

STATE OF MICHIGAN
COURT OF APPEALS

MARK W. DOBRONSKI,

Plaintiff-Appellant,

v

ROBERT PAUL MACDOWELL a/k/a WOLF
HARPER, and PATRICK KIRBY ROBERTSON,

Defendants-Appellees,

and

THE SOUTHERN MICHIGAN RAILROAD
SOCIETY, INC. and CYNTHIA L. GIVEN,

Defendants.

UNPUBLISHED
September 15, 2011

No. 302377
Lenawee Circuit Court
LC No. 10-003794-CZ

Before: M. J. KELLY, P.J., and OWENS and BORRELLO, JJ.

PER CURIAM.

In this case involving numerous claims that are premised on defamation and breach of a settlement agreement, plaintiff Mark W. Dobronski appeals as of right the trial court's order granting summary disposition in favor of defendant Robert Paul MacDowell.¹ Because the trial court properly dismissed Dobronski's claims against MacDowell, we affirm.

Dobronski is a long-time member of the Southern Michigan Railroad Society (the Society). In 2004, Dobronski sued the Society and its directors over his right to see the Society's financial records. Dobronski entered into a settlement agreement with the Society to resolve that dispute; the settlement agreement included a non-disparagement clause.

¹ This appeal involves only defendant Robert Paul MacDowell; the parties stipulated to the dismissal of defendant Patrick Kirby Robertson from this appeal.

In March 2010, Dobronski sued the Society, MacDowell, and defendants Patrick Kirby Robertson and Cynthia L. Given. Dobronski alleged that the Society and its officers—MacDowell, Robertson and Given—disparaged him and that their remarks amounted to a breach of the settlement agreement, defamation, breach of fiduciary duty, conspiracy, and breach of good faith. He also asked to have the officers removed and asked for declaratory relief.

MacDowell moved for summary disposition under MCR 2.116(C)(8) and (10) in August 2010. MacDowell argued that he was entitled to summary disposition of Dobronski's claims premised on the settlement agreement because he was not a party to the settlement agreement. He also argued that Dobronski failed to plead his defamation claim with sufficient particularity and that he was not one of the Society's officers or directors during the time at issue and that the trial court otherwise lacked the authority to remove him as a director.

At a hearing in September 2010, the trial court stated that it was going to grant MacDowell's motion for summary disposition. Dobronski later stipulated to the dismissal of his claims against the remaining parties. And, in October 2010, the trial court dismissed all Dobronski's claims against those parties with prejudice. The trial court entered an order dismissing Dobronski's claims against MacDowell in December 2010.

This appeal followed.

Dobronski argues that the trial court erred when it granted MacDowell's motion for summary disposition. Specifically, he argues that there was a question of fact as to whether MacDowell was one of the Society's directors and, therefore, the trial court erred when it "found" that MacDowell was not a director. He also argues that the trial court clearly had the authority to grant him his declaratory relief and, for that reason, should not have dismissed that count of his complaint. This Court reviews a trial court's decision on a motion for summary disposition de novo. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009).

Although Dobronski claims that the trial court erred when it granted MacDowell's motion because there was a question of fact as to whether MacDowell was a director, we need not address this claim of error if MacDowell was otherwise entitled to summary disposition under MCR 2.116(C)(8). See *Fisher v Blankenship*, 286 Mich App 54, 70; 777 NW2d 469 (2009) (noting that this Court will affirm a trial court's decision on a motion for summary disposition if the decision was correct even if for the wrong reason). A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the pleadings alone. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). The trial court should dismiss a claim under MCR 2.116(C)(8) when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Id.* at 119.

In his complaint, Dobronski alleged several claims that arose out of the alleged breach of the settlement agreement. He alleged that MacDowell breached the settlement agreement, that MacDowell breached his fiduciary duties by breaching the settlement agreement, that MacDowell conspired to breach the settlement agreement, that MacDowell breached implied duties under the settlement agreement, that MacDowell should be removed as a director because he breached the settlement agreement, and Dobronski asked the trial court to declare his rights—

presumably as between him and MacDowell—under the settlement agreement. However, it was undisputed that MacDowell was not a party to the settlement agreement, which was attached to Dobronski’s complaint. Therefore, MacDowell could not be personally liable for any actions premised on his alleged breach of the settlement agreement. See *Thomas v Leja*, 187 Mich App 418, 422; 468 NW2d 58 (1991) (noting that, in order to hold someone liable under an agreement, the plaintiff must establish mutuality of agreement). For the same reason, the trial court could not—as between Dobronski and MacDowell—declare the parties’ rights under the settlement agreement. Furthermore, even if MacDowell were one of the Society’s directors, directors cannot normally be personally liable for a breach of an agreement with the corporation. *Saint Joseph Valley Bank v Napoleon Motors Co*, 230 Mich 498, 501-502; 202 NW 933 (1925). As such, the trial court properly dismissed Dobronski’s claims against MacDowell to the extent that they were premised on liability for breaching the settlement agreement.

A director may be personally liable for torts committed by the corporation. See, e.g., *Citizens Ins Co of Am v Delcamp Truck Ctr, Inc*, 178 Mich App 570, 576; 444 NW2d 210 (1989). However, Dobronski failed to plead his defamation claim with the required specificity. See *Royal Palace Homes v Channel 7 of Detroit, Inc*, 197 Mich App 48, 52-55; 495 NW2d 391 (1992). As such, MacDowell was entitled to have this claim dismissed under MCR 2.116(C)(8). See *Ledl v Quik Pik Food Stores, Inc*, 133 Mich App 583, 590; 349 NW2d 529 (1984). Further, without his defamation claim, Dobronski’s conspiracy claim against MacDowell also fails. See *Mable Cleary Trust v Edward-Marlah Muzyl Trust*, 262 Mich App 485, 507; 686 NW2d 770 (2004) (noting that a civil conspiracy must be premised on an underlying actionable tort). Likewise, to the extent that his remaining claims were premised on MacDowell’s alleged defamatory statements, those claims too must fail.

Because Dobronski failed to state any claims against MacDowell upon which relief could be granted, the trial court did not err when it dismissed Dobronski’s claims against MacDowell.

Affirmed.

/s/ Michael J. Kelly

/s/ Donald S. Owens

/s/ Stephen L. Borrello