

MICHIGAN COURT OF APPEALS

Feldman v. Green, 138 Mich. App. 360

360 N.W.2d 881 (Mich. Ct. App. 1984) · No. 65930 · Decided October 16, 1984

SUMMARY

The Michigan Court of Appeals affirmed summary judgment for defendants in a tortious-interference action arising from competing offers to purchase nursing homes. The court held that liability requires the intentional commission of a per se wrongful act or a lawful act performed with malice and without legal justification, and that merely making a more attractive offer did not create a genuine issue of material fact.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                   |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Michigan Court of Appeals                                                                                                                                                                                                                                                                                                         |
| WRITING FOR THE COURT | Gribbs, P.J.; Wahls, J.; Hood, J.                                                                                                                                                                                                                                                                                                 |
| JURISDICTION          | Michigan                                                                                                                                                                                                                                                                                                                          |
| DECIDED               | October 16, 1984                                                                                                                                                                                                                                                                                                                  |
| DOCKET                | 65930                                                                                                                                                                                                                                                                                                                             |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | Plaintiff appealed the Oakland County Circuit Court's grant of defendants' motion for summary judgment on a claim for tortious interference with contractual or business relations.                                                                                                                                               |
| STANDARD OF REVIEW    | The court reviewed the grant of summary judgment de novo under the standard applicable to a motion based on the absence of a genuine issue of material fact, considering the pleadings, affidavits, depositions, admissions, and other documentary evidence and giving the nonmoving party the benefit of every reasonable doubt. |
| PRECEDENTIAL VALUE    | Published Michigan Court of Appeals opinion; precedential under the court's publication rules.                                                                                                                                                                                                                                    |
| PARTIES               | Feldman v. Green                                                                                                                                                                                                                                                                                                                  |

TOPICS

- torts
- summary judgment
- contracts
- real estate
- civil procedure

## PRACTICE AREAS

Torts

Contracts

Real estate

Civil procedure

## QUESTIONS PRESENTED

1. Whether the trial court overlooked a second theory of recovery based on defendants' filing of a constructive-trust counterclaim and lis pendens.
2. Whether a claim for tortious interference with a contractual or business relationship requires proof of illegal or improper conduct, and whether Feldman's evidence raised a genuine issue of material fact under that standard.
3. Whether defendants' act of making a more attractive offer to AMI, without specific evidence of an unlawful purpose or wrongful means, could support liability for tortious interference.

## HOLDINGS

1. A plaintiff alleging tortious interference must allege the intentional doing of a per se wrongful act, or the intentional doing of a lawful act with malice and without legal justification for the purpose of invading the plaintiff's contractual rights or business relationship. In the latter circumstance, the plaintiff must identify specific affirmative acts corroborating the unlawful purpose.
2. Feldman failed to raise a genuine issue of material fact because the record showed that his claim was based solely on defendants' better offer of price and terms, without specific evidence that defendants used unlawful means or acted with an unjustified and malicious purpose.
3. The trial court did not improperly overlook Feldman's alternative theory based on defendants' constructive-trust counterclaim and lis pendens; the record showed that the trial court considered the allegations and found them factually unsupported.

## KEY QUOTATIONS

*"We hold that one who alleges tortious interference with a contractual or business relationship must allege the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another." (369-370)*

*"Otherwise stated, the placing of another offer to purchase is not per se a violation." (379)*

## FACTUAL BACKGROUND

Feldman and defendants each negotiated with American Medicorp, Inc. to purchase three nursing homes. Feldman obtained a 30-day option, with a possible 60-day extension, but defendants purchased the properties before Feldman's option expired. Feldman claimed defendants tortiously interfered with his contractual relationship with AMI, but acknowledged under oath that his claim rested solely on defendants' offering AMI better price and terms. The litigation also involved defendants' counterclaim seeking a constructive trust and a lis pendens, which Feldman contended constituted additional interference.

## PROCEDURAL HISTORY

Feldman sued defendants after they purchased nursing homes that Feldman had an option to purchase from American Medicorp, Inc. The case previously proceeded to trial, resulting in a jury verdict for Feldman, but the Michigan Court of Appeals reversed and remanded because the trial court improperly instructed the jury that Feldman was entitled to specific performance as a matter of law. On remand, the circuit court granted defendants summary judgment, concluding that Feldman had not shown unlawful means or an improper purpose beyond defendants' more attractive offer. The Court of Appeals affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Northern Plumbing & Heating, Inc. v. Henderson Brothers, Inc., 83 Mich. App. 84, 268 N.W.2d 296 (1978)
- Weitting v. McFeeters, 104 Mich. App. 188, 304 N.W.2d 525 (1981)
- Meyering v. Russell, 53 Mich. App. 695, 220 N.W.2d 121 (1974), rev'd, 393 Mich. 770, 224 N.W.2d 280 (1974)
- Dassance v. Nienhuis, 57 Mich. App. 422, 225 N.W.2d 789 (1975)
- Association Research and Development Corp. v. CNA Financial Corp., 123 Mich. 162, 333 N.W.2d 206 (1983)
- Morgan v. Andrews, 107 Mich. 33, 64 N.W. 869 (1895)
- Wilkinson v. Powe, 300 Mich. 275, 1 N.W.2d 539 (1942)
- Bahr v. Miller Brothers Creamery, 365 Mich. 415, 112 N.W.2d 463 (1961)
- Imperial Ice Co. v. Rossier, 18 Cal. 2d 33, 112 P.2d 631 (1941)
- Lipton v. Boesky, 110 Mich. App. 589, 313 N.W.2d 163 (1981)
- Rizzo v. Kretschmer, 389 Mich. 363, 207 N.W.2d 316 (1973)
- Fry v. Ionia Sentinel-Standard, 101 Mich. App. 725, 300 N.W.2d 687 (1980)
- Peebles v. Detroit, 99 Mich. App. 285, 297 N.W.2d 839 (1980)
- Meyering v. Russell, 393 Mich. 770, 224 N.W.2d 280 (1974)
- Walker v. Cronin, 107 Mass. 555 (1871)
- Bowen v. Hall, L.R. 6 Q.B.D. 333 (1881)
- Louis Schlesinger Co. v. Rice, 4 N.J. 169, 72 A.2d 197 (1950)
- Mardirosian v. American Institute of Architects, 474 F. Supp. 628 (D.D.C. 1979)
- Guard-Life Corp. v. S. Parker Hardware Manufacturing Corp., 50 N.Y.2d 183, 406 N.E.2d 445 (1980)

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