

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

JOHN MICHAEL JONES and
OUTBACK PROPERTY
MANAGEMENT, LLC,

Plaintiffs,

Case No. 2015-1987-CB

vs.

WESTMINSTER, LLC and
LEONARDO ROBERTS,

Defendants.

FILED
2016 AUG -3 AM 6:33
STATE CLERK
MACOMB COUNTY
MICHIGAN

OPINION AND ORDER

Defendants have filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). Plaintiffs have filed a response and request that the motion be denied.

I. Factual and Procedural History

Plaintiff John Michael Jones ("Plaintiff Jones") is a licensed realtor and broker in the State of Michigan. Plaintiff Jones is also a member and manager of Plaintiff Outback Property Management, LLC ("Plaintiff Outback"). On or about July 1, 2010, Plaintiff Jones and Defendants entered into a contract entitled "Global Release of All Claims" ("GRC") pursuant to which, *inter alia*, Defendants agreed not to institute any action against Plaintiffs or file any complaints with any governmental agency or professional boards. (See Defendants' Exhibit A.)

In 2013, Plaintiffs filed a lawsuit against Defendants in the Macomb County Circuit Court, case no. 2013-627-CK ("First Case"). In the First Case, Plaintiffs alleged that

Defendants breached the terms of the GRC by initiating Michigan Department of Licensing and Regulatory Affairs ("LARA") complaints against Plaintiff Outback. The First Case was ultimately resolved after the Court conducted an evidentiary hearing and entered an Order holding:

The Court has determined that the LARA complaint filed by Defendants against Outback Property Management, LLC, necessitating a complaint to be filed against [Plaintiff Jones] which in so doing violating the [GRC]. Judgment shall enter in favor of the [Plaintiff Outback] in the amount of \$15,618.95.

(See Defendants' Exhibit C.)

Plaintiff's judgment in connection with the First Case was subsequently satisfied. (See Defendants' Exhibit D.) In addition to granting Plaintiffs a judgment for the damages caused by Defendants' breach of the GRC, the Court entered an order requiring Defendants to "seek withdrawal of the [LARA] complaint, filed by them, against Plaintiff John Jones only, from the Michigan Department of Regulatory Affairs...". (See October 7, 2013 Order entered in the First Case.)

On December 20, 2015, Plaintiffs filed their amended complaint in this matter ("Complaint"). Among the various allegations within the Complaint, Plaintiffs allege that Defendants have not complied with the October 7, 2013 Order entered in the First Case, and that they have continued to suffer damages as a result of Defendants breach of the GRC. The Complaint contains several claims, including a claim for breach of contract based on Defendants alleged breaches of the GRC (Count II).

On March 15, 2016, Plaintiffs filed a motion for partial summary disposition in which they sought summary disposition of Count II. Defendants subsequently filed a response and requested that the motion be denied. On April 4, 2016, the Court held a hearing in

connection with the motion and took the matter under advisement. On May 25, 2016, the Court entered its Opinion and Order denying Plaintiffs' motion and granting Defendants' request for summary disposition pursuant to MCR 2.116(l)(2). The Court has subsequently denied Plaintiffs' motion for reconsideration of the May 25, 2016 Opinion and Order.

On June 2, 2016, Defendants filed their instant motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). On June 20, 2016, Plaintiffs filed their response in which they request that the motion be denied. On June 27, 2016, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Standard 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 upon which relief may be granted. *Radtke v Everett*, 442 Mich 368, 373-374; 501 NW2d 155 (1993). A motion under MCR 2.116(C) (10), on the other hand, tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

III. Arguments and Analysis

A. Counts I, III, IV, V and X

In their motion, Defendants first contend that Counts I, III, IV, V and X should be dismissed under the doctrine of res judicata. "Res judicata bars relitigation of claims that are based on the same transaction or events as a prior suit." *Ditmore v. Michalik*, 244 Mich App 569, 576; 625 NW2d 462 (2001). In *Ditmore*, the Michigan Court of Appeals summarized the doctrine as follows:

Res judicata relieves parties of the cost and vexation of multiple lawsuits, conserves judicial resources, and encourages reliance on adjudication. Res judicata applies when (1) the prior action was decided on the merits, (2) the decree in the prior decision was a final decision, (3) both actions involved the same parties or their privies, and (4) the matter in the second case was or could have been resolved in the first.

As this Court discussed in its May 26, 2015 Opinion and Order, the First Case was decided on the merits, a final decision was entered, and the First Case involved the exact same parties as this matter. Accordingly, as was the case with Count II, the issue before the Court is whether Counts I, III, IV, V and X could have been resolved in the First Case. See *Ditmore*, 244 Mich App at 576.

In their response, Plaintiffs' argument is confined to the exact same arguments contained in their motion for reconsideration of the May 26, 2015 Opinion and Order. However, for the reasons discussed in the Court's subsequent Opinion and Order denying that motion, the Court is convinced that Plaintiffs' position is without merit. Consequently, Plaintiffs' counts I, III, IV, V and X are all barred by res judicata for the same reasons as Count II is barred. As a result, Defendants' motion for summary disposition of Counts I, III, IV, V and X must be granted.

B. Fraud (Count IV) and Silent Fraud (Count V)

Next, Defendants assert that Counts IV (Fraud) and V (Silent Fraud) also fail as a matter of law because they owed Plaintiffs no duty separate and distinct from those set forth in the GRC. As a general matter, there must be a breach of a duty separate and distinct from those imposed by the contract in question in order maintain a separate tort action. *Hart v Ludwig*, 347 Mich 559, 563; 79 NW2d 895 (1956). However, Plaintiffs aver that their fraud claims sound in fraud in the inducement, and that such claims are an exception to the general rule set forth in *Hart*. In support of their position, Plaintiffs rely on *Huron Tool and Engineering Co v Precision Consulting Services, Inc.*, 209 Mich App 365; 532 NW2d 541 (1995).

In *Huron*, the Court noted that fraud in the inducement deals with situations where one side is misled into entering into the contract and that in certain situations such allegations may form the basis for an independent tort claim. However, the Court explained that in order to pursue a separate fraud claim the alleged fraud must be extraneous to the contract and have caused harm distinct from the alleged breach of contract. *Id.* The standard for determining whether tort claims may be pursued separately from breach of contract claims was addressed in *Gen Motors Corp v Alumi-Bunk, Inc.*, 482 Mich 1080; 757 NW2d 859 (2008), where the Michigan Supreme Court adopted the dissenting opinion of the Michigan Court of Appeals written by Judge K.F. Kelly in *Gen Motors Cop v Alumi-Bunk, Inc.*, unpublished opinion per curiam of the Court of Appeals, issued July 24, 2007 (Docket No. 270430)(Kelly, J, dissenting). In that case, General Motors ("GM") submitted an offer to the defendants at a discount if the defendants agreed to "upfit" the vehicles before reselling them. GM's breach of contract claim alleged that

defendants breached the contract by failing to “upfit” the vehicles. GM’s fraud claim alleged that defendant fraudulently misrepresented that they would “upfit” the vehicles before selling them. After reviewing both claims, Judge Kelly concluded that “[c]learly, the fraud allegations are not extraneous to the contractual dispute as GM’s allegations of fraud are so intertwined with its allegations of breach of contract to be indistinguishable.” *Id.* at 5 (Kelly, J., dissenting.)

The facts and analysis are comparable to the facts presented in this case. In this case, Plaintiffs’ breach of contract claims allege that Defendants breached the GRC by filing a complaint with LARA. Similarly, Plaintiffs’ fraud claims alleged that Defendants fraudulently misrepresented that they would not engage in activities which would breach the GRC. Under the analysis utilized by Judge Kelly in *General Motors*, Plaintiffs’ fraud claims are not extraneous to their breach of contract claims as the claims allege the same facts as the basis for each claim (that Defendants filed complaints with LARA in violation of the GRC). Accordingly, Plaintiffs’ fraud claims are not extraneous to their breach of contract claim and are therefore barred. As a result, Defendants’ motion for summary disposition of Counts IV and V must be granted.

C. Tortious Interference with Business Relationships (Count VI) and
Tortious Interference with Contracts (Count VII)

In addition, Defendants also seeks summary disposition of Counts VI (Tortious Interference with Business Relationships) and VII (Tortious Interference with Contracts). First, Defendants argue that Plaintiffs tortious interference claims are not sufficiently plead under MCR 2.111. A 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 to reasonably inform the adverse party of the nature of the claims the adverse

party is called on to defend[.]” MCR 2.111(B)(1); see also *Iron Co. v. Sundberg, Carlson & Assoc., Inc.*, 222 Mich App 120, 124, 564 NW2d 78 (1997). “Each allegation of a pleading must be clear, concise, and direct.” MCR 2.111(A)(1).

Tortious interference with a contract and tortious interference with a business relationship or expectancy are separate and distinct torts under Michigan law. *Health Call of Detroit v Atrium Home & Health Care Services, Inc.*, 268 Mich App 83, 89; 706 NW2d 843 (2005). The Court in *Health Call* summarized the elements needed to establish the torts as follows:

The elements of tortious interference with a contract are (1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant. The elements of tortious interference with a business relationship or expectancy are (1) the existence of a valid business relationship or expectancy that is not necessarily predicated on an enforceable contract, (2) knowledge of the relationship or expectancy on the part of the defendant interferer, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resulting damage to the party whose relationship or expectancy was disrupted.

Id., at 89-90 [internal citations omitted]

With regards to Plaintiffs’ tortious interference with a business expectancy claim, they allege that they had valid existing and ongoing business relationships, that Defendants knew about the relationships, that they intentionally interfered with the relationships and that as a result of Defendants’ interference that suffered damages. (See Complaint at 82-89.) Likewise, with respect to their tortious interference with contract claim, they allege that they had contracts, that the contracts were breached because of Defendants’ interference, and that as a result they have suffered damages. (See Complaint, at ¶¶ 91-95.) While Defendants complain that Plaintiffs’ allegations are generic, Defendants have not identified any authority that requires tortious interference

claims to be plead with particularity. Moreover, the Court is satisfied that Plaintiffs' allegations are sufficient to advise Defendants as to the nature of Plaintiffs' claims. Consequently, the Court is convinced that Plaintiffs' tortious interference claims are sufficiently plead and Defendants' motion for summary disposition of those claims must be denied.

D. Injurious Falsehood (Count VIII)

Next, Defendants seeks summary disposition of Count VIII (Injurious Falsehood). The elements of an injurious falsehood claim are publishing a false statement harmful to the interests of another where the actor "intends for publication of the statement to result in harm to interests of the other having a pecuniary value, or either recognizes or should recognize that it is likely to do so, and ... knows that the statement is false or acts in reckless disregard of its truth or falsity." *Kollenberg v. Ramirez*, 127 Mich.App 345, 352; 339 NW2d 176 (1983). In their motion, Defendants aver that Plaintiffs have failed plead that they have suffered pecuniary harm as a result of Defendants' allegedly wrongful actions. However, in ¶100 of the Complaint Plaintiffs allege that they "have suffered substantial pecuniary losses as a result of Defendants' actions. Consequently, Defendants' contention is without merit.

E. Defamation

In addition, Defendants contend that Plaintiffs' defamation claims must be dismissed because Plaintiffs failed to sufficiently set forth the allegedly defamatory statements in the Complaint. "The essentials of a cause of action for libel or slander must be stated in the complaint, including allegations as to the particular defamatory words complained of, the connection of the defamatory words with the plaintiff where such words

are not clear or are ambiguous, and the publication of the alleged defamatory words.” *Pursell v. Wolverine-Pentronix, Inc.*, 44 Mich App. 416, 421, 205 NW2d 504 (1973). In this case, Plaintiffs, in the Complaint, cite to Exhibit E to the Complaint as containing the allegedly defamatory statements. Exhibit E contains 30 pages of emails and attachments. The issue of whether a plaintiff may cite to various documents generically as containing defamatory statements was addressed by the Michigan Court of Appeals in *Royal Palace Homes, Inc v Channel 7 of Detroit, Inc.*, 197 Mich App 48; 495 NW2d 392 (1992).

In *Royal Palace*, the plaintiffs plead general allegations of defamation and asserted that the defamatory content was within transcripts of defendant’s broadcasts, which they attached to the complaint. The Court held that plaintiffs’ pleading was insufficient because merely attaching the transcripts without identifying what statements plaintiffs contended were defamatory was insufficient because it required the defendant to determine what statement(s) plaintiffs were basing their claims on. Specifically, the Court held that “[d]efendants do not bear the burden of discerning their potential liability from these transcripts. Plaintiffs must plead precisely the statements about which they complain.” *Id.* at 56.

In this case, as in *Royal Palace*, Plaintiff has plead its defamation claims in a manner which requires Defendants to guess as to what statements form the basis for Plaintiff’s claims. For the reasons discussed in *Royal Palace*, such allegations are insufficient. Consequently, Defendants’ motion for summary disposition of Plaintiff’s defamation claims must be granted.

IV. Conclusion

Based on the foregoing, Defendants’ motion for summary disposition is

GRANTED, IN PART, and DENIED, IN PART. Specifically, Defendants' motion for summary disposition of Counts I (Rescission of Contract), III (Unjust Enrichment), IV (Fraud and Misrepresentation), V (Silent Fraud/Innocent Misrepresentation), IX (Business Defamation), and X (Injunctive Relief), is GRANTED. Defendants' motion for summary disposition of Counts VI (Tortious Interference with Business Relationship), VII (Tortious Interference with Contractual Relations), and VIII (Injurious Falsehood) is DENIED. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last pending claim nor closes the case.

IT IS SO ORDERED.

Date: AUG 03 2018

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge