

STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

AMERASORTING, LLC

Plaintiff,

vs.

Case No. 2016-2817-CB

MONTEREY SORTERS, LLC, 1ST
SORT, INC., 1ST QUALITY, LLC, PETER
LOPEZ, HENRY YACOUB, CARL GUETHING
and DAVE BRADLEY,

Defendants,

and

PETER LOPEZ, HENRY YACOUB and
DAVE BRADLEY,

Counter-Plaintiffs,

vs.

AMERASORTING, LLC,

Counter-Defendant.
_____ /OPINION AND ORDER

Defendant Carl Guething ("Defendant Guething") has filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff has filed a response and requests that the motion be denied. In addition, Defendant Guething has filed a reply brief and two supplemental briefs in support of his motion.

I. Factual and Procedural History

Plaintiff has been a sorting business operator since May 2014. Counter-

Plaintiffs are three of Plaintiff's former employees, and are three of the co-owners of Defendant Monterey Sorters, LLC ("Defendant Monterey"). On August 9, 2016, Plaintiff filed its complaint in this matter ("Complaint"). The Complaint contains claims against Defendant Guething for tortious interference with contractual relations, tortious interference with a business expectancy, conspiracy and libel.

On June 23, 2017, Defendant Guething filed his instant motion for summary disposition. On July 25, 2017, Plaintiff filed its response. On July 27, 2017, Defendant Guething filed his reply brief in support of his motion. On July 31, 2017, the Court held a hearing in connection with the motion and took the matter under advisement. On August 2, 2017, Defendant Guething filed his first supplemental brief to his motion. On August 15, 2017, Defendant Guething filed his second supplemental brief in support of his motion.

II. Standard of Review

A motion under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by

evidence produced at trial. *Id.*, at 121.

III. Arguments

Defendant Guething argues that Plaintiff's claims against him are based on speculation and that they have not evidence to support it claims, thereby making summary disposition pursuant to MCR 2.116(C)(10) in his favor appropriate.

In response, Plaintiff avers that emails sent to and from Defendant Guething evidence that he worked with the other Defendants to tortiously interfere with its contract(s) and expectancy(ies). Further, Plaintiff asserts that Defendant Guething conspired with the other Defendants to engage in tortious conduct.

IV. Law and Analysis

As a preliminary matter, Plaintiff's complaint does not clearly identify what claims are brought against which Defendants and includes counts such as "Jurisdiction" and "general allegations" which do not types of claims under Michigan law. Nevertheless, the parties appear to agree that the Complaint states claims for tortious interference with a contractual relations, tortious interference with a business expectancy, conspiracy and libel against Defendant Guething. The Court will address each of these claims in turn.

A. Tortious Interference with Contractual Relations and/or Business Expectancies

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]

Under either type of tortious interference claim, “the ‘improper’ interference can be shown either by proving (1) the intentional doing of an act wrongful per se, or (2) the intentional doing of a lawful act with malice and unjustified in law for the purpose of invading plaintiffs’ contractual rights or business relationship.” *Id.* Stated another way, plaintiffs had to proffer evidence that Flagstar “did something illegal, unethical or fraudulent.” *Dalley v. Dykema Gossett, PLLC*, 287 Mich.App 296, 324; 788 NW2d 679 (2010).

Plaintiff has alleged that Defendant Guething conspired with the other defendants to steal its property, create a new competing company, and utilize the stolen property to compete. Defendant Guething maintains that Plaintiff’s assertion that he was involved in the alleged conspiracy is based on mere speculation unsubstantiated by any evidence. When a defendant argues that the plaintiff has no evidence in support of an element of its claim(s), the plaintiff must present such evidence in order to avoid summary disposition. *Lowrey v LMPS &*

LMPJ, Inc., 500 Mich 1, 8; 890 NW2d 344 (2016).

In its response, Plaintiff points to several emails that it maintains establishes that Defendant Guething either tortiously interfered with its contract(s) or expectancy(ies), or intentionally aided the other Defendants in doing the same. However, the emails in question at best merely evidence that Defendant Guething assisted the other Defendants in getting the Defendant Entities' operations off the ground. (See Plaintiff's Exhibits A-C). None of the emails in question reference Plaintiff, Plaintiff's alleged property, or any effort to interfere with Plaintiff's operations. Accordingly, the emails in question do not provide any evidence of the requisite intent needed to maintain Plaintiff's tortious interference claims against Defendant Guething. As a result, Plaintiff's tortious interference claims against Defendant Guething must be dismissed.

B. Libel

It is undisputed that Plaintiff has not presented any evidence that Defendant Guething has made any defamatory statements about Plaintiff. Discovery in this matter is now closed. As a result, Plaintiff's claim for libel must be dismissed with prejudice.

C. Conspiracy

"A claim for civil conspiracy may not exist in the air; rather, it is necessary to prove a separate, actionable tort." *Advocacy Org. for Patients & Providers v. Auto Club Ins. Ass'n*, 257 Mich App 365, 384; 670 NW2d 569 (2003). If a plaintiff fails to establish the underlying tort, the claim for civil conspiracy must also fail. *Id.* at 384–385. In this matter, Defendant Guething is entitled to summary

disposition of Plaintiff's underlying tort claim brought against him. As a result, Plaintiff's conspiracy claim against Mr. Guething must also be dismissed.

V. Conclusion

Based upon the reasons set forth above, Defendant Carl Guething's motion for summary disposition is GRANTED. 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.

Date: SEP 12 2017

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge