COURT OF APPEALS
DECISION
DATED AND FILED

September 19, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

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No. 98-3191

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

HANSON SALES & MARKETING, LTD.,

PLAINTIFF-APPELLANT,

V.

VSA, INC., AND GARDETTO'S,

DEFENDANTS-RESPONDENTS.

APPEAL from judgments of the circuit court for Milwaukee County: CHARLES F. KAHN, JR., Judge. *Affirmed.*

Before Fine, Schudson and Curley, JJ.

¶1 PER CURIAM. Hanson Sales and Marketing (Hanson Sales) appeals the grant of summary judgment to both Gardetto's Bakery (Gardetto's) and to VSA, Inc. (VSA). Hanson Sales sued Gardetto's under the Wisconsin Fair Dealership Law (WFDL), claiming that Gardetto's unlawfully terminated its

broker's contract with Hanson Sales. It also alleged that Gardetto's breached the contract created by Gardetto's broker's manual. Hanson Sales sued VSA, alleging that VSA unlawfully interfered with Hanson Sales's "business relations" with Gardetto's. Because Hanson Sales was not a dealership under the WFDL and there was no enforceable contract created by the Gardetto's broker's manual, we affirm the trial court's grant of summary judgment to Gardetto's. We also affirm the grant of summary judgment to VSA because Hanson Sales failed to prove that VSA interfered with its business relationship with Gardetto's.

I. BACKGROUND.

¶2 Gardetto's, a company making and distributing snack foods, operates as a limited partnership in Wisconsin. Gardetto's has various distribution channels. Until Gardetto's terminated it, Hanson Sales, for approximately ten years, acted as Gardetto's broker and distributed Gardetto's products to convenience stores, vending machines and large merchandisers, such as Shopko.

¶3 During the period that the two businesses operated together, Hanson Sales would solicit orders from customers, submit them to Gardetto's, and then Gardetto's would send the merchandise. Hanson Sales received a commission from Gardetto's for its sales. Hanson Sales did not work exclusively for Gardetto's, as it represented as many as fifty-three other manufacturers, although the Gardetto's account generated approximately thirty percent of Hanson Sales's revenue.

¶4 Unlike sales to convenience stores, which Hanson Sales did directly, sales to vending machine operators were done through vending machine distributors. Hanson Sales would contact vending machine operators and urge

them to order Gardetto's products from their distributors. One such vending machine distributor was VSA.

¶5 According to the affidavit of Nannette Gardetto, an executive vice president for Gardetto's, in July 1996 she learned that Phil Hanson Sr., Hanson Sales's sole shareholder, was forming a brokerage company to distribute a mustard-flavored pretzel manufactured by PrepCo. Inasmuch as Gardetto's mustard-flavored pretzel was one of Gardetto's biggest sellers, Ms. Gardetto was concerned that Hanson Sales's marketing of a similar pretzel would be a conflict of interest. Ms. Gardetto claimed that she launched an investigation into the matter, which revealed that not only had Phil Hanson Sr. negotiated with PrepCo to sell its mustard-flavored pretzel, but also that his daughter-in-law had started a company, MVP, that planned on competing with VSA. Further, she learned that Phil Hanson Sr.'s son, Phil Hanson Jr., an employee of Hanson Sales, had guaranteed a sizable loan on behalf of MVP. Ms. Gardetto was advised that this family relationship posed a possible anti-trust violation which could implicate Gardetto's. Besides the possible legal problem, Ms. Gardetto also did not want her distributor taking orders for a product in direct competition with a popular Gardetto's product. For these reasons, she and the other Gardetto's executives elected to terminate its relationship with Hanson Sales on August 15, 1996. VSA also learned of Hanson Sales's plan. It, too, was concerned about the relationship between Hanson Sales and MVP, as it feared that Hanson Sales might favor MVP over it. Consequently, VSA, after consulting with its legal staff, decided to notify its suppliers of its concerns regarding the relationship between Hanson Sales and MVP.

¶6 After being terminated as Gardetto's broker, Hanson Sales brought suit against Gardetto's, alleging that Hanson Sales was a dealer under the

Wisconsin Fair Dealership Law, and that Gardetto's violated the law by terminating it. Hanson Sales brought a second claim against Gardetto's, alleging that it breached the contract created by Gardetto's broker's manual which stated that Hanson Sales was entitled to notice if it was being terminated and it could only be terminated for a sound business reason. Hanson Sales also sued VSA, asserting that VSA tortiously interfered with Hanson Sales's "business relations" with Gardetto's.

II. ANALYSIS.

Standard of Review

¶7 We review the trial court's decision by applying the same standards and methods as did the trial court. *See* ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). WISCONSIN STAT. § 802.08(2) (1997-98)[1] sets forth the standard by which summary judgment motions are to be judged:

> The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Summary judgment should be granted only where the moving party shows the right to judgment with such clarity as to leave no room for controversy. *See* ***Grams v. Boss***, 97 Wis. 2d 332, 338, 294 N.W.2d 473 (1980).[2]

[1] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

[2] At the trial court level, the respondents requested the trial court to strike certain portions of Phil Hanson, Sr.'s affidavit because it violated WIS. STAT. § 802.08(3), which

(continued)

A. *Hanson Sales was not a dealer under WIS. STAT. § 135.06*

¶8 Hanson Sales submits that the trial court erred in granting summary judgment to Gardetto's when it determined that Hanson Sales was not a dealer under the WFDL. Hanson Sales contends it was a dealer under the WFDL because it had the right to sell Gardetto's products and, thus, had authority to commit Gardetto's to a sale, thereby falling within Chapter 135's definition of dealership. Hanson Sales also posits that the ongoing practices of the two companies created a dealership under the law, and evidence of this relationship was found in the broker's manual provisions. Gardetto's counters that the facts presented and the case law all point to Hanson Sales's being a manufacturer's representative, an entity not usually qualifying for WFDL protection.

¶9 Whether Hanson Sales is a dealership and is subject to the protections of WFDL is a question of law. *See* ***Kania v. Airborne Freight Corp.***, 99 Wis. 2d 746, 758, 300 N.W.2d 63 (1981). We conclude that Hanson Sales was not a dealership as that term is defined in the WFDL. Our independent review supports Gardetto's contention that Hanson Sales was not a dealership under the WFDL because it more closely resembled a manufacturer's representative in its relationship with Gardetto's.

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requires the affidavits to "set forth such evidentiary facts as would be admissible in evidence." After reviewing the challenged affidavit and the trial court's decision, we conclude that the trial court implicitly granted the motion to strike paragraphs 13, 14, 24, 35, 36 and 40 of Phil Hanson, Sr.'s affidavit as the statements in those paragraphs contain either hearsay, speculations or improper legal conclusions. Therefore, those paragraphs of Phil Hanson Sr.'s affidavit will not be considered.

Counsel for Hanson is also reminded that briefs must be accompanied by record references under WIS. STAT. § 809.19(1). A failure to comply could lead this court to decline to consider facts and arguments for which there are no record references. *See* ***M.P. v. Dane County Dep't of Human Servs.***, 170 Wis. 2d 313, 334-35, 488 N.W.2d 133 (Ct. App. 1992).

¶10 WISCONSIN STAT. § 135.02 (3) defines "dealership" as:

> a contract or agreement, either expressed or implied, whether oral or written, between 2 or more persons, by which a person is granted the right to sell or distribute goods or services, or use a trade name, trademark, service mark, logotype, advertising or other commercial symbol, in which there is a community of interest in the business of offering, selling or distributing goods or services at wholesale, retail, by lease, agreement or otherwise.

¶11 An understanding of the reason for the passage of Chapter 135—the WFDL—is helpful in determining whether Hanson Sales is a dealership. The legislature's stated purposes in passing the WFDL is found in WIS. STAT. § 135.025(2):

> **(2)** The underlying purposes and policies of this chapter are:
>
> (a) To promote the compelling interest of the public in fair business relations between dealers and grantors, and in the continuation of dealerships on a fair basis;
>
> (b) To protect dealers against unfair treatment by grantors, who inherently have superior economic power and superior bargaining power in the negotiation of dealerships;
>
> (c) To provide dealers with rights and remedies in addition to those existing by contract or common law;
>
> (d) To govern all dealerships, including any renewals or amendments, to the full extent consistent with the constitutions of this state and the United States.
>
> (3) The effect of this chapter may not be varied by contract or agreement. Any contract or agreement purporting to do so is void and unenforceable to that extent only.

Notwithstanding the sweeping language of § 135.025(2), not every business relationship is covered by the law; it encompasses only those found to be "dealerships."

¶12 For purposes of the WFDL, the elements of a dealership are, in summary: (1) an agreement between two or more persons; (2) by which one has granted certain rights to the other; and (3) in which a community of interest exists in the business of offering, selling or distributing goods or services at wholesale or retail. *See* ***Kania***, 99 Wis. 2d at 763. Hanson Sales claims that it is a dealership under the statute because it was granted the right to sell Gardetto's products.

¶13 Gardetto's submits, relying on a line of cases starting with ***Foerster, Inc. v. Atlas Metal Parts Co.***, 105 Wis. 2d 17, 313 N.W.2d 60 (1981), that Hanson Sales is actually a manufacturer's representative and, as such, falls outside the definition of "dealership" found in WIS. STAT. § 135.02(3); thus, it is not protected by the WFDL. Other cases holding that a manufacturer's representative is not covered by the WFDL include ***Kornacki v. Norton Performance Plastics***, 956 F.2d 129 (7th Cir. 1992); ***Wilburn v. Jack Cartwright, Inc.***, 719 F.2d 262 (7th Cir. 1983); and ***E.A. Dickinson v. Simpson Electric Co.***, 509 F. Supp. 1241 (E.D. Wis. 1981).

¶14 In ***Foerster***, the company, Foerster, attempted to recover under the WFDL after Atlas terminated their longstanding sales agreement. Our supreme court concluded that Foerster was a manufacturer's representative, and that manufacturer's representatives are not covered under the law. The supreme court observed:

> The description of the businesses which the Fair Dealership Law was intended to cover indicates that the law was meant to protect only those small businessmen who make a substantial financial investment in inventory, physical facilities or "good will" as part of their association with the grantor of the dealership and is, thus, consistent with common or accepted perceptions of the words franchise or dealership. It is these types of businesses whose economic livelihood would be imperiled by the

> termination of their dealership without good cause and adequate notice. None of the businesses mentioned in this description resembles the type of manufacturer's representative business involved in this case.

Foerster, 105 Wis. 2d at 24. The case established that certain business conditions are frequently present in businesses covered by the law. These conditions include businesses that have made a substantial financial investment in inventory, physical facilities or "good will," as well as businesses that have a right to sell the goods and services of the manufacturer; that have the right to use a trade name, trademark, service mark, logotype, advertising or other commercial symbol; that devote a substantial portion of the business to the promotion of the manufacturer's products; and that are economically dependent on the relationship with the manufacturer. *See* ***id.*** at 24-25.

¶15 Later, in ***Bush v. National School Studios, Inc.***, 139 Wis. 2d 635, 407 N.W.2d 883 (1987), the supreme court again grappled with the question of what is a "dealership."

> Since the enactment of the WFDL in 1974, courts have wrestled with its application. The issue most frequently presented is the same one we consider here: whether a certain business relationship falls within the WFDL's definition of "dealership." … The dilemma courts face in resolving this question is formulating a definition sufficiently broad to encompass non-traditional business relationships which in fact fall under the dealership rubric, yet restrictive enough to avoid "including every vendor/vendee relationship under the protective veil of ch. 135."

Id. at 646 (citation omitted). In finding that Bush had a business relationship with National School Studios that qualified for WFDL treatment, the court found several other conditions that appear in business relationships covered by the WFDL. The court held that, to be entitled to WFDL protection, ordinarily a

business must: set prices, collect payments, extend credit, and assume the cost of advertising. *See **id.*** at 653-54. The court also found that Bush was actually engaged in the grantor business because he took the photographs sold to students through their schools. *See **id.***

¶16 Comparing the ***Foerster*** and ***Bush*** business conditions to the facts present here, we are satisfied that Hanson Sales acted more as a manufacturer's representative than a dealer and, consequently, the grant of summary judgment to Gardetto's was appropriate. First, Hanson Sales only solicited orders for Gardetto's and received a commission; it had no inventory of Gardetto's products. Hanson Sales incurred no substantial financial investment in Gardetto's.[3] Additionally, Hanson Sales did not use the Gardetto's name on its business cards, stationary, etc., nor was Hanson Sales authorized to use Gardetto's trademark. Gardetto's supplied all promotional literature and paid for its advertisements. Nor was Hanson Sales solely dependent on Gardetto's for its economic livelihood as Hanson Sales represented as many as fifty-three other companies and the Gardetto's business represented only about thirty percent of Hanson Sales's yearly revenue. *See **Foerster***, 105 Wis. 2d at 27 ("'economic hardship' … arises where 50% to 60% of the business' time is dedicated to the sale of one company's line of products."). As a result, presumably Hanson Sales spent thirty percent of its time dealing with Gardetto's.

[3] Hanson argues that in 1989 it moved out of its basement location and bought a bigger building in order to handle the Gardetto account, but given that Hanson has only six employees, warehouses none of Gardetto's products, and has fifty-three other accounts, that claim appears disingenuous. In any event, Hanson has never had any "substantial" financial investment in Gardetto. It used its bigger building for its other accounts, and it never paid a franchise fee or other fees to Gardetto.

¶17 Although Hanson Sales contends that it was a dealer because it had the right to sell Gardetto's products, upon closer inspection, it appears Hanson Sales confuses the right to solicit orders with the right to sell goods. In finding Foerster was not a dealer, our supreme court remarked:

> "Plaintiff does not take title to or possession of goods from the defendant, it does not deliver goods from itself or from the defendant to a third party, and it does not exchange goods for a price with any third party. Rather, plaintiff is paid for its promotional services by the defendant, and the value of the services is measured by a percentage of the price of goods sold by the defendant itself. Nor does the plaintiff distribute goods since it has none in its possession."

Id. at 28-29 (quoting ***E.A. Dickenson***, 509 F. Supp. at 1245).

¶18 A similar relationship existed here between Hanson Sales and Gardetto's. The undisputed facts reveal that Gardetto's, not Hanson Sales, set all prices and determined the parameters that Hanson Sales had to follow in soliciting orders. Once Hanson Sales passed the order to Gardetto's, Gardetto's took full control of the transaction. Credit decisions were also the responsibility of Gardetto's, as was collection of the debt.[4] In order to escape the label of a manufacturer's representative, Hanson Sales must have had "an unqualified authorization to transfer the product at the point and moment of the agreement to sell." ***Foerster***, 105 Wis. 2d at 26. Hanson Sales had no such right. Hanson Sales never had title or possession of Gardetto's products because Gardetto's products were shipped directly to the customer by Gardetto's. Indeed, Hanson Sales

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[4] Hanson claims Gardetto's manual made Hanson responsible for bad debt. However, in his deposition, Phil Hanson, Sr. could not state one instance when Hanson bore the credit risk or where Hanson had been responsible for bad debt.

concedes in its brief that "Gardetto's routinely provided us with price, promotion and any unusual delivery term information, *so we could make sales within those terms*." Later in Hanson Sales's brief, this restriction is again noted when Hanson Sales argues that "*so long as the order fit Gardetto's pricing, promotion, and delivery terms, Hanson Sales was authorized to confirm the sale.*" This is not the unconditional right to sell found in ***Bush***, where Bush "set prices, collected payment, and at times extended credit," all the while "provid[ing] a substantial and integral part of the portrait service—photographing the students." ***Bush***, 139 Wis. 2d at 653-54. While Hanson Sales had the authority to solicit business for Gardetto's, its authority was limited. It could solicit orders only under the conditions set by Gardetto's.

¶19 Hanson Sales also claims that the broker's manual establishes its right to sell. Hanson Sales points to the following language in the manual for its belief that it had a right to sell: "Do not make promises or obligate the company beyond published prices, marketing programs or policies—ask when in doubt." Again, Hanson Sales confuses the right to solicit orders with the "unqualified authorization to transfer the product." The language of the manual actually supports Gardetto's contention that Hanson Sales's rights were severely limited. The cautionary language found in the manual substantiates Gardetto's contention that Hanson Sales could only solicit orders under Gardetto's terms. Although Gardetto's did not require Hanson Sales to confirm every individual order with Gardetto's, in practice Gardetto's decided whether the order would be accepted.[5]

[5] Hanson argues in its brief that it confirmed the orders. In Phil Hanson Sr.'s deposition, he concedes that Gardetto determined whether to accept a sale.

As a result, Hanson Sales did not have the "authority to commit the grantor to a sale" as all sales were subject to Gardetto's agreement.

¶20 Thus, we conclude, as did the trial court, that Hanson Sales acted more as a manufacturer's representative for Gardetto's than a dealer and it was not entitled to WFDL protection.

B. *Even if the broker's manual created a contract, the Statute of Frauds makes any contract unenforceable.*

¶21 Next, Hanson Sales submits that portions of the broker's manual created a contract between Gardetto's and Hanson Sales which Hanson Sales contends Gardetto's violated. Hanson Sales submits that the parties' "agreement" found in the broker's manual required Gardetto's to terminate the broker's agreement only on sound business judgment principles, and required that when changing a territory, Hanson Sales was entitled to notice. Hanson Sales relies on the following language found in the broker's manual:

> E. Decisions relating to representation will be on the basis of sound business practice and consistent achievement of results, not on the basis of favoritism, personality, longevity nor personal desire.
>
> F. If representation in a territory is to be changed or reviewed, the existing broker organization will first be notified and only then will other interested applicants for the territory be interviewed.

Gardetto's submits that the manual provides no more than a policy statement and that it does not create a contract between the two companies. In any event,

Gardetto's argues, even if it does create a contract, it is an unenforceable one because it violates the Statute of Frauds.[6]

¶22 Hanson Sales posits that the broker's manual "satisfies the UCC, Statute of Frauds found in [WIS. STAT. § 402.201]" and, thus, escapes the general Statute of Frauds found in WIS. STAT. § 241.02. Section 402.21 in part reads: "a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless these is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by the party's authorized agent or broker." Specifically, Hanson Sales argues that because the broker's manual was written, that it satisfies the Statute of Frauds found in the Uniform Commercial Code—Sales, § 402.201. Gardetto's argues that whether the contract meets the test found in § 402.201 is irrelevant because the statute does not apply to a broker relationship. We agree.

¶23 The UCC is not implicated here because, quite simply, financial transactions between Gardetto's and Hanson Sales were not contracts for the sale of goods between Hanson Sales and Gardetto's. Any sales that the broker's manual refers to are between customers and Gardetto's, not Hanson Sales and Gardetto's. As noted, Hanson Sales never purchased any of Gardetto's goods; therefore, Hanson Sales's soliciting orders for Gardetto's does not fall within the ambit of WIS. STAT. § 402.201. Consequently, any contract created by the

[6] Gardetto also urges us to decline to address Hanson's argument that the broker's manual created a contract because in the trial court Hanson failed to respond to Gardetto's arguments until oral argument. However, we have elected to address the issue.

broker's manual is subject to the requirements of WIS. STAT. § 241.02, which provides in pertinent part:

> (1) In the following case every agreement shall be void unless such agreement or some note or memorandum thereof, expressing the consideration, be in writing and subscribed by the party charged therewith:
>
> (a) Every agreement that by its terms is not to be performed within one year from the making thereof.

Since Gardetto's never signed the manual and any terms found in it are of an indefinite duration, § 241.02 prevents any broker's manual's "contractual requirements" from being enforced.[7]

C. *Hanson Sales failed to submit proof that VSA had any communications with Gardetto's concerning Hanson Sales before Gardetto's terminated its business relationship.*

¶24 Hanson Sales argues that the trial court erred in dismissing its claim against VSA that VSA interfered with its contract with Gardetto's. VSA submits that Hanson Sales has not properly pled the tort of interference with a contract because in Hanson Sales's amended complaint it only alleged the following:

> VSA intentionally interfered with the Gardetto's-Hanson business relationship and caused Gardetto's to terminate Hanson. VSA continues to interfere with Hanson's existing and prospective business relations. VSA's interference is improper, without privilege or justification and caused and continues to cause Hanson damages.

[7] Because of our decision on this issue, it is not necessary to address the remaining arguments. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issues need be addressed).

VSA correctly points out that there is no recognized tort for "interference with business relations." Further, VSA posits that, assuming Hanson Sales properly alleged a claim of tortious interference with a contract, nowhere in Hanson Sales's amended complaint or in the materials it submitted in opposition to VSA's summary judgment motion is there any evidence that VSA knew of Hanson Sales's contract with Gardetto's. We are persuaded by both arguments.

¶25 Tortious interference with a contract occurs when someone "'intentionally and improperly interferes with the performance of a contract … between another and a third person by inducing or otherwise causing the third person not to perform the contract.'" ***Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.***, 90 Wis. 2d 97, 105, 279 N.W.2d 493 (Ct. App. 1979) (citation omitted). Hanson Sales has not properly pled a claim of tortious interference with contract because not only does the amended complaint never refer to a contract, but even if there was one, Hanson Sales never established that VSA knew of it. *See* RESTATEMENT (SECOND) OF TORTS § 766, Comment I (1979) ("To be subject to liability under the rule stated in this Section, the actor must have knowledge of the contract with which he is interfering and of the fact that he is interfering with the performance of the contract."). Thus, we are satisfied that Hanson Sales's claim of VSA's tortious interference with a contract fails.

¶26 Hanson Sales has, however, successfully pled the elements of tortious interference with prospective economic relations or prospective economic advantage. *See **id.*** at 103 ("The question is whether any cause of action has been stated on which relief may be granted. The plaintiff is bound by the facts he alleges but not by his theory of recovery."). The elements of this tort include: "a prospective contractual relationship on behalf of the plaintiff, knowledge by the defendant of the existence of the relationship, intentional acts on the part of the

defendant to disrupt the relationship, actual disruption of the relationship, and damages to the plaintiff caused by those acts." ***Anderson v. Regents of University of California***, 203 Wis. 2d 469, 490, 554 N.W.2d 509 (Ct. App. 1996).

¶27 There is limited evidence in support of Hanson Sales's claim against VSA. It consists of two affidavits of VSA salesmen who related that, in late July 1996, they attended a company meeting called to discuss how to compete with MVP. Both salesmen asserted that the discussion centered on hurting MVP, who VSA viewed as a new competitor and a threat to its company's financial security. At the meeting, everyone in attendance generally believed that Hanson Sales had money invested in MVP, resulting in the suggestion that, as a way of hurting MVP, VSA should determine who were Hanson Sales's suppliers and encourage them to drop Hanson Sales. There was also evidence of several conversations between VSA employees and Hanson Sales's other suppliers in which the suggestion was made that the suppliers should consider changing brokers. At Phil Hanson's deposition, he asserted, with no evidence to support his contention, that because of VSA's pressure, Hanson Sales was released as a broker for a company called Otis Spunkmeyer, and that Hanson Sales had been unable to get new business because of VSA's actions. Finally, Hanson Sales relies on a conversation between a Gardetto's employee and a VSA employee concerning Hanson Sales which took place seven months after Hanson Sales's termination.

¶28 Absent from the materials provided by Hanson Sales in opposition to VSA's summary judgment motion is any admissible evidence that Gardetto's decision to terminate its relationship with Hanson Sales was influenced by VSA's actions. Although Hanson Sales has established that VSA employees discussed a plan to pressure Hanson Sales's suppliers to change brokers, this fact does not establish that the plan was ever executed with regard to Gardetto's. Evidence that

a party had an intent to commit a tort, standing alone, is not sufficient to prove the tort.

¶29 The fact that VSA representatives spoke to other Hanson Sales suppliers and voiced a concern that Hanson Sales's family relationship with MVP could lead to favoritism would engender a suspicion that VSA interfered with Hanson Sales's relationship with Gardetto's, but without more, it does not prove it. Here, Gardetto's was independently troubled by Hanson Sales's actions in brokering a competitive product. Gardetto's also was unhappy about Hanson Sales's relationship with MVP. Nor are Phil Hanson, Sr.'s beliefs that VSA pressure caused the company to suffer several setbacks a substitute for proof. Unsupported speculations are not sufficient to survive a motion for summary judgment. *See* ***Sandifer v. Long Investors, Inc.***, 440 S.E.2d 479 (Ga. Ct. App. 1994).

¶30 Thus, Hanson Sales has not fulfilled the vital element in its claim against VSA. It has submitted nothing to support its allegation that VSA communicated with Gardetto's in an attempt to hurt Hanson Sales. Hanson Sales suggests that evidence of VSA's interference can be inferred from Nannette Gardetto's explanation as to why Hanson Sales was terminated. Hanson Sales asserts that Ms. Gardetto's explanation that Hanson Sales was terminated after she learned of Hanson's relationship with MVP and the competing mustard-flavored pretzel was a pretext. As proof, it points to the fact that these reasons could not have been the real reasons for the termination because Nannette Gardetto stated that she learned this information after her source played golf with a member of the Hanson family. She stated that this occurred in late July 1996. Others attested that it occurred later. Hanson Sales claims that since the golf game actually took place on August 6th, she must have been lying. We disagree.

¶31 Hanson Sales does not dispute that a Hanson family member was planning to set up a company competing with VSA, nor does Hanson Sales dispute that it intended to handle a pretzel competing with Gardetto's. Phil Hanson Sr. acknowledged that he had a conversation with a Gardetto's executive about MVP and the new pretzel. Therefore, the exact date that Ms. Gardetto learned of these disturbing developments is of no consequence because she knew them before Hanson Sales was terminated on August 15, 1996. Moreover, no evidence has been presented that anyone from VSA ever spoke to a Gardetto's employee about Hanson Sales until seven months after Hanson Sales's termination. Consequently, Hanson Sales has failed to prove an essential element of its tort claim.

¶32 For all the reasons stated, the trial court's decision is affirmed.

By the Court.—Judgments affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.