STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

MHC LAKE IN THE HILLS, LLC,

Plaintiff,

Case No. 14-138620-CZ

v

Hon. Wendy Potts

SPARTANS PROPERTIES, LLC, et al,

Defendants.

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OPINION AND ORDER RE: DEFENDANT SPARTANS PROPERTIES, LLC'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10)

At a session of Court
Held in Pontiac, Michigan
On
NOV 13 2014

Plaintiff MHC Lake in the Hills, LLC filed this action claiming that Defendant Spartans Properties, LLC tortiously interfered with MHC's contractual relationship and business expectancy with Defendants Nicholas and Jessica Kerns. MHC leased space to the Kerns in its mobile home park. The Kerns original lease expired in February 2011, and they continued to lease on a month-to-month basis until Spartans purchased their mobile home in January 2014. After learning about the sale, MHC filed this action alleging the Kerns' breached a term of their lease agreement giving MHC a right of first refusal on the sale of their mobile home. MHC also alleged that Spartans trespassed in the mobile home park and tortiously interfered with MHC's contract with the Kerns and its business expectancy in their lease. The Court dismissed MHC's claims against the Kerns and concluded that the right of first refusal was unenforceable.

The matter is now before the Court on Spartans's motion for summary disposition under MCR 2.116(C)(10), which tests the factual support for the claims. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). The parties agreed to waive a hearing and allow the Court to decide the motion on the briefs. See MCR 2.119(E)(3).

Spartans first asserts that MHC's tortious interference claims fail because they are premised on MHC's claimed right of first refusal, which this Court held was unenforceable. MHC contends that the claims are based on Spartans's interference with the Kerns' lease, and there is no question of fact that Spartans interfered with the lease. However, a claim for tortious interference with a contractual relationship or business expectancy must be premised on wrongful interference. *Badiee v Brighton Area School*, 265 Mich App 343, 367; 695 NW2d 521 (2005). MHC does not explain how Spartans's offer to purchase the Kerns' mobile home was wrongful or present evidence showing a question of fact on this point. Because MHC had not demonstrated a question of fact on all elements of their tortious interference claims, the claims fail as a matter of law.

Regarding MHC's trespass claim, MHC appears to concede that it has no evidence demonstrating a question of fact on this claim. To survive summary disposition on its trespass theory, MHC must present evidence that Spartans made an unauthorized intrusion on property over which MHC has a right of exclusive possession. *Adams v Cleveland-Cliffs Iron Co*, 237 Mich App 51, 67; 602 NW2d 215 (1999). Mr. Kerns testified that he invited Spartans to come to his home and there is no evidence to the contrary. MHC contends that it has been unable to obtain discovery on this issue because the Court denied its motion to compel discovery and entered a protective order. However, MHC misconstrues the Court's decision. The Court did not bar MHC from conducting discovery on whether Spartans was authorized to enter the property.

Rather, the Court held that MHC's written discovery seeking evidence of Spartans's conduct in unrelated mobile home purchases was irrelevant to the issues of this case. The Court instructed MHC to narrow its discovery requests to the transactions at issue in this case. Thus, MHC was not precluded from conducting discovery on the circumstances under which Spartans entered the property.

Even if there was a question of fact whether Spartans made an unauthorized entry on the property, MHC fails to explain or present evidence that it had exclusive possession of the property. The Kerns had possession of the lot where their mobile home was placed, and a leasehold interest normally includes the right to exclusive possession during the term of the lease. *Ann Arbor Tenants Union v Ann Arbor YMCA*, 229 Mich App 431, 443; 581 NW2d 794 (1998). Regardless whether Spartans had authorization to enter the premises, MHC presents no evidence that Spartans entered any property over which MHC had exclusive possession. Thus, MHC's trespass claim also fails as a matter of law.

For all of these reasons, the Court grants Spartans's motion and dismisses MHC's claims with prejudice.

This order resolves the last pending claim and closes the case.

IT IS SO ORDERED.

Dated: NOV 13 2014

Hon. Wendy Potts