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]

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).

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.

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

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.

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.

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.

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.

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.

As stated, Defendants now move for summary disposition 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]

I. Dissolution of BCP (Count I)

First, Defendants argue that Plaintiff's claim for dissolution fails. Defendants argue that since Plaintiff is not a member of BCP, it lacks standing to assert a dissolution claim. Alternatively, Defendants argue that if Plaintiff is considered a member, Plaintiff's claim still fails because (1) BCP can continue operating business under the Operating Agreement, (2) there was nothing willful or oppressive about enforcing the Operating Agreement, and (3) Beaumont Health and Beaumont ACO are minority members, so they are not in control of BCP.

In response, Plaintiff states that MCL 450.4515 provides a basis for dissolution. Plaintiff argues that it was at all relevant times a member of BCP, so Plaintiff does have standing to

[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).

maintain a dissolution claim. Further, Plaintiff argues that it has plead that BCP is not longer able to carry on business in conformity with the Operating Agreement.

MCL 450.4802 provides:

> Upon application by or for a member, the circuit court for the county in which the registered office of a limited liability company is located may decree dissolution of the company whenever the company is unable to carry on business in conformity with the articles of organization or operating agreements.

And MCL 450.4515 provides (in relevant part):

> (1) A member of a limited liability company may bring an action in the circuit court of the county in which the limited liability company's principal place of business or registered office is located to establish that acts of the managers or members in control of the limited liability company are illegal or fraudulent or constitute willfully unfair and oppressive conduct toward the limited liability company or the member. If the member establishes grounds for relief, the circuit court may issue an order or grant relief as it considers appropriate, including, but not limited to, an order providing for any of the following:
>
> (a) The dissolution and liquidation of the assets and business of the limited liability company.

Plaintiff, in its Complaint, alleges that at all relevant times it was and remains a member of BCP. (Complaint, at ¶64). Further, Plaintiff alleges that Beaumont Health and Beaumont ACO exerted majority control to illegally and wrongfully divest Plaintiff of its membership interest in BCP. (Complaint, at ¶65). Plaintiff asserts that Defendants' oppressive conduct includes (among other things) voting to terminate Plaintiff, prohibiting Plaintiff from exercising its rights, wrongfully refusing capital payments, and locking Plaintiff out of BCP. (Complaint, at ¶66). And finally, Plaintiff alleges that "BCP is unable to carry on business in conformity with the Agreement because the Agreement contains no provision to resolve the dispute over payment of the initial capital contributions." (Complaint, at ¶67).

As more fully discussed below, the Court would be required to make factual determinations regarding Plaintiff's membership status. However, assuming arguendo that Plaintiff is a member, Plaintiff's only allegation that BCP is unable to carry on business in conformity with the Operating Agreement is based on the lack of provision to resolve the dispute at issue, essentially a restatement of its breach of contract claim. This, however, does not render BCP "unable to carry on business in conformity with the articles of organization or operating agreements" as required by MCL 450.4802.

The purposes and objectives of BCP are (among others) to develop and implement a CIN "in order to better serve the heath care needs of the communities served by the Members and Participating Physicians., improve the quality and efficiency of health care service, and generally reduce overuse, underuse, and misuse of clinical resources." (Plaintiffs' Response to Defendant Beaumont Health, Exhibit A §3.1). Plaintiff has not alleged that BCP is unable to carry on business in conformity with these purposes.

Further, Plaintiff has failed to allege how minority members are "in control" of BCP such that their conduct is "illegal or fraudulent or constitute willfully unfair and oppressive conduct toward the limited liability company or the member" as provided in MCL 450.4515. Although in response, Plaintiff cites to *Barnett v ITC*, 80 Mich App 396; 263 NE2d 908 (1978) and MCL 450.1489 for the proposition that a shareholder can sue a director or those in control of a corporation for illegal, willfully unfair, or oppressive conduct, Plaintiff fails to establish how the cited case law and statute governing corporations apply to a limited liability company such as BCP.

Based on the foregoing, Plaintiff has failed stated a claim for dissolution. The Court further finds that no factual development could justify recovery for the same. As such,

Defendants' motions pursuant to (C)(8) are GRANTED, and Plaintiff's dissolution of BCP claim is DISMISSED.

II. Breach of Contract (Count II)

Defendants next argue that Plaintiff's claim for breach of contract fails because Plaintiff failed to satisfy the condition precedent. Further, Defendants argue that the Operating Agreement did not need to grant the members the right to terminate another for failure to make its initial capital contribution. Defendants argue that Plaintiff has no right to enforce the Operating Agreement, and as such, Plaintiff's claim for breach of the same should be dismissed.

In response, Plaintiff argues that there is no provision in the Operating Agreement that allows for termination of a member for failure to make an initial capital contribution. Further, Plaintiff argues despite Defendants' position that it was never a member, Plaintiff was entitled to vote on matters affecting BCP and allowed to continue in the governance of BCP. As such, Plaintiff argues it was a member of BCP, and therefore, Defendants breached the Operating Agreement by terminating its membership interest.

In their reply, Defendants argue that although Plaintiff was a member when it made the first annual installment of the capital contribution, it lost the same when Plaintiff failed to make the remaining instalment payments. Therefore, Defendants argue that Plaintiff cannot now maintain an action for breach of contract.

In order to prove breach of contract, a plaintiff must establish: (1) the existence of a contract; (2) a breach of that contract; and (3) damages resulting from that breach. *Stoken v JET Electronics & Technology, Inc*, 174 Mich App 457, 463; 436 NW2d 389 (1988).

A condition precedent is a fact or event that the parties intend to exist or take place before there is a right to performance. *MacDonald v Perry*, 342 Mich 578, 586; 70 NW2d 721 (1955). The failure to satisfy a condition precedent precludes any cause of action for the failure of performance. *Berkel & Co Contractors v Christma Co*, 210 Mich App 416, 420; 533 NW2d 838 (1995).

As it related to the initial capital contributions of members, the Operating Agreement provides, "[t]he initial Capital Contribution made by each Member to acquire its Membership interest in the Company is listed on Appendix A to this Agreement and shall be reflected on the books and records of the Company." (Plaintiffs' Response to Defendant Beaumont Health, Exhibit A, §4.1). Appendix A provides that each member is to make an initial capital contribution in the amount of $1.2 million, payable in $400,000 annual installments.

The Operating Agreement further provides that "[t]he Contributing Members may remove a Non-Contributing Member as described in Sections 4.2 and 4.5." (*Id.* at §4.9). Section 4.2 addresses additional capital contributions and Section 4.5 defines the rights of members. Neither section, however, provides a remedy or procedure for removing a member who has failed to make subsequent initial capital contributions as required by Section 4.1. Therefore, the Court would be required to look beyond the scope of the pleadings and the Operating Agreement to determine when Plaintiff was a member and if Plaintiff lost that status. The Court cannot make such determinations when considering a motion pursuant to (C)(8).

In response to Defendants' argument that Plaintiff failed to satisfy the condition precedent to become a member. Plaintiff argues that once demanded, Plaintiff tendered the second initial capital contribution and the same was rejected by Defendants. Plaintiff further argues that additional conditions outside of the operating agreement were placed on Plaintiff in

order to remain a member of BCP. Again, the factual development and determination would be required for the Court to determine if Plaintiff failed to satisfy a condition precedent.

As plead, however, and accepting all well-pled factual allegations as true, the Court finds that Plaintiff has stated a claim for breach of contract. Plaintiff alleges that there was a contract, the Operating Agreement, Defendants breached the same by wrongfully terminating Plaintiff's membership interest in BCP, and as a result, Plaintiff suffered damages.

Based on the foregoing, Defendants' motions to dismiss Plaintiff's breach of contract claim are DENIED.

III. Unjust Enrichment (Count III)

Next, Defendants argue that Plaintiffs unjust enrichment claims fail because there is an express contract between the parties governing the subject matter, the Operating Agreement. Defendants argue that since the parties admit that there is an express contract governs any alleged right to relief, Plaintiff cannot seek quasi-contract relief.

In response, Plaintiff states that although it primarily relies on the Operating Agreement, the allegations in the Complaint suggest that material terms are missing from the same. As such, Plaintiff appears to argue, that the parties did not have a valid contract.

To establish a claim for unjust enrichment, a plaintiff must show: (1) receipt of a benefit by the defendant from the plaintiff, and (2) an inequity resulting to the plaintiff because of the defendant's retention of the benefit. *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003). Where an express contract exists between the parties, a contract cannot be implied in law which covers the same subject matter. *Cascade Elec Co v. Rice*, 70 Mich App 420, 426; 245 NW2d 774 (1976). However, if Plaintiff claims that there is a verbal agreement

and that is disputed by Defendants, Plaintiff is "not required to elect to proceed under one theory or the other, but could seek recovery on the basis either of an express verbal contract, or an implied contract if the jury found the express verbal contract did not exist." *Id.* at 427.

According to Plaintiffs' Complaint, "UPI, by its action in contributing to and building BCP," has "substantially and unjustly enriched Beaumont Health and Beaumont ACO." (Complaint, at ¶77). In response to Defendants' motion, Plaintiffs elaborate and explain that Defendants were unjustly enriched by making the first initial contribution installment of $400,000 and argues the payment should be returned if Plaintiff is not a member of BCP. (Plaintiffs' Response to Defendant Beaumont Health, at p.18).

Further, in its Complaint, Plaintiff acknowledges that the parties "entered into an operating agreement to form a limited liability company." (Complaint, at ¶14). Plaintiff admits that the Operating Agreement is "a contract." (Complaint, at ¶15). Indeed, the crux of Plaintiff's Complaint is that Defendants breached the Operating Agreement but terminating its membership in BCP. Although Defendants dispute that they breached the Operating Agreement, they do not deny the existence of the same.

Based on Plaintiff's admission that an express contract exists between the parties governing the same subject matter (and relies on the same for the remainder of its Complaint), the Court cannot imply a contract in law. Additionally, no factual development could justify recovery for the same. As such, Defendants' motions for summary pursuant to (C)(8) of Plaintiff's unjust enrichment claim are GRANTED, and the same is DISMISSED.

IV. Breach of Fiduciary Duty (Count IV)

Next, Defendants argue that Plaintiff's breach of fiduciary duty claim fails because Plaintiff is not a member of BCP, Plaintiff failed to specify what conduct violated the referenced duties, and to the extent that Plaintiff is alleging that Defendants breached duties owed to BCP, Plaintiff failed to comply with the demand requirements as outlined in MCR 450.4510.

In response, Plaintiff argues that MCL 450.4510 does not apply to the instant case. Instead, Plaintiff argues that a majority or controlling shareholder is a fiduciary and holds a duty to its minority shareholders. Plaintiff argues that since Defendants Beaumont Health and Beaumont ACO formed a majority voting bloc, they owed a duty to Plaintiff and breached the same by terminating Plaintiff's member status contrary to the Operating Agreement. Plaintiff further argues that Defendants breached their fiduciary duties by failing to provide Plaintiff with copies of motions and meetings and by rejecting Plaintiff's second initial capital contribution payment.

"To establish a breach of fiduciary duty, the plaintiff must demonstrate a fiduciary relationship between himself and defendants." *Holland v Jobete Music Co.*, 1999 WL 33446487. "A fiduciary relationship arises from the reposing of faith, confidence, and trust and the reliance of one upon the judgment and advice of another. Relief is granted when such position of influence has been acquired and abused, or when confidence has been reposed and betrayed." *Vicencio v Ramirez*, 211 Mich App 501, 508; 536 NW2d 280 (1995).

MCL 450.404 provides (in relevant part) that:

> A manager shall discharge the duties of manager in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the manager reasonably believes to be in the best interests of the limited liability company.

As stated above, however, Plaintiff's fiduciary duty claim alleges that Defendants owed duties directly to Plaintiff, not to BCP. As such, Plaintiff argues that its claim falls under MCL 450.4515.

As the Court of Appeals explained in *Frank v Linker*, 310 Mich App 169, 182; 871 NW2d 363 (2015), aff'd in part, rev'd in part 500 Mich 133 (2017):

> Specifically, that subsection permits members of limited liability companies to "bring an action ... to establish that acts of the managers or members in control of the limited liability company are illegal, fraudulent, or constitute willfully unfair and oppressive conduct toward the limited liability company or the member." MCL 450.4515(1). "[W]illfully unfair and oppressive conduct" means, at least in part, "a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the member as a member." MCL 450.4515(2). This does not include conduct permitted by the articles of the organization, the operating agreement, or another agreement to which the member is a party, however. *Id.*

Again, as it relates to its fiduciary duty claim, Plaintiff has cited and supported his argument with law pertaining to corporations and has failed to provide any explanation or law as to how the same would apply to a limited liability company. Similarly, Plaintiff has failed to allege how minority members are "in control" of BCP such that their conduct is "illegal or fraudulent or constitute willfully unfair and oppressive conduct toward the limited liability company or the member" as provided in MCL 450.4515.

Further, Plaintiff has not alleged that Defendant's have engaged in illegal, fraudulent or willfully unfair or oppressive conduct. As previously stated, willfully unfair and oppressive conduct mean, in part, a "continuing course of conduct or a significant action or seriously of actions" that has interfered with Plaintiff's interest as a member. Here, the gravamen of Plaintiff's Complaint is that Defendants voted to terminate its membership interest in BCP. Plaintiff, however, has failed to allege how that act by minority members was willfully unfair or oppressive as required by MCL 450.4515.

Based on the foregoing, Plaintiff has failed to state a claim for breach of fiduciary duty. Additionally, no factual development could justify recovery for the same. As such, Defendants' motions pursuant to (C)(8) are GRANTED, and Plaintiff's breach of fiduciary duty claim is DISMISSED.

V. Tortious Interference (Count V)

Finally, Defendants seek dismissal of Plaintiff's tortious interference claim. Defendants first argue that the claim for tortious interference should be dismissed because it is vague and lacking in a concise legal theory. They argue that Plaintiffs allegations could support two distinct causes of action. Next, Defendants argue that if Plaintiff is claiming that Defendants tortuously interfered with a contract, Plaintiff's claim fails because Plaintiff did not plead any of the requisite elements. And, Plaintiffs argue that a claim for tortious inference with a business expectancy because Plaintiff has not alleged that Defendants actions have caused a breach or termination between Plaintiff and its member physicians.

In response, Plaintiff seems to indicate that seeks relief under a theory of tortious interference with a contract. Plaintiff argues that a claim for interference with a contract can be maintained if a valid contract exists. The contract at issue is the Participation Agreement that Plaintiff's member physicians were required to sign upon joining BCP. Plaintiff argues that even though it is being barred from participating in BCP, BCP has the ability to contractually bind its physicians through the Participation Agreement. Based on the same, Plaintiff argues it has and will continue to suffer damages.

> In Michigan, tortious interference with a contract or contractual relations is a cause of action distinct from tortious interference with a business relationship or expectancy.

> The elements of tortious interference with a contract are (1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant.
>
> 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.
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> *Health Call of Detroit v Atrium Home & Health Care Services, Inc*, 268 Mich App 83, 89-90; 706 NW2d 843 (2005) (internal citations omitted) (paragraph breaks added for clarity).[3]

As stated, based on Plaintiffs' response to the present motion, Plaintiff seems to argue that it is seeking recovery for tortious interference with a contractual relationship. Plaintiff's Complaint, however, implies Plaintiff is seeking recovery for tortious interference with a business expectancy. Between the Complaint and Plaintiff's response, it seems that Plaintiff is conflating the two theories of recovery.

Specifically, Plaintiff's alleges in its Complaint that it "had an advantageous relationship with its member physicians." (Complaint, at ¶85). And that Defendants "intentionally and improperly interfered with that relationship and the expectancy of that relationship." (Complaint,

[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.").

at ¶88). Plaintiff's response, however, argues that the Defendants are interfering with the Participation Agreement executed by its member physicians.

Accepting all well-pled allegations as true, the Court finds that Plaintiff has failed to state a claim for tortious interference with a contract. In its Complaint, Plaintiff did not reference a contract. Instead, Plaintiff makes several references to an "advantageous relationship," which implies to the Court that Plaintiff is, in fact, seeking recovery for tortious interference of a business relationship or expectancy.

Further, the Court finds that Third-Party Plaintiffs have not stated a claim for tortious interference of a business relationship or expectancy. Here, Plaintiff has failed to allege that Defendant's actions caused breach or termination of the relationship between Plaintiff and its members. As a result, Plaintiff has failed to state a claim for tortious interference.

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

VI. Conclusion

To summarize, Defendants' motions to dismiss Plaintiff's claim for breach of contract are DENIED. Defendants' motions to dismiss Plaintiff' claims for dissolution of BCP, unjust enrichment, tortious interference, and breach of fiduciary duty are GRANTED, and the same are DISMISSED.

But, while the factual allegations contained in Plaintiff's Complaint may fall short for purposes of the present motions, 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. MCR 2.116(I)(5). Plaintiff has requested an opportunity to

amend, and the Court will provide Plaintiff such an opportunity. As such, Plaintiff has 14 days to amend its Complaint to properly allege its tortious interference claim only.

IT IS SO ORDERED.

November 14, 2019
Date

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