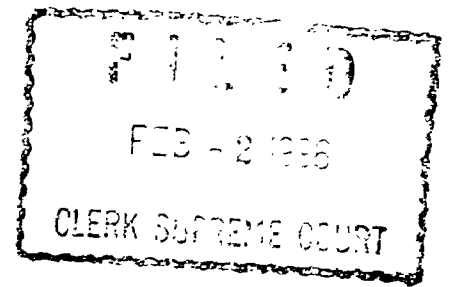


IN THE COURT OF APPEALS OF IOWA

No. 5-650 / 94-1477



CHARLES G. "CHAD" BUSH, W. SCOTT BUSH, and TOBIN L. BUSH d/b/a **BUSH BOYS LIMOUSIN,**
Appellants.

vs.

STEPHEN GOODENOW and JOHN G. FLETCHER,
Appellees.

Appeal from the Iowa District Court for Sac County, Stuart Scoles, Judge.

Plaintiffs appeal district court ruling granting defendants' motion for summary judgment on plaintiffs' action for tortious interference with contractual relations.

AFFIRMED.

Warren L. Bush of the Bush Law Office, Wall Lake, for appellants.

John A. McClintock of Hansen, McClintock & Riley, Des Moines, for appellee John Fletcher.

Richard K. Updegraff of Brown, Winick, Graves, Baskerville & Schoenbaum, P.L.C., Des Moines, and **Joseph L. Fitzgibbons** of the Fitzgibbons Brothers, Estherville, for appellee Stephen Goodenow.

Heard by Habhab, P.J., Cady, J., and Schlegel, S.J.* Sackett, J., takes no part.

*Senior judge from the Iowa Court of Appeals serving by order of the Iowa Supreme Court.

SCHLEGEL, S.J.

The plaintiffs appeal the trial court's grant of the defendants' motion for summary judgment. When reviewing a grant of summary judgment we consider the evidence in the entire record in the light most favorable to the non-movant and determine whether there exists any genuine issue as to any material fact. *Marcus v. Young*, 538 N.W.2d 285, 287 (Iowa 1995). We will affirm a trial court's grant of a motion for summary judgment if no issue as to any material fact exists such that the moving party is entitled to judgment as a matter of law. *Id.* We review the district court's ruling for errors of law. *Id.* From our review of the record in this case, we find the trial court did not err and summary judgment was properly granted.

A receiver was appointed to oversee land in Crawford County. The land was the subject of a real estate contract. The vendees had assigned their interests in the land to Bank Midwest of Wall Lake ("Bank") as collateral for loans. It became apparent the vendees were going to default on the contract and would not be making a balloon payment due on March 31, 1993. To preserve its security interest in the land, the Bank paid off the contract to the vendors and acquired their interest in the property. After the vendees failed to make the balloon payment, the Bank commenced forfeiture proceedings in early April.

In mid-March 1993, Warren Bush had negotiated an oral lease agreement with the receiver for the lease of the pasture land to his sons (the plaintiffs in this action).

When the receiver subsequently informed the Bank's president, defendant Goodenow, and its attorney, defendant Fletcher, that the land would be leased, Fletcher and Goodenow informed him the Bank had commenced forfeiture proceedings and would be acquiring all interests in the property in mid-May and did not want the property encumbered by a lease.

Confronted with Bush's demand that the lease agreement be executed and Goodenow and Fletcher's direction that the land not be leased, the receiver sought instructions from the district court. The district court concluded a valid lease existed and had to be honored by the receiver. The plaintiffs sued Goodenow and Fletcher for tortious interference with contract. The trial court granted the defendants' motion for summary judgment, and the plaintiffs now appeal.

To prove intentional interference with a contract a plaintiff must show : (1) the plaintiff had a contract with a third party; (2) the defendant knew of the contract; (3) the defendant intentionally and improperly interfered with the contract; (4) the interference caused the third party not to perform, or made performance more burdensome or expensive; and (5) damage to the plaintiff resulted. *Burke v. Hawkeye Nat'l Life Ins. Co.*, 474 N.W.2d 110, 114 (Iowa 1991). The trial court predicated its grant of summary judgment on the second element, knowledge of the contract. We affirm but on a different ground than that relied upon by the trial court. *See Rouse v. Union Township*, 530 N.W.2d 714, 717 (Iowa 1995) (supreme court

obligated to affirm where any proper basis appears in record for trial court's judgment even though it was not the one upon which trial court based its holding).

We affirm on the basis of the plaintiffs' failure to establish there was any genuine issue of material fact with respect to the third element, intentional and improper interference. In determining whether the conduct of the defendants was "improper" we consider: 1) the nature of the actor's conduct; 2) the actor's motive; 3) the interest of the other with which the actor's conduct interferes; 4) the interest sought to be advanced by the actor; 5) the social interest in protecting the freedom of action of the actor and the contractual interests of the other; 6) the proximity or remoteness of the actor's conduct to the interference; and 7) the relations between the parties. *Robert's River Rides, Inc., v. Steamboat Dev. Corp.*, 520 N.W.2d 294, 303 (Iowa 1994). This determination necessarily involves a balancing process. *Id.*

In this case the defendants represented the Bank. Through its acquisition of the vendors' interests in the defaulted real estate contract, the Bank had acquired an interest in the land, and it had a direct interest in what the receiver did with the property. Finalization of the forfeiture was imminent, and it was in the Bank's financial interest that the land not be encumbered by a lease which would hamper its resale.

A party does not improperly interfere with another's contract by exercising its legal rights in protection of its own financial interests. *See Wilkin Elevator v.*

Bennett Sate Bank, 522 N.W.2d 57, 62 (Iowa 1994). Similarly, a party does not tortiously interfere with a contractual relationship when acting in good faith and on the advice of counsel in asserting a legally protected interest. *See Iowa Supply Co., v. Grooms & Co. Constr. Inc.*, 428 N.W.2d 662, 666 (Iowa 1988).

Both defendants in this case had fiduciary duties to protect and act in the Bank's best interest. Furthermore, defendant Goodenow was acting on the legal advice of Fletcher when he asked the receiver not to encumber the land. The Bank had a bona fide interest in the property and the defendants were acting in its financial interest when the receiver was asked not to lease it. Given these circumstances, the defendants' conduct and motives were not improper. Absent a genuine issue of material fact on this issue, summary judgment was appropriate.

AFFIRMED.