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Court of Appeal, Fifth District, California.

RINALDO CORPORATION, Plaintiff and Appellant,
v.
NEVADA GOLD & CASINOS, INC., Defendant and Respondent.

No. F052648.
|
(Super. Ct. No. S-1500-CV-253969 AEW).
|
Feb. 15, 2008.

APPEAL from a judgment of the Superior Court of Kern County. Arthur E. Wallace, Judge.

Attorneys and Law Firms

Best Best & Krieger, Edward J. Szczepkowski and Christopher M. Pisano for Plaintiff and Appellant.

Clifford & Brown and James E. Brown; Susman Godfrey, Robert Rivera, Jr., Joseph S. Grinstein and Nicholas F. Daum for Defendant and Respondent.

OPINION

LEVY, J.

***1** Appellant, Rinaldo Corporation (Rinaldo), challenges the trial court's grant of summary judgment in favor of respondent, Nevada Gold & Casinos, Inc. (Nevada Gold), on Rinaldo's complaint for tortious interference with contract and prospective economic advantage. According to Rinaldo, there exist triable issues of material fact regarding Rinaldo's claim that Nevada Gold tortiously interfered with its development of a casino for the Timbisha Shoshone Indian Tribe (Tribe).

The trial court concluded that Rinaldo could not establish an essential element of a cause of action for tortious interference with contract because a valid contract between Rinaldo and the Tribe did not exist. The court further found that Rinaldo did not establish any independently wrongful conduct on Nevada Gold's part that caused the Tribe's termination of its relationship with Rinaldo and thus, Rinaldo could not demonstrate that Nevada Gold tortiously interfered with Rinaldo's prospective economic advantage.

As discussed below, the trial court was correct. Accordingly, the judgment will be affirmed.

BACKGROUND

The Tribe's ancestral homelands are in Nevada and southern California, and include Death Valley National Park. However, when it was formally recognized, the Tribe had no homeland. Therefore, the United States Congress adopted the Timbisha Shoshone Homeland Act in 2000 (16 U.S.C. § 410aaa) to give some federal land to the Tribe and to authorize future land acquisition by the Tribe for economic development purposes.

The Tribe's governing body, the General Council, is composed of the entire adult membership of the Tribe. However, the General Council has constitutionally delegated certain authority to a Tribal Council that is elected by the General Council. The duties of the Tribal Council include negotiating and executing agreements on the Tribe's behalf.

In 2002, Rinaldo met with the Tribal Council to discuss developing a casino. In November 2002, Rinaldo and the Tribal Council executed a Development Agreement and Personal Property Lease (2002 Agreement). Rinaldo agreed to finance and develop the casino and then lease the facility and its equipment to the Tribe. The 2002 Agreement specifically stated that it was not to be construed as a contract for management services.

In December 2002, Rinaldo located a site for the casino consisting of 57 acres within an 83-acre parcel located near the I-15 freeway in Hesperia, California. Rinaldo entered into a purchase agreement to buy the entire 83-acre parcel through an 18-month escrow for slightly less than $6 million. The purchase agreement additionally gave Rinaldo the right to extend the escrow from June 30, 2004, to March 30, 2005.

In May 2003, the General Council approved the 2002 Agreement. Also, in 2003, the Hesperia City Council approved a Municipal Services Agreement negotiated by Rinaldo and the Tribe that identified the public services that would be required by the casino development and the funding sources available to pay for those services.

***2** In January 2004, Tribal Council members Erick Mason, Doreen Mason and Mark Lee, along with Tribal Administrator Sheila Torkelson and Tribe consultant Michael Derry, met with Nevada Gold executives to discuss the management of the proposed casino. Additional meetings took place over the next few months that also included Tribal Council member Dan Shoshone. Nevada Gold hosted the meals and entertainment.

In April 2004, Erick Mason requested the National Indian Gaming Commission (NIGC) to review the 2002 Agreement. General Counsel for the NIGC concluded that the 2002 Agreement was not a management contract subject to the NIGC's regulatory authority. However, the General Counsel opined that the 2002 Agreement violated the Indian Gaming Regulatory Act (IGRA) because it gave Rinaldo a proprietary interest in the gaming operation.

While their negotiations were ongoing, Nevada Gold assisted the Tribe by making various loans. These funds enabled the Tribe to hire law firms that specialized in Indian gaming. One such firm noted in its May 17, 2004, engagement letter that it was undertaking to represent the Tribe in connection with a contractual dispute between the Tribe and Rinaldo.

In July 2004, Shirley Summers held the position of Tribal Council chairperson. However, an intratribal dispute led to the Tribal Council splitting into two rival factions. One council was made up of four of the five Tribal Council members and chaired by Dan Shoshone (Shoshone Council). The competing council was led by the remaining Tribal Council member, Shirley Summers (Summers Council). Following this Tribal Council split, Nevada Gold dealt exclusively with the Shoshone Council whereas Rinaldo dealt exclusively with the Summers Council.

By letter dated July 31, 2004, Nevada Gold presented a casino management proposal to "Chairman Dan Shoshone." This Memorandum of Agreement granted Nevada Gold "the exclusive right to negotiate with the Tribe to manage the Project and all of the Tribe's gaming facilities and enterprises." In return, Nevada Gold agreed to advance funds to the Tribe for expenses related to tribal administration. The Memorandum of Agreement was executed by the Shoshone Council.

Thereafter, Nevada Gold provided the promised funds to the Shoshone Council. During this same period, Rinaldo loaned money to the Tribe through the Summers Council.

In August 2004, Summers called a special meeting of the General Council. At this meeting, held August 21, 2004, Rinaldo presented a revised development agreement to the Tribe. The General Council then appointed a committee to negotiate with Rinaldo. The General Council also passed resolutions withdrawing the authority of the Shoshone Council members; invalidating actions taken by the Shoshone Council, including the Memorandum of Agreement entered into with Nevada Gold; and setting a November 2004 date for Tribal Council elections.

The Shoshone Council members did not accept their disfranchisement. Rather, they almost immediately petitioned the Bureau of Indian Affairs (BIA) to declare the August 21, 2004, actions invalid.

***3** In October 2004, the negotiating committee and Rinaldo agreed on a revised development agreement (Revised Agreement) that would clearly comply with the IGRA. The Revised Agreement was submitted to the General Council and approved by a vote of 77 to 13.

On October 18, 2004, Rinaldo filed the underlying complaint against Nevada Gold, Torkelson and Deny. Rinaldo alleged causes of action for tortious interference with contract, tortious interference with prospective economic advantage, unfair competition, and conspiracy.

In November 2004, a new Tribal Council was elected. This Tribal Council, chaired by Joe Kennedy (Kennedy Council), did not include either Summers or any member of the Shoshone Council.

Summers informed Rinaldo that it would be more appropriate for the incoming Kennedy Council members to execute the Revised Agreement after they took office on December 9, 2004. However, on December 1, 2004, the Shoshone Council appealed the Tribal Council election and, by doing so, delayed the change in Tribe leadership.

In February 2005, the BIA rejected the Shoshone Council's position that the August 21, 2004, actions by the General Council were procedurally improper. The BIA also recognized the results of the November 2004 election. However, the Shoshone Council appealed the decision recognizing the election. This again delayed the change in Tribe leadership. On June 1, 2005, the Interior Board of Indian Appeals placed the February 2005 decision into immediate effect. Thus, as of that date, the Tribe was led by the Kennedy Council.

In the meantime, Rinaldo funded the purchase of the 83-acre parcel in Hesperia and closed the extended escrow on March 30, 2005.

In April 2005, Rinaldo stopped paying expenses related to the casino project.

In June 2005, Rinaldo advised the Tribal Council that, due to the cost of the delays, Rinaldo would proceed with the development of the Hesperia casino only if the Tribe agreed to further conditions. These conditions included the Tribe agreeing to roll the Revised Agreement into a combined development/management agreement and reducing the casino site acreage from 57 to 35 acres. Based on concerns with the new conditions, the Tribal Council rejected Rinaldo's proposal on June 11, 2005.

In October 2005, the Tribal Council terminated the 2002 Agreement by resolution. The Tribal Council found that Rinaldo had failed to perform its obligations in accordance with the 2002 Agreement and that it was in the best interest of the Tribe to terminate the 2002 Agreement based on "Rinaldo's actions during the formation of the Agreements and Rinaldo's failure to perform in accordance with the terms of the Agreements." In response, Rinaldo informed the Tribe that the Tribe did not have the right to terminate the 2002 Agreement. According to Rinaldo, the 2002 Agreement was in full force and effect. Rinaldo further advised the Tribe that all appropriate legal action would be taken to enforce Rinaldo's rights.

***4** In November 2005, Nevada Gold moved for summary judgment on the causes of action against it. In February 2006, the trial court summarily adjudicated Rinaldo's claims for tortious interference with contract and unfair competition in favor of Nevada Gold. The court found that Nevada Gold had produced sufficient evidence to establish that the 2002 Agreement was not valid and that Rinaldo had failed to raise a triable issue of fact on that issue.

In January 2007, Nevada Gold again moved for summary judgment. The trial court granted the motion finding that Rinaldo had failed to present evidence sufficient to raise a triable issue of fact on its cause of action for tortious interference with prospective economic advantage.

DISCUSSION

1. *Standard of review.*

A defendant who moves for summary judgment under Code of Civil Procedure section 437c, must either negate a necessary element of the plaintiff's cause of action or establish a complete defense to that cause of action. (Code Civ. Proc., § 437c, subd. (o)(2); *Brantley v. Pisaro* (1996) 42 *Cal.App.4th* 1591, 1594.) However, all the defendant must do is show that the plaintiff cannot *establish* at least one element of the cause of action. The defendant may, but need not, *conclusively negate* any such element. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853.) Nevertheless, the defendant must present evidence and not simply point out that the plaintiff does not possess, and cannot reasonably obtain, needed evidence. (*Id.* at p. 854.) If the moving defendant satisfies this obligation, the burden shifts to the plaintiff to produce evidence creating a triable issue of material fact. (*Brantley v. Pisaro, supra,* 42 Cal.App.4th at p. 1594.)

In evaluating the ruling under Code of Civil Procedure section 437c, the appellate court must independently examine the record to determine whether triable issues of material fact exist. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 767.) In performing this de novo review, the court must view the evidence in a light favorable to the plaintiff as the losing party, liberally construing the plaintiff's evidentiary submission while strictly scrutinizing the defendant's own showing and resolving any evidentiary doubts or ambiguities in the plaintiff's favor. (*Id.* at p. 768.)

Broadly speaking, summary judgment may be reduced to, and justified by, a single proposition. If a party moving for summary judgment would prevail at trial without submission of any issue of material fact for determination, then that party should prevail on summary judgment. (*Aguilar v. Atlantic Richfield Co., supra,* 25 Cal.4th at p. 855.)

2. *Summary adjudication was properly granted on the tortious interference with contract cause of action because no valid contract existed*

To prevail on a cause of action for intentional interference with contract, a plaintiff must plead and prove (1) the existence of a *valid* contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage. (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126.) Rinaldo bases its intentional interference with contract claim on the disruption and later termination of the 2002 Agreement.

***5** Nevada Gold argued, and the trial court agreed, that the 2002 Agreement was invalid under 25 United States Code section 81. This section provides that "No agreement or contract with an Indian tribe that encumbers Indian lands for a period of 7 or more years shall be valid unless that agreement or contract bears the approval of the Secretary of the Interior or a designee of the Secretary." (25 U.S.C. § 81, subd. (b).) In this context, encumber means "to attach a claim, lien, charge, right of entry or liability to real property" and may include a contract or agreement that by its terms "could give to a third party exclusive or nearly exclusive proprietary control over tribal land." (25 C.F.R. § 84.002.) The failure to obtain approval when required renders the contract invalid at the outset. (Cf. *U.S. ex rel. Morongo Band of Mission Ind. v. Rose* (9th Cir.1994) 34 F.3d 901, 904.)

The 2002 Agreement was not approved by the Secretary of the Interior. As discussed below, such approval was in fact required.

First, the term is for seven or more years. The 2002 Agreement provides that the term of the lease "shall commence upon its execution by the Parties and shall continue thereafter until the tenth anniversary of the date upon which the total Base Rent is paid in full." This "Base Rent" is to be paid over a 60-month period. Thus, the total lease term is 15 years, i.e., five years followed by 10 years.

Rinaldo does not dispute that the lease term exceeds that allowed by 25 United States Code section 81. Even so, Rinaldo argues, section 81 should not bar the 2002 Agreement in that it would have been modified to reduce the term to less than seven years if Nevada Gold had not interfered. However, Rinaldo's expectation is irrelevant. It is the validity of the 2002 Agreement, as written, that is at issue.

Second, the 2002 Agreement encumbers Indian land in that it gives Rinaldo "nearly exclusive proprietary control over tribal land." The 2002 Agreement provides that, so long as there is base rent payable, "or the Tribe's other obligations hereunder," the Tribe will not "[s]ell, dispose of, lease, assign, sublet, transfer, mortgage or encumber (whether voluntarily or by operation of law) all or any part of its right, title, or interest in or to the Trust Lands" without Rinaldo's prior written consent. Further, without Rinaldo's prior written consent, the Tribe can "neither establish or conduct, nor license or permit the establishment or conduct of Gaming on the Trust Lands ... except for Gaming contemplated by and performed in accordance with" the terms of the 2002 Agreement. Thus, the 2002 Agreement vests the ultimate control over the use of the tribal land in Rinaldo. Moreover, the 2002 Agreement grants Rinaldo a "right of entry" providing it with "complete and unrestricted access to the Trust Lands for purposes of developing, installing and constructing the Structure, and installing the Equipment."

***6** Rinaldo contends that, because the land had not yet been acquired and placed in trust for the Tribe, Secretarial approval was unnecessary to a finding that the 2002 Agreement was valid. However, the acquisition of Trust Lands was required before the purpose of the agreement could be fulfilled, i.e., the development of a gaming facility in accordance with the terms and provisions of the IGRA. The relevant question is whether, if the project had gone forward, the terms of the 2002 Agreement would have encumbered Indian land. As discussed above, the answer to that question is yes. Accordingly, the 2002 Agreement was invalid at the outset regardless of whether the Indian lands existed when the agreement was executed.

Based on the California case of *SCEcorp v. Superior Court* (1992) 3 Cal.App.4th 673, Rinaldo argues that, even assuming the 2002 Agreement needed the Secretary of Interior's approval to be valid, an action for tortious interference with a contractual relationship is not precluded. *SCEcorp* arose out of a merger agreement between two utility companies. Regulatory approval was a condition precedent to completion of the merger contract. Nevertheless, the court held that a cause of action for tortious interference with the merger agreement was not precluded as a matter of law due to this condition precedent. Rather, the court concluded that the regulatory approval requirement did not prevent the merger agreement from being a valid, binding contract. (*SCEcorp v. Superior Court, supra,* 3 Cal.App.4th at pp. 680, 683.) However, the *SCEcorp* court distinguished the situation where the contract is void *ab initio.* In that case, there is no contract upon which to make a claim of tortious interference. (*Id.* at p. 679.)

Here, the applicable statute, 25 United States Code section 81, subdivision (b), provides that no agreement or contract falling within its parameters "shall be valid unless that agreement or contract bears the approval of the Secretary of the Interior." Thus, unlike the merger agreement in *SCEcorp v. Superior Court,* the 2002 Agreement, without the Secretary of the Interior's approval, was never valid. (25 C.F.R. § 84.007 ["A contract or agreement that requires Secretarial approval under this part is not valid until the Secretary approves it."].) Accordingly, the 2002 Agreement cannot be the basis for a tortious interference with contract cause of action. A valid contract must exist before such a claim will lie. (*A-Mark Coin Co. v. General Mills, Inc.* (1983) 148 Cal.App.3d 312,322.)

Rinaldo also cites *NGV Gaming, Ltd. v. Upstream Point Molate, LLC* (N.D.Cal.2005) 355 F.Supp.2d 1061 to support its claim that 25 United States Code section 81 did not preclude the tortious interference with contract cause of action. There, the district court was faced with an agreement to develop a casino for the Guidiville Band of Pomo Indians that was nearly identical to the 2002 Agreement. Further, as here, the complaint alleged that defendants, rival casino development groups, tortiously interfered with this agreement.

***7** However, *NGV Gaming* was not a final determination of the merits of the action. Rather, it concerned a preliminary ruling denying the defendants' motion to dismiss the complaint. The court posited that execution of the agreement may have created immediate duties and obligations relating to matters for which no regulatory approval was needed. (*NGV Gaming, Ltd. v. Upstream Point Molate, LLC, supra,* 355 F.Supp.2d at p. 1064.) Additionally, the court was not willing to dismiss the action at that stage of the litigation where the Indian trust lands had not been acquired during the time relevant to the plaintiff's claim. (*Id.* at p. 1066.)

Moreover, the district court thereafter reversed these preliminary conclusions. The tribe had filed a separate complaint seeking declaratory relief against NGV on the ground that the underlying contract was invalid under 25 United States Code section 81. After consolidating these two cases, the district court ruled in the tribe's favor. The court found that, despite the fact that the trust lands had not yet been acquired, the absence of Secretarial approval was a bar to the formation of a valid contract or agreement. (*Guidiville Band of Pomo Indians v. NGV Gaming, Ltd.* (Oct. 19, 2005, N.D.Cal.) 2005 WL 5503031.) Accordingly, the court found that the agreement was invalid as a matter of law and that NGV's claim for tortious interference with a valid contract could not stand.

In sum, the 2002 Agreement was subject to Secretarial approval under 25 United States Code section 81. Since the 2002 Agreement was not so approved, it is invalid as a matter of law. Therefore, Rinaldo cannot state a cause of action for tortious interference with the 2002 Agreement.

3. *Summary judgment was properly granted on Rinaldo's claim for tortious interference with prospective economic advantage because there was no evidence that Nevada Gold committed an independently wrongful act that caused the termination of Rinaldo's economic relationship with the Tribe.*

The tort of interference with prospective economic advantage protects the same interest in stable economic relationships as does the tort of interference with contract, but does not require proof of a legally binding contract. (*Pacific Gas & Electric Co. v. Bear Stearns & Co., supra,* 50 Cal.3d at p. 1126.) "The chief practical distinction between interference with contract and interference with prospective economic advantage is that a broader range of privilege to interfere is recognized when the relationship or economic advantage interfered with is only prospective." (*Ibid.*)

Accordingly, to recover for alleged interference with prospective economic advantage, the plaintiff must plead and prove that the defendant engaged in an independently wrongful act, i.e., the interference must be wrongful ' "by some measure beyond the fact of the interference itself.' " (*Delia Penna v. Toyota Motor Sales, U .S.A., Inc.* (1995) 11 Cal.4th 376, 392-393.) In other words, while intentionally interfering with an existing contract is a wrong in and of itself, intentionally interfering with a plaintiff's prospective economic advantage is not. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1158.) Because the act of interference with prospective economic advantage is not tortious in and of itself, the requirement of pleading that a defendant has engaged in an act that was independently wrongful distinguishes lawful competitive behavior from tortious interference. (*Ibid.*)

***8** An act is independently wrongful if it is unlawful. To be unlawful in this context, the act must be proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard. (*Korea Supply Co. v. Lockheed Martin Corp., supra,* 29 Cal.4th at p. 1159.) An improper motive does not cause an act to be independently wrongful. (*Id.* at p. 1158.) Rather, the conduct must be independently actionable. (*Stevenson Real Estate Services, Inc. v. CB Richard Ellis Real Estate Services, Inc.* (2006) 138 Cal.App.4th 1215, 1220.) Again, the plaintiff must plead and prove such wrongful conduct as part of its case-in-chief. (*Delia Penna v. Toyota Motor Sales, U.S.A., Inc., supra,* 11 Cal.4th at p. 393.)

Causation is also a threshold requirement for maintaining a tortious interference with economic advantage cause of action. The plaintiff must plead and prove it is reasonably probable that, but for the defendant's interference, the prospective contract or relationship would have been entered into. (*Youst v. Longo* (1987) 43 Cal.3d 64, 71.)

Here, Rinaldo's third amended complaint alleges that Nevada Gold schemed and conspired to destroy the contractual and economic relationships between Rinaldo and the Tribe. According to this complaint, Nevada Gold engaged in "extensive wining and dining" of Tribal Council members; hosted certain Tribal Council members at a New York City strip club; advanced money to the Tribe; was highly critical of Rinaldo and the 2002 Agreement; created a rift among members of the Tribe and members of the Tribal Council; entered into a competing agreement with the Tribe; "devised intricate plans to undermine the Tribe's general election that was set for early November 2004;" and issued a press release stating that Nevada Gold " 'has received an invitation from the Tribe to submit a proposal for both the development and management of the proposed casino' in Hesperia, California." However, none of these allegations describe conduct that is wrongful beyond the interference itself. Rinaldo could not state an independent action against Nevada Gold based on any of these allegations. Thus, Rinaldo has not met the requirement of pleading that the defendant engaged in an act that was independently wrongful.

At one point during the trial court proceedings, Rinaldo asserted that Nevada Gold had bribed tribal members. However, this allegation was not in Rinaldo's complaint. The pleadings set the boundaries of the issues to be resolved at summary judgment. (*Oakland Raiders v. National Football League* (2005) 131 Cal.App .4th 621, 648.) A plaintiff wishing to rely on unpleaded theories to defeat summary judgment must move to amend the complaint. (*Ibid.*) Additionally, Rinaldo has neither pointed to evidence supporting these unspecified bribes nor raised the issue on appeal.

Moreover, contrary to Rinaldo's position, the evidence does not demonstrate that Nevada Gold's conduct was a substantial factor in terminating Rinaldo's economic relationship with the Tribe. Rather, by November 2004, it was clear that Nevada Gold's attempted interference had failed. The Shoshone Council had been stripped of its power, the Revised Agreement had been overwhelmingly approved by the General Council, and a new Tribal Council had been elected. Thus, notwithstanding Nevada Gold's alleged misconduct, Rinaldo and the Tribe continued to move forward with the casino development. Accordingly, it cannot be said that Nevada Gold's alleged interference disrupted Rinaldo's relationship with the Tribe. (Cf. *Parlour Enterprises, Inc. v. Kirin Group, Inc.* (2007) 152 Cal.App.4th 281, 295.)

***9** Nevertheless, Rinaldo argues there is ample evidence that after November 2004 Nevada Gold continued to affect Rinaldo's relationship with the Tribe by providing additional money to the Shoshone Council to finance their failed legal challenge to the election of the Kennedy Council. However, a plaintiff cannot base a claim for tortious interference with prospective economic advantage on the defendant having induced another to undertake litigation unless the plaintiff alleges that the litigation was brought without probable cause. (*Pacific Gas & Electric Co. v. Bear Stearns & Co., supra,* 50 Cal.3d at p. 1137.) Rinaldo has neither alleged nor attempted to show that the Shoshone Council's appeal of the 2004 Tribal Council Election was without probable cause.

Further, there is no evidence that the Shoshone Council's challenge of the election had any effect on the Kennedy Council's decision to end the Tribe's relationship with Rinaldo. Rinaldo's claim that this challenge intimidated the Kennedy Council members because it called their legitimacy into question is based on nothing more than pure speculation and thus does not raise a triable issue of material fact. When a plaintiff relies on inferences to oppose a summary judgment motion, those inferences must be reasonably deducible from the evidence and not derived from speculation, conjecture, imagination, or guesswork. (*Joseph E. Di Loreto, Inc. v. O'Neill* (1991) 1 Cal.App.4th 149, 161.)

As discussed above, in June 2005, Rinaldo imposed a series of new conditions on the Tribe before it would proceed with the casino development. These conditions included reducing the size of the project site. Rinaldo had also stopped paying project related expenses. According to Rinaldo, it did so to mitigate the damages it had suffered due to the delays in the project. However, the Tribal Council rejected Rinaldo's proposal.

The reasonable inference from this evidence is that the Tribe terminated its economic relationship with Rinaldo due to Rinaldo's requiring modifications to the Revised Agreement. Nevertheless, Rinaldo argues that Nevada Gold should be held responsible because it was reasonably foreseeable that Rinaldo would attempt to mitigate its damages in this manner. This position has no merit. There is no evidence that Nevada Gold forced or induced Rinaldo to take the actions objected to by the Tribe. Rather, deposition evidence indicates the opposite. A member of the Kennedy Council at the time the resolution was passed testified that Nevada Gold had nothing whatsoever to do with the termination of the 2002 Agreement. Nevada Gold cannot be held responsible for Rinaldo's unilateral business decisions under any rational theory.

In sum, Rinaldo did not meet its burden of pleading that Nevada Gold engaged in an act that was independently wrongful. Additionally, the evidence presented by Nevada Gold showed that Rinaldo could not prove it is reasonably probable that, but for Nevada Gold's alleged interference, the Revised Agreement would have been entered into. Accordingly, Nevada Gold demonstrated that Rinaldo could not establish at least one element of the tortious interference with prospective economic relationship cause of action. Since Rinaldo failed to produce evidence creating a triable issue of material fact, judgment in Nevada Gold's favor was properly granted. Moreover, because Rinaldo's conspiracy cause of action was dependent on the validity of the tortious interference with prospective economic relationship cause of action, judgment in favor of Nevada Gold was properly entered on that cause of action as well.

DISPOSITION

***10** The judgment is affirmed. Costs on appeal are awarded to respondent.

WE CONCUR: VARTABEDIAN, Acting P.J., and CORNELL, J.

All Citations

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