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

LAUNCH SUPPORT SPECIALISTS, INC, ET AL,
Plaintiffs,

v. **Case No. 16-151393-CB**
Hon. James M. Alexander

KAREN MUELLER and
CHAMPION GROUP, LLC,
Defendants.
_____/

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Plaintiffs' motion to dismiss counterclaims. Plaintiffs previously employed Defendant Karen Mueller as a sales representative and terminated her on October 2, 2015. Thereafter, she began working for Defendant Champion Group in January 2016.

In February 2016, Plaintiffs filed the present suit on claims that Mueller violated a December 2014 Non-Competition and Confidentiality Agreement and Champion tortiously interfered with said Agreement by employing Mueller. In response to the present lawsuit, Defendants filed a Counterclaim.

Under the Agreement's terms, Mueller was prohibited from working in a similar line of work that she did for Plaintiffs. This covenant survived her termination for 12 months and covered a 200-mile radius. During an April 28, 2016 hearing, however, the Court exercised its discretion to amend the geographical scope to a 50-mile radius.

In their motion, Plaintiffs seek dismissal of Mueller's Counterclaims for (Count I) wrongful discharge in violation of public policy, (Count II) constructive discharge in violation of public policy – pled in the alternative to Count I, (Count III) intrusion upon seclusion, (Count IV) violation of the Bullard-Plawecki Act, and (Count V) declaratory judgment. In her response to Plaintiff's, motion, Mueller admitted that her declaratory judgment count should be dismissed as moot. As a result, the Court need not consider the same. Defendant Champion also asserted a single Counterclaim for tortious interference with existing and prospective business relationships.

Plaintiffs now move for summary disposition of each claim under MCR 2.116(C)(8), which tests the legal sufficiency of the complaint. 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; 483 NW2d 26 (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).

The Court will note that Defendants' response to Plaintiffs' motion was filed one week late. Along with said response, Defendants' filed a motion requesting that the Court consider the same because it erred in filing said response late. The Court will exercise its discretion to do so.

1. Champion's Claim for Tortious Interference with Business Expectancy

Plaintiffs first claim that they are entitled to summary of Champion's tortious interference with business expectancy claim. The parties agree to support such a claim a plaintiff must plead and prove:

> [1] the existence of a valid business relationship or expectancy, [2] knowledge of the relationship or expectancy on the part of the defendant, an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and [3] resultant damage to the plaintiff. *Badiee v Brighton Area Sch*, 265 Mich App 343, 365-66; 695 NW2d 521 (2005).
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> Further:
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> 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. *Where the defendant's actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference. Id*. at 366 (emphasis in original), quoting *Mino v Clio School Dist*, 255 Mich App 60, 78; 661 NW2d 586 (2003).

Plaintiffs initially argue that Champion's claim alleges that the present lawsuit is a wrongful act sufficient to support a tortious interference claim. But our Court of Appeals has held the same insufficient to support a tortious interference claim, concluding "[t]here is nothing illegal, unethical or fraudulent in filing a lawsuit, whether groundless or not." *Dalley v Dykema Gossett*, 287 Mich App 296, 324; 788 NW2d 679 (2010). Indeed, the filing of a lawsuit cannot serve as the basis for any tortious interference claim. As a result, to the extent that Champion relies on the same to establish its tortious interference claim, the same is DISMISSED.

Plaintiffs also argue that contacting a third party over legitimate business concerns such as a breach of contract cannot form the basis of a tortious interference claim. In support, Plaintiffs cite to a non-binding, unpublished, federal opinion. While said opinion is not dispositive, the Court agrees that Defendant has entirely failed to plead facts supporting a "lawful act . . . done with malice and without justification." For this reason, Champion's Counterclaim fails.

For the foregoing reasons, considering only the pleadings, and accepting all well-pled factual allegations as true, the Court concludes that Champion's tortious interference claim is "so clearly unenforceable as a matter of law that no factual development could possibly justify

recovery." As a result, Plaintiffs' motion for summary disposition of under MCR 2.116(C)(8) is GRANTED, and Champion's tortious interference counterclaim is DISMISSED.

2. Mueller's Discharge Claims (pled in the alternative)

Next, Plaintiffs seek dismissal of Mueller's Counterclaims for (Count I) wrongful discharge in violation of public policy, (Count II) constructive discharge in violation of public policy – pled in the alternative to Count I.

In support, Plaintiffs argue that Mueller was an at-will employee, and therefore, she can be terminated for any or no reason at all. Mueller's counterclaims allege that she was fired or constructively discharged because she observed that Plaintiffs regularly violated the law in several ways. Plaintiffs claim that, if Mueller alleges a violation of the law, her sole remedy falls under the Whistleblower's Protection Act. But she never attempted to report such violations to any public body. As a result, the WPA cannot apply.

In response, Mueller argues that our Court of Appeals recently reasoned that:

> Michigan law generally presumes that employment relationships are terminable at the will of either party. There is, however, an exception to the at-will employment doctrine "based on the principle that some grounds for discharging an employee are so contrary to public policy as to be actionable." *Landin v Healthsource Saginaw, Inc*, 305 Mich App 519, 523; 854 NW2d 152, 158 (2014), citing *Lytle v Malady (On Rehearing),* 458 Mich 153, 163, 579 NW2d 906 (1998) and quoting *Suchodolski v Mich Consol Gas Co.*, 412 Mich 692, 695, 316 NW2d 710 (1982).

And the *Landin* Court dismissed the notion that the WPA provided the exclusive remedy for an alleged violation of public policy. *Landin*, 305 Mich App at 532. The *Landin* Court also noted that the Supreme Court in *Suchodolski v Mich Consol Gas Co*, 412 Mich 692, 695; 316 NW2d 710 (1982) "opined that the only grounds that have been recognized as so violative of public policy that they serve as an exception to the general rule of at-will employment" include

"where the alleged reason for the discharge was the failure or refusal of the employee to violate a law in the course of employment." *Landin*, 305 Mich App at 524.

Based on the foregoing, the Court cannot conclude that Mueller's discharge counterclaims fail as a matter of law. Plaintiffs' motion on said claims is, therefore, DENIED.

3. Mueller's Intrusion on Seclusion Claim

Plaintiffs next seek dismissal of Mueller's intrusion on seclusion claim.

> There are three necessary elements to establish a prima facie case of intrusion upon seclusion: (1) the existence of a secret and private subject matter; (2) a right possessed by the plaintiff to keep that subject matter private; and (3) the obtaining of information about that subject matter through some method objectionable to a reasonable man. *Doe v Mills*, 212 Mich App 73, 88; 536 NW2d 824 (1995).

Plaintiffs argue that they are entitled to dismissal of said claims because she has failed to identify exactly what information of a "secret and private subject matter" was obtained.

Indeed, in her response, Mueller fails to identify what information was obtained by Plaintiff. Because she fails to allege what information was obtained that was of a secret and private subject matter, she has not pled sufficient facts to support the cause of action and her claim fails as a matter of law.

For the foregoing reason, Plaintiffs' motion with respect to this claim is GRANTED, and Mueller's intrusion on seclusion counterclaim is DISMISSED.

4. Mueller's Bullard-Plawecki Claim

Finally, Plaintiffs seek dismissal of Mueller's Bullard-Plawecki claim because Plaintiffs provided Mueller's personnel file within a reasonable time after she requested the same. The Act, at MCL 423.503, provides:

> An employer, upon written request which describes the personnel record, shall provide the employee with an opportunity to periodically review at reasonable intervals, generally not more than 2 times in a calendar year or as otherwise provided by law or a collective bargaining agreement, the employee's personnel record if the employer has a personnel record for that employee. The review shall take place at a location reasonably near the employee's place of employment and during normal office hours. If a review during normal office hours would require an employee to take time off from work with that employer, then the employer shall provide some other reasonable time for the review. The employer may allow the review to take place at another time or location that would be more convenient to the employee.

It is undisputed, however, that Plaintiffs provided Mueller's personnel file to her on March 21, 2016. As a result, the Court finds that Mueller's claim alleging a violation of the Bullard-Plawecki Act is moot and, therefore, properly DISMISSED.

5. Summary/Conclusion

To summarize, Plaintiffs' motion to dismiss is GRANTED IN PART, but only with respect to Champion's tortious interference claim, and Mueller's (Count III) intrusion on seclusion, (Count IV) Bullard-Plawecki, and (Count V) declaratory judgment claims, which are all DISMISSED.

In all other respects, Plaintiffs' motion is DENIED.

IT IS SO ORDERED.

June 8, 2016 /s/ James M. Alexander
Date Hon. James M. Alexander, Circuit Court Judge