FOURTH DIVISION
April 7, 2011

Nos. 1-10-1079 and 1-10-1129 (Consolidated)

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

SKYWALKER OUTDOOR, INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 08 CH 15372
	)	
VAN WAGNER COMMUNICATIONS, LLC,	)	The Honorable
	)	LeRoy Martin and Barbara
Defendant-Appellee.	)	McDonald,
	)	Judges Presiding.
_____	)	
	)	
VAN WAGNER COMMUNICATIONS, LLC,	)	
	)	
Defendant-Appellant,	)	
	)	
v.	)	
	)	
SKYWALKER OUTDOOR, INC.,	)	
	)	
Plaintiff-Appellee.	)	

PRESIDING JUSTICE GALLAGHER delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

ORDER

HELD: The trial court did not err in granting a section 2-615 motion to dismiss a negligent or intentional improper supervision count where no allegations of the employee's unfitness or the employer's knowledge of any alleged unfitness were pled in the amended complaint. The trial court also did not err in granting a section 2-615 motion to dismiss an injunction count because plaintiff failed to plead that it had an ascertainable right to access air rights enabling it to place an advertisement on the wall of an adjacent property. No genuine issue of material fact exists that plaintiff was not a party to a confidentiality agreement, that it lacked standing to raise a breach of contract count or that the contract was not breached. The trial court did not err in granting summary judgment on an intentional interference with prospective economic advantage count where no reasonable expectation existed of entering into a lease renewal with a company in a competitive outdoor advertising business. Rule 137 sanctions are warranted where a count for injunctive relief is brought despite express language in an agreement stating that upon the occurrence of an event the rights provided for under the agreement terminate. The trial court did not abuse its discretion in denying Rule 137 sanctions regarding the remaining counts raised in plaintiff's amended complaint because the counts were not baseless or unfounded.

This consolidated appeal arises from the non-renewal of a lease for outdoor advertising wall space leased from Sterling Bay, Inc. to plaintiff Skywalker Outdoor, Inc. (Skywalker). Sterling Bay did not renew the lease because it instead entered into a lease with defendant Van Wagner Communications, LLC (Van Wagner). Skywalker appeals the trial court's dismissal of its injunctive and negligent or intentional improper supervision of an employee counts from its amended complaint pursuant to section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2008)). Skywalker claims that injunctive relief should have been granted because a continuing trespass of its air rights to access the outdoor advertising wall space exists.

Skywalker also claims that its supervision count should not have been dismissed because pleading unfitness of an employee is not necessary to plead a cause of action for negligent or intentional improper supervision of an employee. Skywalker also appeals the trial court's granting of summary judgment in Van Wagner's favor regarding Skywalker's breach of contract and intentional interference with prospective economic advantage counts from its amended complaint. Skywalker contends that it had standing to raise a breach of contract claim against Van Wagner even though Skywalker was not a party to the confidentiality agreement. Skywalker also contends that it had a reasonable expectation of entering into a valid business relationship with Sterling Bay for the rental of the wall space based on its ongoing relationship with Sterling Bay and that all of Skywalker's leases had been renewed. On cross-appeal, Van Wagner claims that the trial court erred in denying its motion for Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994) sanctions because Skywalker raised baseless and unfounded counts in its amended complaint. For the reasons that follow, we affirm Skywalker's appeal, and affirm in part and reverse in part Van Wagner's cross-appeal and remand the cross-appeal for further proceedings.

BACKGROUND

Michael Richards and David Malay formed M & M Outdoor, Inc. (M & M) with Richards owning 49% of M & M and Malay owning the remaining 51%. M & M's business consists of leasing and selling outdoor advertising space that may be placed on walls and billboards.

On March 22, 2000, M & M and Sterling Bay[1] executed a lease leasing to M & M the exterior west wall of property located at 560 West Washington in Chicago, Illinois, "for the purpose of maintaining an advertising wall, including illumination facilities and connections, service ladders, and other appurtenances, with the right of ingress to and egress from the Leased Premises, and for no other purpose, subject to the terms and conditions herein contained." The lease also provided that the lease term would be for five years commencing on May 1, 2000 and the lease "will be automatically extended at the end of the term herein granted on a year-to-year basis under the same terms and conditions and at the same rental rate then in effect unless otherwise terminated by either party, hereto on ten (10) days notice by registered mail." On March 6, 2002, the parties executed the "First Amendment to Land Lease," which extended the lease term for a one three (3) year term resulting in a new expiration date of May 1, 2008.

On November 1st, M & M and IBEW Local 134 – Chicago, an Illinois Union ("the Union") entered into an "Air Rights and Access Agreement – 600 West Washington" ("air rights agreement") relating to property located at 600 West Washington. This agreement permitted M & M to use the property to access the advertising sign located at 560 W. Washington and to "hang lighting apparatus, scaffolding, mechanisms, including necessary supporting structures, devices, illumination facilities and connections, service ladders and other apparatus thereof and workers over and on the Premises as long as such actions do not interfere with the normal business hours of the parking lot business located at 600 W. Washington." The air rights

[1] Sterling Bay executed the lease as agent for the beneficiary of Cole Taylor Bank Trust Agreement known as Trust No. 95-9621.

agreement acknowledged that M & M entered into a lease with the property owner of 560 West Washington "for the purpose of erecting advertising signs thereon." The Union permitted M & M to use its property to access the advertising sign on the adjacent property. The air rights lease began on the day the parties signed the agreement and ran through the 15th anniversary of the commencement date. Pursuant to the tenant's covenant and rights provision, "in the event the Property Lease is terminated or otherwise expires prior to the expiration of this Agreement, then upon thirty (30) days written notice from Landlord to Tenant, this Agreement shall terminate." Malay as M & M's President and Michael Caddigan as the Union's Office Manager executed the air rights agreement.

On September 17, 2003, M & M and Van Wagner entered into an agreement ("confidentiality agreement") regarding evaluation material relayed from M & M to Van Wagner associated with Van Wagner's contemplated purchase of certain M & M assets. Evaluation material included "financial information, records, operation information, leases, advertising rates, advertiser information." The confidentiality agreement stated that the evaluation material "should be used by you and your Representatives solely to evaluate the possible acquisition of the Assets. You shall restrict the Evaluation Material to those of your Representatives who have a need to know such information solely for evaluating a possible transaction between you and the Company." The confidentiality agreement also stated that "You shall not use any of the Evaluation Material to divert or attempt to acquire the Assets other than through the Company. You shall not attempt to divert any business, customers, clients or lessors of the Company as a

direct result of all knowledge obtained from the Evaluation Material."

Richards formed Skywalker in November 2006, and left M & M in December 2006. Skywalker engages in the same business as M & M. When Richards left M & M, he sold his stock in the company back to M & M and in return, M & M assigned certain leases to Richards. One of the leases assigned to Richards was the 560 W. Washington lease. In early 2007, Richards began contacting Sterling Bay to renew the lease that was expiring in May 2008. In approximately February 2008, Sterling Bay notified Richards that the lease would not be renewed and that it executed a lease with Van Wagner. The lease with Van Wagner was executed on February 1, 2008 with a commencement date of May 1, 2008.

On April 25, 2008, Skywalker filed a complaint against Van Wagner raising the following counts: (1) injunctive relief; (2) breach of contract; and (3) intentional interference with prospective economic advantage. Van Wagner on May 15, 2005 filed a section 2-615 motion to dismiss the injunctive count. On May 29, 2008, the trial court granted Van Wagner's motion to dismiss and struck the injunctive count from the complaint without prejudice. The trial court entered an order on June 12, 2008 transferring the case to the law division since the remaining claims of the complaint were for money damages. The case then proceeded to discovery.

During Richards' discovery deposition, he identified himself as Skywalker's President and is responsible for sales and leasing of advertising space. Prior to working at Skywalker, Richards worked at M & M. Richards and Malay formed M & M in 1997 with Richards owning

49% of M & M and Malay owning the remaining 51%. Richards was Vice President and Malay was President of M & M. Richards and Malay's business relationship ended in 2006, when Richards resigned. As part of Richards' departure, M & M purchased Richards' shares of M & M pursuant to a stock redemption agreement and, in exchange, M & M assigned designated leases to Richards. One of the leases assigned to Richards was the lease for the property at 560 West Washington, and the assignment's effective date was January 1, 2007. Richards also executed a non-solicitation agreement.

After M & M assigned the lease, Richards sent a letter to Sterling Bay, as landlord of the 560 West Washington property, informing Sterling Bay that M & M assigned the lease to Skywalker. Richards also sent to Sterling Bay an amended lease. Richards sent a letter informing Michael Caddigan at the Union about the assignment as well.

In 2003 when Richards was still affiliated with M & M, discussions began between Van Wagner and M & M regarding Van Wagner purchasing M & M's assets. Van Wagner contacted M & M inquiring about buying its Chicago leases, which was a market that Van Wagner was targeting to expand its business. Van Wagner, which was owned by Richard Schaps, employed Ray Sipperly. M & M communicated with Sipperly regarding the potential asset purchase. According to Richards, M & M and Van Wagner are current competitors both in the business of placing advertisements on building walls and in competing for wall space.

As discussions continued with Van Wagner, Malay and Richards decided that a confidentiality agreement or a non-disclosure agreement should be signed before Van Wagner

received any pertinent information considered to be confidential. Richards stated that he and Malay did not want Van Wagner to approach M & M's landlords knowing the lease details and doubling or tripling its offer in an effort to steal M & M's sign space. The attempt to steal sign space is known as "jumping" in the industry. Richards claims that a lease's expiration date and monthly lease amount was confidential information, and that information was sent to Van Wagner.

Richards began communicating with Craig Golden of Sterling Bay about extending the lease approximately one year prior to its expiration, but Golden kept "brushing him off." Richards sent a second amended lease to Golden in approximately mid-December, which was not executed. During a fourth conversation with Golden in 2008, Golden informed Richards that the lease would not be renewed because Sterling Bay entered into a lease with Van Wagner who offered it a $60,000 signing bonus and double or triple the rent that Skywalker paid to it. Richards stated to Golden that he would have liked the opportunity to have matched Van Wagner's offer. Golden responded that Van Wagner contacted another individual at Sterling Bay, and that Van Wagner knew when the lease with Skywalker was expiring. Sterling Bay sent Richards a letter in February 2008 informing him that the lease would not be renewed upon its expiration.

After receiving the letter, Richards then contacted Caddigan at the Union to inform him that he lost the rights to the sign and that he anticipated that another company would place a sign on the wall in violation of the air rights agreement. Richards requested that Caddigan contact

him if he saw any changes to the sign, which Caddigan agreed to do. Richards acknowledged that Van Wagner could have learned about the sales revenue stream associated with the wall space by contacting Starcom, an advertising company that had an ongoing relationship with Van Wagner. Richards alleges that Van Wagner knew the rental rate in 2006, 2007, and 2008, but may not have known what Skywalker would be offering as rent for 2009, 2010 and 2011.

During Richard Schaps' discovery deposition, he identified himself as Van Wagner's Chairman and CEO. Schaps did not recall having any conversations with Malay prior to July 18, 2003, and did not recall having any conversations with Sipperley on approximately July 18, 2003. Schaps did not recall receiving the confidentiality agreement that would have been sent to him as an exhibit to an email in August 2003. Schaps recognized the signature on the confidentiality agreement as his signature. Schaps did not retain a copy of the confidentiality agreement, but he speculated that Van Wagner's general counsel may have retained a copy of the agreement. Abu-Ghazaleh, a Van Wagner employee, customarily speaks to many individuals in an attempt to negotiate a lease for wall space. When it appears that a lease may be executed, then Abu-Ghazaleh would contact Schaps to discuss the lease prospect. Schaps did not have a conversation with Abu-Ghazaleh after May 10, 2007, in which Schaps disclosed that he executed a confidentiality agreement relating to the targeted wall space.

During Walid Abu-Ghazaleh's discovery deposition, he stated that he began working for Van Wagner in approximately May 2000 until November 1, 2002, when he left the country to open an office in France. Then he returned to Chicago and resumed working in Chicago for Van

Wagner in March 2006. Abu-Ghazaleh first learned of a contract between M & M and Van Wagner in March or April of 2008. Prior to that time, Abu-Ghazaleh submitted a lease proposal for the wall space to Sterling Bay. Abu-Ghazaleh forwarded the proposal via email to Schaps on April 12, 2007. Schaps responded on May 10, 2007, stating that it "Looks good. What is it?" Between April 12, 2007 and December 5, 2007, Schaps did not inform Abu-Ghazaleh that a confidentiality agreement relating to the wall space existed. On December 5, 2007, Abu-Ghazaleh submitted a revised proposal to Sterling Bay, which now included a provision providing payment of the 5th year rental amount of $60,000 in advance, shortened the lease term and increased the rental amount. Based on Abu-Ghazaleh's conversations with Sterling Bay, he revised the proposal because he believed that the property would go to auction soon and Van Wagner needed a property in Chicago. Abu-Ghazaleh began communicating with Schaps more intensely in January 2008. Typically, if Abu-Ghazaleh finds a location that is interesting based upon his research, he tries to identify who the landlord is so that he can begin negotiations. On February 1, 2008, Van Wagner signed the lease and Sterling Bay signed it on February 5, 2008, with an effective date of May 1, 2008.

At the time of Malay's discovery deposition, he worked at M & M. Malay described M & M's business as "a small billboard company of about 15 locations mostly downtown, wallscapes, bulletins." Malay stated that when he signed the lease and the first amendment, he knew that renewal of the lease could go either way at the end of the term. Generally, Malay puts M & M's name on the wall or billboard that it leases and puts onto it an advertisement. To target

rental locations, Malay looks for a location with good traffic by walking around the area and then checks pertinent zoning laws to verify that outdoor advertising is permitted. Malay does this before he contacts the landowner to ensure that permits may be granted or if an old advertisement is currently on the targeted spot, that the old permit may be resurrected. To identify the targeted building's owner, Malay would either look at the building itself because the owner's name may be listed there or he searches through the county records for the name. To estimate a rental amount, Malay stated that he may contact his friends in the outdoor advertising business because they can determine how much an advertiser would be willing to pay for advertisement space in the targeted area. Malay indicated that based on experience, an estimate could be made of the expected revenue stream associated with a wall sign.

Malay stated that Van Wagner contacted him about selling some of M & M's assets. Malay considered the following information about a lease's term confidential: (1) the landlord's name; (2) location of the leases; (3) expiration of the lease; and (4) rental amount. Malay stated that "jumping," which occurs when a company contacts a building's owner directly to enter into a lease, occurs often in the industry. Malay sent Van Wagner details about the lease at 560 N. Washington, but Van Wagner ultimately did not purchase the leases. To Malay's recollection, Van Wagner and M & M did not communicate in 2004, 2005 and 2006 and Malay did not tell Van Wagner what M & M's revenue stream was for those years. M & M's identity as leasing the space at 560 West Washington was not confidential because M & M had a plaque displaying its name on the building.

According to Malay, Richards decided to separate from M & M. As a result of that separation, Richards sold his shares in M & M to M & M and M & M assigned to Richards certain leases. Richards also signed a two year non-solicitation agreement. The entire transaction consisted of a stock redemption agreement, an assignment of leases and a mutual non-solicitation agreement.

At the time of his discovery deposition, Sipperley was self-employed in the outdoor advertising business. Sipperley previously served as Van Wagner's Vice President/General Manager until February 2006, and directly supervised Abu-Ghazaleh. Sipperley participated in the decision to expand Van Wagner's business into the Chicago market. Sipperley indicated that M & M approached Van Wagner about purchasing its Chicago leases, but negotiations did not result in the purchase of any assets. Sipperley indicated that if Van Wagner decided not to purchase M & M's assets, the "whole file would have just been filed, meaning in the garbage." Sipperley stated that he would not have discussed the confidentiality agreement's contents with Abu-Ghazaleh because discussions regarding the purchase of M & M's assets would have been upward and not downward based on Van Wagner's corporate structure. Abu-Ghazaleh's job was to gather information and identify potential advertising spaces. According to Sipperley, Van Wagner had no plans to acquire Chicagoland locations "by taking over somebody's existing location" while he worked at Van Wagner.

At the conclusion of discovery, Van Wagner filed a motion for summary judgment on July 15, 2009 regarding the breach of contract and intentional interference with prospective

economic advantage counts. Skywalker filed an amended complaint on July 30, 2009, raising four counts against Van Wagner. Skywalker pled the previously stricken injunction count, revised the previously pled breach of contract and intentional interference with prospective economic advantage counts and added a count for negligent or intentional improper supervision. Van Wagner filed a section 2-615 motion to dismiss regarding the negligent or intentional improper supervision count. On October 27, 2009, the trial court granted Van Wagner's motion for summary judgment regarding the breach of contract and intentional interference with prospective economic advantage counts. The trial court also dismissed with prejudice the negligent or intentional improper supervision count. Van Wagner on November 25, 2009 filed a motion for Rule 137 sanctions against Skywalker. On December 17, 2009, the trial court entered an order ruling that the order dismissing the injunctive count without prejudice entered on May 29, 2008 was now dismissed with prejudice. The trial court denied Van Wagner's motion for Rule 137 sanctions on March 18, 2010. The timely filed appeal and cross-appeal follows.

STANDARD OF REVIEW

This court reviews a trial court's ruling granting a motion for summary judgment or a section 2-615 motion to dismiss *de novo*. *Atanus v. American Airlines, Inc.*, 403 Ill. App. 3d 549, 553 (2010). Summary judgment should be granted "where the pleadings, depositions, and admissions on file, together with any affidavits and exhibits, when viewed in the light most favorable to the nonmoving party, indicate that there is no genuine issue of material fact and the

moving party is entitled to judgment as a matter of law." *Id.*, citing 735 ILCS 5/2-1005(c) (West 2008). Disposing of a case by granting a motion for summary judgment is a drastic measure and a trial court should grant the motion only when " 'the movant's right to judgment is clear and free from doubt.' " *Id.,* quoting *Outboard Marine Corp. v. Liberty Mutual Insurance Co.,* 154 Ill. 2d 90, 102 (1992). A section 2-615 motion to dismiss tests the legal sufficiency of a complaint. *Rajterowski v. City of Sycamore*, 405 Ill. App. 3d 1086, 1091 (2010). A trial court when ruling on a section 2-615 motion to dismiss, "should inquire whether the allegations of the complaint, when accepted as true and considered in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted." *Id.* If no set of facts can be established that would entitled the plaintiff to recover, then the section 2-615 motion to dismiss should be granted. *Id.* A trial court's ruling regarding the granting or denial of Rule 137 sanctions is reviewed for an abuse of discretion. *Kensington's Wine Auctioneers & Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 15 (2009).

ANALYSIS (1-10-1079)

A. Negligent or Intentional Improper Supervision

Skywalker first claims on appeal that the trial court erred in granting Van Wagner 's section 2-615 motion to dismiss the negligent or intentional improper supervision count from the amended complaint on the basis that the complaint did not allege that Abu-Ghazaleh was unfit, that his employer knew that he was unfit and that the unfitness caused Skywalker's damages.

Skywalker claims that the cause of action of negligent or intentional improper supervision does not require the plaintiff to allege or prove unfitness. Skywalker claims that the law is unclear regarding the distinctions between negligent hiring, negligent supervision and negligent retention. To establish a count for negligent supervision, Skywalker claims that the following must be pled: "(1) an employer had a duty to supervise its employees, (2) the employer negligently supervised an employee, and (3) such negligence proximately caused the plaintiff's injuries." *Van Horne v. Muller*, 294 Ill. App. 3d 649, 657 (1998), modified on other grounds, 185 Ill. 2d 299 (1998). Skywalker claims that Van Wagner had a duty to prevent its employees from acting in a manner inconsistent with the confidentiality agreement and breached that duty when it negligently supervised its employee, Abu-Ghazaleh, by not alerting him that restrictions on targeting 560 W. Washington existed. Skywalker also claims that Van Wagner breached its duty to supervise by not requiring its employees to make reasonable inquiries about whether restrictions apply to targeted companies. Skywalker maintains that Van Wagner provided negligent supervision when it failed to take steps to verify that Abu-Ghazaleh understood and would abide by the confidentiality agreement's restrictions. Skywalker claims that it was injured by Van Wagner's negligent supervision because Sterling Bay did not renew its lease with Skywalker.

The trial court did not err in dismissing the negligent or intentional improper supervision count from the amended complaint. The amended complaint alleged the following:

> "14. At all times material hereto Richard Schaps as Manager of Van

Wagner and as supervisor of Walid Abu-Ghazaleh had a duty to properly and adequately supervise Walid Abu-Ghazaleh in the performance of his activities within the scope of his employment, specifically including supervision of his activities in regard to the subject wall located at 560 W. Washington, Chicago, Illinois, in a manner that did not cause harm to Plaintiff.

15. Richard Schaps, as Manager and agent of Van Wagner, breached that duty by knowingly, or in reckless disregard of the circumstances, permitting Abu-Ghazaleh to pursue negotiations with Sterling Bay despite the covenants and obligations imposed by the confidentiality agreement designed in paragraph #9."

This court recently stated in *Helfers-Beitz v. Degelman*, that "the tort of negligent supervision has not been distinguished from the tort of negligent retention." 406 Ill. App. 3d 264 (2010). Also recently in *Zahl v. Krupa*, this court acknowledged that *Vancura v. Katris,* 391 Ill. App. 3d 350 (2009), leave to appeal granted, 233 Ill. 2d 601, suggested that negligent supervision and negligent retention are distinct torts, but the *Zahl* court continued by stating that "our supreme court has not distinguished the two in the employment context." *Zahl*, 399 Ill. App. 3d 993, 1018 (2010) citing *Van Horne v. Muller*, 185 Ill. 2d 299 (1998). In *Zahl*, this court treated negligent supervision as the same tort as negligent retention. See *Id.* The facts of this case do not warrant a departure from the law as decided by our supreme court nor are we at liberty to do so. Accordingly, we adopt the principles regarding negligent or improper supervision set forth in *Helfers-Beitz* and *Zahl*.

To plead a cause of action for negligent hiring and negligent retention, a plaintiff must establish:

> " '(1) that the employer knew or should have known that the employee had a particular unfitness for the position so as to create a danger of harm to third persons; (2) that such particular unfitness was known or should have been known at the time of the employee's hiring or retention; and (3) that this particular unfitness proximately caused the plaintiff's injury.' " *Helfers-Beitz*, 406 Ill. App. 3d 264, quoting *Van Horne*, 185 Ill. 2d at 311.

Skywalker failed to present facts supporting allegations that Van Wagner knew or should have known that Abu-Ghazaleh was unfit or required supervision. Abu-Ghazaleh had been working in the real estate business for numerous years. Skywalker does not allege that Abu-Ghazaleh did not know how to perform his job or that he inadequately performed his job duties. Instead, Skywalker claims that Van Wagner was negligent in supervising Abu-Ghazaleh because it should not have permitted Abu-Ghazaleh to pursue negotiations with Sterling Bay in light of the confidentiality agreement's terms. The allegations in the complaint fail to establish that Abu-Ghazaleh was unfit for his position, that Van Wagner knew of his unfitness and that such unfitness proximately caused Skywalker's injury. Instead, the complaint alleges that Van Wagner permitted Abu-Ghazaleh to perform his job. Skywalker's allegation is that Van Wagner was negligent in its supervision of Abu-Ghazaleh because it did not prohibit Abu-Ghazaleh from researching and negotiating a lease with Sterling Bay pursuant to terms of the confidentiality

agreement, which was entered into approximately three years prior to when negotiations began between Abu-Ghazaleh and Sterling Bay. Abu-Ghazaleh's job function was to target locations and negotiate leases for advertising spaces. According to the confidentiality agreement's terms, Van Wagner was prohibited from disclosing the terms of the Sterling Bay lease with employees who did not need to know that information, and Abu-Ghazaleh was such an individual because his job did not encompass asset acquisitions. Here, the amended complaint is void of allegations that Skywalker was injured due to Abu-Ghazaleh's unfitness as an employee. As such, Skywalker failed to plead the elements of negligent or intentional improper supervision and the trial court did not err in dismissing this count.

B. Injunctive Relief

Skywalker next claims on appeal that the trial court erred in dismissing the injunctive relief count because it was a party to the air rights agreement. Skywalker claims that the air rights agreement that M & M and the Union entered into transferred to Skywalker when M & M assigned the lease at 560 W. Washington to Skywalker. Since the air rights belonged to Skywalker, it maintains that Van Wagner knowingly and intentionally trespassed upon those rights when it went onto and continued onto the Union's property to place advertisement space upon the wall at 560 W. Washington.

Skywalker also claims that its air rights created a protectable interest in real estate because possessing air rights is synonymous with possessing real estate. Skywalker cites to the definition of "real estate" set forth in the Mortgage Foreclosure Article of the Illinois Code of

Civil Procedure, which defines "real estate" as "land or any estate or interest in, over and under land (including minerals, air rights, structures, fixtures and other things which by custom, usage or law pass with a conveyance of land though not described or mentioned in the contract of sale or instrument of conveyance). 735 ILCS 5/15-1213 (West 2008). Skywalker contends that the trial court erred in dismissing its injunction count because it pled that Van Wagner continuously and intentionally trespassed upon its property rights, which were its air rights pursuant to the air rights agreement.

To state a cause of action for injunctive relief, a plaintiff must plead that "(1) he possesses a clearly ascertainable right or interest which needs protection; (2) he will suffer irreparable injury without protection; (3) there is no adequate remedy at law; (4) there is a substantial likelihood of success on the merits; and (5) in the absence of preliminary relief, he will suffer greater harm without the injunction than defendant will suffer if it is issued." *Fields v. Schaumburg Firefighters Pension,* 383 Ill. App. 3d 209, 225 (2008). Skywalker failed to plead these elements and, thus, the trial court did not err in dismissing this count from the amended complaint. All five elements must be established to prevail on a claim for injunctive relief. In its amended complaint, Skywalker stated that M & M entered into an air rights and access agreement for property located at 600 W. Washington. The complaint also alleged that without the air rights agreement, the wall space used to place advertisements on at 560 W. Washington was not accessible. Skywalker further alleged in the amended complaint that the lease executed between Van Wagner and Sterling Bay effective in May 2008 requires "Van Wagner to violate

the exclusive Air Rights Agreement because no other access to the wall space exists." Skywalker requested injunctive relief to prevent Van Wagner from violating the air rights allegedly granted exclusively to Skywalker pursuant to the air rights agreement.

Skywalker's amended complaint failed to state a cause of action for injunctive relief. The Union and M & M entered into the air rights agreement. The air rights agreement provided that each of the agreement's provisions "will extend to and inure to the benefit of Landlord and Tenant and they're [sic] the [sic] respective heirs, legal representatives, successors and assigns." The air rights agreement's term commenced upon the signing of the lease and would end on the first day of the 15th anniversary of the commencement date. Regarding the commencement date, the air rights agreement's introductory clause provides the following:

> "THIS AIR RIGHTS AND ACCESS AGREEMENT ("Agreement") is made and entered into this 1st day of November by and between IBEW Local 134 - Chicago, an Illinois Union ("Landlord") and M & M Outdoor, Inc., an Illinois Corporation ("Tenant")."

Above the execution lines, the air rights agreement states the following: "WITNESS TO, the parties hereto have entered into this Lease as of the day and year first written above." Reviewing the air rights agreement in its entirety, including each of the 22 sequentially numbered paragraphs, we note that absent from the air rights agreement is the year in which the agreement was executed. Although the air rights agreement provides that it was entered into on November 1st and its duration is for 15 years, the air rights agreement's provisions fail to state the year in

which the agreement was entered into or executed. Moreover, the integration provision set forth in paragraph 19 of the air rights agreement states in part that "this Agreement contains the entire agreement and understanding between the parties and supercedes all prior representations, understanding and agreement relating to the Property." Here, an essential contractual element is omitted from the air rights agreement.

Also, the air rights agreement's lease provision states as follows:

> "2. Lease.
>
> Pursuant to that lease ("Lease") by and between Tenant and the owner of that certain property known as 560 West Washington, Chicago, Illinois 60661 (the "Sign Property"), and Tenant has leased the Sign Property for the purpose of erecting advertising signs thereon. Additionally, all electrical connections shall be made from the Sign Property and not from the Premises."

The third provision also provides in part that the "Tenant may use the Premises for the purpose of (a) accessing the advertising sign on the Sign Property." Interpreting the air rights agreement's provisions, its purpose was to provide to the Tenant air access rights over the Union's property to access the advertising sign at 560 W. Washington. After Sterling Bay did not renew the lease, the air rights agreement became null as its stated purpose was to provide air access rights to access the advertising sign that was leased at the neighboring property. Thus, without the lease on the neighboring property, there would be no need for the air rights agreement.

The air rights agreement's sixth provision entitled "Tenant's Covenant and Rights" is also a critical provision. Provision six subpart (c) states in part that:

> "(c) Tenant and Landlord acknowledge that this agreement is subject to the terms and conditions of the Property Lease. In the event the Property Lease is terminated or otherwise expires prior to the expiration of this Agreement, then upon thirty (30) days written notice from Landlord to Tenant, this Agreement shall terminate. . . . In the event the Lease is terminated or expires, then upon thirty (30) days written notice from tenant to Landlord, this agreement shall terminate."

Thus, according to the air rights agreement's express provisions, Skywalker was obligated to inform the Union in writing within 30 days after the lease on the 560 W. Washington building expired. According to the air rights agreement, after the 30 day written notice period, the air rights agreement terminated. In Richards' deposition, he stated that upon learning that Sterling Bay did not renew the lease, he telephoned Caddigan at the Union to inform him that the lease was not renewed and to contact him if another company put an advertising sign on the wall. Regardless of whether Skywalker provided the Union with written notice that the lease at 560 W. Washington expired or was not renewed, it was obligated to do so. Since the air rights agreement terminates within 30 days of receiving written notice from the Tenant of the termination of the lease at the 560 W. Washington building, Skywalker had no rights under the air rights agreement. Moreover, the lease executed between Sterling Bay and Van Wagner was not effective until May

1, 2008, which was after Skywalker's lease with Sterling Bay expired. Thus, Skywalker fails to state a cause of action for injunctive relief because Skywalker had no ascertainable right needing protection. Accordingly, the trial court did not err in dismissing this count from the amended complaint.

C. Breach of Contract

Skywalker also contends on appeal that the trial court erred in granting summary judgment in Van Wagner's favor regarding its breach of contract count. Skywalker claims that as an assignee of M & M's interest in the confidentiality agreement, Skywalker had standing to bring this count. Skywalker maintains that Van Wagner breached the confidentiality agreement's terms because the agreement protected M & M, and through assignment Skywalker, against Van Wagner from interfering with Skywalker's ongoing relationship with Sterling Bay. Since Van Wagner and Sterling Bay executed a lease before Skywalker's lease expired, Skywalker claims that Van Wagner interfered with Skywalker's relationship with Sterling Bay, thereby breaching the confidentiality agreement. Skywalker maintains that it had standing to bring a cause of action for Van Wagner's breach of the confidentiality agreement.

Skywalker failed to establish that a genuine issue of material fact exists regarding whether Skywalker and M & M intended to transfer the confidentiality agreement along with the identified leases that were transferred. As a preliminary matter, a party must have standing to bring a cause of action. Standing " 'assures that issues are presented to a court only by parties who have a sufficient stake in the outcome of the controversy.' " *Scachitti v. UBS Financial*

Services, 215 Ill. 2d 484, 493 (2005), quoting *People ex rel. Hartigan v. E & E Hauling, Inc.*, 153 Ill. 2d 473, 482 (1992). Skywalker was not a party to the confidentiality agreement, and thus, did not have standing to bring a cause of action alleging a breach of the agreement. Skywalker acknowledges that it was not a party to the agreement, but claims that the confidentiality agreement was assigned along with the leases or that an assignment of the ancillary rights in the confidentiality agreement occurred by implication. M & M and Van Wagner executed the confidentiality agreement on September 13, 2003, which was approximately three years prior to M & M assigning the lease to Skywalker. According to the lease assignment executed by M & M and Richards on December 6, 2006, M & M assigned and transferred to Richards all of its "right, title, and interest in and to the Leases." The confidentiality agreement was not referenced in the assignment document. If the rights set forth in the confidentiality agreement were intended to be transferred along with the leases, those rights should have been addressed and incorporated in the assignment, but they were not. The confidentiality agreement was independent from the leases and addressed use of information about the leases provided by M & M to Van Wagner. The confidentiality agreement should not be construed to be synonymous with the actual leases because the purpose and provision of both documents are different. Thus, assignment of the lease does not automatically give rise to an assignment of the confidentiality agreement.

Skywalker similarly claims that the rights provided under the confidentiality agreement were ancillary to the rights in the leases, and thus, the confidentiality rights were assigned along

with the lease. Skywalker relies on *Gold v. Ziff Communications Company*, 322 Ill. App. 3d 32 (2001) and *Painter v. Merchants and Manufacturers Bank of Milwaukee* , 277 Ill. App. 208 (1934) to support its position. These cases, however, are distinguishable. The relevant agreement in *Gold* referenced other companies and businesses that the party to the agreement controlled. *Gold*, 322 Ill. App. 3d at 46. Here, the confidentiality agreement did not include a provision addressing any successor or related companies nor is it alleged that M & M controls Skywalker. Moreover, both Skywalker and M & M are in existence, and, thus, Skywalker should not be considered to be M & M's successor. *Panter* addresses the assignment of a judgment and the rights incidental to and available to judgment creditors. *Painter*, 277 Ill. App. 208. Here, the rights afforded to a creditor and its successor are not at issue and the rights of the confidentiality agreement do not give rise to the same level of protection afforded to judgment creditors. In the instant case, the confidentiality rights that M & M was entitled to arose in 2003, but the lease assignment occurred in 2006. Given the lapse of time from the execution of the confidentiality agreement and the assignment, Skywalker failed to raise a genuine issue of material fact regarding whether the confidential rights Skywalker claims M & M was entitled to and received in 2003 were incidental and collateral rights existing at the time of the assignment. Similarly, when the confidentiality agreement was executed, Skywalker was not an entity in existence nor did Skywalker replace M & M as it too still exists. Without establishing that Skywalker was a party to the confidentiality agreement or that the rights under that agreement were ancillary to the lease assignment, Skywalker lacks standing to bring a breach of contract cause of action, and the

trial court did not err in granting summary judgment in Van Wagner's favor.

Assuming *arguendo* that the lease assignment incorporated the rights afforded to M & M under the confidentiality agreement and that Skywalker has standing to bring this count, Skywalker failed to raise a genuine issue of material fact that Van Wagner breached the confidentiality agreement's terms. The confidentiality agreement stated that "As a condition to such information being furnished to you and your Representatives, you agree to treat the Evaluation Material confidentially and to observe all of the terms and conditions set forth herein." The confidentiality agreement also stated that:

> "You agree that the Evaluation Material shall be used by you and your Representatives solely to evaluate the possible acquisition of the Assets. You shall restrict the Evaluation Material to those of your Representatives who have a need to know such information solely for evaluating a possible transaction between you and the Company. You shall be responsible for any breach of this agreement by you and any of your Representatives."

In its amended complaint, Skywalker claims the following:

> "By failing to inform the Defendant's agent and employee, Walid Abu-Ghazaleh, of the existence of and the terms of the confidentiality agreement, and by withholding information from him concerning the designated covenants which have the plain intent of placing limitations on Defendant's conduct with regard to the wall at 560 W. Washington, Defendant Van Wagner breached the covenants

> and obligations imposed on it under the confidentiality agreement, and Van Wagner's execution of a lease with Sterling Bay is directly attributable to the failure of Richard Schaps to inform Abu-Ghazaleh of the duties and obligations imposed upon Van Wagner."

Skywalker's allegations in the amended complaint are contradictory to the confidentiality agreement's protections. The confidentiality agreement permitted Van Wagner to discuss and disclose the confidential information only to individuals who would participate in the purchase negotiations. Abu-Ghazaleh was not an individual who was responsible for deciding whether to purchase M & M's assets. Abu-Ghazaleh's job function was to identify potential wall advertisement space. The confidentiality agreement provided that Van Wagner might discuss the confidential information only with the relevant individuals, but the amended complaint alleges that Van Wagner breached the confidentiality agreement's terms by not disclosing to Abu-Ghazaleh, an employee who was not responsible for determining whether M & M's assets should be purchased, that the property was subject to the confidentiality agreement. Thus, the provisions of the confidentiality agreement and amended complaint are inconsistent.

Moreover, Abu-Ghazaleh targeted the 560 W. Washington property through his own efforts and initiatives in performing his job without knowing any of the information contained in the confidentiality agreement. Malay, in his deposition, stated that companies in this business could identify a building's owner by looking for the owner's name on the building itself or searching through county records for the name. In his deposition, Malay also stated that the

rental revenue amount could be estimated by contacting advertisers and inquiring what they would be willing to pay for advertisement space at the targeted location. Thus, Abu-Ghazaleh could have obtained the information to enter into a lease negotiation with Sterling Bay without knowing any of the information in the confidentiality agreement that, if known, may have resulted in a breach of the confidentiality agreement. Here, Skywalker failed to establish a triable issue regarding its breach of contract count.

D. Intentional interference with prospective economic advantage

Lastly, Skywalker claims that the trial court erred in granting summary judgment in Van Wagner's favor regarding the intentional interference with prospective economic advantage count. Skywalker contends that contrary to the trial court's finding, it had a reasonable expectation of a lease renewal. In the outdoor advertisement industry, Skywalker maintains that renewal of leases are much more common than non-renewal. When discussing the lease renewal with Sterling Bay, Skywalker claims that Sterling Bay did not give any indication that the lease would not be renewed. Skywalker contends that the trial court erred in granting summary judgment because an issue of fact exists regarding whether Skywalker had a reasonable expectation of a lease renewal with Sterling Bay.

The tort of intentional interference with a prospective economic advantage requires a plaintiff to establish: "(1) a reasonable expectation of entering into a valid business relationship, (2) the defendant's knowledge of the expectation, (3) purposeful interference by the defendant that prevents the plaintiff's legitimate expectancy from ripening into a valid business

relationship, and (4) damage to the plaintiff resulting from the defendant's interference." *Atanus*, 403 Ill. App. 3d at 554. Actual interference with a plaintiff's contractual relationship does not need to be established to prevail in this cause of action. *Miller v. Lockport Realty Group, Inc.*, 377 Ill. App. 3d 369, 375 (2007). Instead, the plaintiff must establish that the defendant interfered with a plaintiff's reasonable expectation of entering into a business relationship. *Id*.

Here, the trial court did not err in granting Van Wagner's motion for summary judgment because no genuine issue of material fact exists regarding Skywalker's lack of a reasonable expectation of entering into a valid business relationship with Sterling Bay. Skywalker contends that it had a reasonable expectation of a business relationship because of its ongoing relationship with Sterling Bay for eight years and that all of Skywalker's leases had been renewed. Richards' deposition reveals that he initiated discussions with Sterling Bay regarding renewal of the lease approximately one year prior to its expiration. Sterling Bay did not commit to renewing the lease and instead informed Richards that it was too early to discuss renewal of the lease on the multiple occasions that Richards contacted Sterling Bay. Richards' deposition did not claim that he and Sterling Bay entered into negotiations regarding the lease renewal. Instead, he claimed that he was given the "brush-off."

Skywalker also claims that it had a reasonable expectation of a business relationship because Skywalker never had a lease that was not renewed. Such a contention, however, fails to support a claim that Skywalker had a reasonable expectation of entering into a valid business relationship. When Skywalker lost its lease with Sterling Bay in February 2008, Skywalker had

been in existence since only November 2006. Thus, it is not likely that Skywalker had numerous leases that expired during that time and that would have been eligible for renewal. Skywalker's basis for establishing a reasonable expectation of entering into a valid business relationship based on the lack of prior non-renewals is not persuasive. Also, Malay during his deposition indicated that one reason it requested execution of the confidentiality agreement was to prevent "jumping" of the lease, which was prevalent in the industry. Richards also acknowledged the existence of jumping in his deposition. Thus, both Malay and Richards acknowledged that competition for outdoor sign rentals existed. Malay in his deposition stated that renewal of the Sterling Bay lease upon its expiration could have gone either way. Based on this, it would be reasonable to assume that no guarantee exists that a current rental agreement would continue indefinitely.

Also, Skywalker failed to plead facts establishing Van Wagner's purposeful interference that prevented Skywalker's legitimate expectancy from ripening into a valid business relationship. This element of the tort of interference with a prospective economic advantage requires Skywalker to establish that Van Wagner engaged in actions that improperly interfered with Skywalker's expectancy of entering into a business relationship with Sterling Bay. *Atanus*, 403 Ill. App. 3d at 557. Skywalker must allege facts indicating that Van Wagner acted with the purpose and aim of interfering with Skywalker's expectancy of the continued sign rental and that Van Wagner's actions were improper. *Id*. Skywalker must prove that Van Wagner intentionally acted with the purpose of injuring Skywalker's business expectancy. *Chicago Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 863 (2008).

The privilege of competition permits one to divert business from a competitor, but assertion of competition "is not available to those who use wrongful means to interfere." *Id.*; *Miller*, 377 Ill. App. 3d at 377. If a qualified privilege is asserted in the pleadings or is apparent, then the plaintiff bears the burden of pleading and proving that the defendant acted with actual malice and without justification. *Miller*, 377 Ill. App. 3d at 375; *J. Eck & Sons, Inc. v. Reuben H. Donnelley Corp.*, 213 Ill. App. 3d 510, 514 (1991); *Philip I. Mappa Interests, Ltd. v. Kendle*, 196 Ill. App. 3d 703, 708 (1990). "Actual malice" is defined as "a positive desire and intention to annoy or to injure another." *Philip I. Mappa Interests, Ltd.*, 196 Ill. App. 3d at 708. A plaintiff must establish that a defendant acted "with a desire to harm which was unrelated to the interest he was presumably seeking to protect by bringing about the breach." *Id.*

In the amended complaint, Skywalker alleges that Van Wagner "intentionally acted in a manner calculated to induce Sterling Bay to terminate its negotiations with Plaintiff, and to terminate its land lease with Plaintiff without any further extensions." The amended complaint also alleges that Schaps "withheld information from Abu-Ghazaleh concerning Plaintiff's leasehold rights in the wall, and thereby knowingly and intentionally permitted Abu-Ghazaleh to continue with his activities which interfered with Plaintiff's reasonable business expectancies." The allegations in the amended complaint fail to identify acts that Van Wagner performed with the intent to deprive Skywalker of its business opportunity. Rather, Van Wagner engaged in activities to further promote its business in Chicago, which was the same business as Skywalker. Van Wagner's desire to expand its Chicago market does not equate to or demonstrate a desire to

purposely and intentionally interfere with Skywalker and Sterling Bay's relationship. The amended complaint lacks allegations demonstrating that Van Wagner acted with actual malice or without justification in an attempt to prevent Skywalker from maintaining its business relationship with Sterling Bay. The trial court did not err in granting summary judgment regarding the intentional interference with prospective economic advantage because no genuine issue of material fact exists because Skywalker did not have a reasonable expectation of entering into a valid business relationship or that Van Wagner purposely acted to interfere and prevent Skywalker's legitimate expectancy of a business relationship from ripening into an actual relationship. Without raising a genuine issue of material fact regarding at least one of these two elements, the amended complaint cannot withstand a motion for summary judgment.

CONCLUSION (1-10-1079)

The trial court did not err in granting Van Wagner's section 2-615 motion to dismiss the negligent or intentional improper supervision count because Skywalker failed to plead facts alleging that Abu-Ghazaleh was an unfit employee and that Van Wagner knew of the unfitness. Since Skywalker did not have "a clearly ascertainable right that needs protection," the trial court did not err in dismissing the injunctive count. The trial court did not err in granting summary judgment in Van Wagner's favor regarding the breach of contract count because Skywalker did not have standing to bring this count, and assuming *arguendo* that it did have standing, Van Wagner did not breach the confidentiality agreement's terms. Since Skywalker lacked a

reasonable expectation of entering into a business relationship with Sterling Bay, the trial court did not err in granting summary judgment on this count in Van Wagner's favor. For these reasons, we affirm the trial court's judgment.

CROSS-APPEAL (1-10-1129)

Van Wagner cross-appeals claiming that the trial court erred in denying its motion for sanctions pursuant to Rule 137. Van Wagner contends that upon learning that Skywalker's claims lacked merit, Skywalker's attorney should have dismissed the case. Van Wagner also claims that the trial court applied a subjective standard in denying its motion for sanctions instead of applying an objective standard as required by Rule 137. Determining whether an attorney acted in bad faith is not a consideration under an objective standard, and Van Wagner claims that the trial court erred in applying the "bad faith" subjective standard in denying its motion for sanctions. Van Wagner contends that attorneys must make a reasonable inquiry regarding a case's basis in law and foundations in fact to ensure that the claims raised are not baseless, unfounded or not viable, and such an inquiry was not performed here. If such an inquiry was performed, Van Wagner contends that Skywalker's attorney proceeded despite knowing that Skywalker lacked standing under the confidentiality agreement that served as the basis for the counts raised in the amended complaint. Van Wagner contends that imposing sanctions does not require a finding of bad faith and the trial court should have imposed sanctions.

The underlying purpose of Rule 137 "is to prevent the filing of false and frivolous lawsuits." *Kensington's Wine Auctioneers & Brokers, Inc.*, 392 Ill. App. 3d at 15. An attorney adheres to Rule 137 by certifying that to his knowledge, "the pleading is well grounded in fact and is warranted by law." *Id*. A trial court's ruling regarding a Rule 137 motion will not be overturned absent an abuse of its discretion. *Id*. This court's primary consideration in reviewing a trial court's ruling on a Rule 137 motion " 'is whether the trial court's decision was informed, based on valid reasoning, and follows logically from the facts.' " *Id*., quoting *Whitmer v. Munson*, 335 Ill. App. 3d 501, 514 (2002).

The trial court during the hearing on the motion for sanctions implied that Van Wagner was seeking sanctions because it believed that Skywalker's attorney engaged in bad lawyering. The trial court stated that Rule 137 does not relate to bad lawyering, but instead to bad faith. The trial court continued that before it would award sanctions, it needed a clear-cut case indicating bad faith, which did not exist here. Van Wagner correctly recites that when ruling upon a Rule 137 motion, a trial court should adopt an objective standard. In response to Van Wagner's motion for sanctions, Skywalker claimed that M & M orally assigned to it the confidentiality agreement. Throughout the legal proceedings, Skywalker alleged that it had standing because the confidentiality agreement's rights were ancillary to the assignment of the lease and that the confidentiality agreement was transferred along with the lease assignment. Although Skywalker did not prevail in its claims regarding standing, the failure to prevail in litigation is not a basis to award Rule 137 sanctions and arguing the transfer of ancillary rights following an assignment of

an interest does not demonstrate baseless legal reasoning.

Subsequent to the parties filing their briefs on appeal, this court issued two decisions holding that the tort of negligent supervision was not distinguishable from the tort of negligent retention. When Skywalker filed its brief, this court's decision in *Vancura* provided a basis in law for Skywalker to argue that negligent supervision and negligent retention were distinct torts.

Regarding Skywalker's intentional interference with prospective economic advantage count, whether Skywalker had a reasonable expectation of entering into a lease renewal was at issue. Determining an individual's reasonable expectation of entering into a business relationship requires a subjective analysis. Skywalker had a basis in law and fact to plead this count given Sterling Bay's past relationship with Richards.

Turning to the injunctive count, we believe Rule 137 sanctions are warranted. The injunctive count sought to prevent Van Wagner from violating air rights allegedly granted exclusively to Skywalker pursuant to the air rights agreement. The air rights agreement, however, contained a provision that the rights were subject to the lease at 560 W. Washington. After Sterling Bay did not renew the lease, Skywalker lost any rights that it may have allegedly had pursuant to the air rights agreement. Without having a right to access the wall space, Skywalker cannot prevent another party from accessing the same wall space. Since the air rights agreement was contingent upon Skywalker having an executed lease with the owner of the property located at 560 W. Washington, when Skywalker lost that lease, it also lost the air rights at 600 W. Washington. Prior to litigating the injunctive count, Skywalker's attorney should have

made a reasonable inquiry into the air rights agreement to ensure that Skywalker had a basis to seek injunctive relief. Since the injunctive relief count is not warranted by law, sanctions relating strictly to the injunctive count should be granted. Accordingly, this cause is remanded to the trial court to impose sanctions corresponding to the litigation of the injunctive count only.

CONCLUSION (1-10-1129)

The trial court did not abuse its discretion in denying Van Wagner's motion for Rule 137 sanctions regarding Skywalker's breach of contract, intentional interference with prospective economic advantage and negligent or intentional improper supervision counts. Since Skywalker had no clearly ascertainable right to the air rights provided for under the air rights agreement according to the agreement's express language, Rule 137 sanctions with respect to this count are warranted. This cause is remanded to the trial court to determine sanctions relating strictly to the injunctive count.

1-10-1079 - Affirmed.

1-10-1129 - Affirmed in part and reversed in part; cause remanded.