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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

KEVIN HOSKINS and NANCY HOSKINS,	)	
Plaintiffs-Appellants,	)	Filed February 23, 1983
vs.	)	
UNIVERSAL REALTY COMPANY and ROBERT W. OGDEN,	)	2-418 2-67852
Defendants-Appellees.	)	

Appeal from Polk District Court - Richard A. Strickler, Judge

Plaintiffs appeal from summary judgment for defendants in this lawsuit alleging interference with a contractual relationship and with a prospective business advantage. REVERSED AND REMANDED.

Marc S. Harding of Des Moines, for plaintiffs-appellants.

Michael L. Huston of Huston & Fairbank, Des Moines, for defendant-appellee, Universal Realty.

Marvin Duckworth of Hopkins & Huebner, Des Moines, for defendant-appellee, Ogden.

Heard en banc.

DONIELSON, J.

Plaintiffs appeal from summary judgment for defendants in this lawsuit alleging interference with a contractual relationship and with a prospective business advantage. On appeal, the plaintiffs contend the trial court erred by holding there was no material issue of fact which would permit a factfinder to conclude that a contract had existed at the time of the alleged interference or that the defendants had intended to foreclose the plaintiffs' business prospects. We reverse and remand.

Our scope of review is on assigned errors. Iowa R. App. P. 4.

I.

In September, 1979, a non-resident owner of commercial real estate in Des Moines, Homer Jewett, contacted plaintiffs, Nancy and Kevin Hoskins, both real estate agents, and expressed a desire to list the Des Moines property for sale. The plaintiffs decided to purchase the property for themselves and, after negotiations, agreed upon a price for the property. The plaintiffs assert that there was a firm oral agreement for the sale of the property at this time and that the documents confirming the agreement were then sent to Jewett.

At about that point the defendant Ogden, another real estate agent, telephoned Jewett. The exact substance of the conversation is not clear, but afterwards Jewett called the plaintiffs and requested a higher price for the property. Jewett and the plaintiffs then re-negotiated the sale price, finally agreeing on a much higher price.

As a result of these events, the plaintiffs filed the present lawsuit against Ogden and his employer, Universal Realty. The plaintiffs alleged that the defendants had tortiously interfered with a contractual relationship and had damaged the plaintiffs' reputations as real estate agents.

The defendants moved for summary judgment. The defendants treated the

plaintiffs' petition as raising essentially three causes of action: interference with a contractual relationship, interference with a prospective business advantage, and "damage to reputation." The defendants' motion asked for summary judgment as to all these theories.

On October 23, 1981, the trial court sustained the defendants' motion for summary judgment "for the reasons urged therein," without any further comment. The plaintiffs challenged this ruling by filing a motion for enlargement or amendment pursuant to Iowa Rule of Civil Procedure 179(b). The trial court denied this motion on December 2, 1981, "for reasons stated in the resistance." Plaintiffs then instituted this appeal.

II.

The plaintiffs assert the trial court erred by holding that no material issue of fact existed with respect to the plaintiffs' claims for intentional interference with a contractual relationship and intentional interference with a prospective business advantage. More specifically, the plaintiffs contend the trial court erred by holding they had failed to allege any facts that would permit a fact-finder to conclude either (1) that a contract had existed between the plaintiffs and the seller at the time of defendant Ogden's telephone call, or (2) that Ogden had possessed an intent to foreclose the plaintiffs' business prospects. We agree.

The principles governing our review of the grant or denial of a motion for summary judgment are as follows:

> In reviewing the grant or denial of summary judgment motions, we view the underlying facts contained in the pleadings and the inferences to be drawn therefrom in the light most favorable to the party opposing the motion, and give to such party the benefit of any doubt as to the propriety of granting summary judgment. Our task on appeal is to determine only whether a genuine issue of material fact exists and whether the law was correctly applied, and to reverse the grant of summary judgment if it appears from the record there is an unresolved issue of material fact.

Meylor v. Brown, 281 N.W.2d 632, 634 (Iowa 1979) (quoting Frohwein v. Haesemeyer, 264 N.W.2d 792, 795-96 (Iowa 1978)); see also Enochs v. City of Des Moines, 314 N.W.2d 378, 379 (Iowa 1982). The burden of showing the absence of any genuine issue of material fact is on the party moving for summary judgment. Schulte v. Mauer, 219 N.W.2d 496, 500 (Iowa 1974); Tasco v. Winkel, 281 N.W.2d 280, 282 (Iowa 1979). On the other hand, "even if the facts are undisputed, summary judgment is not appropriate if reasonable minds may draw different inferences from them." Tasco v. Winkel, 281 N.W.2d at 282. Applying these principles, we believe the trial court erred in granting defendants summary judgment.

To recover under the theory of interference with the contractual relationship, plaintiffs must meet the requirements set forth in Stoller Fisheries Inc. v. American Title Ins. Co., 258 N.W.2d 336, 340 (Iowa 1977). Defendants urge that the critical requirement is the existence of an existing contract. However, the language in Stoller is not so limiting. The Stoller court recited several authorities which recognize this tort in fashioning the requirements:

> Section 766B of [Restatement, Second, Torts, Tentative Draft No. 23 (April 1977)] provides:
>
> Intentional Interference with Prospective Contractual Relation.
>
> One who intentionally and improperly interferes with another's prospective contractual relation (except a contract to marry) is subject to liability to the other for the pecuniary harm resulting from loss of the benefits of the relation when the interference consists of
>
> (a) inducing or otherwise causing a third person not to enter into or continue the prospective relation or
>
> (b) preventing the other from acquiring or continuing the prospective relation.
>
> The basic elements going into a prima facie establishment of the tort are set forth in [Calborn v. Knudtzon, 65 Wash.2d 157, 396 P.2d 148, 151 (1964)], as follows: (1) the

> existence of a valid contractual relationship or business expectancy; (2) knowledge of the relationship or expectancy on the part of the interferer; (3) intentional interference inducing or causing a breach or termination of the relationship or expectancy; and (4) resultant damage to the party whose relationship or expectancy has been disrupted.
>
> The same basic elements stated in somewhat different language are recognized in Tom Olesker's Exc. W. F., Inc. v. Dun & Bradstreet, Inc., 16 Ill. App. 3d 709, 306 N.E.2d 549, 553, where the court said:
>
> > . . . The essential allegations in such an action are the plaintiff's reasonable expectancy of entering into a valid business relationship; and damage to the plaintiff from such interference. . . . [citing authority].

Stoller, 258 N.W.2d at 340-41.

It is clear under this language that if defendants' conduct interfered with plaintiffs' reasonable expectations of entering the contractual relationship with Jewett, or of continuing the prospective business relationship with him, then there is a valid cause of action. We believe there remains a material issue of fact as to the nature of plaintiffs' business relationship with Jewett. The existence or nonexistence of an agreement between them for the purchase of the Des Moines property is material to this issue. We believe a factfinder may make different inferences and draw different conclusions from the underlying facts in the pleadings. Accordingly, since we view the facts in the light most favorable to plaintiffs, we find this case to be inappropriate for a summary judgment determination. We thus reverse and remand the case for trial.

REVERSED AND REMANDED.