

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

FRASER GRINDING, CO.,

Plaintiff,

vs.

Case No. 2014-3664-CZ

MARTIN HARDIN,

Defendant.

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OPINION AND ORDER

Defendant has moved for summary disposition pursuant to MCR 2.116(C)(8). Plaintiff has filed a response and requests that the motion be denied. In addition, Defendant has filed a reply brief in support of his motion.

*Facts and Procedural History*

Plaintiff is a company in Fraser, Michigan specializing in grinding and manufacturing services. Plaintiff is owned and operated by its president, and sole shareholder, Rudolph Lipski.

Defendant was a machine operator for Fraser for several years before allegedly being promoted to shop foreman in 2007. At the time of Defendant's promotion, Mr. Lipski would spend about 6 months each year in Hawaii.

In its complaint, Plaintiff alleges that Defendant was in charge of the day-to-day operations of Plaintiff's business during the periods of time that Mr. Lipski was not present. Subsequent to his promotion, Defendant allegedly engaged in a course of conduct detrimental to Plaintiff, which allegedly resulted in loss of customers and employees.

On September 19, 2014, Plaintiff filed its complaint in this matter asserting claims for: Breach of Fiduciary Duty (Count I); Tortious Interference with Business Relationships (Count II), and; Tortious Interference with Contracts (Count III).

On November 3, 2014, Defendant filed his instant motion for summary disposition in lieu of filing an answer. On December 15, 2014, Plaintiff filed its response requesting that the motion be denied. Defendant has since filed a reply brief in support of his motion. On December 22, 2014, the Court held a hearing in connection with the motion and took the matter under advisement.

#### *Standard of Review*

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party "has failed to state a claim on which relief can be granted." *Radtke v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). All factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.* The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992); *Cork v Applebee's Inc*, 239 Mich App 311, 315-316; 608 NW2d 62 (2000).

#### *Arguments and Analysis*

##### 1) Count I- Breach of Fiduciary Duty

In his motion, Defendant contends that he did not owe Plaintiff a fiduciary duty. A fiduciary relationship...exists when there is a reposing of faith, confidence, and trust and the placing of reliance by one on the judgment and advice of another." *Farm Credit Services of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 680; 591 NW2d 438 (1998). A

person who is in a fiduciary relationship with another is under a duty to act for the benefit of the other person regarding matters within the scope of the relationship. *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 581; 603 NW2d 816 (1999). “Relief is granted when such position of influence has been acquired and abused, or when confidence has been reposed and betrayed.” *Vicencio v Jaime Ramirez, MD, PC*, 211 Mich App 501, 508; 536 NW2d 280 (1995).

In its complaint, Plaintiff alleges that Defendant was in a managerial position that bestowed him with the responsibility to oversee and supervise Plaintiff’s employees and solicit, quote and secure new work for Plaintiff. Indeed, Plaintiff alleges that it placed faith, confidence and trust in Defendant while Mr. Lipski was caring for his wife for approximately 6 months out of the year. Further, Plaintiff alleges that Defendant abused and betrayed the trust bestowed upon him by verbally abusing Plaintiff’s customers, utilizing Plaintiff’s employees for his own personal needs such as driving him to the doctor, the bank, and the party store to purchase alcohol and lottery tickets. While it appears undisputed that Defendant was not an officer or director of Plaintiff, the Court is convinced that Plaintiff has sufficiently plead its breach of fiduciary duty claim where Defendant was in entrusted with the day-to-day operations of Plaintiff’s business and allegedly violated that trust as set forth above. Consequently, the Court is convinced that Defendant’s motion for summary disposition of Plaintiff’s breach of fiduciary duty claims pursuant to MCR 2.116(C)(8) must be denied.

(2) Counts II and III- Tortious Interference.

Plaintiff’s complaint includes claims for, *inter alia*, (1) tortious interference with a business relationship or expectancy and (2) tortious interference with a contract. Tortious interference with a contract and tortious interference with a business relationship or expectancy are separate and distinct torts under Michigan law. *Health Call of Detroit v Atrium Home &*

*Health Care Services, Inc.*, 268 Mich App 83, 89; 706 NW2d 843 (2005). The Court in *Health Call* summarized the elements needed to establish the torts as follows:

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.

*Id.*, at 89-90 [internal citations omitted]

With respect to its tortious interference with a business relationship or expectancy claim, Plaintiff alleges in its complaint that: (1) It has valid existing an ongoing business relationships and expectancies with its existing, potential and future customers, (2) Defendant had knowledge of the relationships/expectancies, (3) Defendant intentionally interfered with the relationships/expectancies, and (4) That Plaintiff has been damaged as the result of Defendant's actions. (*See* Complaint, at ¶ 29-36.) While the merits of Plaintiff's claims have yet to be determined, the Court is satisfied that Plaintiff has sufficiently plead its claim in a manner to survive a motion for summary disposition pursuant to MCR 2.116(C)(8).

With regards to Plaintiff's tortious interference with a contract claim, Plaintiff alleges that (1) Plaintiff had valid and existing contracts with its customers, (2) Defendant had knowledge of the contracts, (3) Defendant intentionally interfered with the contracts, and (4) As a result of Defendant's interference Plaintiff has suffered damages. (*See* Complaint, at ¶37-43.) As was the case with Plaintiff's business expectancy claim, the Court is convinced that Plaintiff has sufficiently plead its tortious interference with a contract claim to survive Defendant's

instant motion. For these reasons, Defendant's motion for summary disposition of Plaintiff's tortious interference claims must be denied.

*Conclusion*

For the reasons discussed above, Defendant's motion for summary disposition pursuant to MCR 2.116(C)(8) is DENIED WITHOUT PREJUDICE. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

/s/ John C. Foster  
JOHN C. FOSTER, Circuit Judge

Dated: February 3, 2015

JCF/sr

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