

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

LAWRENCE F. JASPER, II,
Plaintiff,

Case No. 2015-147901-CB
Hon. Wendy Potts

v

BLOOMFIELD VILLAGE INVESTOR
HOLDINGS, LLC, DONALD J. NEWMAN,
CRG CAPITAL PARTNERS, STEVE TOWLE,
PCCP, LLC, and REDICO, LLC,
Defendants.

**OPINION AND ORDER RE: DEFENDANTS' SUMMARY DISPOSITION
MOTIONS AND PLAINTIFF'S MOTION FOR DECLARATION**

At a session of Court
Held in Pontiac, Michigan

FEB 23 2016

This matter is before the Court on the following motions:

- 1) Motion to Dismiss Defendants PCCP, LLC and Steve Towle;
- 2) Redico, LLC's Motion and Brief for Summary Disposition Pursuant to MCR 2.116(C)(8);
- 3) Defendant Bloomfield Village Investor Holdings, LLC's Motion for Summary Disposition Pursuant to MCR 2.116(C)(8); and
- 4) Plaintiff's Motion for Declaration of Necessity of Specificity of Corporate Entities of the Defendant in regards to Interrogatories Pursuant to MCR 2.309(E)(1), (2), and (3).

The Court dispenses with oral argument under MCR 2.119(E)(3).

Motion to Dismiss Defendants PCCP, LLC and Steve Towle

In their motion, Defendants PCCP, LLC ("PCCP") and Steve Towle ("Towle") move for summary disposition under MCR 2.116(C)(1) for the reason that Michigan lacks personal jurisdiction. While Plaintiff filed a response, the Court observes that Plaintiff's response fails to

specifically address the issue of personal jurisdiction as raised by Defendants PCCP and Towle in their summary disposition motion.

A (C)(1) motion tests whether the Court has personal jurisdiction over a defendant. Plaintiff has the burden of establishing a prima facie showing of jurisdiction to avoid summary disposition. *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995). A court reviewing a (C)(1) motion must examine the affidavits, pleadings, depositions, admissions as well as any other documentation submitted by the parties. MCR 2.116(G)(5); *Jeffrey*, 448 Mich 178. All factual disputes are resolved in the non-movant's favor. *Id.* Whether a court has personal jurisdiction over a party is a question of law. *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 426; 633 NW2d 408 (2001).

Jurisdiction can be established by way of general personal jurisdiction or specific (limited) personal jurisdiction. *Oberlies*, 246 Mich App at 427. A court has general jurisdiction over a defendant if the defendant was present, domiciled, or incorporated in Michigan when process was served or if the defendant consented to the court's exercise of jurisdiction. See MCL 600.701. A court has general jurisdiction over a partnership association or unincorporated voluntary association if that association was formed under the laws of this state, it consented to jurisdiction as provided in MCL 600.745, or it carried on a continuous and systematic part of its general business within the state. See MCL 600.731.

In the motion, Defendant Towle submits his Affidavit as Exhibit One to support his contention that he has been a resident of the State of California for the past 47 years, he has never stepped foot in the State of Michigan, nor has he ever transacted business in the State of Michigan. Towle asserts further that he does not hold a member interest in Bloomfield Village

Investor Holdings, LLC and he has never had any contact with Plaintiff Lawrence F. Jasper, II. In addition, Towle maintains that he had never heard of or had any contact with co-defendant Donald J. Newman.

Defendant PCCP offers as Exhibit Two the Affidavit of Gabriel Willey, the Compliance Manager for PCCP, who asserts that PCCP is not registered to do business in Michigan and it does not conduct any business in Michigan. In fact, PCCP has business offices in the States of California and New York. Moreover, PCCP and does not own any real or personal property in Michigan. None of the real property development projects of PCCP are located in Michigan. Additionally, PCCP does not have any connection to Plaintiff and it does not hold a member interest in Bloomfield Village Investor Holdings, LLC.

The Court observes further that neither PCCP nor Towle have consented to the Court's exercise of jurisdiction. Therefore, the Court does not have general personal jurisdiction over Towle under MCL 600.701 or PCCP under MCL 600.731.

To determine whether the Court may exercise limited personal jurisdiction, it must determine whether the defendant's conduct falls within a provision of a Michigan long-arm statute and if so, whether the exercise of jurisdiction comports with due process. *Oberlies*, 246 Mich App at 428.

First, the Court must determine whether Defendants' activities fall within the applicable provisions of the long-arm statute¹, MCL 600.705 and MCL 600.735, which can be summarized in relevant part:

¹ MCL 600.705 concerns limited personal jurisdiction over an individual and MCL 600.735 concerns limited personal jurisdiction over a partnership association or unincorporated voluntary association. "Michigan's long-arm

The existence of any of the following relationships between an individual/ partnership association or unincorporated voluntary association or agent thereof and the state shall constitute a sufficient basis of jurisdiction to enable a court of record of this state to exercise limited personal jurisdiction over the individual/partnership association or unincorporated voluntary association and to enable the court to render personal judgments against the individual or his representative/partnership association or unincorporated voluntary association arising out of an act which creates any of the following relationships:

- (1) The transaction of any business within the state.
- (2) The doing or causing an act to be done, or consequences to occur, in the state resulting in an action for tort.
- (3) The ownership, use, or possession of real or tangible personal property situated within the state.
- (4) Contracting to insure a person, property, or risk located within this state at the time of contracting.
- (5) Entering into a contract for services to be rendered or for materials to be furnished in the state by the defendant.
- (6) Acting as a director, manager, trustee, or other officer of a corporation incorporated under the laws of, or having its principal place of business within this state.

As evidenced by their respective Affidavits, Defendants PCCP and Towle do not conduct or transact business in the State of Michigan, nor do they own any real or personal property within the State of Michigan. Moreover, Defendants PCCP and Towle never had any contact with Plaintiff, which would have resulted in an action for tort. The Court notes further that Plaintiff's First Amended Complaint does not allege that Defendants PCCP and Towle entered into any contracts with Plaintiff for services or materials or to insure a person, property, or risk located in Michigan. Additionally, Defendant Towle asserts in his Affidavit that he does not serve as a manager, director, trustee, or officer of a Michigan corporation.

statute, MCL 600.735, extends limited personal jurisdiction over a non-resident LLC." *United Ins. Grp. Agency, Inc. v Patterson*, unpublished opinion per curiam of the Court of Appeals, issued October 25, 2011 (Docket No. 299631). The language of these two statutes is virtually identical with the exception of (6) and (7) in MCL 600.705, which is not included in MCL 600.735. MCL 600.705(7) pertains to a marital or family relationship and is therefore irrelevant and will not be considered herein.

It is clear to this Court that Defendants have no connection to the State of Michigan and neither have purposely availed themselves of Michigan law or sought contact with Michigan in a manner sufficient to confer this Court's jurisdiction over them.

Accordingly, the Court finds that Plaintiff has failed to make a prima facie showing of this Court's general or limited personal jurisdiction over Defendants PCCP and Towle. As a result, summary disposition is granted with respect to Defendants PCCP and Towle. It is ordered that Plaintiff's claims against Defendants PCCP, LLC and Steve Towle are dismissed with prejudice for lack of personal jurisdiction.

*Redico, LLC's Motion and Brief for Summary Disposition
Pursuant to MCR 2.116(C)(8)*

*Defendant Bloomfield Village Investor Holdings, LLC's Motion for Summary Disposition
Pursuant to MCR 2.116(C)(8)*

Next, Defendants Redico, LLC ("Redico") and Bloomfield Village Investor Holdings, LLC ("BVI") have filed substantially similar motions for summary disposition pursuant to MCR 2.116(C)(8). Since the same pleading defects apply to Plaintiff's claims against Redico and BVI, the Court shall consider the merits of the two motions simultaneously. In their respective motions, Redico and BVI are requesting the Court to dismiss Plaintiff's claims against them for the reason that Plaintiff has failed to plead with particularity the various claims asserted in the First Amended Complaint.

While Plaintiff filed a response to the summary disposition motions, Plaintiff's response fails to specifically address the legal basis for dismissal offered by Redico and BVI in their respective motions.

When reviewing a summary disposition motion pursuant to MCR 2.116(C)(8), all well-pleaded factual allegations are accepted as true and are construed in a light most favorable to the non-movant. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). The Court only considers the pleadings in a (C)(8) motion. *Id.* “A court may only grant a motion pursuant to MCR 2.116(C)(8) where the claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Wade v Dep't of Corr.*, 439 Mich 158, 163; 483 NW2d 26 (1992).

In general, Defendants argue that Plaintiff’s First Amended Complaint is severely deficient under MCR 2.111(B) for the reason that it does not identify one single act or factual allegation attributable to either Redico or BVI to provide a legal foundation for the specific claims alleged in Count II through Count VII.

MCR 2.111(B) provides that “[a] complaint, counterclaim, cross-claim, or third-party complaint must contain...[a] statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend.” See MCR 2.111(B)(1). Defendants contend and this Court agrees that Plaintiff’s First Amended Complaint offers general conclusory allegations that fail to comply with MCR 2.111(B)(1).

With respect to Count II, Fraud and Misrepresentation, Defendants argue that the allegations of fraud must be stated with particularity. Pursuant to MCR 2.112(B)(1), allegations of fraud or mistake must be stated with particularity. “In order to sustain a cause of action for common law fraudulent misrepresentation, the plaintiff must prove the following elements: (1) a material representation by the defendant; (2) the representation was false; (3) at the time of its

making, defendant knew said representation was false, or made it recklessly, without knowledge of its truth and as a positive assertion; (4) defendant made the representation with the intention that plaintiff would act upon it; (5) plaintiff acted in reliance upon it; and (6) plaintiff suffered damage.” *Hi-Way Motor Co v Int'l Harvester Co*, 398 Mich 330, 336; 247 NW2d 813 (1976).

The Court concurs with Defendants’ assertion that Plaintiff’s Count II has failed to inform Redico and BVI separately of the allegations surrounding their respective participation in the fraud. Instead, Plaintiff simply makes general, conclusory allegations that Defendants made false representations of material fact without pleading with particularity the basis of their respective fraudulent acts. As such, questions remain as to which defendants committed what fraudulent acts and when. Thus, Plaintiff has failed to plead, with particularity, facts sufficient to support its fraud claim.

Regarding Count III, Innocent Misrepresentation, Defendants assert that Plaintiff must prove that Redico and BVI made a false representation in conjunction with the making of a contract. “A claim of innocent misrepresentation is shown if a party detrimentally relies upon a false representation in such a manner that the injury suffered by that party inures to the benefit of the party who made the representation...[I]n order to prevail on an innocent misrepresentation claim, a plaintiff must also show that the plaintiff and defendant were in privity of contract.” *M&D, Inc. v W.B. McConkey*, 231 Mich App 22, 27-28; 585 NW2d 33 (1998)

As noted previously, Plaintiff’s First Amended Complaint does not allege that Defendants Redico or BVI entered into any contracts with Plaintiff. As such, Defendants do not have a contractual relationship with Plaintiff and so this claim should be dismissed.

In relation to Count IV, Misappropriation of Trade Secrets, Defendants maintain that Plaintiff has not satisfied the pleading requirements concerning allegations of misappropriation

of trade secrets. “The three essential elements of a cause of action for misappropriation of trade secrets in Michigan are: (1) the existence of a ‘trade secret’; (2) its acquisition in confidence; and (3) the defendant's unauthorized use of it.” *Aerospace America, Inc v Abatement Technologies, Inc*, 738 F Supp 1061, 1069 (ED Mich, 1990).

“To be a trade secret, the information must, of necessity, be a Secret: specifically, there must be evidence presented that sufficient measures have been taken to guard the secrecy of the information and preserve its confidentiality...The term ‘trade secret’ does not encompass information which is readily ascertainable, i.e., capable of being acquired by competitors or the general public without undue difficulty or hardship.” *Kubik, Inc. v Hull*, 56 Mich App 335, 347-48; 224 NW2d 80 (1974).

While Plaintiff asserts that his entire Business Plan is the trade secret, he filed the document as Exhibit A in the public case file on July 6, 2015. It certainly appears to this Court that Plaintiff has not taken measures to guard the secrecy of the information and preserve its confidentiality. Further, Count IV does not particularize and identify the trade secrets within the 103 page Business Plan with specificity as required. “A party alleging trade secret misappropriation must particularize and identify the purportedly misappropriated trade secrets with specificity.” *Wilson v Cont'l Dev. Co.*, 112 F Supp2d 648, 662 (W.D.Mich.1999). Thus, the Court finds that Plaintiff has failed to state a valid claim for misappropriation of trade secrets upon which relief can be granted.

With respect to Count V, Tortious Interference with Advantageous Business Expectancy, Defendants argue that Plaintiff has failed to make a prima facie case of tortious interference with a contract or a prospective business advantage.

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).

Additionally, “[o]ne who alleges tortious 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).

First, Plaintiff does not allege in his First Amended Complaint that either Redico or BVI knew of Plaintiff’s claimed contracts or business relationships. Without that knowledge, there can be no intentional interference causing termination of Plaintiff’s business relationship or expectation and consequently, no liability on the part of Defendants Redico or BVI. Moreover, a plaintiff necessarily must demonstrate, with specificity, affirmative acts by the defendants which corroborate the unlawful purpose of the interference. *Feldman v Green*, 138 Mich App 360, 370; 360 NW2d 881 (1984). Not only does Plaintiff fail to allege specific affirmative acts by Defendants Redico and BVI, Plaintiff fails to allege in his First Amended Complaint that Defendants engaged in any per se wrongful acts. The Court finds that Plaintiff’s general, conclusory allegations are not sufficient to establish the pleading requirements for this intentional tort.

Concerning Count VI, Concert of Action, Defendants assert that this cause of action is dependent upon Plaintiff pleading a proper tort. “The concert of action claim is a true joint tort, and once the fact of a tortfeasor's liability is established, its extent is clear: he is jointly and severally liable for the entire amount of damages, although he may be entitled to contribution from his fellow tortfeasors.” *Abel v Eli Lilly & Co.*, 94 Mich App 59, 73; 289 NW2d 20 (1979). Since Plaintiff has failed to sufficiently plead and establish the tort and remaining claims in Counts II through V, the concert of action claim should be dismissed.

Finally, Defendants maintain that Count VII, Civil Conspiracy, must be dismissed because it is not a cause of action which can stand alone. “There is no civil action for conspiracy alone. It must be coupled with the commission of acts which damaged the plaintiff. Recovery may be had from parties on the theory of concerted action as long as the elements of the separate and actionable tort are properly proved.” *Earp v City of Detroit*, 16 Mich App 271, 275; 167 NW2d 841 (1969). Here, Plaintiff has failed to sufficiently plead the underlying wrongful conduct and therefore, he cannot successfully plead the necessary elements for a conspiracy claim. “Because Plaintiff has failed to state any tortious action, its conspiracy action must also fail.” *Early Detection Center, P.C. v New York Life Ins. Co.*, 157 Mich App 618, 632, 403 NW2d 830 (1986).

For the reasons stated herein, considering only the pleadings, and accepting all well-pled factual allegations as true, the Court concludes that Plaintiff's Counts II through VII are so clearly unenforceable as a matter of law – against Redico and BVI - that no factual development could possibly justify recovery.

Accordingly, Defendants' summary disposition motions under MCR 2.116(C)(8) are granted. The Court hereby dismisses all claims against Defendants Redico, LLC and Bloomfield Village Investor Holdings, LLC with prejudice.

Plaintiff's Motion for Declaration of Necessity of Specificity of Corporate Entities of the Defendant in regards to Interrogatories Pursuant to MCR 2.309(E)(1), (2), and (3)

In his motion, Plaintiff appears to be arguing that Defendants have purposely misled the Court in their responses to interrogatories. Additionally, Plaintiff contends that the declaratory statute supports his motion for a declaration of necessity with regard to BVI in order to identify its members and their ownership rights.

In response, Defendants Redico and BVI argue that they are again forced to respond to Plaintiff's motion without knowing the basis for, nor the relief requested by Plaintiff. Defendants point out that Plaintiff is not objecting to responses to interrogatories, but rather Defendant BVI's statements within its Answer to the First Amended Complaint.

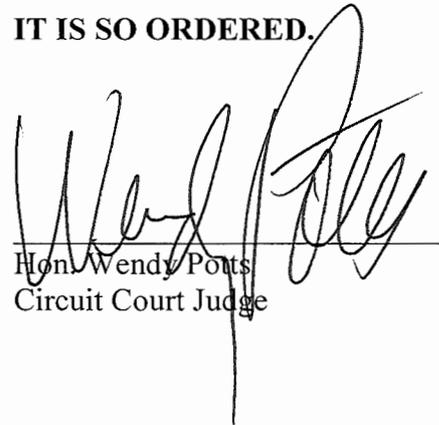
Additionally, Plaintiff's motion does not satisfy the requirements of MCR 2.119(A) because it does not state with particularity the grounds and authority upon which it is based. To the extent that Plaintiff's motion is a motion to compel answers to interrogatories, it fails for the same reasons as noted by the Court in its January 22, 2016 Order. Further, Plaintiff's motion is replete with inaccurate statements.

The Court agrees with Defendants' argument that Plaintiff's motion does not satisfy the requirements of MCR 2.119(A). The Court hereby denies Plaintiff's motion pursuant to MCR 2.119(A)(1)(b) for its failure to state with particularity the grounds and authority on which it is based. To the extent that Plaintiff's motion sought relief with respect to Redico and BVI, the

Court notes that the motion is moot as Plaintiff's claims against those defendants have been dismissed.

In light of the fact that the Court has dismissed Plaintiff's claims against Defendants PCCP, Towle, BVI, and Redico, the Court seeks clarification as to the status of the other remaining defendants within seven days.

IT IS SO ORDERED.



Hon. Wendy Potts
Circuit Court Judge

Dated:

FEB 23 2016