STATE OF MICHIGAN

COURT OF APPEALS

KNIGHT ENTERPRISES,

Plaintiff-Appellees,

v

MARK BEARD and M & L PETROLEUM, INC,

Defendants-Appellants,

and

TRANSIT LEASING, JOHN DOES TRUCKER, JEFFERSON PETROLEUM MART, HUSSEIN YASSINE, HUSSEIN MOHAMAD, JEFFERSON PETRO MART, AND ROBERT CARRON,

Defendants.

UNPUBLISHED
January 13, 2004

No. 241499
Macomb Circuit Court
LC No. 1999-001284-CK

Before: Murray, P.J., and Gage and Kelly, JJ.

PER CURIAM.

Plaintiff, Knight Enterprises, Inc., appeals as of right from the trial court's grant of a directed verdict in favor of defendants, Mark Beard and M & L Petroleum, Inc., and the trial court's May 1, 2002, order awarding mediation sanctions in favor of defendants. On appeal, plaintiff contends that the trial court erred by granting defendants' motion in limine precluding the admission of certain evidence at trial, by granting defendants' motion for a directed verdict, by failing to permit CITGO Petroleum Corp. (CITGO) to join the action or to intervene in the action, and by awarding defendants mediation sanctions. We affirm.

This case involves the question of whether a petroleum distributor (defendants Beard and M & L Petroleum Inc.) can be liable to another petroleum distributor (plaintiff Knight) for tortious interference with contractual relations when the defendants delivered fuel to plaintiff's customers at those customer's requests.

Beard is the president of M & L Petroleum, a Michigan corporation that is in the business of the wholesale and transportation of gasoline. Beard obtains his gasoline product from Primcor, Peerless Distributing, or unbranded Marathon suppliers. Beard also hauls product for Peerless, a wholesale distributor, and purchases product from Peerless so that he may supply the

product to his own customers. Beard testified that distributors haul different products into their own branded stations every day. Beard indicated that if a station called his company and requested delivery, he assumed that they had the right to do so and that he would sell gasoline to that station. Station owners with CITGO signs contact Beard and make inquiries on defendants' price for gasoline. Some of the station owners contact defendants because of their cheaper price for gasoline, and other station owners contact defendants because the station is out of product and cannot otherwise obtain delivery of the product.

Beard denied contacting, inducing, or coercing any of plaintiff's customer stations to purchase gasoline from him. Beard also denied soliciting any of the accounts, and indicated that the station owners contacted defendants. Beard admitted he knew of the contracts between plaintiff and Pars Petro and Jefferson Petro (two stations defendant delivered fuel to), but denied having any knowledge of any other contracts between plaintiff and other stations. At trial, plaintiff conceded that they had no evidence to suggest that defendants had made any contacts or solicitations with its customers. Plaintiff also admitted that there was no evidence to suggest that defendants told plaintiff's customers to stop purchasing fuel from plaintiff.[1]

Knight Enterprises has a franchise agreement or contract with CITGO to use the brand identification in order to obtain dealer customers, who Knight then enters into contracts with in order to supply them with petroleum products. According to Knight, one is not qualified to deliver product to a location if there is a major brand identification and that seller does not have a formal agreement with that location.

Knight also testified that most major oil companies operate directly with their own distributors, and will occasionally have a surplus of product that they sell as unbranded gasoline. Unbranded gasoline products may be three to five cents per gallon cheaper than branded products. Knight testified that there are three reasons that a station owner or dealer would call defendant for delivery of gasoline: (1) economic; (2) the station owner could not obtain deliveries from plaintiff because of credit problems; and (3) the station owner is incompetent in planning deliveries for the station.

Additionally, Knight testified that the solicitation was based on defendants' price for unbranded surplus gasoline. Knight insisted that defendants' inducement was economic, because defendants purchased unbranded gasoline at a certain price and then would sell it to a branded location at a better economical price. Regarding Jefferson, Knight testified that defendants' continued relationship with the station along with defendants' offer to sell the gasoline at a lower price was evidence of defendants' solicitation. Knight further testified that the proof of the solicitation was defendants' "practice of [Beard's] selling product to locations that have a branded sign is the proof that he solicited something." Knight believed that if defendants sold gasoline to a station owner cheaper than the stations could buy the product from plaintiff, this was inducement for the station owner to purchase product from defendants instead of plaintiff.

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[1] Indeed, when questioned as to whether he had any evidence that defendants asked plaintiff's customers to stop buying fuel from plaintiff, Beard testified "absolutely not."

On August 3, 2001, the jury returned with a verdict. The jury found in favor of plaintiff on the tortious interference with a contractual relationship claim, and determined that plaintiff's lost net profit was $225,027.15. The jury returned a verdict in favor of defendants on plaintiff's claim for tortious interference with a business relationship. However, as noted, after the verdict was rendered the trial court granted defendants a directed verdict on the tortious interference with a contractual relationship claim.

I. Motion in Limine

Plaintiff first argues that the trial court abused its discretion in granting defendants' motion in limine to preclude evidence that defendants violated the Michigan Consumer Protection Act (MCPA), committed a fraud, or violated federal and state trademark laws. We disagree. This Court reviews for an abuse of discretion a trial court's decision concerning the admission or exclusion of evidence. *Barrett v Kirtland Community College*, 245 Mich App 306, 325; 628 NW2d 63 (2001). "An abuse of discretion exists 'only if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling made.'" *Rickwalt v Richfield Lakes Corp*, 246 Mich App 450, 454; 633 NW2d 418 (2001) (citation omitted). A trial court's decision regarding a close evidentiary question ordinarily does not amount to an abuse of discretion. *Hilgendorf v St John Hosp & Medical Center Corp*, 245 Mich App 670, 707 n 49; 630 NW2d 356 (2001).

On March 19, 2001, the trial court entered an order and opinion granting defendants' motion in limine, and precluding reference to state and federal trademark infringement and to violations of the Michigan Franchise Investment Law, the MCPA, and fraudulent or criminal conduct. Regarding the copyright and trademark acts, the trial court held that reference to those acts would be precluded, finding that such reference would be more prejudicial than probative because it was a non-party whose trademark was allegedly being infringed upon. Additionally, the trial court precluded reference to the Michigan Franchise Investment Law, finding that the act did not apply to instances where the alleged wrongdoer is a supplier and not a party holding itself out as a franchise holder. Next, the trial court precluded reference to the MCPA, where the "conduct of a business providing goods" refers to the sale of consumer goods rather than a supplier of goods and because such evidence would mislead and confuse the jury. The trial court then precluded reference to allegations of fraud on the public, finding that such evidence was more prejudicial than probative regarding the specific issue brought before the jury. Finally, the trial court precluded reference to "criminal" conduct because there was no prior adjudication finding such.[2]

A. Liquid Fuels Act

[2] Although the trial court did not specifically cite to the Liquid Fuels Act, it is evident from the fact that the Liquid Fuels Act is a criminal statute along with plaintiff's and defendants' briefs in support of the motion that the "criminal" conduct the trial court referred to were plaintiff's allegations that defendants violated this statute.

Plaintiff first contends that the trial court abused its discretion because it did not permit plaintiff to reference the Liquid Fuels Act, MCL 752.251, *et seq*., in order to demonstrate that defendants committed per se unlawful conduct for the purposes of plaintiff's tortious interference claim. Plaintiff, however, has failed to demonstrate or argue, in any way, as to *how* defendants' conduct constituted a violation of the Liquid Fuels Act. Instead, plaintiff relies on conclusive statements that defendants' conduct violated the Liquid Fuels Act and that such conduct was unlawful per se. Plaintiff does not even provide citation to the Liquid Fuels Act in the argument section of its brief, and seemingly relies solely on the citation to the act included in the statement of facts.

Because plaintiff has failed to properly brief the merits of its claim, the issue is deemed abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). It is not sufficient for a party "'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Accordingly, plaintiff has abandoned this claim.

Further, regardless of whether defendants violated the Liquid Fuels Act, plaintiff failed to demonstrate that the allegedly unlawful conduct was done for the purpose of interfering with plaintiff's contracts with the station owners. *CMI Int'l Inc v Intermet Int'l Corp*, 251 Mich App 125, 131; 649 NW2d 808 (2002). Here, nothing indicates that defendants' conduct, even if a violation of the Liquid Fuels Act, was a cause for the station owners to breach their contracts with plaintiff. Indeed, plaintiff's testimony throughout trial was that defendants interfered with plaintiff's contracts by offering a lower priced fuel, no relationship whatsoever to the provision of the Liquid Fuel Act. Because plaintiff alleged that defendants induced its customers to purchase fuel by having fuel for sale at a lower price, what occurred *after* the agreement to sell the fuel was made is irrelevant to whether defendants' actions in offering a lower price constituted a tortious interference with contract. Furthermore, it is clear plaintiff is not seeking damages because their customers mixed different brands of gas in their tanks. Rather, plaintiff is seeking damages for lost revenue because its customers purchased gas from defendants at a lower price.

Evidence that defendants and plaintiff's customers may have been placing unbranded fuel into branded fuel pumps was not only irrelevant, but it also would have been more prejudicial than probative, MRE 403. There was a real danger that, if the jury was told that they could conclude defendants violated the Liquid Fuel Act, the jury would be misled into deciding against defendants because of a concern over the mixing of fuels which were to be purchased by the consuming public, which was not a proper issue for trial. Thus, the trial court did not abuse its discretion in refusing to allow plaintiff to state that defendants violated the Liquid Fuel Act.[3]

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[3] Indeed, a cursory reading of the Liquid Fuels Act demonstrates that the statute was enacted for the protection of the consuming public and not to protect station owners from distributors of fuel. MCL 752.251, *et seq*.

B. Fraud on the Public, Consumer Protection Act, and Trademark Law Violations

Plaintiff further contends that the trial court erred in excluding evidence of fraud on the public and of violations of the MCPA and federal and state trademark laws. Plaintiff contends that the evidence was more probative than unfairly prejudicial, and that the evidence was necessary to rebut defendants' "innocent competition" defense.

However, on appeal, plaintiff merely states in a conclusory fashion that the evidence regarding fraud on the public, the MCPA, and the trademark laws was more probative than prejudicial. Plaintiff contends that the evidence would establish per se unlawful conduct, but fails to argue how this evidence would establish per se unlawful conduct. Plaintiff fails to demonstrate, in any way, how defendants' conduct violated any of the statutes, in any way. Plaintiff merely states that defendants violated the statutes and that such violation constituted per se unlawful conduct. In fact, plaintiff fails to cite to any authority or even to any of the statutes in support of its arguments.[4]

Because plaintiff has failed to properly brief the merits of its claim or cite any supporting legal authority, the issue is deemed abandoned. *Prince*, *supra* at 197. It is not sufficient for a party "'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Wilson*, *supra* at 243, quoting *Mitcham*, *supra* at 203. Therefore, plaintiff has abandoned this issue on appeal.

Moreover, even if plaintiff had not abandoned the issue, we would affirm the trial court's ruling on the merits. It was not an abuse of discretion for the trial court to preclude plaintiff from stating that defendants violated these laws or committed a fraud on the public when these conclusions related to conduct occurring after the agreement to deliver the fuel was made, ie, after the conduct that allegedly caused the breach. Additionally, the trial court did allow plaintiff to present evidence of the commingling of fuel, etc., which allowed plaintiff to argue to the jury that defendant committed unlawful acts.

II. The Directed Verdict

Plaintiff next argues that the trial court erred in granting defendants' motion for directed verdict because plaintiff was not required to prove active solicitation by defendants, especially when plaintiff had proof of unlawful conduct per se. This Court reviews a trial court's decision regarding a motion for a directed verdict or judgment notwithstanding the verdict (JNOV) de

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[4] Plaintiff did provide citation to the statutes in its statement of facts, but fails to provide citation in the argument section. The reference to the statutes in the statement of facts is the only reference made to the statutes, which includes reference to the Michigan and Federal Trademark Laws, MCL 429.31, *et seq*.; 15 USC 1051, *et seq*., and the MCPA, MCL 445.901, *et seq*. Thus, even when plaintiff cites to the statutes, it provides only the general citation and fails to indicate which specific provision(s) were allegedly violated.

novo. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 131; 666 NW2d 186 (2003). In addressing such issues, this Court must review the evidence and all legitimate inferences in the light most favorable to the nonmoving party. *Id*. "A motion for directed verdict or JNOV should be granted only if the evidence viewed in this light fails to establish a claim as a matter of law." *Id*.

In order to establish a claim for tortious interference with a contractual relationship, a plaintiff must demonstrate the following: "(1) a contract, (2) a breach, and (3) an unjustified instigation of the breach by the defendant." *Mahrle v Danke*, 216 Mich App 343, 350; 549 NW2d 56 (1996). Regarding the third element, "one who alleges tortious interference with a contractual . . . relationship must allege the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another." *CMI Int'l*, *supra* at 131. This Court has further held that a person is not liable for tortious interference with a contract if legitimate personal or business interests motivate him or her. *Wood v Herndon & Herndon Investigations, Inc*, 186 Mich App 495, 500; 465 NW2d 5 (1990).

"A wrongful act per se is an act that is inherently wrongful or an act that can never be justified under any circumstances." *Prysak v R L Polk Co*, 193 Mich App 1, 12-13; 483 NW2d 629 (1992). If the plaintiff relies on the second theory to demonstrate a claim for tortious interference with a contractual relationship, i.e., the intentional doing of a lawful act done with malice and unjustified in law, the plaintiff "necessarily must demonstrate, with specificity, affirmative acts by the interferer which corroborate the unlawful purpose of the interference." *Feldman v Green*, 138 Mich App 360, 369-370; 360 NW2d 881 (1984). As shown below, in this case plaintiff alleged that defendants interfered with plaintiff's contracts by offering fuel at a low price. Because such conduct is not wrongful per se, plaintiff was required to prove that defendants took affirmative acts to interfere with plaintiff's contracts. This plaintiff failed to do.

In *Wilkinson v Powe*, 300 Mich 275; 1 NW2d 539 (1942), the Michigan Supreme Court addressed, in detail, the tort of the intentional procurement of a breach of contract.[5] In *Wilkinson*, the Court addressed the issue of whether the defendants' acts of writing letters to farmers indicating that they would not accept deliveries of milk from trucks that did not belong to defendants. *Id*. at 279. The Court in *Wilkinson* found:

> If the defendants in the instant case had merely refused to accept further delivery of milk by plaintiff, they would have been clearly within their legal rights, although this would have resulted in a breach of contract between plaintiff and the farmers. But defendants did more. Their letters of May 29th and June 1st show active solicitation of a breach of the contract and their refusal to accept delivery of milk was merely another step in bring about the breach. [*Id*. at 283-284.]

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[5] The tort "intentional procurement of a breach of contract" is the same tort now called tortious interference with contractual relations. See *Feldman, supra* at 371-376.

In *Bahr v Miller Brothers Creamery*, 365 Mich 415, 422, 425; 112 NW2d 463 (1961), the Supreme Court reiterated the principle that in order for a defendant to be held liable for the intentional procurement of a breach of contract between the plaintiff and another, there must be some evidence of inducement of a third party to break their contract with the plaintiff.

In adopting its position, the *Bahr* Court relied on *Imperial Ice Co v Rossier*, 18 Cal 2d 33; 112 P2d 631 (1941), which held that a party may not, under the guise of competition, actively and affirmatively induce the breach of a competitor's contract in order to secure an economic advantage over that competitor. Quoting *Imperial Ice*, the *Bahr* Court held that the mere selling of a product to a person under contract with another is not the active inducement to breach a contract required to sustain the tort:

> "Had defendants merely sold ice to Coker without actively inducing him to violate his contract, his distribution of the ice in the forbidden territory in violation of his contract would not then have rendered defendants liable. They may carry on their business of selling ice as usual without incurring liability for breaches of contract by their customers. *It is necessary to prove that they intentionally and actively induced the breach*." [*Bahr*, *supra* at 425 (emphasis added.)]

The *Bahr* Court indicated that in the cases finding liability for such conduct, there was proof or accepted allegations of active solicitation and instigation of the breach on the part of the defendants. *Id*. at 425. In *Bahr*, the Court indicated that there was no testimony from which it could be asserted or inferred that the corporate defendant approached, solicited, or induced a breach of the contract between the third party and the plaintiff, and further noted that the evidence presented demonstrated that the approach was made from the "other direction" or from the third party. *Id*. Specifically, the Court stated the following:

> Plaintiff's reliance on these cases is misplaced. They do clearly hold that a cause of action is available where a defendant has induced a third party to break a contract with plaintiff. But in each case there was proof (or accepted allegations) of active solicitation and instigation of the breach on the part of the defendants. And in each case the court qualified its holding by stating that had the defendants not been the instigators, they would not have been liable.
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> There is no testimony in this record from which it can be asserted or inferred that the corporate defendant approached, solicited or induced the breach of contract by the individual defendants. On the contrary, the approach appears to have been made wholly from the other direction . . . . [*Bahr*, *supra* at 425.]

Similarly, and contrary to plaintiff's argument on appeal, the Restatement of Torts supports this position. Regarding claims of "inducement by offer of better terms," the Restatement provides:

> Another method of inducing B to sever his business relations with C is to offer B a better bargain than that which he has with C. Here, . . . a nice questions of fact is presented. A's freedom to conduct his business in the usual manner, to advertise his goods, to extol their qualities, to fix their prices and to sell them is

> not restricted by the fact that B has agreed to buy similar goods from C. Even though A knows of B's contract with C, he may nevertheless send his regular advertising to B and may solicit business in the normal course. This conduct *does not constitute inducement of the breach of contract*. The illustration below is a case of solicitation that does constitute inducement.
>
> Illustration:
>
> 3. A writes to B: "I know you are under contract to buy these goods from C. Therefore I can offer you a special price way below my cost. If you accept this offer, you can break your contract with C, pay him something in settlement and still make money. I am confident that you will find it more satisfactory to deal with me than with C." As a result of this letter, B breaks his contract with C. A has induced the breach. [4 Restatement Torts, 2d, § 766, p 14.]

As noted throughout this opinion, Knight unequivocally testified that the alleged inducement from defendants was stating a low fuel price in response to the customer's inquiry. This is not an unlawful act per se. Therefore, in accordance with Michigan law and the Restatement of Torts, plaintiff was required to prove that defendant took an affirmative act to induce the customers to break the exclusive contract with plaintiff. Indeed, in *Hutton v Roberts,* 182 Mich App 153, 159; 451 NW2d 536 (1989) we held, after examining *Wilkinson* and *Feldman, supra*:

> Consistent with the case law discussed above, *it is instead necessary to show some active solicitation or encouragement of a breach of an already existing contract,* accompanied by and corroborative of a malicious, unjustified purpose to inflict injury. *The act of* making an offer or of *accepting an offer of another in violation of the other's contractual obligations is, by itself, not enough.* [Emphasis added.]

Plaintiff has simply failed to present any evidence whatsoever demonstrating that defendants' conduct induced or otherwise caused[6] the station owners to breach their contracts with plaintiff. Plaintiff admitted that defendants never contacted plaintiff's customers, but only gave the pricing in response to the customers unsolicited inquiries. This evidence is insufficient,

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[6] Indeed, as stated in the Restatement, there must be some conduct that induces or otherwise causes one to breach a contract with the plaintiff. The Restatement indicates that conduct that induces refers to situations where one party causes another party to choose one course of conduct rather than another, while "otherwise causing" refers to situations where one party leaves the other party no choice but to breach their contact with another party. 4 Restatement Torts, 2d, § 766, p 11, comment h. Neither of these situations applies to the instant case where it was the station owner's own choice to breach their contracts with plaintiff in order to obtain fuel from defendants.

as a matter of law, to sustain the tort of tortious interference with contractual relations. *Wilkinson, supra*; *Bahr, supra; Hutton, supra*. Thus, the trial court properly granted defendants' motion for directed verdict.[7]

III. The Joinder of CITGO[8]

Plaintiff next argues that the trial court abused its discretion in denying its motion to join CITGO as a party. This Court reviews a trial court's decision regarding the joinder of a party for abuse of discretion. *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 95; 535 NW2d 529 (1995). An abuse of discretion exists when the trial court's decision is so violative of fact and logic so as to constitute a perversity of will or a defiance of judgment. *Messenger v Ingham Co Prosecutor*, 232 Mich App 633, 647; 591 NW2d 393 (1998).

Prior to trial, plaintiff brought a motion pursuant to MCR 2.205 and MCR 2.206 to join CITGO as a party to the action. In denying the motions for joinder and intervention, the trial court concluded that it was not necessary to join CITGO to the action in order to settle the dispute between plaintiff and defendants. The court also indicated that prejudice would result from the two-year delay between the motions for joinder and intervention and the filing of the complaint, stating that defendants had proceeded with the knowledge that they were to defend against plaintiff only and not the trademark holder.

Plaintiff's analysis focuses more on the trial court's refusal to permit CITGO to join the action permissively. With respect to plaintiff's argument that CITGO should be joined as a necessary party, plaintiff provides no analysis or case law supporting its argument that CITGO should have been joined as a necessary party to the action. Instead, plaintiff relies on its

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[7] *Bonelli v Volkswagen of America*, *Inc,* 166 Mich App 483; 421 NW2d 213 (1988) is distinguishable from the case at bar. In *Bonelli*, there was ample evidence presented to demonstrate the defendants' active conduct in inducing or causing a breach or termination of the plaintiff's business relationship, including the defendants' request for a team picture and evidence that AHAUS never intended to give Volkswagen the right to distribute posters of the hockey team and that a release executed by AHAUS did not grant Volkswagen such a right. *Id*. at 500. Thus, in *Bonelli*, there was evidence that the defendants unilaterally and knowingly appropriated to themselves the benefits of the plaintiff's exclusive contractual rights. Here, however, as previously stated, there was no evidence that defendants engaged in any conduct that began the station owner's breach. Instead, defendants merely operated the business, and it was the station owners that initiated contact with defendants regarding their price of gasoline, and the station owners that requested deliveries of the product.

[8] We note that CITGO has not appealed from the trial court's order denying its motion for intervention. Accordingly, the intervention issue is not properly before this Court. One party may not claim another party's appellate opportunities. *Branch Co Bd of Comm'rs v Service Employees Int'l Union, Local 586*, 168 Mich App 340, 346; 423 NW2d 658 (1988); *Winters v Nat'l Indemnity Co*, 120 Mich App 156, 159; 327 NW2d 423 (1982).

conclusive statement that CITGO was a necessary party to the action and that it should have been joined necessarily. Plaintiff has thus failed to demonstrate that CITGO's presence in the action was essential to "permit the court to render complete relief." *Hofmann*, *supra* at 96, citing MCR 2.205(A). Further, because plaintiff has failed to properly brief the merits of its claim or cite any supporting legal authority, the issue is deemed abandoned. *Prince*, *supra* at 197. It is not sufficient for a party "'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Wilson*, *supra* at 243, quoting *Mitcham*, *supra* at 203.

Plaintiff places greater focus on its claim that the trial court should have joined CITGO to the action under the permissive joinder rule. In that regard, plaintiff argues that the trial court abused its discretion by concluding that joinder would be prejudicial solely because two years passed from the time the complaint was filed. Pursuant to MCR 2.206(A), a court may grant joinder if it "will promote the convenient administration of justice." However, in order for a court to grant permissive joinder, there must be no prejudice to any party. *Gervais v Annapolis Homes, Inc*, 377 Mich 674, 679; 142 NW2d 7 (1966).

In the instant case, the trial court determined that defendants would suffer prejudice due to the two-year delay between the filing of plaintiff's complaint and the motion for joinder because defendants had proceeded under the assumption that they were only defending against plaintiff and not CITGO. As a delay in joining a party asserting a trademark violation claim could be viewed as prejudicial to defendants, the trial court's decision would not be so violative of fact and logic so as to constitute a perversity of will or a defiance of judgment. *Messenger*, *supra* at 647. Accordingly, the trial court did not abuse its discretion by denying plaintiff's request for permissive joinder.

IV Case Evaluation Sanctions[9]

Plaintiff's final argument is that the trial court erred in granting case evaluation sanctions. We disagree. "'We review the court's decision whether to grant mediation sanctions de novo because it involves a question of law, not a discretionary matter.'" *Jericho Construction, Inc v Quadrants, Inc*, 257 Mich App 22, 27; 666 NW2d 310 (2003) (citation omitted). However, the trial court's decision to apply the interest of justice exception of MCR 2.403(O)(11) is subject to an abuse of discretion standard. *Campbell v Sullins*, 257 Mich App 179, 205, n 9; 667 NW2d 887 (2003).

On appeal, plaintiff contends that the trial court erred in awarding defendants case evaluation sanctions because this case involves an issue of first impression and it is not in the interest of justice to award attorney fees pursuant to MCR 2.403(O)(11) and MCR 2.405.

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[9] The process previously referred to as "mediation," which is the nomenclature utilized by the parties in their briefs, was changed to "case evaluation" in 2000. *Bauroth v Hammoud,* 465 Mich 375, 376, n 1; 632 NW2d 496 (2001).

Specifically, plaintiff argues that the trial court added a new element to the tort of tortious interference with a contractual relationship because it required plaintiff to demonstrate active solicitation of plaintiff's customers by defendants.

The Michigan Supreme Court has held that "the plain language of MCR 2.403(O) requires the trial court to award mediation sanctions if the jury verdict itself, adjusted only as set forth in MCR 2.403(O)(3), is not more favorable to the rejecting party than the mediation evaluation." *Marketos v American Employers Ins Co*, 465 Mich 407, 412; 633 NW2d 371 (2001). For purposes of MCR 2.403(O), a "verdict" includes "a judgment entered as a result of a ruling on a motion after rejection of the case evaluation." MCR 2.403(O)(2)(c). There is no contention that the verdict was more favorable to plaintiff than the mediation evaluation, nor is there any argument to that effect. Thus, it would appear as though the trial court properly awarded case evaluation sanctions in favor of defendants.

Plaintiff instead contends that the trial court should have refused to award sanctions pursuant to MCR 2.403(O)(11). Plaintiff correctly asserts that this Court has applied the interest of justice exception where the nature of the law is unsettled. *Stitt v Holland Abundant Life Fellowship (On Remand)*, 243 Mich App 461, 473; 624 NW2d 427 (2000). However, contrary to plaintiff's argument, this case does not present an issue of first impression. Rather, the alleged issue of first impression (relating to the elements of tortious interference with a contractual relationship) has been adequately addressed and covered by Michigan case law. Further, plaintiff failed to demonstrate an issue of first impression regarding its claim that the trial court abused its discretion by excluding evidence of statutory violations to demonstrate unlawful per se conduct. Thus, the trial court did not abuse its discretion.

Affirmed.

/s/ Christopher M. Murray
/s/ Hilda R. Gage
/s/ Kirsten Frank Kelly