IN THE SUPREME COURT OF THE STATE OF NEVADA

JAFBROS, INC., A NEVADA CORPORATION,
Appellant,
vs.
GEICO INDEMNITY COMPANY, A FOREIGN CORPORATION,
Respondent.

No. 55247

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a complaint pursuant to NRCP 12(b)(5) in a tort action. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Appellant Jafbros, Inc., is an automobile repair shop. In its complaint, Jafbros alleged that a customer brought his vehicle to Jafbros to be repaired. Respondent GEICO, as the insurer of the driver who hit the customer's vehicle, was to pay for these repairs. Jafbros stated that it entered into a repair agreement with the customer but that GEICO told the customer that it would not pay Jafbros' full rate. GEICO told the customer that he could either take his vehicle to one of its preferred shops or have Jafbros repair the vehicle and pay for the difference out-of-pocket. The customer decided to use GEICO's preferred shop and removed his vehicle from Jafbros. Jafbros then filed its complaint, claiming intentional interference with contractual relations and unfair trade practices. Jafbros

also demanded punitive damages and injunctive relief. GEICO filed a motion to dismiss for failure to state a claim upon which relief could be granted. Jafbros opposed the motion to dismiss and moved to amend the complaint. The district court granted GEICO's motion and dismissed the action, concluding that GEICO was privileged to interfere and therefore none of the requested relief could be granted.[1] This appeal followed.

An order granting an NRCP 12(b)(5) motion to dismiss is subject to rigorous de novo review, with all alleged facts in the complaint presumed true and all inferences drawn in favor of the complaint. Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Jafbros' complaint was properly dismissed only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief. Id.

The nucleus of Jafbros' lawsuit is its claim for intentional interference with contractual relations. In its complaint, Jafbros made very few specific factual assertions, but in essence alleged that GEICO told the customer that he had the choice of using a GEICO-approved shop or covering the difference between GEICO's estimate and Jafbros' rate. Even assuming that GEICO knew of an existing contract between the customer and Jafbros,[2] the pleading does not establish the elements of the

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[1]The district court acknowledged the motion to amend but did not address it in its order.

[2]Such knowledge was inartfully pleaded in Jafbros' complaint but was the subject of Jafbros' motion to amend. This is the only averment that Jafbros sought to supplement in its motion. Though the district court did not address the motion in its order, it did assume that GEICO had

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tort. See Edgar v. Wagner, 101 Nev. 226, 227, 699 P.2d 110, 111 (1985) (stating that in reviewing an order granting a motion to dismiss, this court's task "is to determine whether or not the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief").

To state a claim of intentional interference with contractual relations, Jafbros must show that: (1) a valid contract existed between Jafbros and the customer, (2) GEICO knew of the contract, (3) GEICO intentionally or by design acted to disrupt the contractual relationship, (4) the contract was actually disrupted, and (5) damages. See Sutherland v. Gross, 105 Nev. 192, 196, 772 P.2d 1287, 1290 (1989). As pleaded, Jafbros' complaint alleges nothing more than GEICO's communication to the customer of its policy to pay no more than the lowest price for repairs it can obtain elsewhere in the marketplace. While Jafbros made conclusory allegations that these actions were willful, malicious, oppressive, and tortious, the factual assertions it included in the complaint do not sustain these conclusions.

Rather, in the context of this tort, "proof of the requisite intent required more than a showing [that GEICO] intended the act which caused the interference; it required evidence that [it] intended to cause the interference itself." Ramona Manor Convalescent Hosp. v. Care Ent., 225

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knowledge of the purported contract in its analysis. Therefore, the proposed amendment would not have rescued the complaint from dismissal and the district court did not err in implicitly denying it. See Allum v. Valley Bank of Nevada, 109 Nev. 280, 287, 849 P.2d 297, 302 (1993).

Cal. Rptr. 120, 124 (Ct. App. 1986); see also Restatement (Second) of Torts § 766 cmt. h (1979) ("The essential thing is the intent to cause the result. If the actor does not have this intent, his conduct does not subject him to liability under this rule even if it has the unintended effect of deterring the third person from dealing with the other."). Even taking the complaint's allegations as true, Jafbros cannot establish the required intent and thus failed to plead a prima facie case of intentional interference with contractual relations.[3] Cf. G&C Auto Body Inc v. GEICO General Ins. Co., 552 F. Supp. 2d 1015, 1021 (N.D. Cal. 2008) (denying motion for summary judgment on intentional interference claim where auto body shop produced evidence that insurer's agent specifically intended to disrupt auto body shop's business). Therefore, we conclude that the district court did not err in dismissing Jafbros' tort claim and related demand for punitive damages.

Jafbros also claimed that GEICO's acts constituted unfair trade practices under NRS Chapter 598A, but made no further factual allegations aside from those detailed above. Thus it is unclear how the communication of GEICO's rate policy was anticompetitive behavior. Accordingly, the district court did not err in implicitly denying this conclusory allegation. See Cholla Ready Mix, Inc. v. Civish, 382 F.3d 969, 973 (9th Cir. 2004). Additionally, because Jafbros insufficiently pleaded

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[3]On appeal, Jafbros contends that GEICO, in various ways, induced a breach through misrepresentations it made to the customer. This was not part of the pleadings or any proposed amendments and thus the argument is waived. See Diamond Enters., Inc. v. Lau, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997).

its two substantive claims, injunctive relief is unavailable. See State Farm Mut. Auto. Ins. Co. v. Jafbros Inc., 109 Nev. 926, 928, 860 P.2d 176, 178 (1993).

Having considered all of Jafbros' arguments and concluded that no relief is warranted, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Douglas

_____, J.
Saitta

_____, J.
Hardesty

cc: Hon. Steven P. Elliott, District Judge
Paul F. Hamilton, Settlement Judge
Rands, South, Gardner & Hetey
Georgeson Angaran, Chtd.
Washoe District Court Clerk