

[Cite as *Landskroner v. Landskroner*, 2005-Ohio-4582.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA
No. 85060

LAWRENCE LANDSKRONER,	:	
Plaintiff-Appellant	:	JOURNAL ENTRY
vs.	:	AND
JACK LANDSKRONER,	:	OPINION
Defendant-Appellee	:	

DATE OF ANNOUNCEMENT OF DECISION	SEPTEMBER 1, 2005
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CHARACTER OF PROCEEDING	: Civil appeal from Common Pleas Court
	: Case No. CV-470452

JUDGMENT	: AFFIRMED
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DATE OF JOURNALIZATION	:
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APPEARANCES:

For Plaintiff-Appellant:	CHARLES W. BENNETT Lawrence Landskroner & Assoc. 55 Public Square Suite 1040 Cleveland, Ohio 44113-1904
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For Defendant-Appellee:	ROBERT J. DUBYAK Levy & Dubyak 25200 Chagrin Blvd. Suite 310 Beachwood, Ohio 44122
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PAUL W. FLOWERS
Paul W. Flowers Co., LPA
Terminal Tower - 35th Floor
50 Public Square
Cleveland, Ohio 44113

MARY EILEEN KILBANE, J.:

{¶1} Lawrence Landskroner appeals the trial court's grant of summary judgment in favor of his son, Jack Landskroner. He contends there are material questions of fact that preclude summary judgment. We affirm.

{¶2} Lawrence Landskroner ("Lawrence") appeals following a remand from this Court in *Landskroner v. Landskroner*, 154 Ohio App.3d 471, 2003-Ohio-5077 ("*Landskroner I*"),¹ finding partial error in the trial court's grant of Jack Landskroner's ("Jack") motion to dismiss. We remanded the case only as to claims of tortious interference and action on loan, but affirmed the dismissal as to the other thirteen causes of action.

{¶3} Upon remand, Jack moved for a more definite statement as it related to both counts, to which Lawrence responded. In April 2004, Jack moved for summary judgment, which the court granted. Lawrence appeals from this order in the assignments of error set forth in the appendix to this opinion.

I. Standard of Review

{¶4} Appellate review of summary judgment is de novo. *Grafton*

¹A complete statement of the facts is available in *Landskroner I*.

v. Ohio Edison Co., 77 Ohio St.3d 102, 105, 1996-Ohio-336. The Ohio Supreme Court set forth the appropriate test in *Zivich v. Mentor Soccer Club*, 82 Ohio St.3d 367, 369-370, 1998-Ohio-389, and held:

"Pursuant to Civ.R. 56, summary judgment is appropriate when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in his favor. The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law." (Citations omitted)

{¶5} Once the moving party satisfies its burden, the nonmoving party "may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Civ.R. 56(E); *Mootispaw v. Eckstein*, 76 Ohio St.3d. 383, 385, 1996-Ohio-389. Doubts must be resolved in favor of the nonmoving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d. 356, 358-359, 1992-Ohio-95.

III. Action on Loan

{¶6} In his first assignment of error, Lawrence claims the trial court erred in granting summary judgment as to count fifteen of the amended complaint, "action on loan." This claim sought an alleged \$6,000 unpaid balance stemming from an \$80,000 loan Lawrence made to the firm in 1999. The prayer for relief on this

count sought the unpaid principal balance plus interest at a rate of 10 per cent per annum from the date of the amended complaint.²

{¶7} Following our remand in *Landskroner I*, depositions were scheduled for both Lawrence and Jack. During Jack's deposition on December 23, 2003, and immediately following a reference to the unpaid \$6,000 loan, Jack's attorney offered opposing counsel a \$6,000 check made payable to Lawrence Landskroner. Counsel specifically noted that his check was in lieu of count fifteen of the complaint, i.e., action on loan, and the following discussion took place:

"MR. DUBYAK: On the record. Just let the record reflect we've tendered the \$6,000 to satisfy the claim. You've indicated that you won't accept it.

We've also indicated that we would pay interest as prayed for in the complaint of a thousand-forty dollars, and you have refused that, and that any claim, for whatever the proper interest calculation, really doesn't go to the merits, but can be worked out among counsel.

So if you want to refuse to accept that and continue to ask questions, then go ahead.

MR. BENNETT: At this time we will refuse. I'm not saying we will refuse for good, nor do we wish to engage in bad faith negotiations.

We will place on the record that you appear to be making the offer in good faith. Thank you, Mr. Dubyak." (Deposition at

²We note that Lawrence's prayer for relief contains a typographical error which reverses the demands for counts fourteen and fifteen. It is clear from the body of the amended complaint, however, that the intention was to demand \$6,000 plus interest at the rate of 10 per cent per annum from the date of the amended complaint.

16-17.)

{¶8} Although the offer of payment in full, including interest, was made on December 23, 2003, this record before the court reflects that Lawrence never accepted the offer.

{¶9} Instead, Lawrence claimed in his response to Jack's summary judgment motion that he refused the offer because the amount was not tendered with interest as prayed for in his complaint, and because he wished to engage in further discovery regarding the loan to see if it in any way related to the acquisition of business contracts for the prosecution of the tortious interference claim.

{¶10} As it relates to Lawrence's contention that it was necessary to wait for the court's response to the objections during deposition, the sole question objected to during deposition, which the court later overruled, states:

"But isn't it true that you had agreed to split the profits with your father at the time?" (Tr. At 70-71)

{¶11} It is apparent that neither the question nor the response related to the issue of the "action on loan." Nonetheless, even in his response to Jack's motion for a more definite statement, Lawrence claimed that he was attaching a document to his response that clearly showed a loan was made that was not fully repaid. The record contains no such document attached to Lawrence's November 24, 2003 Response to Defendant's Motion for a More Definite Statement.

{¶12} "A motion for summary judgment forces the nonmoving party to produce evidence on any issue for which that party bears the burden of production at trial." *Wing v. Anchor Media, Ltd. Of Texas* (1991), 59 Ohio St.3d 108, at paragraph three of the syllabus. The moving party is entitled to judgment as a matter of law whenever the nonmoving party "has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." *Celotex Corp. v. Catrett* (1986), 477 U.S. 317, 323, 106 S.Ct. 2548, 2552.

{¶13} The record clearly reflects that despite a claim for the remaining \$6,000 balance on the claimed loan, Lawrence never attached documents proving the existence of this loan. Even assuming, arguendo, that a loan existed, Lawrence has failed to put forth any documents referencing the remainder due on the loan or any delinquency. While counsel for Jack tendered an offer of \$6,000 plus interest to settle the claim, this offer was rejected.

{¶14} We find that Jack satisfied his burden of proof that no genuine issue of material fact remained as to the existence of this loan, and that Lawrence's failure to set forth facts evidencing such a genuine issue necessitated the trial court's grant of summary judgment in Jack's favor.

{¶15} For the reasons stated above, this assignment of error lacks merit.

III. Tortious Interference

{¶16} In his second assignment of error, Lawrence claims that the trial court's grant of summary judgment was in error as it relates to his claim of tortious interference.

{¶17} As we outlined in *Landskroner I*, supra, in *Fred Siegel Co., L.P.A. v. Arter & Hadden*, 85 Ohio St.3d 171, 1999-Ohio-260, the Supreme Court of Ohio reaffirmed *Kenty v. Transamerica Premium Ins. Co.*, 72 Ohio St.3d 415, 1995-Ohio-61, and set forth the elements of tortious interference with contract. These elements include: (1) the existence of a contract, (2) the wrongdoer's knowledge of the contract, (3) the wrongdoer's intentional procurement of the contract's breach, (4) the lack of justification, and (5) resulting damages. The court in *Fred Siegel* made clear, however, that compliance with the Disciplinary Rules, or the lack thereof, does not excuse or serve as a basis for liability for a tortious- interference-with-contract claim.

{¶18} In Lawrence's response to Jack's motion for a more definite statement, Lawrence asserted that he adequately complied with the fact pleading requirement as outlined in Civ.R. 8(A). He additionally claimed the existence of contracts with which Jack interfered, resulting in damages in excess of \$25,000.

{¶19} Specifically, Lawrence claimed that Jack failed to share the settlement proceeds from a claim of Michael Hippo. While Lawrence claimed that Hippo was his client, he failed to offer any evidence of this fact, other than mere allegations. Further,

attached to Jack's motion for summary judgment was an affidavit by Michael Hippo. In the affidavit, Hippo claimed that he never met Lawrence, that he entered into a written fee agreement with only Jack and his Firm on February 7, 2000, and, that while significant amounts of time were spent in settlements and negotiations, Lawrence was never involved.

{¶20} Although Lawrence also alleged that Jack interfered with other business relationships and outlined several names at Jack's deposition, Lawrence failed to prove that Jack had in any way interfered with these individuals in spite of Jack's repeated denials. A mere assertion of wrongdoing without support does not create a genuine issue of material fact.

{¶21} Contrary to Lawrence's assertion that the trial court ordered the parties to return to deposition to answer any further questions, the trial court's only action was to overrule one objection during Jack's deposition regarding any agreement to split profits. (Journal Entry, June 25, 2004). Regardless of the answer to this question, the underlying fact remains: Lawrence failed to prove the existence of a contract as it relates to any tortious interference claim, and has failed to establish any evidence of wrongdoing on Jack's part.

{¶22} Lawrence has failed to prove the existence of any element of a tortious interference claim.

{¶23} This assignment of error lacks merit.

Judgment Affirmed.

APPENDIX

ASSIGNMENTS OF ERROR:

"I. THE TRIAL COURT ERRED IN GRANTING DEFENDANT'S MOTION SUMMARY JUDGMENT ON ACTION ON LOAN.

II. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT WITH RESPECT TO TORTIOUS INTERFERENCE WITH CONTRACT"

It is ordered that appellee shall recover of appellant costs herein taxed.

The court finds that there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE
JUDGE

COLLEEN CONWAY COONEY, P.J., And

KENNETH A. ROCCO, J., CONCUR

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc. App.R.22. This decision will

be journalized and will become the judgment and order of the court pursuant to App.R. 22(E), unless a motion for reconsideration with supporting brief, per App.R. 26(A) is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).