

STATE OF MICHIGAN  
COURT OF APPEALS

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EDWARDS PUBLICATIONS, INC.,

Plaintiff/Counter Defendant-  
Appellee/Cross Appellant,

v

TRACY KASDORF,

Defendant-Appellant/Cross  
Appellee,

and

BILBEY PUBLICATIONS, L.L.C.,

Defendant/Counter Plaintiff.

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UNPUBLISHED

May 3, 2011

No. 293617

Tuscola Circuit Court

LC No. 06-023444-CK

Before: TALBOT, P.J., and SAWYER and M. J. KELLY, JJ.

TALBOT, P.J. (*dissenting*).

I respectfully dissent as I see no reasonable alternative other than affirm the judgment based on the instructions and verdict form provided to the jury and approved by counsel.

As noted, Edwards Publications, Inc. (Edwards) proceeded to trial on three counts, consisting of (a) breach of contract, (b) intentional interference with business relationships, and (c) civil conspiracy. An element or factual predicate for the determination of a civil conspiracy in this case was the existence or finding that the tort comprising an intentional interference with business relationships had occurred. This was clearly indicated by the trial court's instruction to the jury, which was approved by counsel for both parties, as follows:

Plaintiff claims that the Defendant engaged in a civil conspiracy. A civil conspiracy is a combination of two or more persons by some concerted action to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means.

In order to establish the claim, Plaintiff has the burden of proving each of the following:

- a. a concerted action

- b. by Defendant or some other persons
- c. to accomplish a criminal or unlawful purpose or accomplish a lawful purpose by criminal or unlawful means
- d. Plaintiff was damages [sic] as a result of the Defendant's conduct; and
- e. Plaintiff proved its claim of tortuous [sic] interference with a business relationship.

Your verdict will be for the Plaintiff if you find that the Plaintiff has proved all of these elements.

Your verdict will be for the Defendant if you find the Plaintiff has failed to prove any one of these elements.

A written copy of these instructions was provided to the jury for use or reference during their deliberations in conjunction with the verdict form.

As properly elucidated by the trial court in the jury instructions to establish a cause of action for civil conspiracy it is necessary to prove the existence of (a) a "concerted action" (b) by "a combination of two or more persons" (c) "to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means."<sup>1</sup> In addition, to support a civil conspiracy claim, the proponent must demonstrate the existence of a "separate, actionable tort"<sup>2</sup>; in this case the tortious interference with a business relationship. The jury instructions treated the three claims as separate. This was reinforced by the inartful drafting of the verdict form as approved by counsel, which treated the claims as distinct and capable of standing alone. Specifically, the verdict form contained the following questions for the jury's response:

QUESTION NO. 1: Did Plaintiff suffer damages as a result of the Defendant's breach of contract?

ANSWER: \_\_\_\_\_ (yes or no)

QUESTION NO. 2: Did the Defendant tortuously interfere with the Plaintiff's business relationships or expectancies with its customers and cause the Plaintiff to suffer damages because of this interference?

ANSWER: \_\_\_\_\_ (yes or no)

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<sup>1</sup> *Admiral Ins Co v Columbia Cas Ins Co*, 194 Mich App 300, 313; 486 NW2d 351 (1992).

<sup>2</sup> *Advocacy Org for Patients & Providers v Auto Club Ins Ass'n*, 257 Mich App 365, 384; 670 NW2d 569 (2003); *Early Detection Ctr, PC v New York Life Ins Co*, 157 Mich App 618, 632; 403 NW2d 830 (1986).

QUESTION NO. 3: Did the Defendant conspire with one or more persons to commit an unlawful act and cause the Plaintiff to suffer damages because of this conspiracy?

ANSWER: \_\_\_\_\_ (yes or no)

If your answer to **any** of the above is “yes”, please state the amount:

\$ \_\_\_\_\_

In fact, the jury indicated to the trial court that it had a question regarding the wording of the verdict form during their deliberations. Unfortunately, while the record discloses the existence of the query the specific content or focus of the jury’s concern cannot be discerned from the lower court file or transcript. The record does reveal, however, that within approximately 30 minutes of having received a response to their query, the jury indicated that they had attained a verdict. As counsel for both parties approved both the relevant jury instructions and the verdict form and gave no indication of concern when the verdict was announced and the jury polled, they should not now be permitted to complain regarding the result obtained or be given another opportunity to try this case.

Any analysis must begin with the presumption that the jurors comprehended and followed the instructions provided by a trial court.<sup>3</sup> Based on the responses to the verdict form, the jury accepted that a civil conspiracy occurred but that any resultant interference with Edwards’ business relationships was minimal as demonstrated by the amount of the award. This would be consistent with the trial court’s instruction on civil conspiracy, “Your verdict will be for the Plaintiff if you find that the Plaintiff has proved all of these elements.”

While superficially, the responses on the verdict form are inconsistent, they are not irreconcilable.<sup>4</sup> It has been repeatedly recognized by this Court and our Supreme Court that a

jury's verdict must be upheld, even if it is arguably inconsistent, [i]f there is an interpretation of the evidence that provides a logical explanation for the findings of the jury. [E]very attempt must be made to harmonize a jury's verdicts. Only where verdicts are so logically and legally inconsistent that they cannot be reconciled will they be set aside.<sup>5</sup>

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<sup>3</sup> *Bordeaux v Celotex Corp*, 203 Mich App 158, 164, 511 NW2d 899 (1993).

<sup>4</sup> Inexplicably, the majority would approve remanding the entire matter for a new trial even though there is no dispute or contention pertaining to the verdict on the breach of contract claim.

<sup>5</sup> *Allard v State Farm Ins Co*, 271 Mich App 394, 407; 722 NW2d 268 (2006) (footnotes and quotation marks omitted).

Contrary to the majority's opinion, the resultant discrepancy can be explained by examining the verdict form and how it permitted the jury to reach a verdict finding a civil conspiracy premised on tortious interference with business relationships while responding negatively on the question pertaining to the underlying tort. Had the jury responded affirmatively to the existence of a civil conspiracy but indicated no resultant damages any purported inconsistency in the verdict would be irrelevant. In addition, the questions posed to the jury for each charged claim are compound. In reviewing the question pertaining solely to tortious interference the jury was allowed only one response but asked two separate questions: (a) "Did Defendant tortuously interfere with Plaintiff's business relationships or expectancies with its customers" and (b) did such interference "cause the Plaintiff to suffer damages?" It is not impossible or beyond contemplation to apprehend the jury's negative response to this question to be a more directed indication that although they believed tortious interference occurred that Edwards did not incur damages on this basis. The phrasing regarding the question pertaining to civil conspiracy is similarly compound permitting the jury to determine that Edwards was aggrieved and suffered damages because of the conspiracy rather than the interference with its business.

Because the jury actually calculated an award and the verdict form permitted them to determine an award should they answer "any" of the questions posed to them in the affirmative, the resultant verdict while inconsistent can be satisfactorily explained and, therefore, should be affirmed.

/s/ Michael J. Talbot