

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

RSVP INTERNATIONAL WORLDWIDE
LOGISTICS, LLC,

Plaintiff,

vs.

Case No. 2014-2869-CK

GENERAL MOTORS HOLDINGS, LLC,

Defendants.

OPINION AND ORDER

Defendant has filed a motion for summary disposition of Plaintiff's claims pursuant to MCR 2.116(C)(8). Plaintiff has filed a response and requests that the motion be denied. In addition, Defendant has filed a reply brief in support of its motion.

Factual and Procedural History

This action arises out of a hauling contract between the parties. Plaintiff is a trucking company that ships dry freight. Effective November 1, 2011, the parties executed a non-exclusive "Premium Truck Transport Agreement" (the "Contract").

On December 17, 2012, Plaintiff agreed to transport a load of automotive parts from Texas to Indiana (the "Load"). During the transportation the Load was allegedly stopped by the Federal Department of Transportation at a weigh station in Texas. Plaintiff allegedly informed Defendant, through its logistics provider, that the Load was delayed and that the delay would prevent it from meeting the delivery deadline provided by Defendant. In response, Defendant allegedly extended the deadline to 9:00 am on December 19, 2012. However, Defendant also diverted a different load of similar parts via air as the result of the initial delay. At 7:29 am on

December 19, 2012, Plaintiff allegedly delivered the Load. On December 20, 2012 Defendant allegedly issued a transportation claim to Plaintiff for \$61,367.94 for the airfreight of the diverted cargo. Plaintiff refused to pay the claim.

On March 22, 2013, Plaintiff allegedly received a letter from Ryder Integrated Logistics (“Ryder”) notifying Plaintiff that Ryder was demanding a refund check in the amount of \$27,847.85 from Plaintiff because of an “outstanding credit.” Attached to the letter was an invoice showing that the refund was being demanded in connection with the diverted load.

On July 21, 2014, Plaintiff filed its complaint in this matter against Defendant alleging claims for: Count I- Breach of Contract, Count II- Tortious Interference with a Business Expectancy, and Count III- Statutory Conversion. On September 30, 2014, Defendant filed its instant motion for summary disposition pursuant to MCR 2.116(C)(8). On October 17, 2014, Plaintiff filed its response. On November 13, 2014, Defendant filed its reply brief in support of its motion. On November 17, 2014, the Court held a hearing in connection with the motion and took the matter under advisement.

Standards of Review

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party "has failed to state a claim on which relief can be granted." *Radtke v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). All factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.* The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992); *Cork v Applebee's Inc*, 239 Mich App 311, 315-316; 608 NW2d 62 (2000).

Arguments and Analysis

1) Count I- Breach of Contract

A party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach. *Miller-Davis Co v Ahren Constr. Inc*, 495 Mich 161, 178; 848 NW2d 95 (2014). In this case it is undisputed that the parties executed the Contract and that the Contract is valid and enforceable. Therefore the first element is satisfied.

With respect to the second element, Plaintiff alleges that Defendant breached the Contract when it failed to permit Plaintiff with an opportunity to cure and also failed to excuse the delay in delivery of the cargo. Plaintiff also alleges that Defendant breached the Contract by demand that Plaintiff pay the airfreight charges and by failing to terminate the Contract.

As a preliminary matter, Plaintiff has failed to cite any specific provision(s) of the Contract that it alleges that Defendant has breached. With regards to Defendant's alleged failure to allow Plaintiff to cure, the Contract does not provide a specific cure period. However, paragraph 15 of the Contract excuses Plaintiff's failure to meet the Contract's requirements or a delay in meeting the requirements if the delay or failure is the result of "actions of any governmental authority", *inter alia*. In its complaint, Plaintiff contends that the shipment at issue was delayed due to it being stopped by the Federal Department of Transportation at a weigh station in Texas. Plaintiff alleges that but-for being stopped the shipment would have been delivered on time. If Plaintiff is able to prove that the shipment would have been delivered on time but-for the governmental delay, the delay does not constitute a breach by Plaintiff of the terms of the Contract pursuant to paragraph 15.

With respect to Defendant's demand for airfreight charges, paragraph 15 of the Contract provides, in part:

During the period of [excused delay or failure to perform] by [Plaintiff], [Defendant] may obtain Transportation Services from other sources, without liability to Carrier.

Further, paragraph 5(d)(iii) provides, in pertinent part:

If [Plaintiff] cannot deliver a shipment within the agreed upon transit time or within the predetermined delivery schedule, [Plaintiff] will contact [Defendant] to determine when such shipment is critical and should be moved by an alternate mode. [Plaintiff] will cooperate with [Defendant's] efforts to arrange alternate transportation to meet [Defendant's] requirements. If alternative service is required due to Carrier's failure, and [is not an excused delay or failure under paragraph 15], the resulting freight charges, up and including the cost of an air charter, will be the responsibility of [Plaintiff].

Accordingly, if Plaintiff is able to establish that the delay in delivery at issue was excused by paragraph 15 of the Contract, Defendant's alleged refusal to pay for the shipment, and alleged attempt to charge Plaintiff for the air freight charges incurred as a result of the delay, will amount to a breach of the terms of the Contract. Accordingly, the Court is convinced that Plaintiff has sufficiently pled its breach of contract claim.

While the Court is satisfied that Plaintiff has sufficiently pled a breach of contract claim, it is convinced that Plaintiff's breach of contract claim fails as a matter of law to the extent that it alleges that Defendant breached the Contract by failing to award Plaintiff additional jobs. While the Contract governs any jobs awarded to Plaintiff it does not require Defendant to award Plaintiff a minimum number of jobs and does not require Defendant to terminate the Contract after any particular period of time in which they do not award Plaintiff any jobs. Consequently, Plaintiff's breach of contract claim must be dismissed to the extent that it is based on Defendant's failure to terminate or failure to award additional jobs.

2) Count II- Tortious Interference with a Business Expectancy

In order to maintain a tortious interference claim, a plaintiff must establish: “the existence of a valid business relationship or expectancy, 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 resultant damage to the plaintiff.” *Cedroni Association, Inc. v Tomblinson, Harburn Associates, Architects & Planners Inc.*, 492 Mich 40, 45–46; 821 NW2d 1 (2012).

In its complaint and response, Plaintiff alleges that (1) Defendant intentionally interfered with its expectation of payment from Ryder Integrated Logistics, (2) the Plaintiff had a valid expectancy to be paid for the shipment at issue by Ryder, (3) that Defendant knew that Plaintiff expected to be paid by Ryder for the shipment, and (4) that the interference caused Ryder to withhold the payment.

In its motion, Defendant contends that Plaintiff’s tortious interference claims fail because Ryder was acting as its agent. Specifically, Defendant contends that because Ryder is its agent, any interference would not be by a third party. In order to prove tortious interference, a plaintiff must establish that the defendant was a third party to the contract or business relationship. *Reed v Mich Metro Girl Scout Council*, 201 Mich App 10, 13; 506 NW2d 231 (1993). When an agent acts within the scope of its authority as an agent, the agent is not a third party for purposes of a tortious interference claim. *Lawsuit Fin, LLC v Curry*, 261 Mich App 579, 593; 683 NW2d 233 (2004).

Paragraph 3 of the Contract provides:

Lead Logistics Providers. [Plaintiff] acknowledges and agrees that [Defendant] may utilize a Lead Logistics Provider (“LLP”) as [Defendant’s] designee to manage its logistics and transportation functions, including this Agreement, and to pay for some or all of [Defendant’s] obligations under this Agreement. Except as expressly qualified elsewhere in this Agreement, [Plaintiff] acknowledges and agrees that LLP may exercise [Defendant’s] rights and remedies under this Agreement for the benefit of [Defendant] and that LLP shall be entitled to the same

indemnities from [Plaintiff] as this Agreement provides to [Defendant]. All references in this Agreement to [Defendant] shall include the “LLP,” as necessary to effect the intent of this section.

It appears undisputed that Ryder has acted as one of Defendant’s LLPs in connection with the events at issue in this matter. Nevertheless, Plaintiff asserts that Ryder has not acted as Defendant’s agent. In support of its position, Plaintiff relies on a portion of the “Lead Logistics Provider Agreement” between Ryder and Defendant (“Provider Agreement”). Specifically, Plaintiff relies on section 18.01 of the Provider Agreement, which provides:

[Ryder] and [Defendant] are independent contracting parties and nothing in this agreement makes either party the agent or legal representative of the other for any purpose whatsoever.

Although the Provider Agreement indicates that Ryder is not Defendant’s agent, the Contract, which governs Plaintiff’s interaction with Defendant and Ryder, provides that Ryder is Defendant’s designee to manage logistics and transportation functions, including the services to be provided under the Contract. While Plaintiff attempts to use a contract to which it is not a party in order to define Ryder’s relationship with Defendant, it has failed to provide any authority under which it can utilize the language in the Provider Agreement for its benefit. Moreover, the Court is convinced that under the unambiguous terms of the Contract LLPs, including Ryder, act as Defendant’s agent in connection with any services provided under the Contract. Consequently, any interference by Defendant would be interference with its own contract, which is insufficient to form the basis for a tortious interference claim under *Reed*. Consequently, Defendant’s motion for summary disposition of Plaintiff’s tortious interference claim must be granted.

3) Count III- Common Law and Statutory Conversion

The common law tort of conversion is defined as “any distinct act of dominion

wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein.” *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 111; 593 NW2d 595 (1999), quoting *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992). “The gist of conversion is the interference with control of the property.” *Sarver v Detroit Edison Co*, 225 Mich App 580, 585; 571 NW2d 759 (1997) (internal citation omitted). In addition, statutory conversion, pursuant to the current version of MCL 600.2919a(1)(a), provides for damages three times the amount of actual damages to a person damaged as a result of another person’s stealing or embezzling property or converting property to the other person’s own use.

In this case, Plaintiff’s conversion claims are based on Ryder’s failure to pay it the funds that were due under the Contract. As a preliminary matter, the Court is convinced that, for the reasons discussed above, Ryder has acted as Defendant’s agent in connection with the event forming the basis for Plaintiff’s claims. Accordingly, Plaintiff’s conversion claims are that Defendant, via its agent, allegedly retained funds that should have been paid to Plaintiff. However, Plaintiff’s claim, as stated, amounts to a breach of contract claim for unpaid amounts under the Contract. An action arises in tort only where a duty separate and distinct from the contract exists. *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich 157, 171; 809 NW2d 553 (2011). In this case, the complained of conversion is based on the breach of a duty under the Contract, not a duty independent of the Contract. Consequently, Plaintiff’s conversion claim fails as a matter of law and Defendant’s motion for summary disposition of the conversion claim must be granted.

Conclusion

For the foregoing reasons, Defendant General Motors Holdings, LLC’s motion for summary disposition is GRANTED, IN PART, and DENIED, IN PART. Defendant’s motion

for summary disposition of Plaintiff's conversion and tortious interference claims is GRANTED. In addition, Defendant's motion for summary disposition of Plaintiff's breach of contract claim is GRANTED, to the extent that the claim is based on Defendant's failure to terminate the Contract or Defendant's decision not to award additional jobs to Plaintiff. The remainder of Defendant's motion is DENIED. Pursuant to MCR 2.602(A)(3), this Opinion and Order neither resolves the last pending claim nor closes the case.

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: December 15, 2014

JCF/sr

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