

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

**PRIMESOURCE HEALTHCARE SYSTEMS, INC,
Plaintiff/Counter-Defendant,**

v.

**Case No. 14-144719-CK
Hon. James M. Alexander**

**MOBILE MEDICAL SUPPORT, LLC,
Defendant/Counter-Plaintiff.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on cross motions for summary disposition.¹ The Court dispenses with oral argument pursuant to MCR 2.119(E)(3).

Plaintiff and Defendant are competitors in the business of providing contractual management services to long-term care facilities to manage the on-site healthcare services for client facilities' patients.

The present suit arose after a Plaintiff-contracted podiatrist, non-party Dr. Seymoure Balaj, stopped working with Plaintiff and began working with Defendant. As a condition of working with it, Plaintiff claims that Dr. Balaj executed a contract that contained clauses prohibiting him from disclosing Plaintiff's confidential information, soliciting Plaintiff clients, competing with Plaintiff, or disparaging Plaintiff to its customers.²

In its Complaint, Plaintiff alleges that Dr. Balaj breached his agreement in numerous ways, including: canceling patient visits, failing to provide 30-days' notice of his resignation,

¹ Plaintiff moves for summary disposition of Defendant's Counterclaims, and Defendant moves for summary disposition of Plaintiff's Complaint.

² Dr. Balaj's "Health Care Provider Service Agreement" with Plaintiff contains Illinois governing law and forum-selection provisions, which apparently precludes his inclusion in this lawsuit.

working for Defendant (a Plaintiff competitor), soliciting Plaintiff clients, and divulging Plaintiff's confidential information. Plaintiff claims that some of these things occurred while Dr. Balaj was still serving as a Plaintiff independent contractor.

On these allegations, Plaintiff sued on claims of (Count I) tortious interference, (Count II) unjust enrichment, and (Count III) a request for injunctive relief. Each of Plaintiff's claims is founded on Defendant's knowledge and encouragement of Dr. Balaj's breach of his confidentiality/non-compete/non-solicit agreement with Plaintiff.

In response to Plaintiff's Complaint, Defendant filed a Counterclaim on (familiar) claims of (Count I) unjust enrichment, (Count II) tortious interference, and (Count III) a request for injunctive relief. Defendant's Counterclaim is founded on allegations that Plaintiff entered into an illegal contract with Dr. Balaj and Plaintiff's business structure otherwise violates the law.

It is apparent that each party wishes to litigate the other out of the business. In any event, the parties now move for summary disposition under MCR 2.116(C)(5), (C)(8), or (C)(10).

A motion under MCR 2.116(C)(5) challenges whether a plaintiff lacks the legal capacity to sue. *McHone v Sosnowski*, 239 Mich App 674, 676; 609 NW2d 844 (2000).

A (C)(8) motion tests the legal sufficiency of the complaint. *Wade v Dept of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992). And a (C)(10) motion tests the factual support for Plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

1. Unjust Enrichment (Plaintiff's Count II and Defendant's Count I).

First, the parties move for dismissal of the other's unjust enrichment claim. "[I]n order to sustain a claim of . . . unjust enrichment, a plaintiff must establish (1) the 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.” *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 195; 729 NW2d 898 (2006); citing *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993).

Plaintiff argues that Defendant’s unjust enrichment counterclaim should be dismissed because there is no private right of action to bring such a claim when founded solely on violations of the law.

Defendant, on the other hand, argues that Plaintiff’s unjust enrichment claim should be dismissed because it is founded solely on an invalid and unenforceable contract with non-party Dr. Balaj.

Both parties spend the overwhelming majority of their briefing arguing these competing points and ignoring the larger issue – can a business sue its competitor under an unjust enrichment theory when the parties have had no dealings with each other? Neither party cites to authority to support an unjust enrichment claim in these circumstances, and the Court is not inclined to extend the doctrine.

And a careful examination of each party’s pleadings reveals that neither has pled the required elements to support its unjust enrichment claim. The overwhelming bulk of Plaintiff’s Complaint levels allegations of wrongdoing by a non-party (Dr. Balaj). And the overwhelming bulk of Defendant’s Counterclaim alleges that Plaintiff is violating various laws and public policy. But neither alleges actionable wrongdoing by one party against the other.

In any event, viewing all well-pled allegations as true and construing them a light most favorable to the nonmovant, the Court finds that each party’s unjust enrichment claim is so clearly unenforceable as a matter of law that no factual development could possibly justify

recovery. As a result, said claims (Plaintiff's Count II and Defendant's Count I) are DISMISSED.

2. Tortious Interference (Plaintiff's Count I and Defendant's Count II).

The parties next seek dismissal of the other's claim 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).

Further, 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."').

Plaintiff alleges that Defendant tortiously interfered with its relationship with Dr. Balaj by soliciting and encouraging him to breach his agreement with Plaintiff. Defendant, on the other hand, alleges that Plaintiff tortiously interfered with its current and expected relationships with certain long-term care facilities in Michigan.

The Court will note that it rejects Plaintiff's argument that Defendant lacks standing to bring its claims based on violations of law. This argument mischaracterizes Defendant's Counterclaim. Defendant does not bring a claim for violations of law. Rather, Defendant alleges violations of the law as an element of its tortious interference claim.

This Court, however, has viewed with skepticism tortious interference claims brought by a former employer against a new employer. This is so because hiring a skilled employee is a legitimate business interest. If Dr. Balaj is violating his Service Agreement, then Plaintiff may have a valid claim against him. But such a claim is not before this Court.

Similarly, Defendant has failed to convince this Court that its tortious interference claim is appropriate under these circumstances. Essentially, Defendant alleges that Plaintiff's entry into the Michigan marketplace is in violation of certain laws, which, in turn, has led to the loss of certain of its former clients. The Court finds that such allegations are insufficient to support a tortious interference claim.

For the foregoing reasons and viewing all well-pled allegations as true and construing them a light most favorable to the nonmovant, the Court finds that each party's tortious interference claim is so clearly unenforceable as a matter of law that no factual development

could possibly justify recovery. As a result, said claims (Plaintiff's Count I and Defendant's Count II) are DISMISSED.

3. Injunctive Relief (Plaintiff's and Defendant's Count III).

Finally, each party moves for summary disposition of the other's claim for injunctive relief. But for the reasons stated above, each party has failed to establish that it has any cognizable claim against the other. Without any basis on which to found an injunctive relief claim, it must also fail.³ As a result, said claims (Plaintiff's and Defendant's Count III) are also DISMISSED.

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

IT IS SO ORDERED.

September 29, 2015
Date

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

³ When deciding whether to grant an injunction under traditional equitable principles, a court must consider (1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. *Barrow v Detroit Election Comm*, 305 Mich App 649, 659; 854 NW2d 489 (2014); quoting *Kernen v Homestead Dev Co*, 232 Mich App 503, 509-510; 591 NW2d 369 (1998).

Both parties failed to plead or demonstrate the existence of any of these considerations.