If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

M S ABSTRACT, LLC,

Plaintiff-Appellant/Cross-Appellee,

v

OAKLAND COUNTY,

Defendant-Appellee,

and

TITLE CHECK, LLC,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED
October 20, 2026
1:49 PM

No. 372685
Oakland Circuit Court
LC No. 2023-201493-CB

Before: MURRAY, P.J., and BOONSTRA and RIORDAN, JJ.

PER CURIAM.

In this action involving contracts between plaintiff M S Abstract, LLC (MSA), defendant Title Check, LLC (TC), and defendant Oakland County, MSA appeals as of right the trial court's opinion and order granting TC and Oakland County's motions for summary disposition of MSA's claims against them. Additionally, TC cross-appeals the trial court's order denying its motion for attorney fees under MCR 2.405. We affirm the court's opinion and order granting TC and Oakland County's motions for summary disposition, but vacate the court's order denying TC's motion for attorney fees and remand for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

MSA initiated this action against Oakland County and TC. Against Oakland County, MSA claimed breach of contract (Count I) and injunctive relief (Count II), alleging that Oakland County issued a request for proposals (RFP) for title search services in 2022, in response to which MSA submitted a bid, and awarded contracts for the work to MSA and another company which is not a party to the lawsuit, effective from July 1, 2022, to June 30, 2025; the rate for the work was fixed in the RFP; MSA relied on the contract to hire extra staff but Oakland County, without notice, decided not to honor the contract by awarding the title search work to TC; and Oakland County

did so without issuing a new RFP, and without TC submitting a bid for title search work. With regard to TC, MSA claimed injunctive relief (Count II), tortious interference with prospective economic advantage (Count III), and tortious interference with a business relationship (Count IV), alleging that TC had knowledge of the business relationship by way of the contract between MSA and Oakland County for title search services, and intentionally interfered with the contract, resulting in Oakland County's breach. Attached to the first amended complaint was the contract between MSA and Oakland County, § 2300.11 of Oakland County's Purchasing Policies and Procedures, and an affidavit from MSA's owner.

Oakland County and TC each moved for summary disposition under MCR 2.116(C)(8). Oakland County argued that MSA's claims against it failed as a matter of law because: (1) its contract with MSA was non-exclusive and it was, therefore, expressly entitled to award title search work to other vendors; (2) MSA agreed the contract did not guarantee a minimum amount of work; (3) under the contract, which limits damages to title searches actually ordered and not paid for, MSA is not entitled to damages for its alleged reliance on the contract; and (4) MSA's claim for injunctive relief fails because injunctive relief is a remedy, not an independent cause of action. TC argued entitlement to summary disposition of MSA's claims, asserting: (1) "[i]n examining the substance of Counts III and IV, and indeed the entire gravamen of [MSA's] Amended Complaint, it is clear that [MSA] has pleaded a single claim for tortious interference with a contract"; (2) because Oakland County did not breach its contract with MSA, MSA's tortious interference claims necessarily fail; (3) regardless, TC did not interfere with MSA's business relationship because its relationship with Oakland County was non-exclusive and Oakland County did not guarantee deliverables; and (4) injunctive relief is a remedy, not a cause of action.

In response to Oakland County's summary disposition motion, MSA argued that it was entitled to discovery to determine when and how Oakland County awarded TC a contract covering the same scope of work as its contract with MSA, and while acknowledging its contract was non-exclusive, asserted it was entitled to some work, citing Exhibit IX to the contract, and concluding otherwise would render the contract illusory. Further, MSA argued that Oakland County breached the implied covenant of good faith and fair dealing that exists in all contracts because its performance was a matter of discretion and should have been exercised in good faith, that it pled actual damages—"the amount of the payments for deliverables that should have gone to [MSA] but were diverted to [TC]," and that the contract's limitation on damages was unconscionable. For its response to TC's summary disposition motion, MSA stated:

> As [TC's] sole argument pertains to the heart of Co-Defendant Oakland County's concurrently pending Motion for Summary Disposition as to breach of contract, [MSA] incorporates by reference its Response to Defendant Oakland County's Motion for Summary Disposition as if fully restated herein.

In reply, Oakland County asserted that TC did in fact respond to Oakland County's RFP for printing and mailing services related to tax foreclosures, and included as part of its proposal its prices for a full range of services including title search services, and that this type of custom proposal is allowed under Oakland County's Purchasing Policies and Procedures. In doing so, it attached two pages of TC's proposal. Further, Oakland County argued that the implied covenant of good faith and fair dealing could not supplant its unambiguous contract with MSA by imposing a quantity term not included in the terms of the contract. TC, in turn, challenged MSA's bad faith

and unconscionability arguments, and argued that MSA did not address TC's argument that MSA's injunctive relief claim should fail as a matter of law.

The court ultimately issued an opinion and order granting Oakland County and TC's motions for summary disposition under MCR 2.116(C)(8). With regard to Count I, MSA's breach of contract claim against Oakland County, the court reasoned first that MSA failed to "explain how a breach of Oakland County's Policies and Procedures creates a cause of action for breach of contract or why [MSA] has standing to assert such a claim," referencing the Policies' lack of incorporation into the contract and the provision stating the contract supersedes any other agreements. The court also noted that Oakland County provided evidence of TC's custom bid, and found that such a bid is within the parameters of Oakland County's Policies and Procedures. Further, the court rejected MSA's argument that it was entitled to some work under the contract, reasoning that MSA's reference to Exhibit IX ignored the more specific language in the contract, and stated: "Even if [MSA] had a right to receive some work from Oakland County, the Contract prohibits [MSA] from receiving the damages requested, *i.e.*, reliance damages or lost profits. Sections 7.3.1 and 7.3.2 explicitly limit Oakland County's liability to non-payment of work completed."

The court granted summary disposition of Count II, reasoning that injunctive relief is a remedy, not a cause of action, and that MSA failed to respond to the request for dismissal of Count II. With regard to Counts III and IV, the court concluded that the allegations in both related solely to breach of contract and were therefore properly characterized as claims for tortious interference with a contract, and that MSA did not respond to TC's arguments regarding Counts III and IV, so it abandoned any challenge to summary disposition of the claims.

Subsequently, TC moved for attorney fees pursuant to MCR 2.405(D). TC asserted that on April 1, 2024, it served upon MSA an offer of judgment in the amount of $1,500 in full satisfaction of all claims, in response to which MSA counter-offered $200,000. Thus, under MCR 2.405(A)(3), the average offer was $100,750, and because the court dismissed MSA's claims against TC, the adjusted verdict was more favorable to TC than the average offer. Accordingly, TC argued, MSA was required to pay TC's actual costs incurred in the defense of the action under MCR 2.405(D)(1). The trial court denied the motion, stating that an award of costs under MCR 2.405 is not available to a party granted judgment on summary disposition.

This appeal and cross-appeal followed.

II. MSA'S ARGUMENTS ON APPEAL

A. BREACH OF CONTRACT

MSA first argues that the trial court erred when it granted summary disposition of its breach of contract claim against Oakland County.

Oakland County and TC brought their motions for summary disposition pursuant to MCR 2.116(C)(8), and the trial court stated that it granted summary disposition of all claims pursuant to MCR 2.116(C)(8). We review the proper interpretation of a contract de novo. *Mendelson Orthopedics PC v Everest Nat'l Ins Co*, 328 Mich App 450, 457; 938 NW2d 739 (2019).

> We also review de novo motions for summary disposition under MCR 2.116(C)(8). A motion under MCR 2.116(C)(8) tests whether the opposing party has failed to state a claim on which relief can be granted. When deciding a motion under (C)(8), this Court accepts all well-pleaded factual allegations as true and construes them in the light most favorable to the nonmoving party. A trial court may grant summary disposition under MCR 2.116(C)(8) only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. [*Id*. (quotation marks and citations omitted).]

"In an action based on contract, the contract attached to the pleading is considered part of the pleading, even for purposes of MCR 2.116(C)(8)." *In re Burnett Estate*, 341 Mich App 613, 617; 992 NW2d 325 (2022) (quotation marks and citation omitted).

The trial court did not err when it granted summary disposition of MSA's breach of contract claim.

> [I]n regard to breach of contract, a party claiming a breach must establish (1) that there was a contract, (2) that the other party breached the contract, and (3) that the party asserting breach of contract suffered damages as a result of the breach. The measure of damages in relation to a breach of contract is the pecuniary value of the benefits the aggrieved party would have received if the contract had not been breached. [*Doe v Henry Ford Health Sys*, 308 Mich App 592, 601; 865 NW2d 915 (2014) (quotation marks and citations omitted).]

"The goal of contract interpretation is to determine and enforce the parties' intent on the basis of the plain language of the contract itself." *Emerzian v North Bros Ford, Inc*, 350 Mich App 650, 658; 34 NW3d 30 (2024) (quotation marks and citation omitted).

> When the language of the contract is unambiguous, the contract must be interpreted and enforced as written. When the contract language is subject to multiple interpretations, it is considered ambiguous. Ambiguities in a contract generally raise questions of fact for the jury; however, if a contract must be construed according to its terms alone, it is the court's duty to interpret the language. [*Abdelmaguid v Dimensions Ins Group, LLC*, 350 Mich App 214, 244; 31 NW3d 833 (2024) (quotation marks and citations omitted).]

"When enforcing the unambiguous language of a contract, we must give effect to every word or phrase as far as practicable so as to avoid an interpretation that would render any part of the contract surplusage or nugatory." *Id*. at 244-245 (quotation marks and citation omitted).

In looking at the allegations in MSA's first amended complaint (FAC) and the plain language of its contract with Oakland County, MSA failed to state a claim for breach of contract. First, MSA failed to sufficiently allege a breach. In its FAC, MSA alleged that without notice, and without issuing an RFP for title search work, Oakland County decided to not honor its contract with MSA and awarded the title search work to TC, a third party who failed to submit a bid for the work. But, as MSA acknowledges, its contract with Oakland County was non-exclusive. Section 13.13 provides:

> **Non-Exclusive Contract.** This Contract is a non-exclusive agreement. No provision in this Contract limits or is intended to limit, in any way, [MSA's] right to offer and provide its services to the general public, other business entities, municipalities, or governmental agencies during or after the term of this Contract. Similarly, the County may freely engage other persons to perform the same work that Contractor performs. Except as provided in this Contract, the Contract shall not be construed to guarantee [MSA] or any [MSA] Employee any fixed or certain number of Deliverables.

Thus, the plain and unambiguous terms of the contract permit the behavior MSA asserts constitutes a breach—engaging another company to perform the same work and not guaranteeing any work to MSA.

MSA directs this Court's attention to Exhibit IX to the contract, which states, in part, "The Oakland County Treasurer's Office will provide a title search text file to [MSA] of CVT code, parcel number, and property address (if available)," to argue that any title search work should have been assigned to MSA or the other vendor originally granted a contract for the work. But that assertion ignores the specific language in the contract, quoted above, that Oakland County was not obligated to give MSA *any* work. See *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 367 n 22; 817 NW2d 504 (2012) ("The settled rule regarding statutory construction is that a specific statutory provision controls over a related but more general statutory provision."). Moreover, § 3.7 of the contract states, in part, "In the event of a conflict, the terms and conditions contained in Sections 1 through 13 of this Contract, shall prevail and take precedence over any allegedly conflicting provisions in all Contract Documents, Exhibits, Purchase Orders, Amendments, and other documents expressly incorporated herein." And MSA's argument that such an interpretation would render the contract illusory fails. An illusory contract is a contract where "one party gives as consideration a promise that is so insubstantial as to impose no obligation." *Employers Mut Cas Co v Helicon Assoc, Inc*, 313 Mich App 401, 407; 880 NW2d 839 (2015), rev'd on other grounds by 500 Mich 986 (2017) (quotation marks and citation omitted). This renders the contract unenforceable. *Id*. The contract was not illusory because it obligated Oakland County to compensate MSA for any title search work it did assign. Section 5.3 states, for example:

> **Financial Obligations.** Except as otherwise set forth in this Contract, the County's sole financial obligation under this Contract shall be set forth in Exhibit IX. The amount and manner of payment of the financial obligation shall be set forth in Exhibit IX and may be in the Software License Exhibit VI, if applicable, or a Purchase Order.

And § 5.4 states, in part:

> Payment Obligations. Except as otherwise set forth in the Exhibits, Contractor shall submit an invoice to the County's Contract Administrator itemizing amounts due and owing under this Contract, as of the date of the invoice, within sixty (60) days of Contractor's performance of the Deliverables listed in the invoice. . . . Unless otherwise set forth in the Exhibits, the County shall only pay Contractor for Deliverables under this Contract and not any subcontractors or assignees of Contractor.

MSA also failed to state a claim on the basis of a breach of the implied covenant of good faith and fair dealing. "The implied covenant of good faith and fair dealing has been broadly described as a promise '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.' " *Kircher v Boyne USA, Inc*, ___ Mich ___, ___; ___ NW3d ___ (2025) (Docket No. 166459); slip op at 7, quoting *Hammond v United of Oakland, Inc*, 193 Mich App 146, 152; 483 NW2d 652 (1992). Where a party makes its manner of performance under a contract a matter of its own discretion, "the law does not hesitate to imply the proviso that such discretion be exercised honestly and in good faith." *Id*. at ___; slip op at 7-8 (quotation marks and citation omitted).

MSA asserts Oakland County breached the implied covenant of good faith and fair dealing, stating: "Clearly, MS[A] and the other vendor who won the bid process are entitled to the work under the Contract, not some third party [t]hat was never part of [the] bidding process. Had MS[A] not been provided work but the vendor who won the bid was awarded all of the work, MS[A] would not have filed the underlying lawsuit." But, again, MSA agreed by contract that Oakland County had no obligation to guarantee it any work, and "the implied covenant of good faith and fair dealing under existing law neither overrides nor replaces any express contractual term." *Kircher*, ___ Mich at ___; slip op at 7-8 (quotation marks and citation omitted). And MSA has failed to allege actionable bad faith. MSA alleged and argues that Oakland County should have, and failed to, follow its own Policies and Procedures by re-issuing an RFP for title search work before awarding a contract to TC for such work, which constitutes bad faith. As the trial court found, however, MSA failed to point to any part of the contract incorporating Oakland County's Policies and Procedures. Nor do we see one. And § 13.25 of the contract states:

> This Contract represents the entire agreement and understanding between the Parties. This Contract supersedes all other prior oral or written understandings, communications, agreements, or contracts between the Parties. The language of this Contract shall be construed as a whole according to its fair meaning and not construed strictly for or against any Party.

Finally, MSA's breach of contract claim fails as a matter of law because MSA failed to plead actionable damages. See *Doe*, 308 Mich App at 601-602. "The measure of damages in relation to a breach of contract is the pecuniary value of the benefits the aggrieved party would have received if the contract had not been breached." *Id*. at 601 (quotation marks and citation omitted). MSA asserts entitlement to damages for payment of deliverables that should have gone to MSA but were diverted to TC. But the contract between MSA and Oakland County limits damages to payment for deliverables from MSA, of which none existed as MSA alleges Oakland County ultimately gave it no title search work. Specifically, §§ 7.3.1 and 7.3.2 state:

> 7.3. COUNTY LIMITATION OF LIABILITY.
>
> 7.3.1 COUNTY SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, REMOTE, SPECULATIVE, PUNITIVE, EXEMPLARY, LIQUIDATED, TREBLE, OR SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT, OPPORTUNITY, USE, REVENUE, DATA, OR GOODWILL, WHETHER BASED IN WHOLE OR IN PART IN CONTRACT, TORT, EQUITY, STRICT LIABILITY, UNDER

> STATUTE, OR ANY OTHER THEORY OF LIABILITY, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR CONTEMPLATED AND EVEN IF COUNTY WAS ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES.
>
> 7.3.2 COUNTY SHALL NOT BE LIABLE IN CONTRACT, TORT, EQUITY, STRICT LIABILITY, UNDER STATUTE, OR ANY OTHER THEORY OF LIABILITY, FOR TOTAL AGGREGATE DAMAGES IN EXCESS OF COUNTY'S PAYMENT OBLIGATIONS TO CONTRACTOR FOR THE DELIVERABLES UNDER THIS CONTRACT.

MSA argues § 7.3.2 is both procedurally and substantively unconscionable.

> In Michigan, " '[u]nconscionability has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party.' " *Allen v Mich Bell Tel Co*, 18 Mich App 632, 637-638; 171 NW2d 689 (1969), quoting *Williams v Walker-Thomas Furniture Co*, 121 US App DC 315, 319; 350 F2d 445 (1965). In other words, in order for a contract to be unconscionable, it must be procedurally and substantively unconscionable. [*Rayford v American House Roseville I, LLC*, ___ Mich ___, ___; ___ NW3d ___ (2025) (Docket No. 163989); slip op at 30-31 (alteration in original).]

"Procedural unconscionability exists when a weaker party has no realistic alternative but to accept the term." *Id*. at ___; slip op at 31 (quotation marks and citation omitted). "[W]e have looked to factors such as the sophistication of the parties, the parties' relative market power and economic status, and a party's education in a field." *Id*. at ___; slip op at 32. MSA cursorily and without support asserts that § 7.3.2 of the contract is procedurally unconscionable because Oakland County was the more powerful party to the contract and it was therefore forced to accept the County's terms. We see no basis for that assertion. But even if true, MSA's argument that the contract provision is substantively unconscionable fails.

"Substantive unconscionability requires courts to analyze the reasonableness of the challenged term. A contract provision is substantively unreasonable if the inequity shocks the conscience." *Id*. at ___; slip op at 32 (quotation marks, citations, and alteration omitted). MSA argues "to the extent that Oakland contends that a vendor who went through the expense and burden of submitting a successful bid in response to an RFP has no ability to contest when a non-bidding vendor is awarded the work that would otherwise have gone to a bidding vendor, then the provision must also be found to be substantively unconscionable as well." We fail to see how this "shocks the conscience." And the argument would seem to render any contract without a guaranteed amount of work unconscionable, but MSA has not cited any caselaw to that effect. Moreover, whether the entirety of the title search work went to the other vendor originally awarded a contract or to TC, MSA would still have no work and therefore no reimbursement for the work. Accordingly, even construing the allegations in the FAC in the light most favorable to MSA, MSA has failed to plead a claim for breach of contract.

B. INJUNCTIVE RELIEF

MSA next asserts that the trial court erred by granting summary disposition of its claim for injunctive relief.

MSA failed to specifically oppose below Oakland County and TC's arguments regarding entitlement to summary disposition of Count II. While "Michigan follows the raise or waive rule of appellate review," this Court may still consider the issue if it involves a question of law and the facts necessary for resolution are available. *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, 347 Mich App 280, 289-290; 14 NW3d 472 (2023) (quotation marks and citation omitted). Here, the trial court granted summary disposition of Count II as a matter of law under MCR 2.116(C)(8). Accordingly, we will address the issue.

Consistent with the trial court's ruling, "an injunction is a remedy, not an independent cause of action." *Redmond v Heller*, 332 Mich App 415, 432; 957 NW2d 357 (2020). Thus, Oakland County and TC were entitled to summary disposition of MSA's injunctive relief claim as a matter of law.

C. TORTIOUS INTERFERENCE

MSA also challenges the trial court's decision to grant summary disposition of its tortious interference claims.

Issues that have been raised in or decided by the trial court are preserved. *Glasker-Davis v Auvenshine*, 333 Mich App 222, 227-228; 964 NW2d 809 (2020). As the trial court reasoned, MSA failed to address TC's arguments for summary disposition of its tortious interference claims, instead relying on its brief in response to Oakland County's summary disposition motion. But as with the prior issue, because the trial court granted summary disposition of Counts III and IV (the tortious interference claims) as a matter of law under MCR 2.116(C)(8), we will address the issue. *Tolas Oil & Gas Exploration Co*, 347 Mich App at 289-290.

First, the trial court correctly found that MSA's tortious interference claims were most properly characterized as claims for tortious interference with a contract. "It is well settled that the gravamen of an action is determined by reading the complaint as a whole, and by looking beyond mere procedural labels to determine the exact nature of the claim." *Adams v Adams (On Reconsideration)*, 276 Mich App 704, 710-711; 742 NW2d 399 (2007).

> "In Michigan, tortious interference with a contract or contractual relations is a cause of action distinct from tortious interference with a business relationship or expectancy." *Health Call of Detroit v Atrium Home & Health Care Servs, Inc*, 268 Mich App 83, 89; 706 NW2d 843 (2005). "The elements of tortious interference with a contract are (1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant." *Id*. at 89-90. Damage is an element as well. See *id*. at 90. [*Relative Time Films, LLC v Covenant House Mich*, 344 Mich App 155, 162; 999 NW2d 64 (2022).]

In contrast:

> The elements of tortious interference with a business relationship or expectancy are the existence of a valid business relationship or expectancy, knowledge of the relationship or expectancy on the part of the defendant, an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and resultant damage to the plaintiff. [*Cedroni Assoc, Inc v Tomblinson, Harburn Assoc, Architects & Planners, Inc*, 492 Mich 40, 45; 821 NW2d 1 (2012) (quotation marks and citations omitted).]

MSA's claims for tortious interference with prospective economic advantage (Count III) and with a business relationship (Count IV) are actually claims for tortious interference with a contract, despite their labels otherwise. In both, MSA alleges that it had a valid business relationship with Oakland County by way of *contract*, and that TC intentionally interfered with the *contract*, resulting in a breach of that contract by Oakland County. As such, the claims fail as a matter of law because, as discussed above, MSA failed to state a claim for breach of contract.

MSA cursorily asserts in its brief in reply to TC's brief on appeal, that the court should have allowed MSA to amend its complaint to "more fully distinguish the claims for interference with contract and interference with business relationship . . . ." First, MSA failed to even respond to TC's arguments in support of summary disposition of the tortious interference claims, let alone move to amend the complaint. Regardless, any amendment would be futile. See *Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182, 209; 920 NW2d 148 (2018).

Assuming MSA could better distinguish its tortious interference claims, the factual allegations, even when viewed in the light most favorable to MSA, do not support a claim for tortious interference with a business relationship. Specifically, MSA has failed to allege any facts to support its assertion that TC intentionally interfered in the business relationship between MSA and Oakland County. *Cedroni Assoc, Inc*, 492 Mich at 45.

> To fulfill the third element, intentional interference inducing or causing a breach of a business relationship, a plaintiff must demonstrate that the defendant acted both intentionally and either improperly or without justification. To establish that a defendant's conduct lacked justification and showed malice, 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. [*Dalley v Dykema Gossett*, 287 Mich App 296, 323-324; 788 NW2d 679 (2010) (quotation marks and citations omitted).]

In the general allegations of its amended complaint, MSA alleged that Oakland County decided to give title search work to TC without following the proper bidding process, and under Counts III and IV, MSA alleged, with no further context, that TC intentionally interfered, with malice and without justification, in the relationship between MSA and Oakland County. But MSA acknowledges the non-exclusivity of its contract with Oakland County, and in its brief on appeal, MSA states that TC included in its bid for mailing services its pricing for a full spectrum of services, including title searches. On the basis of these allegations, MSA could not establish that TC acted with malice and unmotivated by legitimate business reasons and, thus, could not state a claim for tortious interference with a business relationship. *Dalley*, 287 Mich App 323-324.

Accordingly, any amendment which would purportedly more fully distinguish the claims of tortious interference with a contract and tortious interference with a business relationship would be futile.

D. TC'S BID AND STANDING

Finally, MSA argues that the trial court erred when it concluded that TC properly bid for title search services and that MSA lacked standing to challenge Oakland County's bidding procedures.

To the extent that the trial court considered evidence beyond the pleadings to find that TC bid for the title search services, namely the portion of its bid attached to Oakland County's brief in reply to MSA's summary disposition response, we treat that issue as having been decided under MCR 2.116(C)(10). *Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 544; 904 NW2d 192 (2017). A motion under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019).

MSA challenges the trial court's conclusion that it lacked standing to assert a claim for breach of contract on the basis that Oakland County allegedly awarded TC a contract without following the County's bidding Policies and Procedures.

> The purpose of the standing doctrine is to assess whether a litigant's interest in the issue is sufficient to "ensure sincere and vigorous advocacy." *Detroit Fire Fighters Ass'n v Detroit*, 449 Mich 629, 633; 537 NW2d 436 (1995). Thus, the standing inquiry focuses on whether a litigant "is a proper party to request adjudication of a particular issue and not whether the issue itself is justiciable." *Allstate Ins Co v Hayes*, 442 Mich 56, 68; 499 NW2d 743 (1993) (quotation marks and citations omitted). [*Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 355; 792 NW2d 686 (2010).]

Although not identical to the circumstances at issue here, "Michigan jurisprudence has never recognized that a disappointed bidder . . . has the right to challenge the bidding process." *Groves v Dep't of Corrections*, 295 Mich App 1, 5; 811 NW2d 563 (2011). "[C]ompetitive bidding on public contracts is designed for the benefit of taxpayers and not those seeking the contract." *Id*. at 7.

> Litigation aimed at second-guessing the exercise of discretion by the appropriate public officials in awarding a public contract will not further the public interest; it will only add uncertainty, delay, and expense to fulfilling the contract. The only circumstance that may provide a basis for an action to review the bidding process is the presence of evidence of fraud, abuse, or illegality. But such an action must be brought by the proper public official. [*Id*. at 7-8 (quotation marks and citations omitted).]

Here, MSA was not a disappointed bidder, as Oakland County awarded it a contract for title search services, but we reason that the above principles apply. Like a disappointed bidder, MSA cannot challenge Oakland County's bidding processes. And more importantly, as discussed

extensively above, the contract itself neither incorporates the County's bidding Policies and Procedures, nor requires that Oakland County give MSA *any* title search work.

For the same reasons, the trial court's finding that Oakland County provided evidence of TC's custom bid for mailing, which included title search services, was within the parameters of the County's Policies and Procedures, is inconsequential.

III. TC'S ARGUMENTS ON CROSS-APPEAL

With respect to TC's argument on cross-appeal, we agree that the trial court erred when it denied its motion for fees under MCR 2.405 on the basis that judgment on summary disposition is not a verdict under that rule.

"We review for an abuse of discretion a trial counsel's award of attorney fees and costs. An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Andreson v Progressive Marathon Ins Co*, 322 Mich App 76, 92; 910 NW2d 691 (2017) (quotation marks and citations omitted). We review de novo the interpretation and application of the offer of judgment rule. *Simcor Constr, Inc v Trupp*, 322 Mich App 508, 514; 912 NW2d 216 (2018).[1]

TC filed a motion for attorney fees under MCR 2.405, which the trial court denied, reasoning that an award of costs under MCR 2.405 is not available to a party granted judgment on summary disposition. Under MCR 2.405, a party may serve a written offer to stipulate to the entry of a judgment, including interest and costs accrued. MCR 2.405(B). The party to whom the offer is served may accept or reject the offer, or make a counteroffer. MCR 2.405(C). Where the adjusted verdict, defined as the "verdict plus interest and costs from the filing of the complaint through the date of the offer," MCR 2.405(A)(5), "is more favorable to the offeror than the average offer, the offeree must pay the offeror the offeror's actual costs incurred in the prosecution or defense of the action," MCR 2.405(D)(1), unless the court determines that fees should not be awarded in the interest of justice, MCR 2.405(D)(3). TC served upon MSA an offer of judgment in the amount of $1,500, and asserts that MSA made a counteroffer of $200,000.[2] Ultimately, the trial court dismissed all of MSA's claims by granting TC and Oakland County's motions for summary disposition.

TC argues that this dismissal constitutes a verdict under MCR 2.405(A)(4) of $0, entitling it to actual costs under MCR 2.405(D)(1). In rejecting this argument, the trial court relied on *Employers Mut Cas Co v Petroleum Equip, Inc*, 190 Mich App 57, 67; 475 NW2d 418 (1991), in which this Court held that "an award of costs is not available under MCR 2.405 to a party who is granted judgment pursuant to a ruling on a motion for summary disposition." But at the time that

[1] MSA argues that TC inappropriately incorporated its cross-appeal into its response brief, but as TC recognizes, the Court's Internal Operating Procedures allow a cross-appellant to file a combined appellee/cross-appellant brief. IOP 7.212(E).

[2] We see no evidence of the counteroffer attached to TC's motion for attorney fees, but MSA does not dispute this factual summary.

case was decided, MCR 2.405 defined "verdict" as " 'the award rendered by a jury or by the court sitting without a jury, excluding all costs and interest.' " *Freeman v Consumers Power Co*, 437 Mich 514, 518; 473 NW2d 63 (1991), quoting MCR 2.405(A)(4). That definition subsequently changed to include "a judgment entered as a result of a ruling on a motion after rejection of the offer of judgment," MCR 2.405(A)(4)(c), and this Court has held since that "[a] judgment resulting from a grant of summary disposition is a verdict for purposes of imposing sanctions pursuant to MCR 2.405." *Marilyn Froling Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 297; 769 NW2d 234 (2009); see also *Tennine Corp v Boardwalk Commercial, LLC*, 315 Mich App 1, 18; 888 NW2d 267 (2016). Accordingly, the trial court abused its discretion when it denied TC's motion for attorney fees on the basis that an award of costs under MCR 2.405 is not available to a party granted judgment on summary disposition.

MSA argues that the court should apply the "interest of justice" exception at MCR 2.405(D)(3) to refuse TC's request for attorney fees, but the trial court never reached this issue. As a result, we affirm the trial court's order granting summary disposition of MSA's claims, but vacate the court's order denying the motion for attorney fees and remand for a determination regarding whether the "interest of justice" exception at MCR 2.405(D)(3) applies or whether TC should be awarded fees. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Mark T. Boonstra
/s/ Michael J. Riordan