

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

KEVIN REFFITT, PENCON, INC.,
and RONALD REFFITT, SR.,

Plaintiffs,

Case No. 18-166093-CB
Hon. Wendy Potts

v

GERARD MANTESE, ESQ., MANTESE
HONIGMAN, PC, KENTER GERBERDING,
ESQ., RUNNING WISE & FIRD, PLC,
and DAWN BACHI-REFFITT,

Defendants.

OPINION AND ORDER

At a session of Court
Held in Pontiac, Michigan

On
NOV 05 2018

This matter is before the Court on Defendants' motion for summary disposition under MCR 2.116(C)(8). The Court dispenses with oral argument pursuant to MCR 2.119(E)(3).

A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). When deciding a motion for summary disposition under MCR 2.116(C)(8), the Court accepts all well-pleaded allegations as true and construes them in a light most favorable to the non-moving party. *Id.* at

119. A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Id.*

Plaintiffs allege that Defendants caused a frivolous lawsuit to be filed on behalf of Defendant Dawn Bachi-Reffitt in the US District Court for the Western District of Michigan. The federal lawsuit alleged that Plaintiffs violated the RICO act by entering into transactions regarding Kevin Reffitt’s stock in Peninsula Construction & Design. Plaintiffs allege that the claims and issues in the federal lawsuit were already litigated in the divorce action between Kevin Reffitt and Dawn Bachi-Reffitt and that the litigation was initiated for improper purposes. On June 4, 2018, Plaintiffs filed a complaint alleging claims for (1) malicious prosecution, (2) abuse of process, and (3) tortious interference with business relationships.

Defendants first argue that Plaintiffs’ malicious prosecution claim should be dismissed because an appeal in the underlying federal court litigation has not yet been decided and, therefore, the malicious protection claim has not yet accrued. An action for malicious prosecution accrues upon rendition of the final judgment on appeal in the underlying action. *Parisi v Michigan Townships Association*, 123 Mich App 512, 518-519; 332 NW2d 587 (1983). Plaintiffs agree that the claim has not yet accrued, but the parties dispute whether the claim should be dismissed with, or without, prejudice. Defendants cite *ABB Paint Finishing, Inc v National Union Fire Insurance Co*, 223 Mich App 559, 563; 567 NW2d 456 (1997) for its statement that a dismissal under MCR 2.116(C)(8) “should always be with prejudice.” In *ABB Paint*, the Court reasoned that a decision to grant summary disposition under MCR 2.116(C)(8) is necessarily a decision on the merits. The Court added that “[t]his conclusion does not, of course, preclude a plaintiff from requesting leave to amend its complaint before the trial court

rules on a motion under (C)(8).” The Court finds the reasoning of the *Parisi* case to be persuasive and therefore dismisses the malicious prosecution claim with prejudice. While Plaintiffs have requested an opportunity to amend the complaint pursuant to MCR 2.116(I)(5), such an amendment would be futile where the underlying appeal is apparently still pending.

Defendants argue that the malicious prosecution claim should also be dismissed because Plaintiffs failed to allege “special injury.” One of the required elements of a malicious prosecution claim is “special injury.” *Friedman v Dozorc*, 412 Mich 1, 48; 312 NW2d 585 (1981). A “special injury” must be the “equivalent of a seizure of property.” *Young v Motor City Apartments*, 133 Mich App 671, 676-677; 350 NW2d 790 (1984). Interference with business is not cognizable as a “special injury.” *Id.* at 677. Plaintiffs have alleged that Defendants’ conduct injured their reputations and business interests and embarrassed and harassed them. Plaintiffs have not alleged injuries that qualify as “special injury” for the purpose of a malicious prosecution claim. Accordingly, Defendants are entitled to summary disposition of the malicious prosecution claim under MCR 2.116(C)(8).

Defendants next argue that Plaintiffs’ abuse of process claim should be dismissed because Plaintiffs have not alleged that Defendants used a proper legal procedure for a purpose collateral to the intended use of that procedure. The elements of an abuse of process claim are (1) an ulterior purpose and (2) an act in the use of process which is improper in the regular prosecution of the proceeding. *Friedman*, 412 Mich at 30. The mere commencement of a lawsuit is not an improper use of process. *Id.* Furthermore, sending the preservation letters was not “an act in the use of process which is improper in the regular prosecution of the proceeding.” Indeed, as argued by Defendants, the preservation letters could have been sent before the action was commenced or without ever filing the action. Because Plaintiffs have failed to allege an act

in the use of process which is improper in the regular prosecution of the proceeding, Defendants are entitled to summary disposition of the abuse of process claim under MCR 2.116(C)(8).

Defendants next argue that the tortious interference with business relationships claim should be dismissed because neither institution of a lawsuit nor use of the litigation process as a means to ensure preservation of records is a sufficient factual basis for a claim of tortious interference. The elements of a claim for tortious interference with a business relationship 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. *Lakeshore Community Hosp v Perry*, 212 Mich App 396, 401, 538 NW2d 24 (1995). 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. *BPS Clinical Lab v Blue Cross & Blue Shield of Michigan*, 217 Mich App 687, 699; 552 NW2d 919 (1996). Plaintiffs allege that Defendants interfered with their business relationships by filing a meritless lawsuit and by sending the preservation letters. “There is nothing illegal, unethical or fraudulent in filing a lawsuit, whether groundless or not.” *Early Detection Center, PC v New York Life Insurance Co*, 157 Mich App 618, 631; 403 NW2d 830 (1986). Further, the allegations are not sufficient to show that the sending of the preservation letters was done with malice and without justification. Accordingly, Defendants are entitled to summary disposition of the tortious interference claim under MCR 2.116(C)(8).

Finally, Plaintiffs argue that Dawn Bachi-Reffitt’s attempt to join in the motion filed by the other defendants is improper. Defendant Bachi-Reffitt filed a concurrence and joinder in the motion, adopting the arguments made by the other defendants. Plaintiffs have not demonstrated

that the arguments raised by the other defendants do not apply equally to Defendant Bachi-Reffitt.

Defendants' motion for summary disposition is granted. This order resolves all pending claims and closes the case.

IT IS SO ORDERED.



Hon. Wendy Potts, Circuit Judge

NOV 05 2018

