STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

NAVEED MAHFOOZ, M.D, et al,
Plaintiffs,

v. **Case No. 18-170229-CB**
Hon. James M. Alexander

PRIME ACCOUNTABLE CARE, LLC, et al,
Defendants.

_____/

OPINION AND ORDER RE: SUMMARY DISPOSITIONS

This matter is before the Court on Defendant Mazhar Jaffry's motion for partial summary disposition.[1]

As it relates to the current motion, Plaintiffs' Second Amended Complaint alleges that in or about July 2016, Mahfooz, through Prime PO, entered into negotiations with various regional health care insurers including Blue Cross Blue Shield of Michigan (BCBSM) and Meridian Health Plan of Michigan (Meridian) for the purpose of establishing a physician organization under a private insurer's physician group incentive program (Programs). In or about August 2016, after expending considerable resources, Mahfooz brought in Defendant Jaffry and Blackburn as officers of Prime PO to assist in the Programs application process.

[1] On January 15, 2020, the parties entered a Stipulated Order regarding the pending motion for summary disposition. In the Order, the parties agreed to dismiss certain claims in Plaintiffs' Second Amended Complaint, dismiss Defendant Diane Blackburn, and withdraw Defendants' request for sanctions. The parties also agreed that the only remaining issue for the Court's adjudication as to Defendants' motion for partial summary disposition is the parties' dispute as to Count VII of Plaintiffs' Second Amended Complaint.

Prime PO was ultimately denied admission to the Programs. Plaintiff alleges that Prime PO was denied as a result of Jaffry "stonewalling" the admission process, by, among other things, failing to timely sign and return the BCBSM Program contract, to sign and return the required memorandum of understanding, and to sign and return the Site Access Application and Use Protection Agreement. Despite allegedly working on behalf of Prime PO, Jaffrey sought and secured admission into the Programs for his own benefit in 2018.

On these general claims, Plaintiffs filed their Second Amended Complaint on thirteen counts, claiming among other things, (Count VII) tortious interference with business relationships and expectancies.[2]

As stated, Defendant Jaffry now moves for summary disposition under MCR 2.116(C)(8) and (C)(10). A (C)(8) motion tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).[3] And a (C)(10) motion tests the factual support for a plaintiff's claims. *Id.* at 120.[4]

[2] Again, based on the stipulation of parties, Plaintiffs' tortious interference claim is the only claim relevant to the current motion.

[3] Such a motion may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Wade v Dept of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992). When considering such a motion, all well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade*, 439 Mich at 162-163. Additionally, when considering such motions, the court considers only the pleadings. MCR 2.116(G)(5) (emphasis added). Further, "[w]hen an action is based on a written contract, it is generally necessary to attach a copy of the contract to the complaint. Accordingly, the written contract becomes part of the pleadings themselves, even for purposes of review under MCR 2.116(C)(8)." *Laurel Woods Apts v Roumayah*, 274 Mich App 631, 635; 734 NW2d 217 (2007); citing MCR 2.113(F) and *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2d 633 (2003). "When an action is based on a written contract, it is generally necessary to attach a copy of the contract to the complaint. Accordingly, the written contract becomes part of the pleadings themselves, even for purposes of review under MCR 2.116(C)(8)." *Laurel Woods Apts v Roumayah*, 274 Mich App 631, 635; 734 NW2d 217 (2007); citing MCR 2.113(F) and *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2d 633 (2003).

[4] In such a motion, the moving party must specifically identify the issues that he believes present no genuine issue of material fact. *Maiden, 461 Mich* at 120. The opposing party may not rest on mere allegations or denials in his pleadings, but must, by affidavits or as otherwise provided in the rule, set forth specific facts showing a genuine issue for trial. *Id.* at 120-121. Where the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* at 120.

Defendant argues that he is entitled to summary disposition of Plaintiffs' tortious interference claim because Plaintiffs' allegations are based on inaction, which is insufficient to state a claim for tortious interference as a matter of law. Defendant argues that Plaintiffs fail to identify any actions that amount to interference with Plaintiffs' expectancy in admission to a Program. Further, Defendant argues that failure to sign documents (as alleged in Plaintiffs' Second Amended Complaint) are insufficient to support a tortious interference claim. As such, Defendant argues that Plaintiffs' tortious interference claim should be dismissed.

In response, Plaintiffs argue that Defendants interference went beyond mere business competition. Plaintiffs allege that Defendant created a separate physician organization to capitalize on the efforts Prime PO had made to secure the Program. Further, Plaitniffs argue that Defendant interfered with the supply of necessary paperwork, telling Blackburn, BCBSM's primary contact, that he would "take care of" and "handle" the required paperwork. (Plaintiffs' Exhibit 5, at 64). However, Defendant did not supply BCBSM with the required information. Plaintiffs argue that as a direct result of Defendant's conduct, BCBSM denied Prime PO's application.

Plaintiff alleges that one day before BCBSM denied Prime PO's application, Defendant formed his own physician organization. (Plaintiffs' Exhibit 8). After establishing his physician organization, Defendant directed Blackburn to reach out to BCBSM to pursue a Program. Ultimately, Defendant's physician organization was admitted to the Program. As a result, Defendant earned approximately $250,000 in revenue. Plaintiffs argue that based on Defendant's conduct, they have suffered damages.

> The elements of tortious interference with a business relationship or expectancy are (1) the existence of a valid business relationship or expectancy that is not necessarily predicated on an enforceable contract, (2) knowledge of the

> relationship or expectancy on the part of the defendant interferer, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resulting damage to the party whose relationship or expectancy was disrupted. *Health Call of Detroit v Atrium Home & Health Care Services, Inc*, 268 Mich App 83, 89-90; 706 NW2d 843 (2005) (internal citations omitted).

Further, "one who alleges tortuous interference with a contractual or business relationship must allege the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another." *Feldman v Green,* 138 Mich App 360, 378; 360 NW2d 881 (1984). "A wrongful act per se is an act that is inherently wrongful or an act that can never be justified under any circumstances." *Prysak v R L Polk Co,* 193 Mich App 1, 12-13; 483 NW2d 629 (1992).[5] And, "a plaintiff must demonstrate, with specificity, affirmative acts by the interferer which corroborate the unlawful purpose of the interference." *Formall, Inc v Community Nat Bank of Pontiac*, 166 Mich App 772, 778-79; 421 NW2d 289 (1988).

Plaintiffs argue that Defendant did take affirmative steps to tortious interfere with Plaintiffs business expectancy with BCBSM. Specifically, Plaintiffs argue that Defendant affirmatively stated that he would handle the documentation BCBSM required, but failed to tender the same (Plaintiffs' Exhibit 5, at 64); formed a competing entity a day before Plaintiffs' application was denied (Plaintiffs' Exhibit 8); directed Prime ACO to cease all efforts to support Prime PO (Plaintiffs' Exhibit 9); and secured the Program on behalf of his newly formed company (Plaintiffs' Exhibit 11).

[5] Michigan Courts have long held that "defendants motivated by legitimate personal and business reasons are shielded from liability against this cause of action [tortious interference with a contractual or business relationship]." *Formall, Inc v Community Nat'l Bank*, 166 Mich App 772, 780; 421 NW2d 289 (1988). See also *Mino v Clio Sch Dist*, 255 Mich App 60, 78; 661 NW2d 586 (2003), quoting *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan*, 217 Mich App 687, 698-699; 552 NW2d 919 (1996) ("Where the defendant's actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference.").

Based on the foregoing, Plaintiffs argue that they have, at least, established that a question of fact remains as it relates to Plaintiffs' tortious interference claim. The Court agrees.

Although Plaintiffs may have a challenge proving their case for tortious interference with a business relationship or expectancy at trial, Plaintiff has, for purposes of this motion, presented evidence that creates a question of fact regarding the same. Specifically, Plaintiffs have provided evidence that Defendant affirmatively stated that he would handle the situation, but failed to do the same. Further, the fact that Defendant formed a competing company, which secured the Program, could lead a trier of fact to determine that Defendant engaged in conduct to tortuously interfere with Plaitniffs relationship with BCBSM.

Based on the foregoing, Plaintiffs have created a question of fact as it relates to its tortius interference claim. As such, Defendant's motion for summary disposition of the same is DENIED.

IT IS SO ORDERED.

January 22, 2020 /s/ James M. Alexander
Date Hon. James M. Alexander, Circuit Court Judge