

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

RC MCKINNEY, LLC,

Plaintiff,

v

Case No. 14-142890-CK  
Hon. Wendy Potts

DEANA MILLER, et al,

Defendants.

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OPINION AND ORDER RE:  
DEFENDANT SANDRA BAZZO'S MOTION FOR SUMMARY DISPOSITION

At a session of Court  
Held in Pontiac, Michigan

On  
FEB 26 2015

Defendant Deana Miller operated Pomponi's salon from 2001 through 2012. From 2001 through 2009, the salon was owned by Miller's corporation, DM Miller Hairshop, Inc. DM Miller entered into contracts with its stylists, including Defendant Sandra Bazzo who was hired in 2004. The stylist contracts did not have noncompetition provisions and were expressly nonassignable. In 2009, Miller claims she dissolved the corporation and ran the salon as a partnership with her husband Michael. Miller further claims that DM Miller did not assign any of its rights under its stylist contracts to her or her husband. Bazzo claims that she did not sign a new contract with the Millers after DM Miller was dissolved.

In October 2012, the Millers sold the salon to one of Pomponi's former employees Rachel McKinney and her husband Cory. The purchase agreement allowed Deana Miller to retain her personal customer list and restricted her from owning or operating a business that competes with the McKinneys' business. The McKinneys apparently assigned their interest in

Pomponi's to Plaintiff RC McKinney, LLC. Miller continued to work for McKinney for about two years after the sale. In July 2014 McKinney fired Bazzo, who claims that McKinney accused her of secretly planning to leave Pomponi's. After her termination, Bazzo decided to open her own salon, Carriage House Salon, and later hired Deana Miller to work there.

Plaintiff filed this action in September 2014 claiming that Deana Miller breached the purchase agreement by working at CHS salon, and Bazzo breached her stylist contract by operating the salon. On October 29, 2014, Defendants filed this motion for summary disposition asserting, among other arguments, that Deana Miller was not violating the noncompete in the purchase agreement and any claim for violation of that agreement must be submitted to arbitration. The Court set the matter for hearing on January 21, 2015 and ordered Plaintiff to respond by December 30, 2014. On December 16, 2014, shortly before Plaintiff's response to the motion was due, Plaintiff dismissed its claim against Miller and filed an amended complaint asserting a tortious interference claim against Bazzo. Plaintiff claims that Bazzo interfered with its business relationships by stealing its customer lists and defaming Plaintiff. Defendant sought leave to file a supplemental brief addressing the tortious interference claim, which the Court granted through a stipulated order that adjourned the hearing on the motion and required Plaintiff's response brief to be filed by January 21, 2015. Plaintiff did not timely file its brief, and the Court rejected the brief that Plaintiff attempted to file on January 28. Plaintiff sought leave to adjourn the February 4<sup>th</sup> motion hearing, which the Court also denied. However, at the motion hearing, the Court allowed Plaintiff to file a response and Defendant to file a reply.

Bazzo moves for summary disposition of Plaintiff's claims under MCR 2.116(C)(8), which tests the legal sufficiency of the claims, and (C)(10), which tests the factual support for the claims. *Maiden v Rozwood*, 461 Mich 109, 120 (1999). Bazzo first asserts, and the Court agrees,

that Plaintiff's breach of contract claim fails because Plaintiff is not a party to Bazzo's stylist agreement with DM Miller and the agreement is nonassignable. Further, Bazzo claims that she did not enter into any other agreement with Plaintiff, and Plaintiff presents no evidence to the contrary. Plaintiff did not brief this issue in its response to Bazzo's motion or otherwise explain why the Court should deny summary disposition. Because Plaintiff fails to demonstrate a question of fact whether it has an enforceable contract, Bazzo is entitled to summary disposition of Plaintiff's breach of contract claim.

As for the tortious interference claim, Bazzo asserts that Defendant cannot demonstrate a question of fact whether Bazzo engaged in any wrongful conduct. To survive summary disposition of its claim for tortious interference with a business expectancy, Plaintiff would have to present evidence showing a question of fact whether Bazzo improperly interfered with and induced a breach or termination of Plaintiff's relationship with its customers. *BPS Clinical Laboratories v BCBSM*, 217 Mich App 687, 698-699 (1996). Regarding the improper interference element, Plaintiff must present evidence showing a question of fact whether Bazzo committed a per se wrongful act or committed a lawful act with malice and unjustified in law for the purpose of invading Plaintiff's business relationships. *Badiee v Brighton Area School*, 265 Mich App 343, 367; 695 NW2d 521 (2005).

Bazzo asserts in an affidavit that she did not steal Plaintiff's customer list. Instead, she claims she compiled a list of 48 of her customers' names from memory and located their contact information on the internet or phone book. Bazzo further claims that before opening her salon, she sent these customers a notice telling them she was no longer working at Pomponi's and she would be opening her own salon. Bazzo denies doing anything unlawful or unethical in the operation of her salon. However, Plaintiff presents an affidavit of Rachel McKinney claiming

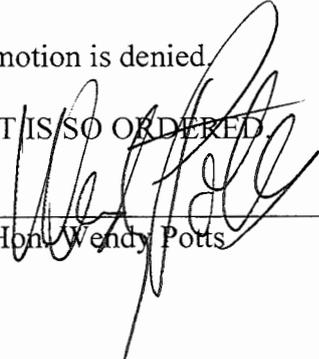
that in July 2014 she “learned and observed that Sandra Bazzo without permission or consent obtained access to our private client database and that she set about to copy, steal and remove the clients information . . .” This claim, if proven, could constitute a per se wrongful act that would support a claim for tortious interference. *Badiee, supra*.

Bazzo claims that this affidavit is not admissible because it is dated January 1, 2014, which is before the events noted in the affidavit. Bazzo is correct that a purported affidavit without proper notarization is not an affidavit. *Wood v Bediako*, 272 Mich App 558, 562; 727 NW2d 654 (2006). However, the notary’s seal appears to be valid, and the Court presumes that date was an oversight. The Court will not disregard the affidavit on this ground. Bazzo also takes issue with McKinney’s statement that Bazzo “set about to” steal Plaintiff’s customer information, claiming that this fails to show a question of fact whether Bazzo improperly took the information. However, this appears to be a question of credibility or fact-finding that cannot be resolved on summary disposition. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). Because there is a factual dispute whether Bazzo improperly took customer information from Plaintiff and used that information to interfere with Plaintiff’s customer relationships, the Court denies summary disposition of the tortious interference claim.

For all of these reasons, the Court grants Bazzo’s motion as to the contract claim and dismisses the claim with prejudice. In all other respects, the motion is denied.

Dated: FEB 26 2015

IT IS SO ORDERED.

  
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Hon. Wendy Potts