STATE OF MICHIGAN

COURT OF APPEALS

FRANDORSON PROPERTIES,

Plaintiff-Appellee,

V

KEITH JOSEPH MITAN, KENNETH MITCHELL MITAN, TERESA FRANCES MITAN, MITAN PROPERTIES COMPANY, V, MITAN PROPERTIES COMPANY, VI, and MITAN DOUBLEWOOD ANCILLARY CONTROL SECTION, INC.,

Defendants-Appellants.

UNPUBLISHED
January 4, 2002

No. 220675
Ingham Circuit Court
LC No. 94-78210-CH

Before: O'Connell, P.J., and White and Smolenski, JJ.

PER CURIAM.

Defendants appeal as of right from the portion of the circuit court's May 28, 1999 order that granted plaintiff summary disposition of all plaintiff's claims: to quiet title, slander of title, conspiracy to slander title, tortious interference with business relationship, and conspiracy to tortiously interfere with business relationship, under MCR 2.116(C)(10). Defendants also challenge the circuit court's grant of summary disposition to plaintiff of all counts on the alternative ground of res judicata, MCR 2.116(C)(7). We affirm the grant of summary disposition to plaintiff under MCR 2.116(C)(10) of all claims, with the exception of the conspiracy claims against defendant Teresa Mitan, which we reverse. In light of our disposition, we need not address the propriety of the res judicata ruling.

We review de novo a circuit court's determination on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). We consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998). The moving party has the initial burden of supporting its position by documentary evidence. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). The party opposing the motion then has the burden of showing that a genuine issue of material fact exists. *Id.*

I

The underlying facts and protracted procedural history of this case are largely set forth in the circuit court's twenty-nine page opinion and order, quoted in part below, which adopted the facts and history from this Court's earlier opinion, *Frandorson Properties v Mitan et al,* unpublished opinion per curiam of the Court of Appeals, issued 12/13/1996 (Docket No. 182423).

Underlying Facts and Procedural History

In a December 12, 1996 decision by the Court of Appeals (Docket No. 182423), that Court remanded Frandorson v Mitan, Docket No. 94-78210-CH, to this Court for further proceedings, having affirmed in part and reversed in part earlier decisions of this Court. That decision concisely sets forth the complex and confusing procedural history and the underlying facts. I adopt and incorporate that history as follows:

> "Defendant Mitan Properties Company, VI ('Mitan VI') is a partnership composed of defendants Keith J. Mitan and Kenneth Mitan. On August 7, 1993, Mitan VI entered into a purchase agreement with plaintiff, Frandorson Properties, whereby Mitan VI agreed to purchase from plaintiff three shopping centers [footnote omitted] for $21,976,832.10. Plaintiff alleges that Mitan VI subsequently defaulted on the purchase agreement by failing to tender various deposits required by the agreement and by failing to obtain a required financing commitment, thereby rendering the agreement null and void under its terms.
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> "On April 21, 1994, Mitan VI tendered to plaintiff a second offer to purchase the three shopping centers, this time for a price of $16,500,000. Plaintiff did not accept this offer. Instead, plaintiff entered into an agreement with Chemical Bank of New York, whereby plaintiff agreed to convey its interest in the three shopping centers to Chemical Bank in lieu of foreclosure. A closing date of July 20, 1994, was set.
>
> "On July 15, 1994, five days before the schedule closing with Chemical Bank, Mitan VI filed a complaint in the Ingham Circuit Court, alleging an interest in the subject shopping centers pursuant to the August 7, 1993, purchase agreement ('Case 1' {No. 94-77994-CZ}). At the same time, Mitan VI recorded a lis pendens in both Ingham County and Clinton County for the purpose of notifying interested parties that an action was pending seeking 'the transfer and conveyance to [Mitan VI] of title to the propert[ies]' in question. The case was assigned to Circuit Judge Carolyn Stell. On July 18, 1994, plaintiff filed its answer, together with a counter-complaint against Mitan VI, and Keith and Kenneth Mitan, alleging slander of title and tortious interference with a business or

contractual relationship. Plaintiff also filed a motion for bond with surety as security. An expedited hearing was conducted on July 19, 1994, by Circuit Judge James Giddings, acting in place of Judge Stell, who was unavailable. Following oral arguments, Judge Giddings ordered Mitan VI to post a security bond with surety in the amount of $33.4 million by 1:00 p.m. on July 21, 1994. Judge Giddings also ordered that if the security bond was not posted by the date and time required, Mitan VI's complaint would be dismissed and Mitan would be enjoined from refiling any action or related action for a period of forty-five days. Judge Giddings gave the following reasons in support of his decision to issue the order: (1) that submitted documentation 'belies any assertion that [Mitan VI] can rightfully claim that there is a lawful basis to proceed'; (2) Mitan VI's failure to demonstrate 'that they have any lawful claim whatsoever arising out of the [August 7, 1993, purchase agreement]'; (3) 'inconsistencies demonstrated by the conduct of [Mitan VI and its agents] in this matter'; (4) that interference with the pending sale of the properties would have 'a significant compelling effect on the financial future of [Plaintiff].'

"Mitan VI did not post a security bond as ordered. Consequently, on July 21, 1994, Judge Giddings issued an order dismissing Mitan VI's complaint and canceling all the lis pendens recorded by Mitan VI or its agents with respect to the properties in question. Additionally, the court enjoined Mitan VI from refiling its action or a related action for forty-five days. In the meantime, Mitan VI filed an appeal with this Court from the July 19 order requiring it to post a security bond. At the same time, it recorded a second set of lis pendens, this time using the caption of this Court on the lis pendens. [Footnotes omitted.]

"On the following day, Friday, July 22, 1994, plaintiff filed a motion for bond, injunctive relief and contempt in the trial court and again obtained an expedited hearing. Judge Giddings thereupon issued a second order canceling the second set of lis pendens and enjoining Mitan VI from recording, 'anywhere in the world,' any further lis pendens pertaining to the subject properties. The order also enjoined Mitan VI and its agents 'from initiating any new actions pertaining to the subject matter of the case in any court of general jurisdiction for forty-five days from July 21, 1994.' Additionally, the order provided that a contempt hearing would be held at a future date and the matter of sanctions for the filing of the second set of lis pendens would be addressed at the contempt hearing.

"Two days later, on July 24, 1994, Mitan VI assigned its alleged interest in the shopping centers to Mitan Properties Company, V ('Mitan V'), which is a Michigan limited partnership composed of

Keith and Kenneth Mitan as the limited partners and Mitan Doublewood Ancillary Control Section, Inc. ('Mitan, Inc.') as the general partner. On the following day, Monday July 25, 1994, Mitan V recorded in both Ingham County and Clinton County copies of (1) the August 7, 1993, purchase agreement between plaintiff and Mitan VI; (2) the above-described assignment from Mitan VI to Mitan V; and (3) an affidavit from Teresa Mitan, [footnote omitted] an officer of Mitan Inc., attesting to Mitan V's alleged interest in the shopping centers pursuant to the foregoing assignment. These documents, although not containing the label 'lis pendens,' nonetheless had the same effect of clouding plaintiff's title to the properties in question, thereby impeding plaintiff from consummating its pending transaction with Chemical Bank.

"Plaintiff responded to this latest course of events by filing a motion for bond, injunctive relief, contempt and cancellation of the third set of title-clouding documents. Judge Stell, who was now available, scheduled a hearing for August 1, 1994, at 4:00 p.m. on plaintiff's motion.

"On August 1, 1994, before the scheduled hearing in Case I, plaintiff commenced the present action in the Ingham Circuit Court against Mitan VI, Mitan V, Mitan Inc., Keith J. Mitan, Kenneth Mitan and Teresa Mitan, alleging slander of title, tortious interference with a business or contractual relationship, and conspiracy to commit slander of title or tortious interference with a business or contractual relationship ('Case II'). The second action was commenced because, following the assignment of interest from Mitan VI to Mitan V, there were now several new participants involved in the matter who were not parties to the action in Case I. The complaint in Case II alleged that the action arose out of the same transaction as that involved in Case I and, consequently, Case II was assigned to Judge Stell. Plaintiff's complaint requested an award of compensatory and exemplary damages, an award of costs and attorney fees under MCL 565.108; MSA 26.1278, an order canceling the latest set of title-clouding documents, and an order adjudging that the Mitan defendants had no right, title or interest in the properties in question.

"Just hours before the scheduled hearing in Case I, Mitan VI caused Case I to be removed to federal court. The parties subsequently appeared for the scheduled hearing, but Judge Stell ruled that she no longer had jurisdiction over that case in light of its removal to federal court. However, Judge Stell agreed to entertain a motion for bond or other relief in Case II. Defendant Keith Mitan, an attorney, represented the defendants. Plaintiff's counsel apprised Judge Stell of the previously described history in

the matter and informed her that plaintiff was unable to consummate its pending real estate transaction with Chemical Bank because [of] the various title-clouding documents that had been recorded by defendants. Following oral arguments, Judge Stell announced the following decision form the bench:

{*Quotations from transcript omitted*}

Plaintiff's attorney was directed to prepare an order consistent with Judge Stell's ruling. Judge Stell ordered the parties to appear at 2:00 p.m. the following date, i.e., August 2, 1994, for entry of the order.

"As it turned out, Judge Stell was unable to issue an order as contemplated on August 2, 1994, because, shortly before the scheduled hearing, defendants caused Case II to be removed to federal court. On August 4, 1994, however, on plaintiff's motion, the federal court remanded Cases I and II to state court. In doing so, the federal court imposed sanctions against the Mitan litigants on the basis that removal 'was instituted for the wholly improperly purpose of delaying and impeding both the state court in conducting its business as well as Frandorson in conveying title of the real property to Chemical Bank.'

"On the following day, August 5, 1994, Judge Stell, having regained jurisdiction over Case II, entered an order providing (1) that the Mitan defendants were required to post a $38.4 million bond with surety as security for damages and costs, including attorney fees, for which they might be found liable for recording the various title-clouding documents; (2) that defendants were not permitted to file any pleadings 'until said bond is filed or until further order of th[e] Court'; (3) that if defendants failed to post the required security bond, plaintiff could file a motion for summary disposition pursuant to MCR 2.116(C)(9); (4) that defendants and their agents were enjoined from filing or recording any further documents which cloud or may tend to cloud the title to the properties in question; (5) that all title-clouding documents previously filed were to be canceled and dissolved upon the recording of a certified copy of that court's order; and (6) that a contempt hearing would be scheduled for a future date.

On August 8, 1994, the law firm of Hardig & Parsons entered an appearance in Case II on behalf of each of the Mitan defendants. The following day, August 9, 1994, the Mitan defendants, through their newly retained counsel, once again removed Cases I and II to federal court. The federal court, once again, remanded the cases to the Ingham Circuit Court. [footnote omitted.]

"On August 26, 1994, without having posted any security bond as

> ordered, the Mitan defendants filed an answer to plaintiff's complaint. The answer was signed by defendant Keith Mitan, as attorney for all defendants. The answer was filed against the recommendation of Hardig & Parsons, which subsequently withdrew as legal counsel for the Mitan defendants.
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> "On October 7, 1994, plaintiff moved to strike defendants' answer and sought summary disposition under MCR 2.116(C)(9). The motion alleged that defendants' answer violated the court's August 5, 1994, order, because defendants had not posted a security bond as required by the order. The motion further alleged that, due to defendants' noncompliance with the August 5, 1994, order, defendants could not defend plaintiff's action, thereby entitling plaintiff to summary disposition under MCR 2.116(C)(9). Defendants, through newly retained counsel, responded to the motion by attacking Judge Stell's August 5, 1994, order, arguing that it was unconstitutional and invalid. Defendants also informed Judge Stell that plaintiff had now consummated its real estate transaction with Chemical Bank and, therefore, a bond was no longer necessary.
>
> "In a decision from the bench, Judge Stell granted plaintiff's motion, stating:
>
> {*Quotations from transcript omitted*.}
>
> An order incorporating Judge Stell's decision was entered on November 28, 1994. Thereafter, on January 10, 1995, the parties stipulated to entry of a consent judgment as to damages only in the amount of $25,000. This appeal followed."

In its decision the Court of Appeals affirmed that part of the Court's decision requiring a security bond for continuance of the title-clouding documents and canceling the title-clouding documents. It is noteworthy that the Mitans did not challenge this Court's finding that the documents at issue were the functional equivalent of a lis pendens. The appellate court reversed this Court's striking of the Mitans' answer and granting summary disposition in favor of Frandorson, holding that this use of the security bond was inconsistent with due process. The case (Case II) was remanded to this Court for further proceedings.

On remand, the parties waived oral argument on Frandorson's motion for summary disposition, the circuit court denied plaintiff's motion under MCR 2.116(C)(9), but granted summary disposition on all counts under MCR 2.116(C)(10) and on the alternative ground of res judicata, MCR 2.116(C)(7).[1] This appeal ensued.[2]

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[1] The circuit court denied defendants' motion for reconsideration.

[2] The circuit court also found defendants Keith and Kenneth Mitan guilty of criminal contempt.
(continued…)

II

Defendants argue that plaintiff's quiet title claim became moot after they tendered quitclaim deeds to plaintiff. We disagree.

> A cloud upon a title is but an apparent defect in it. If the title, sole and absolute in fee, is really in the person moving against the cloud, the density of the cloud can make no difference in the right to have it removed. Anything of this kind that has a tendency, even in a slight degree, to cast doubt upon the owner's title, and to stand in the way of a full and free exercise of his ownership, is, in my judgment, a cloud upon his title which the law should recognize and remove. [*Michigan National Bank-Oakland v Wheeling*, 165 Mich App 738, 745; 419 NW2d 746 (1988), citing *Emig v Frank P Miller Corp*, 238 Mich 695, 698; 214 NW 144 (1927).]

MCL 600.2932(1) provides:

> Any person, whether he is in possession of the land in question or not, who claims any right in, title to, equitable title to, interest in, or right to possession of land, may bring an action in the circuit courts against any other person who claims or might claim any interest inconsistent with the interest claimed by the plaintiff whether the defendant is in possession of the land or not.

The circuit court rejected defendants' argument that the quiet title claim was moot, stating:[3]

(…continued)

Those determinations are the subjects of separate, consolidated appeals currently pending before this Court (Docket Nos. 222230 and 222231).

[3] Defendants filed a reply brief to plaintiff's appellate brief, in which defendants contest the circuit court's determination that they were the first to materially breach the August 1993 purchase agreement. Thus, we quote the circuit court's opinion in that regard, with which we agree.

> By failing to actually deposit $25,000, rather than holding a check that Mitans now say they would have made good, Mitans materially breached the contract [i.e., the August 1993 agreement to purchase three shopping centers from plaintiff]. Their default rendered the contract void ab initio.
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> Mitans' argument that summary disposition is inappropriate because there are material facts in dispute is without merit. Mitans do not contest that the check was not deposited and that there were insufficient funds in the specific account upon which the check was drawn. They simply argue a different interpretation than the Court reached.

(continued…)

> Finally Mitans argue that the quiet title action is moot because all notices of lis pendens have been canceled and that Frandorson no longer holds title to the subject properties.
>
> The cancellation of the two sets of notices of lis pendens and the third set of title-clouding documents does not render the quiet title action moot. Mitans' own action in filing a counterclaim for specific performance on the Purchase Agreement in the federal court case after the order canceling the third set of title-clouding documents entered demonstrates the futility of this argument.
>
> Nor does the fact the closing eventually did take place vitiate the quiet title action. Frandorson has agreed to indemnify Chemical Bank in the event of challenges to the title. Whether the Mitans actually sue the bank is irrelevant. It was the threat of a suit that prompted this requirement. . . . Frandorson's indemnification of Chemical Bank is sufficient interest to support this quiet title action.

We agree with the circuit court's analysis. Defendants' further argument on appeal that the quiet title claim is moot by virtue of defendants having provided plaintiff with quitclaim deeds also fails. Preliminarily, we note that defendants do not explain how they could be aggrieved by the grant of summary disposition on the quiet title claim, if, as they claim, they have no further intent to assert an interest in these properties. In any event, the quitclaim deeds defendants provided plaintiff (in June 1995) reserved defendants' right of action against plaintiff or "any other person or entity, for breach of contract, including any claims for money damages relating to or arising under the August 7, 1993 Offer to Purchase Real Estate." Thus, defendants

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(…continued)

* * *

> Accepting as true that Kenneth Mitan, Peterson and Leslie had each been informed by someone that Frandorson had decided not to terminate the management agreement with Martin, this could not constitute a breach until the October 1, 1993 deadline in Paragraph 15 had passed. Any decision by Frandorson prior to that date was subject to change. Both Kenneth Mitan and Peterson state that they learned this information "within a matter of just days" or "almost immediately" after he execution of he 1993 Purchase Agreement, which is a considerable amount of time before October 1, 1993.
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> The letter of September 20, 1993, which Mitans assert prove [sic] that Frandorson failed to give Martin notice of cancellation of the contract, actually proves that Frandorson was not the first to breach the contract. Accepting Mitans' argument that this letter conclusively proves that Frandorson had breached the Purchase Agreement, September 20, 1993 is more than a matter of days from the execution of the agreement. Mitans' argument that Frandorson was the first to default on the contract fails.

are still persons or entities that claim "or might claim any interest inconsistent with the interest claimed by the plaintiff" under MCL 600.2932(1).

III

Defendants argue that genuine issues of fact remained on the slander of title claim. We disagree.

To establish slander of title at common law, a plaintiff must show falsity, malice, and special damages, i.e., that the defendant maliciously published false statements that disparaged a plaintiff's right in property, causing special damages. *B & B Investment Group v Gitler*, 229 Mich App 1, 8-9; 581 NW2d 17 (1998). The same three elements are required in slander of title actions brought under MCL 565.108. *Id.* Special damages include litigation costs and impairment of vendibility. *Id.* Malice may not be inferred merely from the filing of an invalid lien. *Stanton v Dachille*, 186 Mich App 247, 262; 463 NW2d 479 (1990). A plaintiff must show that a defendant knowingly filed an invalid lien with the intent to cause the plaintiff injury. *Id.*

The circuit court stated, and the record supports, that:

> There is no dispute that Mitans filed two sets of notices of lis pendens and a third set of title-clouding documents. Slander of title may be based on documents other than notices of lis pendens, *e.g.*, a notice of termination of an easement, *GKC Michigan Theaters v Grand Mall*, 222 Mich App 294 [; 564 NW2d 117] (1997). Frandorson argues that the filing of these documents, as well as other actions of Mitans, shows the first element of falsity of statement. The Court of Appeals in *Sullivan v Thomas Organization*, 88 Mich App 77, 83 [; 276 NW2d 522] (1979), held " . . . the filing of an invalid lien may be a falsehood, even if the matter contained in the lien is correct."
>
> Mitans counter that at all times they had a good faith belief they still held an ownership interest in the subject properties because they believed Frandorson was first to breach the Purchase Agreement and, therefore, they had a right to enforce the terms of the agreement. Mitans also argue that, at the very least, there is a question of fact as to who breached the Purchase Agreement first and, consequently, summary disposition pursuant to MCR 2.116(C)(10) is improper. This latter argument is without merit since the Court has already ruled that Mitans breached the agreement first. [See n 3, *infra*.]
>
> Mitans' claim of a good faith belief in the validity of these notices and other documents fails in the light of other documentary evidence. In a letter to Vern Alexander, dated March 30, 1994, Kenneth Mitan acknowledged that the Mitans' efforts at obtaining financing for the subject properties had for he most part been unsuccessful. He indicated that they still had one source (a credit enhancement and bond sales firm) who was studying the matter. (Frandorson Exhibit 19). The letter then stated:

> "This letter serves as an expression of interest only, and *is not intended to be legally binding.* It is expressly subject both to acceptance by legal counsel, and execution of formal documentation. *It is intended for discussion purposes only."* (Italics added.)

The letter, along with subsequent Offers to Purchase Real Estate from Mitans to Frandorson (Frandorson's Exhibits 20 and 21) clearly demonstrates that at least as of March 30, 1994 the Mitans no longer considered the 1993 Purchase Agreement to be in effect.

The Court finds there is no genuine issue of a material fact and the element of falsity of statement is established.

In *Sullivan v Thomas Organization, op cit.*, at page 86, the Court of Appeals held:

> "Malice may not be inferred simply from the filing of an invalid lien; plaintiffs must show that defendants knowingly filed an invalid lien with the intent to cause plaintiffs injury."

Malice may be inferred from circumstantial evidence. *Sullivan.* Page 86. There is ample evidence to support a finding of malice . . .

Mitans filed the second set of notices of lis pendens and the third set of title-clouding documents in willful violation of this Court's orders. At the time of the filing of each set of notices of lis pendens and the third set of title-clouding documents, Mitans wrote to Chemical Bank to advise it of their filings and to tell Chemical bank [sic] to "govern yourselves accordingly". (Frandorson Exhibits 23, 30, and 34.) Mitans also wrote Chemical Bank on August 2, 1994 to advise it of their removal of both Cases I and II to federal court and to "officially notif[y] [you] that any and all orders entered by Judge Stell for these cases . . . are ineffective and not legally binding . . . . " (Frandorson Exhibit 2.) Mitans again wrote Chemical Bank on August 10, 1994 to notify it they had filed a counterclaim in the federal case, seeking specific performance of the purchase agreement. (Frandorson Exhibit 5.)

The Court finds that there is no genuine issue as to a material fact and the element of malice is established.

On appeal, defendants further assert that since plaintiff was eventually able to close on its transaction with Chemical Bank, plaintiff suffered no damages because of defendants' conduct, and that the filing of the notices of *lis pendens* was privileged. Neither of these arguments were raised below and thus are not preserved for appeal. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Even assuming the arguments were preserved, however, they lack merit. Defendants' conduct delayed plaintiff's closing, and plaintiff incurred substantial legal expenses in countering defendants' multiple forays to this Court and federal court, and to remove the clouds on title. Legal expenses alone are sufficient to establish special damages. *B & B*

Investment Group, supra at 11; *GKC Michigan Theaters v Grand Mall*, 222 Mich App 294, 301; 564 NW2d 117 (1997).

Defendants cite one Florida case in support of their argument regarding privilege.[4] They cite no Michigan case, nor have we found any, that support this argument. Further, even if the filing of the first set of notices of lis pendens had been privileged, the filing of the second set was done in direct violation of the circuit court's order. The argument fails.

IV

Defendants contend that genuine issues of fact existed on plaintiff's tortious interference with a business relationship claim.

This Court stated in *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan (On Remand)*, 217 Mich App 687, 698-699; 552 NW2d 919 (1996):

> The elements of a claim for tortious interference with economic relations or business expectancy are: (1) the existence of a valid business relationship or expectancy; (2) knowledge of the relationship or expectancy on the part of the defendant; (3) intentional interference causing or inducing a breach or termination of the relationship or expectancy; and (4) resultant actual damage. To establish that a lawful act was done with malice and without justification, the plaintiff must demonstrate, with specificity, affirmative acts by the defendant that corroborate the improper motive of the interference. Where the defendant's actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference.

There is no dispute that there was a valid business relationship between plaintiff and Chemical Bank. All but one defendant, Teresa Mitan, admitted knowing about the relationship between plaintiff and Chemical Bank and the tentative closing between them. The circuit court's opinion stated, and we agree, that:

> As noted previously in this opinion, Mitans have:
>
> (1) filed two sets of notices of lis pendens, the second set being a willful violation of a Court order,
>
> (2) filed a third set of title-clouding documents, again in willful violation of a Court order,
>
> (3) notified Chemical Bank each time they filed the above documents, warning the bank to "govern yourselves accordingly",

[4] Defendants cite only *Procacci v Zacco*, 402 So 2d 425, 427 (Fla App, 1981).

(4) removed Case I to the Federal District Court just hours before a hearing in this Court on a motion to cancel the third set of title-clouding documents and removed Case II to the Federal District Court just hours before this Court was to sign an order reflecting her ruling to cancel the title-clouding documents, resulting in a remand of both cases to this Court and a finding by the federal court that removal "was instituted for the wholly improper purpose of delaying and impeding both the state court in conducting its business as well as Frandorson in conveying title of the real property to Chemical Bank."

(5) notified Chemical Bank of these removals and that the effect was to "invalidate" orders of this Court,

(6) removed Cases I and II to the Federal District Court for a second time, despite the fact the first two removals were found to be inappropriate,

(7) filed a counterclaim for specific performance of the Purchase Agreement in the federal action brought against them by Frandorson, and

(8) notified Chemical Bank of the filing of the counterclaim seeking specific performance.

All of the above actions were unlawful acts done with malice and unjustified in law. The intention of invading the business relationship between Frandorson and Chemical Bank is demonstrated by Mitans' repeated letters to the bank. Mitans were aware the closing between Frandorson and the bank was to occur on July 20, 1994. Mitans' malicious and wrongful acts cause [sic] several postponements of the closing, resulting in increased attorney fees and closing costs. Mitans' argument that they could not possibly interfere with this business relationship because Chemical Bank held a mortgage on the subject properties is belied by the fact that its actions did result in repeated postponements of the closing.

We agree with the circuit court that summary disposition was appropriate.[5]

V

Defendants next argue that there were factual issues precluding summary disposition on plaintiff's claims of conspiracy to slander title and conspiracy to tortiously interfere with a business relationship. They assert that the evidence did not fulfill the required elements for each defendant.

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[5] The tortious interference claim corresponds to Count II of the complaint. It is unclear whether Count II purports to state a claim against Teresa Mitan as well as the other defendants. While summary disposition was appropriately granted with respect to the other defendants, it would not be proper regarding Teresa Mitan, as to whom there was a question of fact. Thus, we construe the order as granting judgment against the other defendants only.

A civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means. *Admiral Ins Co v Columbia Casualty Ins Co,* 194 Mich App 300, 313; 486 NW2d 351 (1992). The actions taken to accomplish a lawful purpose by unlawful means – to prevent plaintiff from closing its arrangement with its lender – have been amply set forth in the discussion of the other issues.

The question remains whether the actions were "concerted", i.e., whether each of the individual defendants were implicated in the conspiracy by their actions. The documentary evidence submitted below establishes that defendant Mitan VI entered into the agreement with plaintiff, failed to carry out its obligations under the agreement, and assigned its "interest" in the shopping centers to defendant Mitan V. Defendant Kenneth Mitan's extensive involvement in the case, see n 3 *supra,* and the circuit court's opinion, quoted *supra,* included authoring the warning letters to plaintiff's lender. Defendant Keith Mitan's extensive involvement in the case, see n 3 *supra,* and the circuit court's opinion, quoted *supra,* included drafting and filing the notices of lis pendens. Mitan V was the assignee and affiant on the affidavit of assignment of Mitan VI's interest in the shopping centers, its affidavit was executed by Defendant Mitan Doublewood Ancillary Control Section, Inc., Mitan V's general partner. Each of these defendants performed acts that implicated him or it in the conspiracy. Summary disposition against each of these defendants on the conspiracy counts was appropriate.

We agree with defendants, however, that summary disposition was improperly granted as to Teresa F. Mitan on the conspiracy claims. Teresa Mitan is the mother of defendants Keith and Kenneth Mitan. Defendants' answer to plaintiff's complaint admitted that Keith and Kenneth Mitan were aware that a closing was pending between plaintiff and Chemical Bank, but denied that Teresa Mitan was aware of that fact. The only references we have found to Teresa Mitan in plaintiff's brief on appeal are that she, as treasurer of Mitan Doublewood Ancillary Control Section, Inc., the general partner of Mitan V, and Kenneth Mitan, signed the assignment of the assets of Mitan VI to Mitan V in July 1994, and that she signed an affidavit of interest, with copies of the 1993 purchase agreement and assignment attached, in July 1994. There is no evidence that Teresa Mitan was aware of the underlying breach or the prior court proceedings. We conclude that there were questions of fact regarding whether Teresa Mitan conspired with the remaining defendants.

In light of our disposition, we need not address whether the circuit court properly granted plaintiff summary disposition on res judicata grounds.[6]

[6] The res judicata argument is inapplicable to the conspiracy claims against Teresa Mitan.

We reverse the grant of summary disposition under MCR 2.116(C)(10) as to defendant Teresa Mitan. We affirm the grant of summary disposition in plaintiff's favor under MCR 2.116(C)(10) on all other claims.

/s/ Peter D. O'Connell
/s/ Helene N. White
/s/ Michael R. Smolenski