

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

**RESOURCE POINT, LLC,  
Plaintiff,**

**v.**

**Case No. 15-150580-CB  
Hon. James M. Alexander**

**ADDOLUX, LLC and  
MASOUD ABBASI,  
Defendants.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Defendant Masoud Abbasi’s Motion to Dismiss. Although not titled as such, Defendant’s motion is actually one for partial summary disposition – seeking to dismiss only Plaintiff’s Count II for tortious interference.

Plaintiff appears to be in the business of placing temporary IT professionals with its clients. Under the terms of an October 22, 2012 Contractor Agreement, Defendant Addolux contracted with Plaintiff to place Defendant Masoud Abbasi with a Plaintiff client, Gordon Food Services. At the same time, Abbasi also executed a Confidentiality and Noncompetition Agreement.

In its First Amended Complaint, Plaintiff alleges that “Abbasi is or was a principal owner of Addolux, as well as its agent and employee at all relevant (sic) until at least July 13, 2015.” Under the Agreements, Plaintiff claims that Abbasi worked at Gordon from October 12, 2012 until about February 8, 2014.

But, Plaintiff claims, shortly after Abbasi was placed at Gordon, Addolux sought to replace Plaintiff as the Gordon contracting party. As a result, Plaintiff alleges that in May 2015, “Addolux, through one of its [principals], Abbasi, entered into a contract directly with [Gordon] for the engagement of Abbasi with [Gordon] – without notifying [Plaintiff].” These actions, Plaintiff claims, deprived it of its “justified compensation for bringing together Abbasi and [Gordon].”

With respect to its tortious interference claim against Abbasi (Count II), Plaintiff alleges that “Abbasi convinced Addolux to breach its Contractor Agreement with [Plaintiff] such that [Plaintiff] was illegally and unfairly ‘circumvented’ in the new arrangement.”

Abbasi now seeks summary disposition of this claim under MCR 2.116(C)(8) – claiming that Plaintiff did not adequately plead the same because Abbasi (as an Addolux owner) is not considered a third party to the Plaintiff/Addolux Agreement, and Plaintiff otherwise failed to adequately plead said claim.

A (C)(8) motion tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Such a motion 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.” *Wade v Dept of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992). When considering such a motion, all well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade*, 439 Mich at 162-163. Additionally, when considering such motions, the court considers only the pleadings. MCR 2.116(G)(5).<sup>1</sup>

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<sup>1</sup> “When an action is based on a written contract, it is generally necessary to attach a copy of the contract to the complaint. Accordingly, the written contract becomes part of the pleadings themselves, even for purposes of review under MCR 2.116(C)(8).” *Laurel Woods Apts v Roumayah*, 274 Mich App 631, 635; 734 NW2d 217 (2007); citing

## 1. Third-Party?

In order to prevail on the claim that Abbasi tortiously interfered with the Addolux's contract with Plaintiff, Abbasi argues that Plaintiff "must establish that [he] was a 'third party' to the contract or business relationship," quoting *Reed v Michigan Metro Girl Scout Council*, 201 Mich App 10, 13; 506 NW2d 231 (1993). But, Abbasi claims, "Plaintiff has pled exactly the opposite."

Abbasi also cites *Lawsuit Fin, LLC v Curry*, 261 Mich App 579; 683 NW2d 233 (2004) for the proposition that an agent, acting within the scope of its authority as an agent, is not a third-party for purposes of a tortious interference claim. In *Lawsuit Fin*, the Court of Appeals concluded: "To maintain a cause of action for tortious interference, the plaintiff must establish that the defendant was a 'third party' to the contract rather than an agent of one of the parties acting within the scope of its authority as an agent." *Lawsuit Fin*, 261 Mich App at 593; citing *Reed v Michigan Metro Girl Scout Council*, 201 Mich App 10, 13; 506 NW2d 231 (1993).

Abbasi argues just as Plaintiff alleges in its Complaint – that he was an employee or agent of Addolux during the relevant time period that founds the basis for Plaintiff's tortious interference claim. And because he wasn't a third party under Michigan law, said claim fails.

In response, Plaintiff cites *Stack v Marcum*, 147 Mich App 756; 382 NW2d 743, 744 (1985). In *Stack*, in relevant part, the plaintiff sued his supervisor for tortious interference after said supervisor fired him twice. The supervisor then moved for summary disposition – arguing that he was an agent of the corporate defendant "and a corporate defendant acting through its employee cannot induce a tortious breach of its own contract." *Stack*, 147 Mich App at 758.

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MCR 2.113(F) and *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2d 633 (2003).

The *Stack* Court reversed the trial court's granting of the supervisor's summary motion and quoted with approval from *Seven D Enterprises, Ltd v Fonzi*, 438 F Supp 161, 163-164 (ED Mich, 1977) as follows:

[The Seven D defendant] . . . asserts that as a corporate employee and officer who acted on his employer's behalf he is immune from a tortious interference with contract suit unless he committed a separate tort apart from the alleged interference. The court disagrees. *The trier of fact must decide whether the defendant acted on his employer's behalf or for his own benefit when he terminated the contract and lease agreements the plaintiffs had with Interstate. The fact that Fonzi was employed by Interstate to exercise the authority he used to terminate these contracts does not immunize his conduct if he used his authority to further his own ends at the plaintiffs' expense.*

In other words, *Stack* stands for the proposition that an agent defendant can be held liable for tortious interference if he is acting solely for his own benefit. This concept is consistent with *Lawsuit Financial* and *Reed* because both only bar claims where an agent is “**acting within the scope** of its authority as an agent.” *Lawsuit Fin*, 261 Mich App at 593; and *Reed*, 201 Mich App at 13 (reasoning “It is now settled law that corporate agents are not liable for tortious interference with the corporation's contracts unless they acted solely for their own benefit with no benefit to the corporation.”).

In this case, a careful review of the First Amended Complaint reveals that Plaintiff merely pleads legal conclusions that Abbasi tortiously interfered with Plaintiff's contract with Addolux. And there are no allegations that Abbasi did so solely for his own benefit with no benefit to the corporation as required by *Reed*.

As a result, summary disposition of Plaintiff's Count II is appropriate, and said claim is properly dismissed.

## 2. Sufficiently Pled?

In the alternative, Abbasi also seeks summary disposition based on the argument that Plaintiff failed to sufficiently plead wrongful conduct. Even had Plaintiff established that Abbasi was a third party to the business relationship, Plaintiff must also establish: (1) the existence of a valid business relationship or expectancy, (2) knowledge of the relationship or expectancy on the part of Defendant, (3) an intentional interference by Defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resultant damage to the Plaintiff. *BPS Clinical Laboratories v BCBSM*, 217 Mich App 687, 698-699; 552 NW2d 919 (1996).

Plaintiff must also demonstrate that Abbasi's interference was "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." *Badiee v Brighton Area Schools*, 265 Mich App 343, 367; 695 NW2d 521 (2005), quoting *Feldman v Green*, 138 Mich App 360, 378; 360 NW2d 881 (1984).

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).

"To establish that a lawful act was done with malice and without justification, the plaintiff must demonstrate, with specificity, affirmative acts by the defendant that corroborate the improper motive of the interference." *BPS*, 217 Mich App at 699, citing *Feldman*, 138 Mich App

at 369-370; see also *CMI Int'l, Inc v. Intermet Int'l Corp*, 251 Mich.App 125, 131; 649 NW2d 808 (2002).

And Plaintiff fails to allege any per se wrongful act or an act that can never be justified under any circumstances. Again, Plaintiff merely pleads legal conclusions that Abbassi is liable for tortious interference.

As a result, Plaintiff's Count II also fails for this reason, and the same is properly dismissed.

### **3. Opportunity to Amend?**

Finally, Plaintiff argues that, “[s]hould [the] Court find that Plaintiff has not adequately pled wrongful conduct on the part of Abbasi or that Abbasi’s wrongful conduct was entirely for his benefit and not for the benefit of Addolux,” then Plaintiff should be permitted to amend its Complaint under MCR 2.116(I)(5).

The Court agrees. As in any summary motion brought under (C)(8), the Court Rules require that the Court “shall give the parties an opportunity to amend their pleadings.” MCR 2.116(I)(5).

For this reason, Plaintiff must be provided with the opportunity to amend its Complaint to properly allege its tortious interference claim. Plaintiff has 14 days to so amend. Should Plaintiff fail to amend its Complaint within 14 days, Defendant Abbassi’s motion is GRANTED, and Plaintiff’s Count II is DISMISSED.

**IT IS SO ORDERED.**

April 20, 2016  
Date

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