STATE OF MICHIGAN

COURT OF APPEALS

WEDDING BELLES, d/b/a THE LITTLE WEDDINGS CHAPEL, HAPPILY MARRIED, INC., d/b/a THE LITTLE WEDDING CHAPEL, HISTORIC WEDDINGS, INC., d/b/a THE LITTLE WEDDING CHAPEL, OCCASIONS, INC., d/b/a THE LITTLE WEDDING CHAPEL, UNPUBLISHED February 8, 2005

Plaintiffs-Appellants,

V

No. 250103 Wayne Circuit Court LC No. 03-305868-CK

SBC AMERITECH CORPORATION, INC., a/k/a AMERITECH PUBLISHING, INC., SBC AMERITECH MICHIGAN, a/k/a MICHIGAN BELL TELEPHONE COMPANY, and SBC SERVICES, INC.,

Defendants-Appellees,

and

SBC HOLDINGS, INC., and SBC INTERNET SERVICES,

Defendants.

Before: Wilder, P.J., and Sawyer and White, JJ.

PER CURIAM.

Plaintiffs appeal as of right the order granting defendants' motion for summary disposition and dismissing plaintiffs' claims for tortious interference with a contract, defamation and breach of express and implied covenants. On appeal, plaintiffs challenge the trial court's ruling only with regard to the claim for breach of an implied covenant of good faith and fair dealing. We affirm.

Plaintiffs argue that the circuit court erred in granting defendants' motion for summary disposition where there were questions of fact regarding the relationship between the various defendants and there was an implied covenant of good faith and fair dealing in plaintiffs' contract with Ameritech Publishing, Inc. (API), which was breached by defendants. Plaintiffs

contracted with API to list plaintiffs in API's telephone directory. Plaintiffs allege that the covenant of good faith and fair dealing implied in that contract was breached when SBC Ameritech Corporation, Inc. (SBC) launched a billboard advertising campaign implying that utilizing wedding chapel services such as those provided by plaintiffs was a bad idea, like switching one's telephone company.

We need not address plaintiffs' claim that there were questions of fact concerning the relationship between the parties because we conclude that plaintiffs did not state a claim for breach of the covenant of good faith and fair dealing.

A grant or denial of summary disposition based upon a failure to state a claim is reviewed de novo on appeal. *Adair v Michigan*, 470 Mich 105, 119; 680 NW2d 386 (2004). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone; the motion may not be supported with documentary evidence. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001); *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). All factual allegations in support of the claim are accepted as true, as well as any reasonable inferences or conclusions which can be drawn from the facts, and construed in the light most favorable to the nonmoving party. *Adair, supra* at 119. However, a mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to state a cause of action. *Churella v Pioneer State Mutual Ins Co*, 258 Mich App 260, 272; 671 NW2d 125 (2003). The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Adair, supra* at 119.

Generally, there exists an implied covenant of good faith and fair dealing in all contracts "that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." *Hammond v United of Oakland, Inc,* 193 Mich App 146, 151-152; 483 NW2d 652 (1992), quoting *Fortune v National Cash Register Co,* 373 Mass 96, 104; 364 NE2d 1251 (1977). "[A]n implied covenant of good faith and fair dealing . . . applies to the performance and enforcement of contracts," limits "the parties' conduct when their contract defers decision on a particular term, omits terms or provides ambiguous terms," *Hubbard Chevrolet Co v GM Corp,* 873 F2d 873, 876-877 (CA 5, 1989), or leaves the manner of performance to a party's discretion. *Ferrell v Vic Tanny Int'l, Inc,* 137 Mich App 238, 243; 357 NW2d 669 (1984); *Burkhardt v City National Bank of Detroit,* 57 Mich App 649, 652; 226 NW2d 678 (1975). Michigan does not recognize an action separate from an action on the underlying contract for breach of an implied covenant of good faith and fair dealing. *Belle Isle Grill Corp v Detroit,* 256 Mich App 463, 476; 666 NW2d 271 (2003).

Here, the contract on which plaintiffs base their claim for breach of implied covenants of good faith and fair dealing is the contract between plaintiffs and API regarding the placement of advertisements for plaintiffs' businesses in the telephone directory issued by API. The implied covenant of good faith and fair dealing pertains to defendants' conduct in performing and enforcing this contract. Plaintiffs' allegations, however, do not concern the performance or enforcement of this contract. There are no allegations that, for instance, API failed to provide the agreed-upon advertising in the directory, or that the ads were too big or too small, were

inaccurate, misplaced, misspelled or under the wrong heading. Nor do plaintiffs allege that their advertising was placed in proximity to an SBC "bad idea" ad so that the fruits of the directory advertising were denied to them.¹

Plaintiffs' allegations against defendants also do not allege a breach of fair dealing with regard to the supplying of missing terms or ambiguous terms of the contract or of terms that were left undefined until later, or were left to defendant's discretion in performance. Rather. plaintiffs, in effect, seek to add a new term that goes beyond good-faith performance of the contract to place and publish advertising in the directory; plaintiffs seek to enforce an added term to the effect that defendants shall do nothing to disparage plaintiffs' line of business in any way, because to do so might detract from the value of the directory advertising. Defendants have not interfered with plaintiffs' ability to attract business through the directory advertisement. Rather, the advertisement made a general statement about the wisdom of patronizing a 24-hour wedding chapel. While this might hypothetically induce someone who was otherwise inclined to use plaintiffs' services to refrain from doing so, it does not in itself affect the effectiveness of the directory advertisement. Because plaintiffs seek to bring an action for breach of an implied covenant which is not based on the enforcement or performance of the contract to provide advertising in the directory, plaintiffs failed to state a claim on which relief could be granted under Michigan law. Thus, the circuit court did not err in granting defendants' motion for summary disposition.

Affirmed.

/s/ Kurtis T. Wilder /s/ David H. Sawyer /s/ Helene N. White

¹ We express no opinion regarding the application of the covenant in an action seeking to recover amounts owed for API advertisements.