

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

**CORPORATE AUTO RESOURCE SPECIALISTS, LTD,
Plaintiff,**

v.

**Case No. 16-152738-CB
Hon. James M. Alexander**

**SHAUN PRUITT,
Defendant.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant’s motion for summary disposition. Plaintiff employed Defendant for approximately nine years before his resignation in January 2016. At the time, Defendant acted as Plaintiff’s Sales and Operations Director. Shortly after leaving, Defendant started working for a Plaintiff competitor.

In its Complaint, Plaintiff generally claims that Defendant (1) “strategically plann[ed] his resignation from [Plaintiff] for a significant period of time prior to his departure”; (2) failed to disclose that he had actually accepted a job with the competitor while still working for Plaintiff; (3) copied “contact information, pricing models, and other proprietary information” during that time; and (4) acted as a fiduciary for Plaintiff and breached his corresponding duties through his actions. Plaintiff also claims that, almost immediately after Defendant’s resignation, numerous of its “longtime customers” left it to go with said competitor.

On these general claims, Plaintiff filed a multi-count Complaint on claims of (Count I) Misappropriation of Trade Secrets; (Count II) Tortious Interference with and Advantageous

Business Relationship; (Count III) Business Defamation; (Count IV) Unfair Competition; (Count V) Breach of Fiduciary Duties; and (Count VI) Usurpation of Corporate Authority.

Defendant now seeks summary disposition under MCR 2.116(C)(8), arguing that Plaintiff fails to state a claim for each of these counts. 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) (emphasis added).¹

Perhaps confused about the (C)(8) standard, the overwhelming majority of Plaintiff’s response argument centers on the existence of factual disputes as if Plaintiff’s motion was one brought under (C)(10). And, despite the clear rule that “the court considers only the pleadings,” Plaintiff attaches several exhibits. The Court will not consider these exhibits.

The Court will also note that Plaintiff’s Response “agrees that, at this time,” with Defendant’s request for summary under (C)(8) – stating that it cannot proceed on Count III for business defamation or Count IV for unfair competition. Based on this agreement, the Court will DISMISS Plaintiff’s Counts III and IV under (C)(8).

¹ “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 MCR 2.113(F) and *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2d 633 (2003).

Additionally, under MCR 2.110, “The term ‘pleading’ includes only: (1) a complaint, (2) a cross-claim, (3) a counterclaim, (4) a third-party complaint, (5) an answer to a complaint, cross-claim, counterclaim, or third-party complaint, and (6) a reply to an answer. No other form of pleading is allowed.”

Although Plaintiff asks that this dismissal be without prejudice, it offers no authority for the proposition that a (C)(8) dismissal is without prejudice. In fact, our Court of Appeals has concluded that “a grant of summary disposition under subrule C(8) should always be with prejudice.” *ABB Paint Finishing, Inc v Natl Union Fire Ins Co of Pittsburgh, Pa*, 223 Mich App 559, 563; 567 NW2d 456 (1997). As a result, dismissal of these claims is with prejudice.

The Court now turns to Plaintiff’s remaining claims.

1. Misappropriation of Trade Secrets (Count I)

Defendant first claims that Plaintiff cannot succeed on its misappropriation of trade secrets claim because it fails to allege the existence of any specific, recognizable trade secret under Michigan’s Uniform Trade Secrets Act (MUTSA).

Said Act defines “trade secrets” as information that both: (1) “derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use;” and (2) “is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” MCL 445.1902(d).

Turning to Plaintiff’s Complaint (its “pleading”), Plaintiff claims that Defendant “usurped” the following “trade secrets”: “contact information, business model information, pricing structure, and all other relevant business related information.” (Complaint, at ¶ 22-23).

Defendant argues that Plaintiff’s pleading is general and does not specifically identify information that can constitute a trade secret under Michigan law. Rather, Defendant argues, Plaintiff is simply pleading its legal conclusion that Defendant absconded with trade secrets.

Indeed, the Court of Appeals has cautioned, “[c]onclusory statements, unsupported by factual allegations, are insufficient to state a cause of action.” *Churella v Pioneer State Mut Ins Co*, 258 Mich App 260, 272; 671 NW2d 125 (2003); citing *ETT Ambulance Service Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395; 516 NW2d 498 (1994). And, while a (C)(8) motion requires the Court to accept “all well-pled allegations” as true, it does not require the Court accept all pled **legal conclusions** as true.

In response, Plaintiff makes two basic arguments. First, it has sufficiently put Defendant on “notice of the specific allegations necessary to reasonably inform the adverse party of the nature of the claims.” Second, “discovery is needed to ascertain the scope and nature of the misappropriation of these secrets, as, by their own nature, they are secrets.”

With respect to Plaintiff’s notice argument, the Court agrees. Plaintiff has sufficiently pled facts, that Defendant absconded with its “contact information, business model information, pricing structure, and all other relevant business related information,” to state a valid trade secrets claim.²

But Plaintiff’s discovery argument is only relevant to a (C)(10) motion. When considering a (C)(8) motion, the Court accepts Plaintiff’s well-pled factual allegations as true. As a result, this argument is meritless.

For the foregoing reasons, considering only the pleadings, and accepting all well-pled factual allegations as true, the Court cannot conclude that Plaintiff’s trade secrets claim is “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” As a result, Defendant’s motion for summary disposition of this claim under (C)(8) is **DENIED**.

² While Plaintiff’s alleged “contact information” and “all other relevant business related information” (whatever that means) **may** not ultimately be a protectable trade secret under Michigan Law, the other two categories arguably could be considered trade secrets.

2. Tortious Interference (Count II)

Defendant next seeks dismissal of Plaintiff's Count II for tortious interference with an advantageous business relationship. To succeed on 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).

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).³

Defendant argues that Plaintiff has not adequately pled this claim because it only alleges that Defendant contacted its customers. (Complaint, at ¶ 40). But, Defendant argues, in the

³ 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.”).

absence of a non-compete or non-solicitation agreement, it cannot be per-se wrongful to contact Plaintiff's customers.

In response, Plaintiff argues that "at a minimum" "there . . . is a question of fact as to whether the parties intended to be bound by the attached Agreement." But, as stated earlier, a question of fact precludes summary under (C)(10), not (C)(8). And the "attached Agreement" is not attached to, nor identified in, the Complaint. As a result, it may not be considered for (C)(8) purposes.

Further, assuming the "attached Agreement" (Exhibit C to Plaintiff's Response) was a part of the Complaint (and therefore, appropriately considered), it does not actually appear to be an Agreement. Exhibit C is titled "Non-Compete, Confidentiality and Non-Disclosure Agreement." But it is not signed by either party. It is unclear, under what legal theory, Plaintiff believes that an unexecuted writing becomes binding on these parties.

Because Plaintiff has failed to plead any per-se wrongful act to serve as the basis for its tortious interference claim, Defendant's motion as to this claim is GRANTED, and Plaintiff's Count II is dismissed under (C)(8).

3. Breach of Fiduciary Duties (Count V)

Defendant next seeks dismissal of Plaintiff's breach of fiduciary duty claim because Plaintiff failed to plead that Defendant "had a special type of employment relationship with Plaintiff" as needed to support such a claim.

Generally, "a fiduciary relationship arises from the reposing of faith, confidence, and trust and the reliance of one on the judgment and advice of another." *Prentis Family Fund, Inc v Barbara Ann Karmanos Cancer Inst*, 266 Mich App 39, 43; 698 NW2d 900 (2005).

The Court of Appeals has reasoned:

A fiduciary relationship is “[a] relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships—such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client—require the highest duty of care. Fiduciary relationships [usually] arise in one of four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.” *Calhoun County v Blue Cross & Blue Shield*, 297 Mich App 1, 20; 824 NW2d 202 (2012); quoting *In re Karmey Estate*, 468 Mich 68, 75 n 2; 658 NW2d 796 (2003).

In its Complaint, Plaintiff alleges the legal conclusion that “During [Defendant’s] approximately nine (9) year employment with [Plaintiff], a fiduciary relationship was developed.” (Complaint, at ¶ 60). But, as stated earlier, when considering a (C)(8) motion, the Court does not accept pled **legal conclusions** as true (only well-pled **facts** are accepted as true).

Plaintiff’s Complaint also alleges that it “trusted [Defendant] to contact and service customers and develop new business with autonomy.” (Complaint, at ¶ 61). And, generally, that Plaintiff afforded Defendant some autonomy to develop Plaintiff’s business. During this time, Plaintiff alleges, Defendant was planning his departure, contacting Plaintiff’s customers, and in one instance, diverted a potential customer from Plaintiff to his new employer. (Complaint, at ¶¶ 61-67).

Plaintiff claims that it placed its faith, confidence, and trust in Defendant, and relied on his judgment as a fiduciary. And although not mentioned in the Complaint, Plaintiff also argues that Defendant had the authority to enter into binding contracts, make pricing decisions, and had substantial control over Plaintiff’s business.

While the factual allegations contained in Plaintiff's Complaint may fall short for purposes of the present motion, whenever the Court is inclined to grant a (C)(8) motion, the Michigan Court Rules require that a plaintiff be provided an opportunity to amend to properly allege sufficient facts to support its claim. MCR 2.116(I)(5). The Court will provide Plaintiff such an opportunity.

For the foregoing reasons, the Court finds that Defendant is entitled to summary disposition of Plaintiff's breach of fiduciary duty claim in its present form, but Plaintiff should be permitted to amend its Complaint to sufficiently allege facts supporting said claim. Plaintiff has fourteen days to so amend.

4. Usurpation of Corporate Authority (Count VI)⁴

Finally, Defendant seeks dismissal of Plaintiff's usurpation of corporate opportunity claim. With respect to such a claim, the Michigan Courts have adopted the "*Guth* Rule." It provides:

[I]f there is presented to **a corporate officer or a director** a business opportunity which the corporation is financially able to undertake, is, from its nature, in the line of the corporation's business and is of practical advantage to it, is one in which the corporation has an interest or a reasonable expectancy, and, by embracing the opportunity, the self-interest of the officer or director will be brought into conflict with that of his corporation, the law will not permit him to seize the opportunity for himself.

On the other hand, the *Guth* Corollary provides:

It is true that when a business opportunity comes to **a corporate officer or director** in his individual capacity rather than in his official capacity, and the opportunity is one which, because of the nature of the enterprise, is not essential to his corporation, and is one in which it has no interest or expectancy, the officer or director is entitled to treat the opportunity as his own, and the corporation has no interest in it if, of course, the officer or director has not wrongfully embarked the corporation's resources therein.

⁴ It appears that Plaintiff means Usurpation of Corporate **Opportunity**.

Rapistan Corp v Michaels, 203 Mich App 301, 306–07; 511 NW2d 918, 922–23 (1994); quoting *Guth v Loft, Inc*, 23 Del Ch 255, 271-273; 5 A2d 503 (Del Sup Ct 1939) (emphasis added) (internal citations omitted).

Defendant claims that it is entitled to summary of this claim because Plaintiff has failed to plead that Defendant was a corporate officer or director – as required by the *Guth* Rule.

In response, Plaintiff appears to argue that this doctrine should extend to Defendant “as a fiduciary of the company.” But Plaintiff offers no legal authority supporting this notion. Michigan law is clear that, “A party may not merely announce a position and leave it to [the] Court to discover and rationalize the basis for the claim.” *National Waterworks, Inc v International Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007).

Because the *Guth* Rule describes such a claim as appropriately against “a corporate officer or a director,” and Plaintiff pleads that Defendant was “an employee” (Complaint, at ¶ 9), Plaintiff’s usurpation of corporate opportunity claim fails as a matter of law. As a result, said claim (Count VI) is DISMISSED.

5. Summary

To summarize, Defendant’s motion for summary disposition is GRANTED IN PART. Plaintiff’s Counts II, III, IV, V, and VI are DISMISSED.

But, with respect to Plaintiff’s Count V for breach of fiduciary duty only, the Court will provide Plaintiff fourteen days to amend to properly allege facts supporting said claim. MCR 2.116(I)(5).

In all other respects, Defendant’s motion is DENIED.

IT IS SO ORDERED.

August 31, 2016
Date

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