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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

STEVEN O. SPARKS, Plaintiff, Cross-defendant, and Appellant, v. ISAACMAN, KAUFMAN & PAINTER, P.C. et al., Defendants, Cross-complainants, and Respondents.	B226213 (Los Angeles County Super. Ct. No. BC 343553)

APPEAL from a judgment of the Superior Court for the County of Los Angeles. Alan S. Rosenfield, Judge. Affirmed.

LKP Global Law, Luan K. Phan, Albert T. Liou; Esner, Chang & Boyer, Stuart B. Esner and Andrew Chang for Plaintiff, Cross-defendant and Appellant.

Ropers, Majeski, Kohn & Bentley, James C. Potepan, Ernest E. Price and James C. Hildebrand for Defendants, Cross-complainants, and Respondents.

SUMMARY

Steven O. Sparks sued his lawyer (Robert Woods) and law firm (Isaacman, Kaufman & Painter, P.C.) in November 2005 for legal malpractice, breach of fiduciary duty, breach of contract, defamation, and several other causes of action. Plaintiff was required to arbitrate the malpractice, breach of fiduciary duty and breach of contract claims. The arbitration was resolved in defendants' favor and the parties returned to court. In the end, the parties went to trial before a jury on several of plaintiff's claims, including interference with prospective economic advantage and defamation, and on defendants' cross-complaint for unpaid attorney fees. At the close of plaintiff's evidence, the trial court granted defendants' motion for nonsuit, and the jury then awarded defendants $11,179.32 on their quantum meruit claim for attorney fees.

Plaintiff appeals, arguing the trial court's nonsuit ruling was erroneous. We disagree and affirm the judgment.

FACTS

1. The Facts Preceding the Litigation

Plaintiff is a businessman who made a great deal of money in the financial services sector. Early in his career, plaintiff joined exclusive country clubs, where his expertise as a golfer and other talents enabled him to build relationships with many Hollywood notables. After some 30 years in the financial business, in 2003, plaintiff, who always wanted to be in the movie business, finally got his opportunity to do so. Plaintiff's claim in this case is that his lawyer, who also wanted to be in the movie business, deliberately ruined plaintiff's prospects in connection with a job offer and with a movie project in which both were involved.

In January 2003, Milton Kim, whom plaintiff had met many years earlier at the Sherwood Country Club, invested $4 million in Maverick Films, a limited liability company co-owned by pop singer Madonna and her manager, Guy Oseary. Kim was the only contributor of capital to the company and was initially a passive investor in Maverick Films. But after about a year, he became concerned about the company's progress and, starting in 2004, "became more hands-on in the running of the company."

Maverick Films' capital had dwindled to almost zero during the span of a year and a half. The company sought more money from Kim, and in the last quarter of 2004, he put up an additional $1.2 million, but in the form of a loan (instead of equity) giving him a lien against all of Maverick Films' assets, including its movie projects. Kim (through a company he owned) and Maverick Films signed a letter of intent in September 2004, and a security agreement and contemporaneous loan agreement dated as of November 19, 2004.

Kim thought Mark Morgan, then the chief executive officer (CEO), was not qualified to run Maverick Films. During 2004, Kim also insisted that the chief financial officer (CFO) of Maverick Films be replaced, and Kim selected the individual who was hired as the replacement CFO. Kim thought of plaintiff as a possible new CEO. Kim had established a business relationship with plaintiff some years earlier through golfing at the country club. Kim admired plaintiff and was impressed with his extensive business and financial experience, with his business and personal relationships with Hollywood celebrities and producers, and with his use of his golf prowess as a business tool. Kim considered that plaintiff's relationships and access to celebrities could be a major asset to Maverick Films.

"At some point in 2004," Kim extended a verbal offer to plaintiff for the job. Kim offered plaintiff a base salary of $400,000 per year for five years, with a separate bonus of $250,000 for every movie project that was "greenlit or that actually went into production . . . ." According to Kim, plaintiff accepted his offer when they had agreed on these compensation terms. When asked why plaintiff did not come to work at Maverick Films immediately after he accepted Kim's offer, Kim explained:

> "A . . . As I said, because it was not a written kind of, you know, legally binding type of employment contract. It was a verbal offer, and it was a verbal acceptance.
>
> "Q You said it was not a binding contract. What do you mean by that?
>
> "A Well, what I mean by that is something that I would assume that it was typically drawn between a large company and a prospective

employee, where the employer writes down, 'Mr. Sparks, you will be paid "X" amount,' and it is reviewed by the corporate attorney, and it's then given a formal offer. That's what I mean.

"Q That never occurred.

"A No, it did not.

"Q And so, sir, when did you expect [plaintiff] to show up after he accepted your oral offer?

"A That was—the time period was never really discussed, but the whole idea was that, once I refinanced Maverick, meaning reorganized through . . . finishing the loan document and basically being able to clean house, so to speak; okay. [¶] Then at some point [plaintiff] and I would presumably agree when it would be the right time for him to start."

Later in 2004, Kim changed his mind about hiring plaintiff, and that occurred in conjunction with the failed attempt to finance a movie project called *Barber of C'Ville*, in which Kim had become very interested during the summer of 2004. Discussions about financing *Barber of C'Ville* were occurring at about the same time Kim made his verbal offer to plaintiff "about potentially running Maverick." Kim explained: "So that kind of coincided, meaning that, should 'The Barber of C'Ville' go ahead and become a movie, I thought it would be a great way for [plaintiff] to sort of get a flying start in his new job and for me to start a movie with him and hopefully along with him being my new C.E.O."

Plaintiff's attorney-client relationships formed a backdrop to the discussions among plaintiff, Kim and the owners of the screen rights for the *C'Ville* project. Defendant Robert W. Woods was associated with a small firm in Santa Monica, and plaintiff became a client of that firm. Plaintiff met Woods in early 2004, and Woods began to handle matters for plaintiff, including a lawsuit that had been filed against plaintiff. In the spring of 2004, Woods moved his practice and became a partner in defendant Isaacman, Kaufman & Painter, P.C. (the Isaacman firm), an entertainment law firm. Plaintiff had known one of the partners, Brian Kaufman, for years, and in early June 2004, plaintiff signed a retainer agreement with the Isaacman firm, engaging the firm to represent plaintiff in the litigation Woods had been handling.

Woods, like plaintiff, was interested in the movie business. By way of example, Woods and his business partner, Lee Wilson (whom he sometimes introduced as his wife), doing business as Wilson/Woods Productions, made an agreement with plaintiff in March 2004 under which plaintiff would procure investors and work with Wilson/Woods Productions to secure talent for a movie project called Under Pressure. During this period, and until the litigation settled in early December 2004, Woods acted as plaintiff's attorney in litigation matters and also worked with plaintiff in connection with the Under Pressure project and the *Barber of C'Ville* project.

Kees van Oostrum was also a client of defendant Woods. Van Oostrum partnered with Scott Cooper (later to direct Crazy Hearts (Fox Searchlight Pictures 2009)) in developing *Barber of C'Ville*. Cooper wrote and had the rights to the script for *Barber of C'Ville*, and was also to act in and produce the movie. Van Oostrum was to be the director and a producer. Robert Duvall and Natalie Portman were interested in acting in the film. When van Oostrum mentioned to Woods that he and Cooper were developing *Barber of C'Ville* and had raised about half of the financing, Woods told van Oostrum that he knew someone—plaintiff, whom he described as a wealthy individual with very strong connections "in the actor world and financing world"—who could be helpful in completing the financing.

Van Oostrum sent Woods the script for *Barber of C'Ville*. Then, in May 2004, van Oostrum, Cooper, Woods, Wilson and plaintiff all met, for the first time, in Woods's office. At that time, van Oostrum and Cooper had a commitment for half of the anticipated $5 million budget for *Barber of C'Ville*, but needed financing for the remainder. Very soon after the meeting at Woods's office, plaintiff told van Oostrum and Cooper that he would help them raise the money, and that if he was able to do so, he expected producer credit and a five percent fee. Plaintiff was "very confident" of raising the money: "I was going to be running Maverick, and [Kim] needed a movie with a star in it. Maverick didn't have movies that had stars in them. And I could get stars, and [Kim] knew that."

Plaintiff "went directly to [Kim]" with the *C'Ville* project. In May or June 2004, plaintiff set up a meeting to discuss the project with Kim, Woods and Wilson. At this meeting, plaintiff introduced Woods to Kim as his (plaintiff's) lawyer and introduced Wilson (who was also a writer) as Woods's wife. Plaintiff initially sought $2.5 million from Kim for *Barber of C'Ville*, but the partial financing Cooper and van Oostrum had previously obtained fell through, and plaintiff approached Kim about funding the entire budget. Plaintiff said, "I worked on [Kim] all summer with various potential plans, but at one point late in the summer he sort of said, 'I'm going to bite the bullet. I'm going to finance the whole thing.'"

Meanwhile, on June 25, 2004, Woods had written to Cooper's lawyer, proposing the terms of a financing and production agreement among Cooper, Wilson, Woods and plaintiff for *Barber of C'Ville*. The proposal included (among many other provisions) that Wilson/Woods and plaintiff would be entitled to executive producer fees of $125,000 and $75,000, respectively, for introducing *C'Ville* project to Maverick Films. Woods would be engaged to provide production legal services and would receive legal fees of $50,000.

Van Oostrum talked to Cooper and his lawyer, advising them not to agree, because the $125,000 for Wilson/Woods for an "assumed producership" was unnecessary since there was no further development to be done and they had raised no money. By the end of August 2004, Cooper had some "trepidation dealing with Maverick," fearing "that ultimately they couldn't perform," as "that was their reputation ultimately, that they chose badly or poorly." Cooper conveyed that sentiment to Woods.

According to Kim, during the summer of 2004 he was "very interested in doing" the project, and "we were just trying to figure out the best way to go about it." But Kim ultimately changed his mind, for "a number of reasons." First, Woods called Kim and asked him for a second meeting. Woods came to the meeting with Wilson, but without plaintiff, and when Kim inquired about plaintiff's absence, Woods said, "Oh, [plaintiff] doesn't really have to be here because I'm the one that's running this project." At that meeting, Woods and Wilson asked Kim to read a couple of scripts that Wilson had

written. Later, in the fall of 2004 (see *post*), Woods told Kim that he had found another source of funding for *Barber of C'Ville* and that Kim's involvement "was no longer needed, in the sense that they did not require me [(Kim)] to put any money in." Kim was surprised, and viewed this as the "last nail in the coffin." Confusion about who was in charge, with Woods (whom Kim viewed as plaintiff's attorney) "circumventing [plaintiff]" and telling Kim that plaintiff was no longer needed, had caused Kim to become less interested in the project.

Kim also changed his mind about hiring plaintiff, for similar reasons. Kim viewed *Barber of C'Ville* as "the crown jewel that would sort of propel and justify [plaintiff's] hiring by me . . . should the project go ahead as I hoped it would." But Kim began to have doubts about plaintiff's ability to control the project. This was "very awkward" for Kim because he "had verbally [given plaintiff] an offer," but "as a businessman, because of what has happened in the course of 2004, I could not really, with full confidence, hire [plaintiff] at this point."

In the fall of 2004, Woods told van Oostrum that the Isaacman firm had previously raised funding through a company called Partners in Funding, and pitched van Oostrum to use Partners in Funding to finance the *C'Ville* movie. Partners in Funding demanded an upfront due diligence payment of $10,000, and van Oostrum was "very negative" about any proposal requiring such a payment. During the fall of 2004, van Oostrum had regular communications with Woods discussing the Partners in Funding issue. Cooper also had frequent contact with Wilson and Woods, and was "receptive to Mr. Woods' efforts to try and find funding." Cooper agreed "at some point or another" to Woods's being a producer on the project.

Woods told van Oostrum that he did not think plaintiff amounted to much and that he was "basically . . . nothing but a [golfer] with a couple of rich friends and that the Partners in Funding was a real deal because it was real investment companies, and it was real people." Woods also alluded to plaintiff as "a vehement lawsuit person." Van Oostrum said that Woods "basically wanted [plaintiff] out of the deal. He said he's not going to amount to much because the deals aren't happening, the Maverick deal is not

progressing." Woods told van Oostrum that it "sound[ed] like they [(Maverick Films)] don't want to move forward," and Woods thought he had "a real prospect here with this case [(Partners in Funding)]." Woods "would basically tell me [(van Oostrum)] that he didn't think we were going anywhere with [plaintiff] and that [plaintiff] was basically out of the deal and that he was going to take care of that."

Van Oostrum worked with a production manager named Chris Sacani on the first draft of a budget for the *C'Ville* project, generated on September 2, 2004. That budget named Woods and Wilson as producers and had entries for $75,000 in fees to Partners in Funding; $17,000 to the Isaacman firm; $100,000 to Wilson/Woods Productions; and a $75,000 finder fee to plaintiff. Sacani put in these fees, coordinating with Woods while van Oostrum was not in town. Van Oostrum was "baffled" by the $100,000 for Wilson and Woods, and said that he never agreed to make them producers for the project and never told them he wanted them to be producers. He was "somewhat upset" because "the bought-in producerships, or the honorary titles, don't belong in a [working] budget . . . ." There were also legal fees for the Isaacman firm of $75,000, which van Oostrum thought was "way too much money."

So, while plaintiff said that Kim "assumed he was going to raise the money, and he was going to do the picture," Woods told plaintiff that his firm had raised the money through Partners in Funding. A week after the budget was distributed, plaintiff and Woods had "a couple of pretty ugly conversations." Woods told plaintiff, "you're out," and plaintiff "was then out of it completely." According to Woods, Cooper told him (Woods) that because Woods had brought in Partners in Funding, plaintiff "should not be entitled to any compensation and that he should be out of the project," and Woods conveyed this to plaintiff.

But Partners in Funding did not provide the money for the project, as they had no interest in continuing without the $10,000 payment upfront.

Once Partners in Funding failed to materialize, plaintiff, who "was out, . . . then . . . was in big time," because he then introduced van Oostrum to Bruce McNall, "a very influential producer." Plaintiff arranged a meeting among McNall, van Oostrum, Cooper,

plaintiff and Wilson. (Woods was invited but could not come, and Wilson "showed up" in his stead.) They "pitched the project" to McNall, and said they were "basically looking at that point, again, the full financing of $5 million." McNall in turn set up a meeting at the offices of Sidney Kimmel Entertainment (Kimmel). In attendance were two of Kimmel's executives (who had already read the script), McNall, plaintiff, van Oostrum, Cooper, Woods and Wilson. The meeting was "very, very positive" and it was followed later by a meeting with Sidney Kimmel himself, who had met with Robert Duvall and "they had a good understanding about they're going to make this movie."

In October 2004, during the time of the meetings with Kimmel, Woods sent van Oostrum communications indicating he still wanted to be a producer on the project, to which van Oostrum objected. Van Oostrum thought Woods "was claiming a position that we [(he and Cooper)] weren't intending to give him and Lee Wilson, and it set certain financial obligations that I didn't want to be submitted to. And it submitted this to creative control that last of least we were interested in." Woods also tried to convince van Oostrum that he (Woods) deserved credit for making the introduction to Kimmel, but van Oostrum said that was "absolutely untrue." But as late as November 15, 2004, Cooper was in communication with Woods, coordinating funding efforts for the project.

On November 23, 2004, even though van Oostrum had told Woods he did not want him to be a producer on the project, Woods "sent a communication directly to Sidney Kimmel asserting that position." Wilson initially sent an e-mail to Cooper, van Oostrum and plaintiff, with a copy to Woods, with a draft of a proposed e-mail to one of the executives at Kimmel. The draft e-mail listed the people involved in *Barber of C'Ville*—including Wilson herself as "producer (on set)," Woods as "producer (part-time on set), production legal counsel," and plaintiff as "executive producer (not on set)." Van Oostrum objected, considering the proposed e-mail a "gross misrepresentation of our situation," because a "producer on set" is at the "creative center of the movie," and that was "an absolute no-no," and "the final straw"; "we definitely didn't want any association with them any longer . . . ."

Van Oostrum and Cooper conferred with Cooper's attorney, Darren Trattner, and van Oostrum said he was "pretty sure that . . . a letter went out . . . to not send this e-mail at all to Sidney Kimmel." However, Wilson sent the e-mail to Kimmel; she had modified it so that, among other things, it showed her only as "producer" and Woods as "producer, production legal counsel." Van Oostrum and Cooper conferred again with Cooper's attorney, Darren Trattner, who e-mailed Woods and Wilson. Trattner told them that their sending the e-mail to Kimmel was "disturbing"; that Cooper had sole rights to the project; and that they should have no further communications about the project with third parties without Cooper's prior consent.

On November 29, 2004, Cooper told Woods and Wilson he did not want to work with them and asked them to "exit the project." In the middle of December 2004, Woods and Wilson entered into an agreement with Cooper under which they would "exit the project" and would receive a fee equal to 25 percent "of whatever fee [plaintiff] ended up getting for his producing functions on the picture."

Van Oostrum worked with Kimmel's head of production on the budget for *Barber of C'Ville* and on "all the logistics of the movie." The two men had three or four meetings before Christmas 2004 and several meetings after Christmas. Kimmel's head of production told van Oostrum that *Barber of C'Ville* was "one of the go projects on the fast track to be done right away . . . ."

But this financing source fell through, too. In the end, Kimmel "passed on the [*C'Ville*] project"; according to Cooper, "they said that there were too many producers. It was top heavy." When the Kimmel executive gave Cooper this news, "he may have used the terms Lee Wilson and Bob Woods, but I just know that he was unhappy that there were too many producers and too much dead weight on the project."

Shortly thereafter, Cooper decided that, if he were going to make the movie, "I should probably have a clean slate, and everyone who was heretofore involved with the project should be removed"—including plaintiff, van Oostrum and Woods.

2. The Litigation

Plaintiff sued Woods and the Isaacman firm in November 2005. Under his retainer agreement with the Isaacman firm, plaintiff was compelled to arbitrate some of his claims, for malpractice arising from the litigation Woods had handled, breach of fiduciary duty and breach of contract. The arbitration was resolved in defendants' favor with a substantial award of costs and fees. Judgment was entered, and plaintiff satisfied the judgment. Meanwhile, the matter of the Isaacman firm's fees went to a nonbinding arbitration, also in defendants' favor. Plaintiff rejected the fee award and demanded trial. The Isaacman firm then cross-complained in this lawsuit for its fees.

In August 2009, plaintiff filed a third amended complaint, including claims for defamation, fraud, negligent misrepresentation, breach of fiduciary duty, and intentional and negligent interference with prospective economic advantage. The court granted defendants' motion for summary adjudication of the breach of fiduciary duty claim, finding that cause of action barred by res judicata, "as the issues concerning the attorney-client fiduciary relationship were resolved in arbitration . . . ." After plaintiff presented his evidence at trial, summarized above, defendants made an oral motion for nonsuit, and the next morning filed a written motion to which plaintiff responded. After briefing and argument, the court granted the nonsuit motion. Trial proceeded on defendants' cross-complaint and the jury awarded $11,179.32 as the reasonable value of the services provided by the Isaacman firm. Judgment was entered and plaintiff appealed. Plaintiff does not appeal the grant of nonsuit on the fraud and negligent misrepresentation claims.

DISCUSSION

Plaintiff contends he presented substantial evidence of his claims for defamation and for intentional interference with prospective economic advantage—both his prospective job as CEO of Maverick Films and the *Barber of C'Ville* business opportunity—and the trial court therefore erred when it granted defendants' motion for a nonsuit on those claims.

Courts grant motions for nonsuit "only under very limited circumstances," because granting the motion precludes submission of the case to the jury. (*Carson v. Facilities*

Development Co. (1984) 36 Cal.3d 830, 838 (*Carson*).) "A trial court must not grant a motion for nonsuit if the evidence presented by the plaintiff would support a jury verdict in the plaintiff's favor. [Citations.] [¶] 'In determining whether plaintiff's evidence is sufficient, the court may not weigh the evidence or consider the credibility of witnesses. Instead, the evidence most favorable to plaintiff must be accepted as true and conflicting evidence must be disregarded.'" (*Ibid.*) The court must indulge "'"every legitimate inference which may be drawn from the evidence in [plaintiff's] favor . . . ."'" (*Id.* at p. 839.)

On appeal, the rules are the same: the appellate court must evaluate the evidence in the light most favorable to the plaintiff. (*Carson, supra,* 36 Cal.3d at p. 839.) "'The judgment of the trial court cannot be sustained unless interpreting the evidence most favorably to plaintiff's case and most strongly against the defendant and resolving all presumptions, inferences and doubts in favor of the plaintiff a judgment for the defendant is required as a matter of law.' [Citations.] [¶] Although a judgment of nonsuit must not be reversed if plaintiff's proof raises nothing more than speculation, suspicion, or conjecture, reversal is warranted if there is 'some substance to plaintiff's evidence upon which reasonable minds could differ . . . .'" (*Ibid.*)

"Only the grounds specified by the moving party in support of its motion should be considered by the appellate court in reviewing a judgment of nonsuit." (*Carson, supra,* 36 Cal.3d at p. 839.)

1. Intentional Interference With Prospective Economic Advantage

A claim for intentional interference with prospective economic advantage requires proof of five elements: "(1) an economic relationship between the plaintiff and a third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) an intentional act by the defendant, designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the defendant's wrongful act, including an intentional act by the defendant that is designed to disrupt the relationship between the plaintiff and a third party." (*Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, 944.) The cases

generally agree that the "threshold requirement" of probability of future economic benefit requires that it be "reasonably probable that the prospective economic advantage would have been realized but for defendant's interference." (*Youst v. Longo* (1987) 43 Cal.3d 64, 71 (*Youst*).)

a. The opportunity to be a producer on *Barber of C'Ville*

Plaintiff's claim of interference with prospective economic advantage based on the *Barber of C'Ville* project is dependent at its threshold on proof of his assertion that "[plaintiff] and Scott Cooper were in an economic relationship that probably would have resulted in an economic benefit" to plaintiff. Plaintiff more often refers to his "future economic relationship in the C'Ville project" and to Woods's interference with his "prospective opportunity to be a producer on C'Ville" and his "prospective business opportunity with C'Ville." But the interference tort requires an economic relationship with a third party, not a project or opportunity, and plaintiff identifies that third party as Cooper, who had the rights to the script and ultimate control of the *C'Ville* project.

The parties' briefs are devoted principally to issues we do not consider to be dispositive, including arguments about whether or not the trial court erred in concluding Woods was not a stranger to the economic relationship between plaintiff and the *C'Ville* project (Cooper), and in refusing to consider any issues relating to Woods's role as plaintiff's lawyer. We need not consider these points, because we find one ground for nonsuit that defendants asserted in the trial court is dispositive: Plaintiff failed to produce evidence establishing the threshold element of the interference tort: an economic relationship that *probably* would have resulted in an economic benefit to plaintiff but for Woods's interference.

Case precedents make the requirements plain. The first element of the tort requires, the Supreme Court has said, "an economic relationship between the plaintiff and some third party" along with "'the *probability* of future economic benefit.'" (*Youst, supra*, 43 Cal.3d at p. 71 & fn. 6.) As one court has explained, "The law precludes recovery for overly speculative expectancies by initially requiring proof the business relationship contained '"the *probability* of future economic benefit to the plaintiff."'"

(*Westside Center Associates v. Safeway Stores 23, Inc.* (1996) 42 Cal.App.4th 507, 522 (*Westside Center*).) Thus, the interference tort "applies to interference with *existing* noncontractual relations which hold the promise of future economic advantage. In other words, it protects the expectation that the relationship eventually will yield the desired benefit, not necessarily the more speculative expectation that a potentially beneficial relationship will eventually arise." (*Id.* at p. 524.) Accordingly, "[a]s a matter of law, there is a threshold causation requirement in order to establish the tort of intentional interference with prospective economic advantage. What is required is 'proof that it is *reasonably probable* that the lost economic advantage would have been realized *but for* the defendant's interference.'" (*Kasparian v. County of Los Angeles* (1995) 38 Cal.App.4th 242, 271, 261 (*Kasparian*) [also describing the tort as "'an interference with . . . a contract which is certain to be consummated'"].)

We recognize that the question whether an economic relationship "is of sufficient depth to support the tort is a factual question" to be proved at trial. (*Buckaloo v. Johnson* (1975) 14 Cal.3d 815, 830, fn. 7.) In this case, however, there was no proof from which a jury could have concluded that plaintiff had an existing business relationship with Cooper. To the contrary, plaintiff's meetings and discussions with Cooper amounted to nothing more than the possibility that a potential economic relationship might eventually arise. There was no showing that it was "reasonably probable" plaintiff would have obtained producer credit and a fee if Woods had not interfered. No "economic relationship" with Cooper existed or might possibly exist until such time as Kim/Maverick Films, Kimmel, or someone else procured by plaintiff actually made a commitment to finance the project.

We do not mean to say the law requires that plaintiff show a binding loan commitment or a written production agreement in order to defeat a nonsuit motion as to his interference claims, because there does not have to be a contract in order for there to be a business relationship with probable future economic benefit. But there must be an actual business relationship of *some* sort, *something* more than the exploratory discussions and incipient negotiations in this case. Before a funding commitment is

made, virtually anything could happen to derail a movie project. Only after some sort of funding commitment has been made could plaintiff legitimately entertain an expectation that the relationship with Cooper eventually would yield the desired benefit—plaintiff's producer credit and fee. We are in no position to announce, in this case, what evidence might suffice to overcome a nonsuit motion in a case alleging interference with a prospective financing/production agreement in the entertainment industry. We are only saying that, here, there was clearly not enough evidence.

While plaintiff asserts that Kim would have funded the project (and later that Kimmel would have funded the project) if Woods had not inserted himself in the mix, those claims are pure speculation unsupported by any evidence. The most Kim himself said was that during the summer of 2004, he was "very interested in doing" the project, and was "just trying to figure out the best way to go about it." Plaintiff testified Kim "sort of" told plaintiff in the summer of 2004 that he would finance the whole project, but there was no evidence that Kim ever told Cooper or anyone else that Kim/Maverick Films would fund all or any of *Barber of C'Ville*.

Moreover, Cooper testified that by the end of August 2004, he had some "trepidation dealing with Maverick," fearing "that ultimately they couldn't perform" as "that was their reputation . . . ." It is impossible to infer from this evidence a "reasonable probability" that a funding commitment from Kim/Maverick Films would actually have materialized had it not been for Woods. And the same is true of Kimmel. A week after Woods's November 23 e-mail, Cooper told Woods he did not want to work with him, but van Oostrum continued to have meetings, before and after Christmas, with Kimmel's head of production before Kimmel eventually passed on the project. It would be pure speculation to assume that Kimmel would have committed to funding if only Woods had not sent the November 23 e-mail.

As the trial court aptly observed, "the entire C'Ville project was highly speculative because none of the moving parts came together at any point, apparently, in the entire history of it." In short, the *C'Ville* branch of plaintiff's interference claim founders because plaintiff showed nothing more than his "expectation that a potentially beneficial

relationship [would] eventually arise" (*Westside Center*, *supra*, 42 Cal.App.4th at p. 522), if and when plaintiff secured funding for the project *and* when the funder—whether Kim/Maverick Films, Kimmel, or someone else—actually indicated an intent to fund the project. But absent some form of commitment, there was no existing economic relationship with Cooper that held the *probability* that the movie would be made (or, concomitantly, that plaintiff would receive a fee). As the Supreme Court has observed, "to allow recovery without proof of probable loss would essentially eliminate the tort's element of causation, which links the wrongful act with the damages suffered." (*Youst*, *supra*, 43 Cal.3d at p. 74.) Here, there was a dearth of evidence of "'the *probability* of future economic benefit'" or, viewed from the causation perspective, "proof of probable loss." (*Id.* at pp. 71, 74.) Consequently, nonsuit was proper.

b. The prospective job as CEO of Maverick Films

Plaintiff's claim of interference with prospective economic advantage based on Kim's offer to plaintiff of a position as CEO of Maverick Films likewise fails at the threshold: plaintiff did not present evidence sufficient to prove that "[plaintiff] and Milton Kim of Maverick Films were in an economic relationship that probably would have resulted in an economic benefit" to plaintiff.

We repeat the rule: the law requires proof of "*existing* noncontractual relations which hold the promise of future economic advantage" (*Westside Center*, *supra*, 42 Cal.App.4th at p. 524)—or, as *Kasparian* described it, that "'a contract would, with certainty, have been consummated but for the conduct of the tortfeasor . . . .'" (*Kasparian*, *supra*, 38 Cal.App.4th at p. 261.) Absent such proof, there is no tort. Here, as a matter of law, "the threshold element of probability . . . was not met by the facts" proved. (*Youst*, *supra*, 43 Cal.3d at p. 77.)

Kim's testimony throughout consistently demonstrated there was no existing economic relationship between plaintiff and Kim when Woods allegedly interfered and caused Kim "not to pursue" plaintiff's involvement with Maverick Films. There is substantial evidence that Kim and plaintiff agreed on what plaintiff's compensation would be as CEO of Maverick Films, but they never agreed on any other basic terms of

employment, not even when plaintiff would actually start work; indeed, they never even *discussed* a start date or time. Nor did either plaintiff or Kim ever deem it necessary to discuss the fact that plaintiff would never work at Maverick Films, as they never discussed Kim's later decision not to hire plaintiff as CEO.

The two men had agreed on plaintiff's compensation by the beginning of the summer of 2004 (after discussions in late 2003 and early 2004). At that time, Maverick Films had spent almost all of Kim's original $4 million contribution, and Kim "hadn't decided whether [he] was going to [put more money in] or not." The whole idea, Kim testified, was that after Kim refinanced Maverick Films, including finishing the loan documents and being able to "clean house," then "at some point" the two men "would presumably agree" when plaintiff would start work.

In other words, when Kim was negotiating compensation with plaintiff, there was no money in the company to pay him. (Indeed, Kim testified that every operational expense of Maverick Films in 2003, 2004 and 2005 "came out of [his] pocket.") When asked where Maverick Films was going to get the money to pay plaintiff, Kim replied he "had other sources of capital aside from [his] investment in Maverick" that he could draw upon "to further capitalize Maverick," but this was "solely conditional" on Kim having further control of the company and being able to find a new CEO who could change everything about the way the company was run.

Kim never told the other two equity owners (or Morgan, the CEO), that he was thinking of hiring plaintiff. When asked why not, he said, "[Y]ou do not tell the existing CEO" he is being replaced "until that deal is done." Kim said he felt no obligation to tell his partners at Maverick Films that he was seriously thinking about hiring plaintiff because, at that same time, he was in negotiations with Maverick Films about the loan. He "had a lot of leverage as to what [he] would do with the company should [he] decide to invest more in the company," but he "hadn't decided whether [he] was going to or not." This contrasts starkly with Kim's decision in 2004 to hire a new CFO: when he decided to do so, his partners and the CEO "had no choice" in the matter; Kim disclosed to them that he was going to hire Tim Wesley as the new CFO, "because I had already

decided to hire [him]" and "[i]t was a done deal, and my decision was made." In plaintiff's case, Kim testified he did not notify his partner Guy Oseary that he wanted to hire plaintiff because he "hadn't hired him as of now. As I did with [the CFO], I would have notified him after I hired him."

Meanwhile, all of the dealings among plaintiff, Kim, Cooper and van Oostrum on the *Barber of C'Ville* project were also taking place during the summer of 2004. During that summer, Woods and Wilson met with Kim without plaintiff and told Kim plaintiff was not needed because Woods was running the show, leading Kim to doubt plaintiff's ability to control the project. By September, Partners in Funding had entered the picture and Woods had told Kim they had other sources of funding (to which Kim responded, "'Fine. Good luck'"). By mid-September, according to plaintiff, he (plaintiff) had been thrown out of the *C'Ville* project. But it was also not until September 15, 2004, that Kim signed a letter of intent agreeing to lend additional funds ($1.2 million) to Maverick Films.

The only reasonable inference from all the testimony is that plaintiff's opportunity to be CEO of Maverick Films was contingent on Maverick Films being able to continue operations, and Kim had not yet decided on whether he would invest more money in Maverick Films when he made his offer to plaintiff. No reasonable juror could have found the evidence sufficient to prove there was an existing relationship between plaintiff and Kim that "[held] the promise of future economic advantage" for plaintiff as CEO of Maverick Films (*Westside Center*, *supra*, 42 Cal.App.4th at p. 524), or that the two men had, in effect, "'a contract which [was] certain to be consummated . . . .'" (*Kasparian*, *supra*, 38 Cal.App.4th at p. 262.) Far from it, and little wonder that the trial court concluded that, "no matter how you look at it," Kim's offer of employment was "contingent upon future things that never happened . . . ." Again, the "threshold causation requirement,"—that is, "'proof that it is *reasonably probable*'" that plaintiff would have become CEO of Maverick Films "'*but for* the defendant's interference'" (*id.* at p. 271)—was not met.

2. Defamation

Finally, plaintiff contends the trial court erred in finding the alleged defamatory statements did not amount to actionable defamation. We disagree.

"'The *sine qua non* of recovery for defamation . . . is the existence of a falsehood.'" (*Baker v. L.A. Herald Examiner* (1986) 42 Cal.3d 254, 259.) Defamation requires a false statement of fact. (*Jensen v. Hewlett-Packard Co.* (1993) 14 Cal.App.4th 958, 970 (*Jensen*).) A statement of opinion cannot be false. (*Ibid.*) The question whether allegedly defamatory statements were statements of fact or statements of opinion is a question of law for the court to decide. (*Baker*, at p. 260.) California courts apply "a 'totality of the circumstances' test to determine whether an alleged defamatory statement is one of fact or of opinion." (*Ibid.*) "'The dispositive question . . . is "whether a reasonable fact finder could conclude that the published statements imply a provably false factual assertion."'" (*Jensen*, at p. 970.) "The court examines the communication in light of the *context* in which it was published. The communication's meaning must be considered in reference to relevant factors, such as the occasion of the utterance, the persons addressed, the purpose to be served, and 'all of the circumstances attending the publication.'" (*Ibid.*)

Plaintiff contends several of Woods's statements were defamatory: his statement to Kim that "[plaintiff] was no longer needed" on the *C'Ville* project and "doesn't really have to be here" (at a second meeting with Kim) because Woods was running the project; Woods's statements to van Oostrum that "he didn't think that [plaintiff] amounted to much" and was "nothing but a [golfer] with a couple of rich friends," and that plaintiff was a "vehement lawsuit person"; and his statements to Cooper and van Oostrum that plaintiff was "a golfer, just a golfer and a gambler"; and Woods's statement that Cooper wanted plaintiff out because "he did not bring the money."

Woods's statements, considered individually or collectively, and viewed in the context in which they were made (already described at considerable length in connection with plaintiff's other claims) are not defamatory. Some of them were true; plaintiff was a golfer and he had wealthy friends, by his own admission. The other statements—that he

was "just" a golfer and a gambler, a "vehement lawsuit person," and that he did not amount to much and was not needed on the project—are plainly matters of subjective opinion. In no case could a reasonable fact finder conclude that any of the statements "'"impl[ies] a provably false factual assertion."'" (*Jensen, supra*, 14 Cal.App.4th at p. 970; cf. *Moyer v. Amador Valley J. Union High School Dist.* (1990) 225 Cal.App.3d 720, 725-726 [statements that plaintiff was "the worst teacher at [the school]" was a nonactionable expression of subjective judgment containing no verifiable facts and clearly protected under the First Amendment].) The trial court did not err in granting a nonsuit on plaintiff's defamation claim.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.