FILED
AUG 27 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

469

JAMES LEONARD TOMASH,	)	
Plaintiff-Appellant,	)	Filed August 27, 1986
vs.	)	5-626 84-1891
JOHN DEERE INDUSTRIAL EQUIPMENT COMPANY and POWER EQUIPMENT COMPANY,	)	
Defendants-Appellees.	)	

Appeal from the Iowa District Court for Linn County (No. 10182), Larry J. Conmey, Judge.

Plaintiff appeals from judgment for defendants in an action for abuse of process and intentional infliction of emotional distress. **REVERSED.**

Phillip D. Seidl, Cedar Rapids, and Mary K. Hoefer, Cedar Rapids, for plaintiff-appellant.

Patrick M. Roby and Diane Kutzko of Shuttleworth & Ingersoll, P.C., Cedar Rapids, for defendant-appellee Power Equipment.

Scott E. McLeod of Lynch, Dallas, Smith & Harman, Cedar Rapids, for defendant-appellee John Deere.

Considered by Oxberger, C.J., Donielson, and Snell, JJ.

OXBERGER, C.J.

Plaintiff appeals from judgment for defendants in an action for abuse of process and intentional infliction of emotional distress. We reverse.

We first will address the entering of a directed verdict for defendants on plaintiff's abuse of process claim.

On a motion for directed verdict, the trial court must view the evidence in the light most favorable to the nonmoving party. Iowa Rule of Appellate Procedure 14(f)(2). If reasonable minds might draw different inferences from the facts presented, a jury question is engendered and the motion for directed verdict must be denied. Iowa Rule of Appellate Procedure 14(f)(17).

Plaintiff complains that the criminal prosecution instigated by defendants constituted abuse of process. To support this cause of action, plaintiff must prove that defendants intentionally used legal process for an improper purpose incompatible with the lawful function of the process by one with a ulterior motive in doing so. Hydge Construction Co., Inc. v. Koehring Company, 387 F. Supp. 702, 712-13 (S.D. Miss. 1974).

1. **Power Equipment.** The record shows that plaintiff was in default on a debt to Power Equipment Company (Power Equipment) on the purchase of a John Deere Steiger Bobcat Tractor. Following the purchase in October of 1977, plaintiff encountered marital difficulties and resolved to leave Iowa. He contacted John Deere to whom the security interest on the tractor had been assigned to determine the amount necessary to pay off the loan on the tractor. Plaintiff then resolved to sell the tractor for an amount sufficient to retire the debt. The tractor was sold and plaintiff deposited the $20,000 he received in a checking account owned jointly by plaintiff and his wife. Plaintiff directed his wife to use the $20,000 to pay off the loan and then left the state.

When he returned several months later, plaintiff found that the money

had not been used as he had directed and contacted John Deere to inquire as to what he should do. He was told to bring the payments up to date and find some other security for the tractor. Although he was able to pay $11,000 on the debt following the tractor's sale, plaintiff eventually defaulted on the contract.

John Deere unsuccessfully attempted to collect the outstanding balance on the debt, but finally reassigned the contract to Power Equipment and debited its reserve account for the unpaid amount ($5,138.38).

On April 23, 1980, Virgil Peters of Power Equipment filed complaint (#CRE 6247) in the Linn County District Court charging plaintiff with theft in the first degree. Additional evidence in the record shows a communication from Power Equipment's attorney to Robert DeLeon of John Deere Industrial Equipment on April 22, 1980. That letter concludes, "Even though I am in the process of preparing civil suit against Tomash, I feel that criminal prosecution is our best chance to recover and I would appreciate any help you can give me."

The record also shows that, subsequent to filing the complaint, Virgil Peters' attorney volunteered to police that he would attend plaintiff's bankruptcy hearing to gather evidence for the criminal charge.

The record shows defendants initiated criminal prosecution and offered to assist the official investigation of Tomash. The apparent motive spurring this effort was to facilitate collection of a debt. "One who uses a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed is subject to liability to the other for harm caused by the abuse of process." Restatement (Second) of Torts § 682 (1977).

2. John Deere. Nevertheless, officers of John Deere were aware of Peters' efforts and their goal. Robert DeLeon of John Deere authored a letter to Peters regarding use of criminal process to collect the civil debt. In the letter he wrote, "I am sending a copy of this letter to your attorney, so that he might use some

of this information in his present efforts on our behalf." (emphasis added) The record shows John Deere stood to gain $5,000 (the amount debited on its books) if the collection effort against Tomash were successful.

We find that an issue existed for jury determination as to whether John Deere participated in initiation of the criminal process.

At trial, John Deere argued that the criminal prosecution of Tomash would afford it no benefit. An abuse of process claim does not require that the tortfeasor benefit from its misuse of the system. Plaintiff must show only that process was used for an improper purpose. See generally, Schmidt v. Wilkinson, 340 N.W.2d 282 (Iowa 1983).

We find that a jury question was generated from Tomash's case against John Deere. We also find error in the trial court's directing verdict for defendants in Count II of Tomash's complaint.

Our review of the record leads us to believe that the jury could have found that Tomash conscientiously attempted to pay his debt on the tractor and had concealed nothing from defendants. In reviewing the record, we find that Tomash conscientiously attempted to pay his debt on the tractor and had concealed nothing from defendants. In response Power Equipment and John Deere, after failing in efforts to recover by civil means, initiated criminal prosecution resulting in Tomash's arrest before his children. An unwarranted arrest and incarceration certainly falls within the definition of intentional infliction of emotional distress. The elements of the tort are: (1) outrageous conduct by the defendant; (2) the defendant's intention of causing, or reckless disregard of probability of causing emotional distress; (3) plaintiff suffers severe or extreme emotional distress; and (4) actual causation of the emotional distress by the defendant's outrageous conduct. Amsden v. Grinnell Mutual Reinsurance Co., 203 N.W.2d 252, 255 (Iowa 1972).

A jury issue existed as to whether the arrest, initiated by Power Equipment and John Deere, was outrageous in light of Tomash's honest efforts to resolve the matter of the debt; that defendants acted intentionally in disregard of the potential emotional distress the arrest would cause Tomash; and that Tomash did suffer emotional distress as a result of the arrest.

REVERSED.