

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

**VED SOFTWARE SERVICES, INC,
Plaintiff,**

v.

**Case No. 14-138381-CK
Hon. James M. Alexander**

**QUALCOMM CALIFORNIA, INC,
Defendant.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant’s motion for summary disposition. Plaintiff formerly employed non-party Sandip Palit, who resigned his employment and went to work for Defendant.

In its Complaint, Plaintiff alleges that Defendant wrongly induced Mr. Palit to leave Plaintiff and to come to work for it. As a result, Plaintiff filed a two-count Complaint alleging claims of: (1) tortious interference with contractual relations and business expectancy, and (2) unjust enrichment.

Defendant now moves for summary disposition under MCR 2.116(C)(8), which tests the legal sufficiency of the complaint. When analyzing such a motion, all well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dept of Corrections*, 439 Mich 158 (1992). A motion under this subrule may be granted only where the claims alleged are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Id.* When deciding such a motion, the court considers only the pleadings. MCR 2.116(C)(G)(5).

1. Tortious Interference (Count I)

Defendant first seeks dismissal of Plaintiff's claims for tortious interference. In order to establish tortious interference with a contract or business advantage, a plaintiff must prove:

[1] the existence of a valid business relationship or the expectation of such a relationship between the plaintiff and some third party, [2] knowledge of the relationship or expectation of the relationship by the defendant, and [3] an intentional interference causing termination of the relationship or expectation which results in [4] damages to the plaintiff. *Blazer Foods, Inc v Rest Props*, 259 Mich App 241, 255; 673 NW2d 805 (2003); citing *Meyer v Hubbell*, 117 Mich App 699; 324 NW2d 139 (1982).

Further, "[O]ne who alleges tortuous interference with a contractual or business relationship 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." *Feldman v Green*, 138 Mich App 360, 378; 360 NW2d 881 (1984). "A wrongful act per se is an act that is inherently wrongful or an act that can never be justified under any circumstances." *Prysak v R L Polk Co*, 193 Mich App 1, 12-13; 483 NW2d 629 (1992).

Defendant argues that it is entitled to summary disposition of this claim for one of two reasons. First, Defendant claims that Plaintiff failed to allege that Defendant interfered with Mr. Palit's payment of the contractual remedy for his leaving the job before 18 months. Second, Defendant claims that Plaintiff failed to allege the requisite per se wrongful act.

With respect to Defendant's first argument, the Mr. Palit's employment agreement states that his was an "at-will" employment "terminable at will by either EMPLOYER or EMPLOYEE." (Employment Agreement at paragraph 5). In the event that Mr. Palit did terminate his employment within the first 18 months, he agreed "to pay damages to Employer in the amount of all costs, fees and expenses . . . incurred by Employer in recruiting, hiring, employing, marketing and placing Employee." (*Id.* at paragraph 4.2).

The Agreement also provided that Mr. Palit would have to pay other damages: (1) if he failed to report to an assignment (paragraph 8); (2) if in violation of a non-compete provision (paragraphs 10.1, 10.2); and (3) if Mr. Palit terminated his employment while in the middle of a client assignment (paragraph 11).

Because Plaintiff failed to allege that Defendant interfered with Mr. Palit's payment of any contractual remedies due to Plaintiff as a result of Mr. Palit's resignation, Defendant claims that Plaintiff failed to allege a cause of action for tortious interference.

Plaintiff responds, in part, that Mr. Palit was refrained from resigning for 18 months – citing paragraph 5 of the Employment Agreement. That section, however, simply provides that “Employee shall not terminate **this Agreement** during the first eighteen (18) months.” (emphasis added). It does not, however, provide that he could not terminate his **employment**. Any such reading would be inconsistent with the express “at-will” provision and the above contractual remedies for Mr. Palit's termination of employment.

Plaintiff also claims that, just because it failed to allege that Defendant did not interfere with Mr. Palit's payment of contractual remedies, that its tortious interference claim is barred. The Court agrees. Plaintiff's tortious interference claim is founded solely on Defendant's hiring of Mr. Palit away from Plaintiff – which transitions nicely into Defendant's next argument – that Plaintiff's claim fails because Defendant did nothing more than “hire a skilled employee.”

Michigan Courts have long held that “defendants motivated by legitimate personal and business reasons are shielded from liability against this cause of action [tortious interference with a contractual or business relationship].” *Formall, Inc v Community Nat'l Bank*, 166 Mich App 772, 780; 421 NW2d 289 (1988); citing *Christner v Anderson, Nietzke & Co, PC*, 156 Mich App 330, 348-349; 401 NW2d 641 (1986). See also *Mino v Clio Sch Dist*, 255 Mich App 60, 78; 661

NW2d 586 (2003), quoting *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan*, 217 Mich App 687, 698-699; 552 NW2d 919 (1996) (“Where the defendant’s actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference.”).

Even accepting all well-pled factual allegations as true, Plaintiff fails to allege “the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law.” Rather, Defendant simply hired a skilled employee – which is a legitimate business reason – and unable to establish improper motive or interference.

As a result, the Court finds that Plaintiff’s tortious interference claim is “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” Therefore, the Court GRANTS Defendant’s motion as it relates to Plaintiff’s Count I for tortious interference.

2. Unjust Enrichment (Count II)

Next, Defendant claims that it is entitled to summary disposition of Plaintiff’s unjust enrichment claim. Regarding a claim for unjust enrichment, our Supreme Court has held: “Even though no contract may exist between two parties, under the equitable doctrine of unjust enrichment, ‘[a] person who has been unjustly enriched at the expense of another is required to make restitution to the other.’” *Michigan Educ Emples Mut Ins Co v Morris*, 460 Mich 180, 198; 596 NW2d 142 (1999), quoting Restatement Restitution, § 1, p 12.

Michigan courts have established that “The elements of a claim for unjust enrichment are: (1) receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant.” *Barber v SMH (US)*, 202 Mich

App 366, 375; 509 NW2d 791 (1993); citing *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 546; 473 NW2d 652 (1991).

Defendant argues that Plaintiff's Complaint is devoid of allegations that it conferred any benefit on it. As a result, Defendant argues that Plaintiff cannot succeed on its unjust enrichment claim. The Court agrees.

In essence, Plaintiff bases its unjust enrichment claim on its introduction of Mr. Palit to Defendant – who then employed Mr. Palit and failed to compensate Plaintiff for the same. Plaintiff's tenuous and novel allegations do not support an unjust enrichment claim, and Plaintiff fails to cite any authority to support such a claim under these circumstances. As stated above, Mr. Palit was free to terminate his "at-will" employment, and Defendant was then free to hire him.

As a result, the Court finds that, accepting all well-pled factual allegations as true, Plaintiff's tortious interference claim is "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." Therefore, the Court GRANTS Defendant's motion as it relates to Plaintiff's Count II for unjust enrichment.

Summary

To summarize, Defendant's motion for summary is GRANTED, and Plaintiff's Complaint is DISMISSED in its entirety.

This Order is a Final Order that resolves the last pending claim and closes the case.

IT IS SO ORDERED.

June 6, 2014
Date

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