

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

**EDUCATION MANAGEMENT AND
NETWORKS INCORPORATED,
Plaintiff,**

v.

**Case No. 13-137632-CZ
Hon. James M. Alexander**

**JEFFERSON HAMLIN and
EDUCATIONAL PARTNERSHIPS, INC,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendants’ motion for summary disposition. This lawsuit concerns Plaintiff’s management of non-party Hamilton Academy – a public school academy chartered by the City of Detroit.

In July 2011, Plaintiff contracted with Hamilton to manage it for a five-year term. The same year, Plaintiff hired Defendant Dr. Jefferson Hamlin to serve as the Chief Academic Officer for each of Plaintiff’s academies. This role was roughly the equivalent of a public school district superintendent.

In its Complaint, Plaintiff generally alleges that, in 2013, Dr. Hamlin induced Hamilton to end its relationship with Plaintiff and turn its business over to him and his company, Defendant Educational Partnerships. Plaintiff’s Complaint alleges claims of breach of fiduciary duty, tortious interference with a contract, and defamation.

Defendants respond that Hamilton’s termination of Plaintiff’s contract was justified, and the Academy was free to contract with them for management services once said contract was so

terminated. Defendants also claim that there is no evidence that Dr. Hamlin did anything actionable while employed by Plaintiff.

In July 2014, Defendants initially filed their motion for summary disposition – attacking the merits of Plaintiff’s claims under MCR 2.116(C)(8) and (C)(10). Since that time, Plaintiff filed a supplemental motion for summary disposition based on an Arbitration Award arising out of the dispute between Plaintiff and Hamilton Academy.

A (C)(8) motion tests the legal sufficiency of the complaint, and a (C)(10) motion tests the factual support for a plaintiff’s claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

In their supplemental motion, Defendants argue that they are entitled to summary disposition based on collateral estoppel. It makes sense to first address this claim.

1. Collateral Estoppel

In December 2013, Plaintiff filed a demand for arbitration alleging breach of contract based on a wrongful termination relating to its management agreement with the academy. Hamilton Academy responded with claims for breach of contract, unjust enrichment, fraud, and breach of fiduciary duty. Neither Defendant was a party to this proceeding, but the parties agreed that there was a possibility that the arbitration proceedings may affect the current case. As a result, Defendants’ motion for summary disposition was adjourned to allow time for completion of the arbitration proceeding.

The arbitration proceeding concerned the general foundation for Plaintiff’s claims in this case – **the cause** of Hamilton’s termination of Plaintiff’s Management Agreement. In its Complaint, Plaintiff places blame squarely on Defendants. But Defendants respond that it was

Plaintiff's own actions that caused Hamilton to terminate the Management Agreement, which was the subject of the arbitration proceedings.

In December 2014, the arbitration panel issued its final award, and Defendants argue that Plaintiff cannot succeed in this lawsuit because the arbitration panel concluded that Hamilton's termination of Plaintiff's contract was justified and based on Plaintiff's own conduct.

In their motion, Defendants argue that the arbitrators "found that the Management Agreement was terminated on a proper basis," which did not include any actions by the Defendants in this case. Therefore, Defendants argue, collateral estoppel bars the present suit.

"Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding." *Porter v City of Royal Oak*, 214 Mich App 478, 485; 542 NW2d 905 (1995). This principle also applies to arbitration proceedings. *Id.*

Our Supreme Court has held:

Generally, for collateral estoppel to apply three elements must be satisfied: (1) "a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment"; (2) "the same parties must have had a full [and fair] opportunity to litigate the issue"; and (3) "there must be mutuality of estoppel." *Monat v State Farm Ins Co*, 469 Mich 679, 682-685; 677 NW2d 843 (2004), quoting *Storey v Meijer, Inc*, 431 Mich. 368, 373 n 3; 429 N.W.2d 169 (1988).

But "where collateral estoppel is being asserted defensively against a party who has already had a full and fair opportunity to litigate the issue, mutuality is not required." *Monat*, 469 Mich at 695.

As stated, the underlying arbitration was founded on Plaintiff's contention that Hamilton wrongfully terminated the Plaintiff's management agreement. A major underlying dispute had to

do with a disagreement over which services Plaintiff was entitled to reimbursement for. In its final award, the panel concluded that there was an ambiguity in the financial provisions of the management agreement such that more than one interpretation was possible. After resolving this ambiguity, the panel concluded that “the absence of time and function related data for [Plaintiff’s] requested reimbursements constitutes a sufficient basis for termination of the Management Agreement by the Academy.”

The panel then considered the proper termination date of the Agreement and concluded that it was properly terminated following the 2013-2014 school year. As a result, Plaintiff prevailed, in part, on its breach of contract claim – receiving an award of \$325,695.00 after adjustments. The panel concluded that the Academy, however, failed to establish any of its counter-claims and received no award.

Despite Defendants’ contention otherwise, the panel did not resolve a question of fact essential to the judgment in this case. As a result, the first element necessary to a finding that collateral estoppel applies is not met. A careful review of the final award reveals that the arbitration panel simply did not decide what role Dr. Hamlin played in Hamilton’s termination of the Management Agreement. And Defendants’ claim otherwise simply suggests a far-too-broad interpretation of the award. In fact, the panel concluded that Hamilton prematurely terminated the management agreement – thereby awarding Plaintiff over \$325,000 in damages.

Because the arbitration award did not resolve a question of fact essential to the judgment in this case, the Court finds that the collateral estoppel does not apply and Defendants’ motion on this basis is DENIED.¹

¹ The Court, likewise, rejects the remainder of Defendants’ arguments found in their Supplemental Motion as each is founded on the false premise that the panel concluded that Defendants did not cause the termination of the Management Agreement. This was not the panel’s conclusion.

2. Summary on the Merits.

In their original motion, Defendants also requested summary because Plaintiff's breach of fiduciary duty, tortious interference, and defamation claims fail as a matter of law.

With respect to a breach of fiduciary duty claim, "A fiduciary owes a duty of good faith to his principal and is not permitted to act for himself at his principal's expense during the course of his agency." *Prentis Family Found, Inc v Barbara Ann Karmanos Cancer Inst*, 266 Mich App 39, 49; 698 NW2d 900 (2005); quoting *Central Cartage v Fewless*, 232 Mich App 517, 524; 591 NW2d 422 (1998).

The foundation of Defendants' motion on this claim is that Dr. Hamlin was not subject to any non-compete and he never had any plan to steal Hamilton as a client. Rather, Defendants argue, it was only after Dr. Hamlin resigned that considered providing services to Hamilton. But, despite Defendants' claims otherwise, this is disputed.

Plaintiff presents sufficient evidence to establish a question of fact whether Dr. Hamlin engaged in behaviors detrimental to Plaintiff while in its employ to render summary disposition wholly inappropriate. This evidence comes in the form of deposition testimony and various emails.

The Court likewise rejects Defendants' arguments relating to Plaintiff's defamation claim. Plaintiff again presents a substantial amount of evidence that Dr. Hamlin may have made defamatory statements to various individuals. In fact, Dr. Hamlin admitted making statements that Plaintiff was a "bogus company" and that its President, Ahmed Saber, funnels money to his bogus companies. Dr. Hamlin also testified that he told others that "[Plaintiff] was deceiving, misappropriating funds and involved in wrongdoings." These and other alleged statements made by Dr. Hamlin do not fall within a category of statements not capable of defamatory meaning

such that summary disposition is appropriate. See *Heritage Optical Ctr, Inc v Levine*, 137 Mich App 793, 797; 359 NW2d 210 (1984). This claim is appropriately submitted to the trier of fact.

Defendants next argue that Dr. Hamlin is entitled to a qualified privilege based on his status as a public figure, and therefore, a plaintiff must prove a heightened degree of malice in the alleged defamatory statements. But Defendants' cursory and conclusory argument on this issue is unconvincing. And Defendants cite no authority that establishes that a private company's executive is entitled to such treatment simply because his employer contracts with a municipality. There is no evidence that Dr. Hamlin thrust himself to the forefront of a particular public controversy. See *VandenToorn v Bonner*, 129 Mich App 198, 206; 342 NW2d 297 (1983).

Finally, Defendants argue that Plaintiff's tortious interference claim fails because it is based entirely on the alleged defamatory statements that are subject to dismissal. But, as stated, the Court denied Defendants' summary request based on the alleged defamatory statements. As a result, because Defendants offer no other argument in support of their request on this claim, their motion on Plaintiff's tortious interference claim is also DENIED.

(Remainder of this page intentionally left blank.)

3. Conclusion

For all of the above reasons, the Court cannot conclude that Plaintiff's claims are so clearly unenforceable that no factual development could possibly deny recovery. As a result, Defendants' motion for summary under (C)(8) is DENIED.

The Court also finds that viewing all evidence in the light most favorable to Plaintiff, Defendants are not entitled to judgment as a matter of law. Therefore, Defendants' motion for summary disposition under (C)(10) is likewise DENIED.

IT IS SO ORDERED.

February 25, 2015
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge