

STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

QUALITY WATER AND AIR, INC.,
Plaintiff,

vs.

Case No. 2017-1141-CB

K.L. MCCOY AND ASSOCIATES, INC.
MESTEK, INC., TOM ALLEN, and
DOUG BOLASEVICH,

Defendants.

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OPINION AND ORDER

This matter is before the Court on defendants K.L. McCoy and Associates Inc. and Tom Allen's ("McCoy defendants") motion for summary disposition under MCR 2.116(C)(8).

I. Factual and Procedural Background

According to allegations in the First Amended Complaint ("Complaint"), Defendant Mestek, Inc. ("Mestek") entered into a contract with Quality Water and Air ("Quality") to exclusively distribute in Michigan boilers that it manufactures ("Contract"). Relying on the Contract, Quality submitted a bid to install those boilers for a project for the Michigan Department of Corrections. Allegedly then Quality learned that Mestek breached the Contract, and that Quality's competitor, K.L. McCoy, won the Michigan Department of Corrections bid using Mestek's boilers. Quality filed this action alleging, among other things, that McCoy tortiously interfered with the Contract. (Count III of Complaint). McCoy defendants now move the Court to dismiss Count III of Quality's Complaint.

II. 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. *Carter v Ann Arbor City Attorney*, 271 Mich App 425, 426-427; 722 NW2d 243 (2006). A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone. *Beaudrie v Henderson*, 465 Mich 124, 129-130; 631 NW2d 308 (2001). All factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Carter*, 271 Mich App at 427. 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. *Cork v Applebee's Inc*, 239 Mich App 311, 315-316; 608 NW2d 62 (2000). Michigan is a notice pleading state only requiring allegations to reasonably inform the adverse party of the nature of the claims, not the specific facts to support the allegations. MCR 2.111(B)(1).

III. Law and Analysis

Tortious interference of contract requires (1) the existence of a contract; (2) a breach of the contract; and (3) instigation without justification of the breach by the alleged tortfeasor. *Woody v Turner*, 158 Mich App 764, 773-774; 405 NW2d 213 (1987) (citations omitted). To plead tortious interference of contract, a plaintiff 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." *Derderian v. Genesys Health Care Sys*, 263 Mich App 364, 382; 689 NW2d 145 (2004). An act is wrongful per se if it is inherently wrongful or can never be justified under any circumstances. *Badiee v. Brighton Area Sch.*, 265 Mich App 343, 367; 695 NW2d 521 (2005). "To establish that a lawful act was done

with malice and without justification, the plaintiff must demonstrate, with specificity, affirmative acts by the defendant that corroborate the improper motive of the interference.” *Mino v. Clio. Sch. Dist.*, 255 Mich App 60, 78; 661 NW2d 586 (2003) (citation omitted).

McCoy argues that Quality’s tortious interference claim fails as a matter of law because Quality pleads no facts that could establish the third element of the claim--instigation without justification of the breach. The Court disagrees. Quality avers in its complaint that McCoy colluded with Mesteck to ensure that McCoy received the contract for the project with the Michigan Department of Corrections. (Complaint ¶16a.). Further, the McCoy Defendants allegedly knew about the contract that gave Quality exclusive sales rights for Mestek’s boilers in Michigan. (Complaint ¶ 8, 25). Accordingly, Quality has alleged that McCoy knew about the Contract but worked with Mestek nevertheless in an effort to win a contract that would cause Mestek to breach the Contract. Drawing all reasonable inferences in favor of Quality, the Court is satisfied that such allegations sufficiently plead a claim for tortious interference with a contractual relationship against McCoy.

Finally, the Court turns to Tom Allen. Quality’s Complaint indicates that Mr. Allen was an employee at McCoy and that Mr. Allen allegedly colluded with Mestek. The Complaint names Mr. Allen as a defendant yet nothing in Count III or in the Complaint as a whole articulates any cause of action against Mr. Allen. The Court notes that generally where the principal is disclosed and the agent is known to be acting as such, the agent cannot be made personally liable unless he agreed to become personally liable. *Huizenga v Withey Sheppard Associates*, 15 Mich App 628, 632; 167 NW2d 120 (1969). In this case, it is undisputed that it was known that Mr. Allen was acting on behalf of McCoy. As a result, Mr.

Allen cannot be held liable for those actions where he was acting within the scope of his employment. Consequently, Mr. Allen must be dismissed as a defendant.

In its Response, Quality requests leave to amend its Complaint. Under MCR 2.118(A)(2) leave shall be freely given when justice so requires. However, Quality has not explained the nature of its proposed amendment as to Mr. Allen. As a result, the Court is unable to determine whether such an amendment should be permitted. Consequently, Quality request for leave to amend will be denied, without prejudice.

IV. Conclusion

For the reasons set forth above, Defendant McCoy's motion for summary disposition of Count III is GRANTED, IN PART, and DENIED, IN PART. Specifically, the portion of Count III related to Tom Allen is DISMISSED. The remainder of the motion is DENIED. Pursuant to MCR 2.602(A)(3), this *Opinion and Order* neither resolves the last pending claim nor closes this case.

IT IS SO ORDERED.



RICHARD L. CARETTI
Circuit Court Judge

Dated: July 17, 2017

cc: Cecil D. St. Pierre, Jr., Attorney for Plaintiff
Brian M. Moore, Attorney for Defendants McCoy and Allen
Paul D. Galea, Attorney for Defendants Mestek and Bolasevich