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

UNITED PHYSICIANS, INC.,
Plaintiff,

v.

Case No. 19-175599-CB
Hon. James M. Alexander

BEAUMONT HEALTH, ET AL,
Defendants.

_____/

OPINION AND ORDER RE: SUMMARY DISPOSITIONS

This matter is before the Court on Defendants' motions for summary disposition.[1]

The Court previously described this case as follows:

> According to Plaintiff's Complaint, Plaintiff, United Physicians Inc (UPI), is a physician organization with over 2500 members. On or about February 1, 2016, Plaintiff and Defendants Beaumont Health and Beaumont ACO executed a contract entitled "Operating Agreement of Beaumont Care Partners, LLC" which formed Defendant Beaumont Care Partners (BCP), a limited liability company to establish a clinically integrated network (CIN).
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> The Operating Agreement stated BCP's "Purposes and Objectives," which included (among other things) a shared infrastructure, data collection and analysis, collaborative and cooperative efforts to improve efficiency, reduce costs, and provide for better patient outcomes. Further, the Operating Agreement was to permit the parties to collectively contract with payers to provide health care services.
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> In addition to Plaintiff executing the Operating Agreement, Plaintiff's member physicians were required to execute individual Participation Agreements with BCP in order to participate in the CIN venture. The Participation Agreements provided for four different levels of physician participation.

[1] Although Defendants each file a separate motion for summary disposition, the motions advance the same arguments.

> Pursuant to the Operating Agreement, the members were to each make an initial capital contribution of $1,200,000.00, payable in $400,000 annual installments. UPI, Beaumont Health, and Beaumont ACO each made their first $400,000 payment of the initial capital contribution in 2016. On January 25, 2017, BCP issued an invoice to its members demanding the second installment of the initial capital contribution of $400,000. UPI did not make the second payment.
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> On February 23, 2018, BCP held a board meeting. At the meeting, the members discussed why UPI had not made its second annual payment of the initial capital contribution. UPI expressed concerns that the contributions were being placed in a noninterest-bearing account without a plan in place to spend or invest the same. As a result, the members voted to delay the third initial capital contribution to February 2019.
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> On February 28, 2019, BCP invoiced UPI for the second and third installments of the initial capital contribution. Again, UPI did not make either payment. As a result, on April 18, 2019, BCP held a members meeting. The members voted to terminate UPI's membership in BCP for its failure to pay the second and third installments of the initial capital contribution. On April 19, 2019, UPI tendered the second installment payment. BCP returned the check. And on May 1, 2019, BCP sent correspondence to all BCP member physicians informing the members that UPI had failed to make its capital contributions, and that UPI was no longer a member of BCP.
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> On these general claims, Plaintiff filed its Complaint on claims titled: (Count I) dissolution of BCP; (Count II) breach of contract; (Count III) unjust enrichment; (Count IV) breach of fiduciary duty; and (Count V) tortious interference.

On November 14, 2019, the Court issued an Opinion and Order re: Summary Disposition that dismissed Plaintiff's claims for dissolution of BCP, unjust enrichment, breach of fiduciary duty, and tortious interference. The Court did, however, provide Plaintiff with an opportunity to amend its tortious interference claim. On November 27, 2019, Plaintiff filed its First Amended Complaint.

In its First Amended Complaint, Plaintiff alleges that it has a valid business expectancy with its member physicians. Plaintiff claims that Defendants intentionally interfered with Plaintiff's valid business expectancy by (1) disparaging Plaintiff to its members, (2) encouraging

and enticing Plaintiff's member physicians to execute Participation Agreements with BCP to later claim that Plaintiff lacked financial transparency, (3) unilaterally terminating Plaintiff's membership in BCP, and (4) competing directly against Plaintiff.

As stated, Defendants now move for summary disposition of Plaintiff's tortious interference with a business expectancy claim under MCR 2.116(C)(8), which tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). 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).[2]

Defendants argue that Plaintiff's tortious interference with a business expectancy fails because Plaintiff does not allege that Plaintiff's member physicians breached or terminated their relationship with Plaintiff, or that Defendants' actions caused or induced such a breach or termination.

In response, Plaintiff argues that case law supports a cause of action for tortious interference where a defendant has disrupted a business relationship or expectancy. Based on the same, Plaintiff argues that it has stated a claim alleging that Defendants disrupted Plaintiff's relationship with its member physicians. Plaintiff argues that because it was ousted from BCP, it is not longer able to represent its members' interests in BCP.

[2] "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).

> 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).[3]

As stated, Plaintiff argues that case law supports a claim for tortious interference of a business expectancy when Defendants have caused a "disruption" in the relationship or expectancy. To support its position, Plaintiff cites to *Mino v Clio School Dist*, 255 Mich App 60; 661 NW2d 586 (2003); *BPS Clinical Labs v Blue Cross & Blue Shield of Michigan*, 217 Mich App 687; 552 NW2d 919 (1996); and *Winiemko v Valenti*, 203 Mich App 411; 513 NW2d 181 (1994). These cases held:

> The elements of tortious interference with a business relationship are the existence of a valid business relationship or expectancy, knowledge of the relationship or expectancy on the part of the defendant, an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and resultant damage to the plaintiff. *Mino, supra* at 78, quoting *BPS Clinical, supra* at 924-25.
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> And,
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> The basic elements which establish a prima facie tortious interference with a business relationship are the existence of a valid business relation (not necessarily evidenced by an enforceable contract) or expectancy; knowledge of the

[3] Further, "[O]ne 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). 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.").

> relationship or expectancy on the part of the interferer; an intentional interference inducing or causing a breach or termination of the relationship or expectancy; and resultant damage to the party whose relationship or expectancy has been disrupted. *Winiemko*, *supra* at 416.

Although Plaintiff argues that the above-cited cases support its position, the cases do not change the basic elements for a tortious interference with a business expectancy claim. In fact, two of the cited cases do not even use the word "disrupt." Plaintiff's argument seems to be derived from *Winiemko*, which states that damages must result "to the party whose relationship or expectancy has been disrupted." *Id.* at 416. This damage requirement does not, however, affect the requisite element that "an intentional interference inducing or causing a breach of termination of the relationship or expectancy" must occur. *Id.* Plaintiff has not provided any case law to support its position that a tortious interference of a business expectancy claim can be brought absent a breach or termination of the relationship or expectancy.

Here, the Court finds that Plaintiff has failed to state a claim for tortious interference of a business expectancy. As with its original Complaint, Plaintiff's First Amended Complaint fails to allege that Defendants' actions caused a breach or termination of the relationship between Plaintiff and its members. That omission is fatal to Plaintiff's claim. As a result, Plaintiff has failed to state a claim for tortious interference with a business expectancy.

Based on the foregoing, Defendants' motions for summary disposition of Plaintiff's tortious interference claim is GRANTED, and the same is DISMISSED.

Whenever the Court is inclined to grant a (C)(8) motion, the Court Rules require that a plaintiff be provided an opportunity to amend to properly allege sufficient facts to support its claim, unless the evidence before the Court shows that an amendment would not be justified MCR 2.116(I)(5). There is no evidence before the Court that would justify an amendment, and

any such amendment would be futile. Plaintiff was previously afforded an opportunity to amend, its tortious inference claim. Even as amended, Plaintiff's claim fails as a matter of law. Although leave to amend should be freely given when justice so requires, the Court finds that, even if amended for a second time, no factual development could possibly justify recovery on Plaintiff's tortious interference with a business expectancy claim.

IT IS SO ORDERED.

February 19, 2020
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge