale to reduce the amount that GSC owed plaintiff. Plaintiff subsequently wrote off more than \$169,000 as a loss. After the sale, GSC ceased operations. Because GSC ceased operations, it was no longer G & D Development's paying tenant. Hence, G & D Development was no longer receiving \$12,900 per month in rent money from GSC.

In March 2007, G & D Development defaulted on its loan from Mercantile Bank Mortgage Company. Mercantile Bank Mortgage Company foreclosed on G & D Development's mortgage and on April 26, 2007, acquired the building at a sheriff's sale.

Defendant also subsequently defaulted on its loan from plaintiff, which was due on August 31, 2008. Although defendant Doyle had personally guaranteed defendant's loan with plaintiff, defendant Doyle did not repay defendant's loan after it defaulted. On October 10, 2008, plaintiff filed a complaint against defendant and defendant Doyle for money damages as the result of defendant's default. On November 7, 2008, defendants filed a counterclaim alleging promissory estoppel and tortious interference with business relations and prospective advantages. On February 2, 2009, the trial court issued a scheduling order, which provided that the deadline for discovery was June 5, 2009, which allowed four months for discovery. Subsequently, the parties stipulated to extend the discovery deadline 45 days until July 21, 2009.

On May 26, 2009, plaintiff moved for summary disposition pursuant to MCR 2.116(C)(10), alleging that there were no genuine issues of material fact; therefore, it was entitled to judgment as a matter of law on its complaint and defendants' counterclaim.

On June 18, 2009, defendants filed their first amended counterclaim alleging promissory estoppel and tortious interference with business relations and prospective advantages. As part of defendants' tortious interference with business relations claim, defendants argued that plaintiff

was aware of the business relationship between GSC as tenant to G & D Development and knew that the monthly rent was necessary for the financial success of G & D Development. According to defendants, plaintiff therefore “purposely and maliciously increased its financial gain and financial position by taking the actions it knew would put G & D out of business and would cause economic disaster for [Doyle Group Attorneys] and Doyle.”

At the hearing on plaintiff’s motion for summary disposition, the trial court summarized defendants’ argument as follows:

Essentially, the Doyle group is claiming that the bank tortiously interfered with its relationships with G & D, the landlord of the building, and GSC, its principal tenant, by enforcing its loan agreements with GSC.

The trial court rejected defendants’ argument, stating:

The problem, it seems to me, is that for an interference with a business relationship to be tortious, it must by definition be wrongful. Any act by anybody interfering with some business relationship somewhere is not necessarily actionable if the act itself is lawful and is conducted in conformity with the law. And it seems to me that what the plaintiff did was to exercise its lawful rights with respect to GSC in seizing its assets.

* * *

I don’t see that the bank has done anything that can constitute improper illegal conduct which could be the basis of any kind of a tort claim. The Bank operated within its rights and if it did, and somebody else got hurt in the process, it’s an unfortunate example of collateral damage, but it hardly forms the basis for a cause of action under tort law. So it seems to me that the bank having lawfully proceeded as against GSC under its contractual rights, its conduct cannot be considered to be tortious or unlawful, and, therefore, the Court will grant summary disposition as to the tortious interference counterclaim.

The trial court subsequently entered an order granting plaintiff summary disposition and dismissing defendants’ counterclaim with prejudice. This appeal ensued.

II. ANALYSIS

Defendants argue that their tortious interference with a business relationship counterclaim should not have been summarily dismissed because the evidence supported a conclusion by a reasonable fact-finder that plaintiff’s actions were malicious. We review de novo a trial court’s decision to grant summary disposition. *Coblentz v Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). We review the record in the same manner as the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). In evaluating a motion for summary disposition brought under this subsection, a reviewing court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties, MCR

2.116(G)(5), in the light most favorable to the party opposing the motion. *Coblentz*, 475 Mich at 567-568. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10); MCR 2.116(G)(4); *Coblentz*, 475 Mich at 568.

“[O]ne who alleges tortious interference with a . . . business relationship must allege the intentional doing of a per se wrongful act or the intentional doing of a lawful act with malice and unjustified in law for the purpose of invading plaintiff’s . . . business relationship.” *Feldman v Green*, 138 Mich App 360, 369-370; 360 NW2d 881 (1984). “A wrongful act per se is an act that is inherently wrongful or an act that can never be justified under any circumstances. If the defendant’s conduct was not wrongful per se, the plaintiff must demonstrate specific, affirmative acts that corroborate the unlawful purpose of the interference.” *Badiee v Brighton Area Schools*, 265 Mich App 343, 367; 695 NW2d 521 (2005) (citations and quotations omitted). “Where the defendant’s actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference.” *BPS Clinical Labs v Blue Cross & Blue Shield*, 217 Mich App 687, 699; 552 NW2d 919 (1996). Hence, parties that are “motivated by legitimate personal and business reasons are shielded from liability” from a tortious interference with a business relationship or expectancy claim. *Formall, Inc v Community Nat’l Bank*, 166 Mich App 772, 780; 421 NW2d 289 (1988).

To the extent that defendants argue that the trial court incorrectly held that plaintiff’s actions had to be wrongful in order to support a claim for tortious interference with a business relationship, that claim provides no relief to defendants. We find it unnecessary to review whether the trial court misstated the law, because our review is de novo, and we affirm a correct result even if based on incorrect or faulty reasoning. *Fisher v Blankenship*, 286 Mich App 54, 70; 777 NW2d 469 (2009) (citation omitted).

On de novo review, based on the record before us, there is a conspicuous failure of defendants to raise any genuine issue of material fact as to whether plaintiff engaged in a lawful act with malice or with the unlawful purpose of interfering with the business relationship at issue. Defendants did not “demonstrate specific, affirmative acts that corroborate the unlawful purpose of the interference.” *Badiee*, 265 Mich App at 367. In addition, viewing the evidence in a light most favorable to the nonmoving party, plaintiff’s actions were not wrongful per se nor done with malice where they are easily justified as actions based on a legitimate business decision to protect itself from financial losses. *Coblentz*, 475 Mich at 567-568; *Formall*, 166 Mich App at 780. Consequently, because the record supports the conclusion that plaintiff was motivated by legitimate business reasons, it is shielded from liability stemming from a tortious interference with a business relationship or expectancy claim. *Formall*, 166 Mich App at 780. The trial court properly granted plaintiff summary disposition and dismissed defendants’ counterclaim. *Id.*

Defendants also argue that summary disposition was premature because several depositions were scheduled, but not yet taken, of witnesses who were involved in the decisions that led to plaintiff’s seizure of the assets of Gateway Systems Corporation d/b/a GSC Mobile Systems, Incorporated.

Generally, summary disposition under MCR 2.116(C)(10) is premature if it is granted before discovery on a disputed issue is complete. However, the mere

fact that the discovery period remains open does not automatically mean that the trial court's decision to grant summary disposition was untimely or inappropriate. The question is whether further discovery stands a fair chance of uncovering factual support for the opposing party's position. In addition, a party opposing summary disposition cannot simply state that summary disposition is premature without identifying a disputed issue and supporting that issue with independent evidence. The party opposing summary disposition must offer the required MCR 2.116(H) affidavits, with the probable testimony to support its contentions. [*Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 292; 769 NW2d 234 (2009) (citations omitted).]

In this case, defendants have not identified the information they believe additional depositions will provide nor have defendants submitted affidavits, which are required pursuant to MCR 2.116(H). *Id.* Hence, defendants have not demonstrated that "further discovery stands a fair chance of uncovering factual support for" their position. *Id.* Accordingly, viewing the evidence in a light most favorable to the nonmoving party, the trial court correctly granted plaintiff judgment as a matter of law. *Coblentz*, 475 Mich at 567-568.

Affirmed.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Stephen L. Borrello