

STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

ROBERT ANDERSON dba Detroit Bathtubs,

Plaintiff,

Case No. 2023-001402-CB

vs.

NICK DOELLE and OCEAN ROCK BATH
LLC,

Defendants.

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OPINION AND ORDER

This matter is before the Court on Defendants' Motion for Summary Disposition Pursuant to MCR 2.116(C)(8).

I. Background

This case centers around a November 19, 2019 Independent Salesperson Contract, between "Detroit Tubs + Robert Anderson (AKA the Company)" and Nick Doelle ("Doelle"), under which Plaintiff alleges that there was a two year non-compete agreement. Comp. Ex. 5¹.

Anderson provides tub and tile refinishing for residential and commercial projects. In his response to the motion, Anderson alleges that "Detroit Tubs, LLC was filed in 2009 and passed out of existence in 2018. Robert Anderson filed his Certificate of Sole Proprietorship for Detroit Bathtubs in Sept 12, 2018" Plaintiff attached to the Complaint his Certificate of Sole Proprietorship which was filed on September 12, 2018 and identifies the name of his business as "Detroit Bathtubs".

The contract provides, under ¶ 5:

The Independent Contractor agrees to reimburse the Company for any job that requires the following. . . . 4. Contractor agrees that he or she will not engage in,

¹ Plaintiff's Complaint does not contain numbered or lettered exhibits. This exhibit is the fifth exhibit in the Complaint following the Complaint itself. As such, this will be referred to as the Complaint's Exhibit 5 to coincide with Defendant's lettering of the exhibits.

start up any business that is in direct competition to the company. For [sic] a period of two years from his late [sic] date of work.” [Comp. Ex. 5.]

Plaintiff alleges that on or about October 7, 2022 and January 27, 2023, Doelle attended two Novi Home Shows under Anderson’s advertising and allegedly took seventy-four leads for his company, Ocean Rock Bath LLC (“Ocean Rock”). Doelle’s employment with Anderson was terminated on or around February 28, 2023. It is undisputed that Ocean Rock was created on June 21, 2022.

On April 27, 2023, Plaintiff filed his complaint against Defendants asserting Count I: 74 Counts of Tortious Interference; Count II: Breach of Contract; and Count III: Violation of MCL 339.2412.

On May 30, 2023, Defendants filed the instant motion for summary disposition requesting dismissal of all Counts. Anderson filed his response in opposition to the motion which included a request for temporary restraining order on June 26, 2023.

This matter was heard on July 10, 2023 and taken 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 on which relief can be granted. *Carter v Ann Arbor City Attorney*, 271 Mich App 425, 426-427; 722 NW2d 243 (2006). A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone. *Beaudrie v Henderson*, 465 Mich 124, 129-130; 631 NW2d 308 (2001). All factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Carter*, Mich App at 427. 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. *Cork v Applebee's Inc*, 239 Mich App 311, 315-316; 608 NW2d 62 (2000).

III. Law & Analysis

Defendants argue that Count I should be dismissed because Plaintiff did not have a contract with any of the 74 individuals, Count II should be dismissed because Plaintiff is not a party to the contract between “Detroit Bath LLC” and Nick Doelle, and Count III should be dismissed because Plaintiff is not a prosecuting attorney or attorney general. In response, Plaintiff argues that he is a party to the contract because the contract defines “the Company” as Robert Anderson rather than Detroit Tubs, LLC. Plaintiff further argues that Doelle acted improperly with regard to the home show leads.

Count I: 74 Counts of Tortious Interference

Tortious interference with a contract or contractual relations is a cause of action distinct from tortious interference with a business relationship or expectancy. *Badiee v Brighton Area Sch*, 265 Mich App 343; 695 NW2d 521 (2005). “The elements of tortious interference with a business relationship are 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.” [*Id.* at 365-66.] The elements of tortious interference with a contract are (1) the existence of a contract; (2) a breach of the contract, and (3) unjustified instigation of the breach by defendant. *Badiee*, 265 Mich App at 366. “The expectancy must be a reasonable likelihood or probability, not mere wishful thinking.” *Trepel v Pontiac Osteopathic Hosp*, 135 Mich App 361, 377; 354 NW2d 341 (1984).

Defendants aver that there can be no tortious interference because Plaintiff did not have a contract with any of the 74 leads that were collected from the Novi Home Shows. However, Defendants have not addressed the validity of a claim of tortious interference with a business relationship or expectancy.

Plaintiff claims he sent Doelle to the Novi Home Shows as a representative of Detroit Tubs, and Defendant took all 74 leads for Ocean Rock instead. Plaintiff expected all leads generated from the Novi Home Shows would be his, Defendant knew Plaintiff expected these leads, and by taking these leads there was a termination of the expectancy and damages resulted in the form of lost business. These allegations are sufficient to state a claim for tortious interference with a business expectancy.

Accordingly, Count I should not be dismissed.

Count II: Breach of Contract

“As a general matter, courts presume the legality, validity, and enforceability of contracts.” *Coates v Bastian Bros, Inc*, 276 Mich App 498, 507–08; 741 NW2d 539 (2007) citation omitted. When interpreting a contract, this Court's primary task is to determine the intent of the contracting parties. *AFSCME v Bank One, NA*, 267 Mich App 281, 283; 705 NW2d 355 (2005). If a contract's language is not ambiguous, this Court will construe the contract and enforce its terms as written. *Id.* A contract will be construed as a whole. *Associated Truck Lines, Inc. v Baer*, 346 Mich 106, 110; 77 NW2d 384 (1956). This Court will “give effect to every word, phrase, and clause in a contract....” *AFSCME*, 267 Mich App at 284 (quotation marks and citation omitted). “Every word in the agreement must be taken to have been used for a purpose, and no word should be rejected as mere surplusage if the court can discover any

reasonable purpose thereof which can be gathered from the whole instrument.” *Trader v Comerica Bank*, 293 Mich App 210, 215–16; 809 NW2d 429 (2011).

Defendants aver that since Plaintiff does not allege or attach any contract between himself and either Defendant, there cannot be a breach of contract. Since the contract attached to the Complaint is between “Detroit Tubs + Robert Anderson” and Nick Doelle, Defendant avers Anderson has no standing in this action. Defendants cite *Fraser Trebilcock Davis & Dunlap PC v Boyce Trust 2350*, 497 Mich 265, 275; 870 NW2d 494 (2015) for the principle that a limited liability company is a separate legal entity distinct from its owners.

In his response, Plaintiff avers that the name “Detroit Tubs, LLC” never appears in the contract. The definition of “The Company” reads “Detroit Tubs + Robert Anderson” and does not identify what type of entity Detroit Tubs is. As it would have been known to Doelle at the time he entered into the contract that Detroit Tubs LLC no longer existed, it is clear that the contract was between Robert Anderson in whatever business capacity he was operating and Doelle. The Court will not hold what appears to have been a clerical error against Anderson at this stage of proceedings.

Count II states a claim upon which relief could be granted. Accordingly, it will not be dismissed.

Count III: Violation of MCL 339.2412

MCL 339.2412 states:

- (1) A person or qualifying officer for a corporation or member of a residential builder or residential maintenance and alteration contractor shall not bring or maintain an action in a court of this state for the collection of compensation for the performance of an act or contract for which a license is required by this article without alleging and proving that the person was licensed under this article during the performance of the act or contract.

(2) Failure of the person bringing a complaint against a licensee to utilize a contractually provided alternative dispute resolution procedure shall be an affirmative defense to an action brought in a court of this state against a licensee under this article.

(3) A person or qualifying officer for a corporation or a member of a residential builder or residential maintenance and alteration contractor shall not impose or take any legal or other action to impose a lien on real property unless that person was licensed under this article during the performance of the act or contract.

(4) A prosecuting attorney and the attorney general may bring an action for a civil violation in a court of competent jurisdiction against a person not licensed under this article that has violated section 601(1) or (2). The court shall assess a civil fine, to be paid to the prosecuting attorney or the attorney general bringing the action, of not less than \$5,000.00 and not more than \$25,000.00, aside from any civil damages or restitution.

MCL 339.2412 exists to bar a contractor from bringing or maintaining an action seeking compensation from individuals where the contractor was not licensed for the work performed. This statute is inapplicable to the facts of the case at bar.

Additionally, Plaintiff asks for the Court to issue a temporary restraining order to stop Defendants from taking or misleading customers and taking deposits as a licensed contractor. Plaintiff would like this Court to stop Defendant from misleading the public as to him being a licensed contractor. However, Plaintiff does not have standing to make such a request given that he does not have power to enforce MCL 339.2412 or any other statutory requirements regarding Defendants' licensing. Further, although Plaintiff did address the elements of injunctive relief in his Complaint, the issue has never been set for hearing or requested *ex parte*.

Accordingly, Defendants' motion should be granted as to Count III.

IV. Conclusion

For the reasons set forth above, Defendants' motion is GRANTED in part and DENIED in part. Count III is hereby dismissed. 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.

Handwritten signature of Richard L. Caretti in black ink.

HONORABLE RICHARD L. CARETTI
Circuit Court Judge

DATE: November 27, 2023

cc: Robert Anderson, Esq.
Sean P. Murphy, Esq.