

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RYSZARD WOJTUNIECKI, HI TECH BODY  
SHOP CENTER, INC., HI TECH FLEET  
SERVICE-X, INC., RELIABLE-BODY SHOP  
TRUCK-TRAILER, and R & W BUILDING  
INVESTMENT, L.L.C.,

UNPUBLISHED  
February 26, 2009

Plaintiffs-Appellants,

v

STANDARD FEDERAL BANK and NANCY  
BURNHAM,

No. 280634  
Wayne Circuit Court  
LC No. 05-508929-CZ

Defendants-Appellees.

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Before: Jansen, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

Plaintiffs appeal as of right, challenging the trial court's orders dismissing their claims for breach of the contractual covenant of good faith and fair dealing, malicious prosecution, and false imprisonment. We affirm.

Plaintiffs argue that the trial court erred in dismissing their malicious prosecution and false imprisonment claims pursuant to MCR 2.116(C)(10). We disagree.

This Court reviews a circuit court's summary disposition decision de novo. *Trost v Buckstop Lure Co*, 249 Mich App 580, 583; 644 NW2d 54 (2002). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Lewis v LeGrow*, 258 Mich App 175, 192; 670 NW2d 675 (2003). In reviewing a motion under MCR 2.116(C)(10), this Court "must consider the available pleadings, affidavits, depositions, and other documentary evidence in a light most favorable to the nonmoving party and determine whether the moving party was entitled to judgment as a matter of law." *Michigan Ed Employees Mut Ins Co v Turow*, 242 Mich App 112, 114-115; 617 NW2d 725 (2000), quoting *Unisys Corp v Comm'r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999).

To establish a claim for malicious prosecution arising from a criminal prosecution, plaintiffs were required to show that (1) defendants initiated a criminal prosecution against plaintiff Ryszard Wojtuniecki, (2) the criminal proceedings terminated in Ryszard's favor, (3) defendants lacked probable cause for their actions, and (4) the action was undertaken with malice

or for a purpose other than bringing Ryszard to justice. *Matthews v Blue Cross & Blue Shield of Michigan*, 456 Mich 365, 378; 572 NW2d 603 (1998).

The evidence showed that Ryszard's wife Wanda informed defendant Standard Federal Bank that Ryszard had forged her name on a check drawn on her account, in which Ryszard had no interest, deposited the check into his own account, and then withdrew the funds. The bank notified the police and a Northville Police detective conducted an independent investigation. After the investigation was completed, a Wayne County prosecutor initiated the prosecution against Ryszard. Because the prosecutor exercised independent discretion in initiating and maintaining the criminal prosecution,<sup>1</sup> following an independent police investigation, plaintiffs cannot show that the criminal prosecution of Ryszard was instituted or maintained by defendants. *Id.* at 384-386. Therefore, the trial court properly dismissed plaintiffs' malicious prosecution claim.<sup>2</sup>

Although plaintiffs assert that defendants failed to make a full disclosure of all relevant information to the police, the issue of full disclosure is relevant to a defense of reliance on legal advice, which does not come into play where, as here, the plaintiff fails to make out a prima facie case by showing that the defendant instigated or maintained the criminal prosecution without probable cause. *Id.* at 379-381. To the extent that a failure to disclose could be evidence of malice, see *id.* at 379 n 15, evidence of malice was similarly irrelevant because, again, plaintiffs failed to make out a prima facie case by showing that defendants instigated or maintained the criminal prosecution without probable cause.

Plaintiffs also challenge the trial court's dismissal of their false imprisonment claim, which was based on Ryszard's arrest for forging Wanda's name on the check drawn on Wanda's account. "To prevail on a claim of . . . false imprisonment, a plaintiff must show that the arrest was not legal, i.e., the arrest was not based on probable cause." *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 18; 672 NW2d 351 (2003). One who instigates a lawful arrest may not be liable for false imprisonment. See *id.* Probable cause that a person "has committed a crime is established by a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious person in the belief that the accused is guilty of the offense charged." *Id.* at 19 (internal citations and quotation marks omitted).

In this case, a police investigation revealed that Ryszard forged Wanda's name on a check for \$19,878, deposited the forged check into his own business account, and then withdrew

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<sup>1</sup> As noted *infra*, there was probable cause for Ryszard's arrest.

<sup>2</sup> Plaintiffs also argue that the trial court erroneously concluded that summary disposition was proper because they could not establish a special injury. Plaintiffs assert that the element of special injury is only applicable to a malicious prosecution claim arising from the prosecution of a civil action, and is not an element of a claim arising from a prior criminal prosecution. Even assuming that plaintiffs are correct, compare *Matthews, supra* at 378, and *Friedman v Dozorc*, 412 Mich 1, 32; 312 NW2d 585 (1981), summary disposition of plaintiffs' malicious prosecution claim was still proper because plaintiffs failed to show that defendants instituted or maintained the criminal prosecution.

the funds. Because the submitted evidence established that there was probable cause for Ryszard's arrest, the trial court properly dismissed plaintiffs' claim for false imprisonment.

Further, the trial court did not abuse its discretion in denying plaintiffs' motion for reconsideration. *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 629; 750 NW2d 228 (2008). Plaintiffs failed to show that a different disposition of defendants' summary disposition motion was warranted by correction of a palpable error. MCR 2.119(F)(3).

Finally, plaintiffs' claim for breach of the contractually implied covenant of good faith and fair dealing was also properly dismissed.<sup>3</sup> There is no independent cause of action for breach of this implied covenant of good faith and fair dealing. *Fodale v Waste Mgt of Michigan, Inc*, 271 Mich App 11, 35; 718 NW2d 827 (2006); *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 476; 666 NW2d 271 (2003).

Affirmed.

/s/ Kathleen Jansen  
/s/ Patrick M. Meter  
/s/ Karen M. Fort Hood

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<sup>3</sup> Although the court did not specifically address this claim in its findings, it clearly dismissed the entire complaint, and we reject plaintiffs' claim that a remand is necessary for a further ruling by the trial court.