

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

**RYAN LEPPER,**

**Plaintiff,**

**Case No. 20-005588-CB**

**-v-**

**Hon. Muriel D. Hughes**

**DR. KIMBERLY FARROW, and  
DETROIT CENTRAL CITY COMMUNITY  
MENTAL HEALTH, INCORPORATED,  
a Michigan corporation, d/b/a CENTRAL CITY  
INTEGRATED HEALTH,**

**Defendants,**

---

**DETROIT CENTRAL CITY COMMUNITY  
MENTAL HEALTH, INCORPORATED,  
a Michigan corporation, d/b/a CENTRAL CITY  
INTEGRATED HEALTH,**

**Counter-Plaintiff**

**-v-**

**RYAN LEPPER,**

**Counter-Defendant,**

**and**

**DETROIT CENTRAL CITY COMMUNITY  
MENTAL HEALTH, INCORPORATED,  
a Michigan corporation, d/b/a CENTRAL CITY  
INTEGRATED HEALTH,**

**Third Party-Plaintiff**

**-v-**

**BRITTANY CATO,**

**Third Party-Defendant.**

---

**OPINION AND ORDER**  
**DENYING IN PART AND GRANTING IN PART**  
**DEFENDANTS' MOTIONS**

At a session of said Court held in the Coleman A.  
Young Municipal Center, Detroit, Wayne County,  
Michigan  
on this: 12/21/2021

**PRESENT:** Muriel D. Hughes

This civil matter is before the Court on a motion for summary disposition filed by Defendant Dr. Kimberly Farrow and a motion for summary disposition filed by Defendant/Counter-Plaintiff/Third-Party Plaintiff Detroit Central City Community Mental Health, Inc. d/b/a Central City Integrated Health (“CCIH”). For the reasons stated below, the Court grants in part and denies in part the motions.

**I. BACKGROUND**

Plaintiff Ryan Lepper has filed a four-count complaint against Defendants in connection with his termination from employment with CCIH. Lepper was the former Chief Financial Officer (“CFO”) and, later, Chief Executive Officer (“CEO”). In July 2014, he was hired as CFO of CCIH. On January 1, 2016, he was promoted position of CEO of CCIH. At the time, there was no written employment agreement between Plaintiff and CCIH for his employment as CEO. He was to serve through December 31, 2019. Also, at the time, his base salary was \$145,000.00. In January 2019, his salary increased to \$202,250. As CEO, Lepper was responsible for carrying out the policies approved by the Board, overseeing CCIH’s finances, submitting contracts, appropriations, and expenditure requests to the Board that were beyond his authority, complying with agencies’ policies, arranging and obtaining approval for financing, and complying with federal regulations.

According Plaintiff, his contract was then renewed for the period of January 1, 2019 through January 1, 2022. CCIH is a federally funded agency, which relies on federal grants. CCIH serves the residents of Detroit and Wayne County and is recognized as a Level III Patient-Centered Medical Home.<sup>1</sup>

CCIH is governed by bylaws ratified by its Board of Directors (“the Board”). The Board governs CCIH’s internal operations and issues formal resolutions on any major or significant actions it takes.

On October 8, 2019, Lepper was placed on an administrative leave for allegations of sexual harassment. One of the two administrative assistants assigned to Lepper alleged that she was subjected to unsolicited attempts to coerce her into a group orgy with Lepper and another co-worker. She retained a lawyer to represent her interests and the lawyer sent a letter to CCIH notifying it of his representation.

On October 15, 2019, the Board voted to terminate him from employment. Lepper claims he was deliberately excluded from the meeting at which the Board voted to terminate his employment. He allegedly made a demand for a formal resolution regarding his termination, but has received no such document.

Plaintiff contends that his contract provides for severance pay if termination is “with cause” or “without cause.” He has also made a demand for performance of the severance pay obligation in the contract. He has included a copy of the alleged contract as an exhibit to his complaint, which states in relevant part:

If Employee’s employment is terminated during the Initial Term, or during any Renewal Period, by Company without Cause (as hereinafter defined), then Employee shall be paid an amount equal to the remaining amount of gross Base Salary owed under this

---

<sup>1</sup> CCIH is a “funded Federally-Qualified Health Center, staffed by licensed health care professionals who provide quality care to all people regardless of insurance status or income level.” <https://www.centralcityhealth.com/about>, accessed December 7, 2021.

Agreement, paid in one lump sum payment to be made within one (1) month following the date of termination of Employee from the Company. Additionally, Employee shall receive all benefits described in Section 5 and in Exhibit B for the remainder of the Initial Term or applicable Renewal Period. If Employee's employment is terminated during the Term by Company for Cause (as hereinafter defined) or if during the Term Employee tenders his resignation, then Employee shall be entitled to one lump sum payment equal to six (6) months of Base Salary. Additionally, Employee shall receive all benefits described in Section 5 and in Exhibit B for six (6) months from the date of termination.

[Plaintiff's Complaint, Exhibit 1].

In addition, "cause" is defined in this section of the contract as follows:

As used herein, the term "Cause" shall mean: (i) Employee's commission of fraud in the carrying out of his Duties under this Agreement; (ii) Employee's commission of a theft in connection with the carrying out of his Duties under this Agreement; (iv) Employee's violation of any of the terms of this Agreement or any policies or procedures of the Company and, in the event of a violation that is capable of being cured, his failure to cure the same after written notice and a thirty (30) day right to cure;<sup>2</sup>

[Id].

Hence, termination "for cause" would be due to an employee's commission of fraud or theft in connection with his or her duties under the contract, or it would be due to an employee's violation of the terms of the contract. However, there does not appear to be a subsection "(iii)" in the section defining "cause" in this copy of the contract provided by Plaintiff. Whatever might have been intended in subsection "(iii)" may impact, limit, or define other "for cause" reasons for termination. The severance pay terms differ depending on whether termination is "without cause" or "for cause."

Under the terms of this contract, the engagement ran from February 1, 2019 through January 31, 2022. The terms of the agreement also represented a significant raise for Plaintiff. His base salary under the contract is \$275,000, reflecting approximately a \$75,000 increase in

---

<sup>2</sup> There does not appear to be a subsection "(iii)" in this section of the contract.

salary from his prior salary of \$202,250. Plaintiff was not in the meeting when the votes were taken for his salary increase. Two votes were taken and Janice McCrary, the Board Chairperson, cast the deciding vote to approve the salary increase.

Defendants now dispute the existence of the contract and that the copy submitted by Plaintiff has not been authenticated. One board member, Jessica Pappas, attested that she had had to leave the Board meeting early and had not given McCrary her proxy to vote on her behalf. The copy of the agreement submitted by Plaintiff bears his signature as well as the signature of the Chairperson McCrary.

Raymond Byers, the Board Treasurer, was in the meeting when the Board discussed the proposed agreement. Mr. Byers has attested that none of the members were provided a copy of the agreement. Several other board members have submitted affidavits stating that they never saw a copy of the proposed agreement. Defendants contend that that there is a question of whether the agreement Plaintiff has submitted with his complaint is authentic. They also claim that CCIH never approved of the agreement and was unaware of its existence until after Lepper was discharged.

Lepper has submitted an affidavit contradicting the affidavits submitted by Defendants. His affidavit states in relevant part:

6. Prior to the presentation of a written employment agreement for Board review and approval, I met with the Executive Committee of the Board (Alfonso Bermes, Janice McCrary and Karin Plummer) on several occasions devoted to discussion of me having a written employment contract going forward.

7. At those meetings one of the issues that I discussed and that the Executive Committee agreed to was the provision for with or without cause severance. There was no objection to this provision as part of a written employment contract.

9. I personally emailed the form of employment agreement that is attached to my complaint in this matter to each Board Member one

week in advance of the Board Meeting at which the agreement was to be discussed and voted upon.

10. In addition; my assistant, Ria Thurmond, provided written copies of the same document to each Board Member at that meeting.

11. That agreement - containing the with or without cause severance provisions was reviewed and approved by the Board during a meeting in February, 2019, and was signed in my presence by then Board Chair, Janice McCreary. Board Members, Karin Plummer and Ria Thurmond were also in my office when it was signed.

13. The 'with' and 'without cause' severance provisions were specifically negotiated for by me because there was division on the Board and within the organization and I was not willing to risk a termination motivated by internal politics without some form of severance, regardless of the alleged basis for termination.

...

38. At no time did I embezzle any funds from CCIH to my personal use nor was I accused of same by CCIH during my employment.

...

47. Ms. Orr and Dr. Farrow made unsolicited and improper contacts with my wife despite being instructed not to do so by me.

...

49. I was specifically prevented from attending the Emergency Board meeting of October 15, 2019, which was called by Ms. Orr for the purpose of promoting my termination and my replacement by Dr. Farrow.

50. Since the publication of the article about me in Detroit Crain's Business on January 22, 2020, I have been unable to obtain employment despite submitting numerous applications.

51. At no time from the execution of my February 1, 2019 employment agreement through my termination of October 15, 2019 did the Board take any of the following actions: (i) claim that the agreement was executed without authority; (ii) attempt to rescind the agreement or any provision of it; (iii) claim that the signed agreement was not in conformance with the agreement approved by the Board; (iv) attempt to renegotiate the terms of the agreement; (v) declare the agreement null and void based upon an

allegation of fraud; (vi) withhold pay based upon some allegation of breach; (vii) accuse me of a specific breach of some term of the agreement or a breach of any fiduciary duty to CCIH outside of the agreement itself.

...

56. Since the publication of the article about me in the January 22, 2019 issue of Crain's Business,<sup>3</sup> I have been unable to obtain any employment opportunities despite an active job search involving dozens of job inquiries and application

Lepper claims that, sometime in 2018, Defendant Dr. Kimberly Farrow began a campaign against him resulting in his termination. He alleges that, "[c]ommencing in 2018 and running through October 15, 2019, Farrow began manufacturing rumors about Plaintiff being dishonest, misappropriating or embezzling CCIH funds to his personal benefit, engaging in an inappropriate relationship with a female employee of CCEH and other misconduct." [Complaint, ¶ 23].

Prior to Lepper's termination, Dr. Farrow was Chief Medical Officer of CCIH. Defendants maintain that CCIH was under increasing financial stress under the Lepper's leadership. As indicated above, on October 8, 2019, Lepper was placed on an administrative leave for allegations of sexual harassment. During a subsequent investigation, it was alleged that Lepper had committed fiscal malfeasance and mismanagement.

Dr. Farrow reported to various agencies, including Detroit Wayne Integrated Health Network (the "Authority") and HUD from which funding is received. As a CCIH officer, Dr. Farrow had a fiduciary duty to report Lepper's or any other person's misuse of the agency funds.

Again, as indicated above, the Board then voted to terminate his employment as of October 15, 2019. After Lepper had been placed on administrative leave, Defendant Dr. Farrow was appointed Interim President & CEO of CCIH. Plaintiff maintains that Dr. Farrow defamed him by issuing a press release to Crain's Detroit Business published on January 22, 2020.

---

<sup>3</sup> The actual publication date was January 22, 2020 as evidenced in Exhibit 3 of Plaintiff's Complaint.

Through his counsel, Lepper demanded that Dr. Farrow issue a retraction of her statements accusing Plaintiff of fraud and criminal activity. Lepper further claims that Dr. Farrow's slanderous and libelous allegations against him caused his dismissal and have prevented him from gaining employment elsewhere.

CCIH has refused to honor the contract's purported severance provision. As a result, Lepper has filed the instant complaint alleging breach of contract against CCIH, tortious interference against Dr. Farrow, slander and/or libel against both defendants, and false light invasion of privacy against Dr. Farrow.

The close of discovery occurred on March 3, 2021. Thereafter, on May 20, 2020, Defendant CCIH filed a counter-complaint against Lepper and third-party complaint against Brittany Cato. Brittany Cato is one of two administrative assistants who were assigned to Lepper. CCIH amended the counter-complaint and third-party complaint on June 2, 2020. The amended counter-complaint and third-party complaint alleges conspiracy to commit common law conversion and statutory conversion against Cato and Lepper, breach of contract against Lepper, fraud against Lepper, and breach of fiduciary responsibility and duties against Lepper. On July 9, 2020, Lepper filed a motion for partial summary disposition "based upon the pleadings," which the Court denied on January 28, 2021 and entered an order on February 5, 2021. On June 25, 2021, he filed a second motion for partial summary disposition, which also was denied. The order denying the second motion was entered on December 8, 2021. The second motion addressed CCIH's counter-claims and the Court determined that CCIH had adequately stated all of its claims pursuant to MCR 2.116(C)(8).

Now before the Court are CCIH's motion for summary disposition and Dr. Farrow's motion for summary disposition both pursuant to MCR 2.116(C)(10). Defendant Dr. Farrow asks the Court to dismiss Count II (tortious interference), Count III (slander and libel under MCL



600.2911), and Count IV (false light invasion of privacy) of the Plaintiff's complaint with prejudice and award attorney's fees. CCIH asks this Court to dismiss all of Plaintiff's claims and grant judgment in its favor on its counter-claims and attorneys' fees. In support of their respective positions, the parties have submitted numerous exhibits including, but not limited to, several affidavits, depositions, emails, text messages, and various other documents.

## **II. STANDARDS FOR DETERMINING MOTIONS FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10)**

In reviewing a motion under MCR 2.116(C)(10), a court must consider the pleadings, admissions, affidavits, and other relevant documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). If no genuine issue of material fact is established, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "Courts are liberal in finding a factual dispute sufficient to withstand summary disposition." *Patrick v Turkelson*, 322 Mich App 595, 605; 913 NW2d 369 (2018), quoting *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 476; 776 NW2d 398 (2009).

The moving party has the initial burden of supporting its position through documentary evidence. *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the opposing party to establish the existence of a genuine issue of material fact. *Id.* The non-moving party "... may not rest on the mere allegations or denials of his or her pleadings, but must, by affidavit or otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial." MCR 2.116 (G)(4). If the opposing party fails to do so, the motion for summary disposition is properly granted. *Id.*; *Quinto, supra* at 363. Finally,

a “reviewing court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial. A mere promise is insufficient under our court rules.” *Maiden, supra* at 121.

### **III. DISCUSSION**

The Court will address the motion as to Plaintiff’s complaint and the motion as to CCIH’s counter-complaint separately.

#### **A. DEFENDANTS’ MOTIONS AS TO PLAINTIFF’S COMPLAINT**

##### **1. Breach of Contract as to CCIH (Count I)**

###### **a. The Existence of a Contract**

Preliminarily, it should be noted that the relief Plaintiff seeks rests primarily on whether an agreement providing Plaintiff with severance pay actually exists. CCIH first argues that Plaintiff’s breach of contract claim should be dismissed and makes four arguments in support of this position: (1) Lepper cannot prove by a preponderance of evidence that a contract actually exists and the Board never reviewed or approved the agreement; (2) the term of the contract Lepper seeks to enforce is void as against public policy; (3) Lepper’s first material breach excuses CCIH from performance of the contract; and (4) Lepper’s fraud on his resume and/or fraud in the inducement bars enforcement of the contract.

“A party claiming breach of contract must show “(1) that there was a contract, (2) that the other party breached the contract, and (3) that the party asserting breach of contract suffered damages as a result of the breach.” *Total Quality, Inc v Fewless*, 332 Mich App 681, 694; 958 NW2d 294 (2020)[Internal quotation marks and citation omitted]. Before a contract can be completed, there must be an offer and acceptance. *Yoches v City of Dearborn*, 320 Mich App 461, 479; 904 NW2d 887 (2017). A binding contract requires mutual assent or a meeting of the minds on all the essential terms and legal consideration. *Id.* “Consideration is ‘[s]ome right,

interest, profit or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other.” *Id* at 479-480, quoting *Sands Appliance Servs, Inc v Wilson*, 463 Mich 231, 242; 615 NW2d 241 (2000), quoting Black's Law Dictionary (6th ed.), p. 306.

CCIH asserts that Lepper cannot prove by a preponderance of evidence that a contract exists. It is not the role of this Court to determine factual questions when both CCIH and Plaintiff have offered competing affidavits as to this question. Moreover, Plaintiff has participated in a deposition in which he testified as follows:

A. I'm speculating that the contract -- that the Board members saw the contract that they voted on?

Q. You said it was emailed to all of them. I never saw --

A. I said I believe it probably was emailed, I didn't say it was, and I clarified myself and said it may not have been, I don't know. But I can tell you that --

Q. Okay, so --

A. -- everybody in that room had a copy of the contract because they wouldn't be able to vote on it, and the one that Janice had in her hand is the one that I signed. So the one that I signed is the one that everybody had in the room, and that was printed out prior to that meeting for everybody by Ria or someone there, I don't know who, probably Ria.

Q. Well, Mr. Lepper, we do agree on one point; that is, if all the Board members didn't have a copy of your agreement, they could not have voted on it, we both agree on that statement, correct?

A. That's fine. They did.

[February 4, 2021, Transcript, p 191, ln 4-22].

Q. So again, sir, Mr. Lepper, my question is you weren't in the room to witness the --

(Inaudible) --

Q. -- vote, were you?

A. No CEO would have been. They wouldn't vote something like that in front of me. So no. But it would be ironic that every single Board member other than two came in and said congratulations to me without signing the contract, that's kind of ironic.

Q. Where were you when Janice signed the contract?

A. In my office.

Q. And who witnessed her signing it, if anybody?

A. I already -- I've already said this, but Karin Plummer was there and Alfonso was there and then there was people coming in and out. So I don't know, maybe one of the couple people coming in and out, I don't know. ...

[Id, p 192, ln 10-25].

Q. When you were congratulated by Board members, did anyone specifically say congratulations about the agreement or did they just congratulate you?

A. I don't know one human being that would say, "Congratulations on the agreement, Ryan." But I do know several that would say, "Congratulations, you deserve it, job well done." What do you think they're congratulating me for? I mean, that's what they were meeting, to go over the contract. They all had the contract in front of them, that's it. So I -- next, I guess, because I'm not going to answer that again.

[Id, p 195, ln 1-11].

In the Court's view, this testimony, together with Lepper's affidavit, create a genuine issue of material fact as to the existence of the contract on which Lepper relies. "A party's own testimony, standing alone, can be sufficient to establish a genuine question of fact. A conflict in the evidence may generally only be removed from the trier of fact's consideration if it is based on testimony that is essentially impossible or is irreconcilably contradicted by unassailable and objective record evidence." *Jewett v Mesick Consol Sch Dist*, 332 Mich App 462, 476; 957 NW2d 377 (2020), app den 957 NW2d 336 (Mich, 2021) [Citations omitted]. Moreover, a trial court may not make factual findings or weigh credibility when deciding a motion for summary

disposition. *Arbelius v Poletti*, 188 Mich App 14, 18; 469 NW2d 436 (1991). “Thus, when the truth of a material factual assertion depends on a determination of credibility, a genuine factual issue exists and summary disposition may not be granted.” *Id* [Citation omitted]. Accordingly, viewing the pleadings, admissions, affidavits, and other relevant documentary evidence submitted in the light most favorable to the nonmoving party, *Corley, supra*, the Court finds that there is a genuine issue of material fact as to the existence of the alleged contract.

As to Defendants’ arguments regarding missing terms and lack of document identification on the page that contains the contested “severance pay,” term, it is for the trier of fact to determine the veracity of Lepper’s statements and the authenticity of the copy of the contract.

**b. Public Policy against the Terms of the Contract**

CCIH also contends that the terms of the contract are void as against public policy because it “encourages the theft or fraudulent use of public dollars funding.” In response, Plaintiff Lepper argues, citing *Johnson v USA Underwriters*, 328 Mich App 223, 230; 936 NW2d 834 (2019), that the question of whether a contract violates public policy depends on its purpose. He avers, “all agreements the purpose of which is to create a situation which tends to operate to the detriment of the public interest are against public: policy and void, whether in the particular case the purpose of the agreement is or is not effectuated.”

Lepper further asserts that the severance provision at issue here is not against public policy because it provides “two separate severance provisions” for severance pay depending on whether termination is “with cause” or “without cause.” He also states that a judicial assessment that a term is unreasonable is insufficient to establish that the term is against public policy. In support, he also cites *Clark v DaimlerChrysler Corp*, 268 Mich App 138, 141-142; 706 NW2d 471 (2005), quoting *Rory v Continental Ins Co*, 473 Mich 457, 470; 703 NW2d 23 (2005).

Public policy concerning contracts is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests. *Rivera v SVRC Indus, Inc*, \_\_\_ Mich App\_\_\_; \_\_\_ NW2d\_\_\_, (2021); 2021 WL 4047033 at 3. As the term “public policy” is vague, there must be found definite indications in the law of the sovereign to justify the invalidation of a contract as contrary to that policy. *Id.* Hence, “public policy” must ultimately be clearly rooted in the law. *Id.*

Defendants maintain that the severance provision at issue here encourages fraud and theft. Because the severance provision allows for different amounts depending upon whether termination is with or without cause, it is not for the Court to decide the reasonableness of the severance pay terms. *Clark, supra*. “It is a bedrock principle of American contract law that parties are free to contract as they see fit...” *Petersen Fin, LLC v City of Kentwood*, No. 350208, \_\_\_ Mich App\_\_\_; \_\_\_ NW2d\_\_\_; (2021); 2021 WL 2171605, at \*9 [Internal quotation marks and citation omitted]. Whether a contract contravenes “public policy” is also not to be determined by a court’s “personal preferences.” *Rory, supra*. Furthermore, there has not yet been a determination that the contract itself exists. Thus, a determination of whether or not the contract is void as against public policy cannot yet be made.

### **c. Lepper’s First Material Breach**

CCIH next argues that Lepper breached the agreement first, which excuses CCIH from performance of the contract. CCIH contends that Lepper’s behavior violates federal law. Lepper states that, even if he somehow breached the agreement, which Defendants deny the existence of, his termination would be “for cause” whether or not he breached the agreement first. He also argues, citing, *Schnepf v Thomas L McNamara, Inc*, 354 Mich 393, 397; 93 NW2d 230 (1958),<sup>4</sup>

---

4

The *Schnepf* court stated:

that “CCIH continued to accept and indeed expect Mr. Lepper to perform as CFO and CEO throughout these alleged breaches, thereby waiving any such claim.”

“The rule in Michigan is that one who first breaches a contract cannot maintain an action against the other contracting party for his subsequent breach or failure to perform.” *Able Demolition v Pontiac*, 275 Mich App 577, 585; 739 NW2d 696, 701 (2007)[Internal quotation marks and citations omitted] “However, the rule only applies if the initial breach was substantial. To determine whether a substantial breach occurred, a trial court considers “whether the non-breaching party obtained the benefit which he or she reasonably expected to receive.” *Id.*, quoting *Holtzlander v Brownell*, 182 Mich App 716, 722; 453 NW2d 295 (1990).

To support this contention, CCIH offers some examples of Lepper’s various alleged violations of federal law in the Code of Federal Regulations, such as the following:

- Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose... 2 CFR 200.438
- Costs of alcoholic beverages are unallowable. 45 CFR 75.423
- Fines, penalties, damages and other settlements are unallowable.” 2 CFR 200.441.

Lepper had the agency pay for his parking violations.

- Fund raising and investment management costs ...are allowable with prior written approval from the Federal awarding agency.” 2 CFR 200.442

Even if the apartment was intended for use as a model for fundraising, or the lunches were intended to seek contributions, the expenditures still were not allowed.

---

By continuing thus to perform and to accept payments under it, as above noted, he lost his right, if any, to terminate the contract and declare it forfeited. *Robinson v Lake Shore & M S Railway Co*, 103 Mich 607; 61 NW 1014. It was appellant's duty, when it discovered the apparent breach of the contract, if it intended to insist upon a forfeiture, to do so at once. By permitting appellees to proceed with the performance of the contract it waived a breach.’ *Grayson-McLeod Lumber Co v Slack-Kress Tie & Stave Co*, 102 Ark 79; 143 SW 581, 583.

*Schnepf v Thomas L McNamara, Inc*, 354 Mich 393, 397; 93 NW2d 230 (1958).

- Goods or services for personal use ... are unallowable regardless of whether the cost is reported as taxable income to the employees...[T]o be allowable direct costs must be approved in advance by a Federal awarding agency. 2 CFR 200.445

The apartment and its contents, the jewelry for his secretary, and “Lepper’s travel to see his love interest...were disallowed.”

CCIH has submitted credit card statements and statements regarding the purchase of furnishings for an apartment. These show that Lepper engaged in spending money CCIH claims is unallowable under various sections of the CFR.

Lepper’s affidavit and deposition indicates that he did not “embezzle any funds from CCIH” for his personal use nor was he accused of doing so by CCIH. He denies that he traveled to Mississippi to see a “love interest.” He testified that this alleged love interest, Kim Adams, set up meetings with Asian investors. He said that he spent a half day putting presentations together for a project called Lee Plaza. He also said that the investors later came to Detroit to meet with him. He also explained that spending \$329 to fly down to Mississippi to see Kim Adams and the investors was “a very normal part of business” and that he “could obtain \$10 million or so in financing from investors for \$300,” he “would say that’s a pretty good use of the organization’s money.” Lepper also denied having dinner with Kim Adams, but did have lunch with her. He denied that he had drinks with her, but that she may have had a drink.

Whether CCIH, the “nonbreaching party,” received a benefit will determine whether any breach by Lepper is “substantial.” *Able Demolition, supra*. Lepper’s affidavit and deposition testimony create a question of material fact that he violated federal law and breached his contract and whether his alleged breach was substantial. Nevertheless, it has not yet been established that the contract exists. If it does, his termination for violation of federal law would be “for cause” and the severance provision would still be enforceable. Hence, summary disposition as to this argument is without merit.



**d. Fraud on Lepper's Resume and/or Fraud in the Inducement**

CCIH also claims that Lepper committed fraud on his resume, which is fraud in the inducement that would bar enforcement of the contract. “As a general rule, actionable fraud consists of the following elements: (1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage.” *M&D, Inc v W B McConkey*, 231 Mich App 22, 27; 585 NW2d 33 (1998).<sup>5</sup>

CCIH maintains that Lepper provided false information on his resume in order to get hired. CCIH maintains that Lepper misrepresented his salary and position at his prior position at Capital Markets IQ (a/k/a Longhorn), and he omitted from his resume the job he had held before working at Longhorn. In addition, Lepper failed to disclose that, at the time of his application to CCIH, he had just emerged from personal bankruptcy. Affiant, Irva Faber-Bermudez, President and CEO of CCIH from 1997 to 2015, states:

4. During the interview process, Mr. Lepper did not disclose any prior positions or employment other than what is contained on the attached Employment Application and Resume.
5. During the interview process, Mr. Lepper did not disclose that he had previously filed for bankruptcy.
6. Had I known that Mr. Lepper failed to disclose other prior positions/employment (other than that which was On his Employment Application) or that he had filed for bankruptcy in 2013, I would not have hired him as CFO in July 2014.

---

<sup>5</sup> CCIH also cites cases for the notion that, where a plaintiff provides false material information in order to get hired, the plaintiff is not permitted to recover on a subsequent breach of contract by the employer. Those cases are *Wright v Restaurant Concept Management, Inc*, 210 Mich App 105 (1995), *Bradley v Philip Morris, Inc*, 194 Mich App 44, 48 (1991), *aff'd after remand*, 444 Mich 634 (1994), and *Smith v Charter Twp of Union*, 227 Mich App 358 (1998).

8. I supported Mr. Lepper's candidacy as my replacement. Had I become aware of the information above, I would not have supported Mr. Lepper as my replacement in 2015.

Lepper argues that he never induced CCIH to hire him because he was solicited by CCIH to serve as CFO. He also asserts that "CCIH pursued [him] to sign an agreement to continue as its CEO so as not to lose his talents." He maintains that the information allegedly missing was never requested from him. His deposition testimony reflects these responses to CCIH's resume fraud claims.

CCIH's claim of fraud also implicates "silent fraud" as to Lepper's purported failure to disclose a previous job and a bankruptcy. Regarding silent fraud, under Michigan law, "silence cannot constitute actionable fraud *unless* it occurred under circumstances where there was a legal duty of disclosure." [Emphasis in original] *M&D, supra* at 29. Historically, silent fraud claims have been "based upon statements by the vendor that were made in response to a specific inquiry by the purchaser, which statements were in some way incomplete or misleading." *Id* at 31. As a general rule then, "in order to prove a claim of silent fraud, a plaintiff must show that some type of representation that was false or misleading was made and that there was a legal or equitable duty of disclosure." *Id* at 32. As to the latter requirement, an equitable duty of disclosure generally arises only upon an expression of concern or direct inquiry by a purchaser regarding the particular issue in question. *Id* at 33. "A plaintiff cannot merely prove that the defendant failed to disclose something; instead, a plaintiff must show some type of representation by words or actions that was false or misleading and was intended to deceive." *Lucas v Awaad*, 299 Mich App 345, 364; 830 NW2d 141 (2013). Here, there was no "specific inquiry." *M&D, supra* at 31. Moreover, CCIH has not shown a legal or equitable duty to disclose the alleged missing information other than alleging that, when asked if the application he submitted to CCIH was accurate, Lepper lied under oath claiming it was. As to an equitable duty of disclosure, CCIH has

not alleged that it expressed concern or made a direct inquiry regarding any particular issue. *Id* at 33.

Lepper also argues that CCIH had the opportunity to perform a background check, which many organizations do perform. These issues are matters of credibility and are issues for a finder of fact to decide. Thus, CCIH's motion on this issue is denied because there is a genuine issue of material fact whether Lepper lied on a resume and whether or not the information was sought by CCIH. Accordingly, CCIH's motion as to the breach of contract claim is denied because there are numerous genuine issues of material fact to be decided before deciding whether a breach has occurred. MCR 2.116(C)(10).

## **2. Tortious Interference as to Dr. Farrow (Count II)**

As to Dr. Farrow's motion, Dr. Farrow asserts that she cannot be liable for tortious interference with Lepper's contractual relationship or his business relationships because she is not a third party. She argues that, as Chief Medical Officer, she is an agent of the principle and shares a legal identity with the principle.

In response, Lepper contends that Dr. Farrow's actions did not benefit CCIH, but were for her own personal benefit to take the position of CEO.

The Court observes that "[t]ortious interference with a business relationship or expectancy is a cause of action distinct from tortious interference with a contract or contractual relations. 24 Mich Civ Jur Torts § 29 [Footnote omitted]. Plaintiff Lepper does not specifically distinguish the two causes of actions.

To establish a cause of action for tortious interference with a contractual relationship, a plaintiff must establish the existence of a contract, a breach of this contract, and an instigation of this breach, without justification. *Mahrle v Danke*, 216 Mich App 343, 350; 549 NW2d 56 (1996). "One who alleges tortious interference with a contractual. . . 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.”” *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 382; 689 NW2d 145 (2004), quoting *CMI Int’l, Inc v Internet Int’l Corp*, 251 Mich App 125, 131; 649 NW2d 808 (2002). 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).

The elements of a tortious interference with a business relationship or expectancy claim are (1) the existence of a valid business relationship or expectancy, (2) knowledge of the relationship or expectancy by the interferer, (3) an intentional and wrongful interference inducing or causing a breach or termination of the relationship or expectancy, and (4) resultant damage to the party whose relationship or expectancy was disrupted. *PT Today, Inc v Comm’r of Office of Financial & Ins Services*, 270 Mich App 110, 148; 715 NW2d 398 (2006).

Both parties cite *Reed v Michigan Metro Girl Scout Council*, 201 Mich App 10; 506 NW2d 231 (1993) to support their respective positions. In *Reed*, a group of businessmen sued an organization director and the organization which rejected the businessmen's offer to purchase the organization's campground. The trial court dismissed all the claims except the civil rights claim against the director. On appeal, the Court of Appeals held in relevant part that: (1) the businessmen did not show that director acted for her own benefit as is necessary to hold her liable for tortious interference with the corporation's contracts; and (2) the allegedly incorrect statements made by director concerning businessmen were subject to qualified privilege. The *Reed* court stated that to “[t]o maintain a cause of action for tortious interference, the plaintiffs must establish that the defendant was a ‘third party’ to the contract or business relationship.” *Id* at 13 [Citation omitted]. The court further held: “It is now settled law that corporate agents are

not liable for tortious interference with the corporation's contracts unless they acted solely for their own benefit with no benefit to the corporation.” *Id* [Citation omitted].

Regarding the alleged tortious interference claim, the Court agrees that Dr. Farrow was not a third party and was a corporate officer at the time of her alleged tortious interference. *Id*. In the Court’s view, there is no question of material fact to support Lepper’s bare allegations that Dr. Farrow set out “to sabotage” his relationship with CCIH. Lepper has provided nothing other than his claims that she campaigned to have him removed from his CEO. There are numerous instances cited by Defendants of mismanagement of CCIH’s finances. Lepper has provided no specific instances that Dr. Farrow interfered with his contract or his business relationship other than the fact that she attained the position of CEO. All exhibits submitted by Lepper were events that occurred after his dismissal and do not specify any actions taken by Dr. Farrow that interfered with his employment prior to his dismissal. Moreover, Lepper cannot overcome the fact that any actions taken by CCIH or Dr. Farrow were for the benefit of the corporation given its obvious financial stress under Lepper’s leadership. As an officer of CCIH, Dr. Farrow has a fiduciary duty to act in the best interests of CCIH. MCL 450.1541a(1)(a), (b), and (c). Directors and officers of corporations “are fiduciaries who owe a strict duty of good faith to the corporation which they serve.” *Production Finishing Corp v Shields*, 158 Mich App 479, 486; 405 NW2d 171 (1987). Any financial reporting to the Board by Dr. Farrow was in the interests of the corporation. Thus, Lepper has failed to demonstrate a question of material fact that Dr. Farrow tortuously interfered with his contract or with his relationship with CCIH, and that she acted solely for her own benefit “with no benefit to the corporation.” *Id*. The Court also believes that all the events leading to Lepper’s termination were precipitated by the allegations of sexual harassment by Lepper. Accordingly, the Court grants summary disposition in favor of Dr. Farrow as to the tortious interference claim (Count II).

### **3. Slander and/or Libel as to both Dr. Farrow and CCIH (Count III)**

Lepper has brought a statutory (not common law) slander/libel claim against both Dr. Farrow and CCIH. Preliminarily, the Court notes that an organization may be held liable for torts committed by an employee. “The doctrine of respondent superior is well established in this state: An employer is generally liable for the torts its employees commit within the scope of their employment. It follows that “an employer is not liable for the torts ... committed by an employee when those torts are beyond the scope of the employer's business.” *Hamed v Wayne Co*, 490 Mich 1, 10–11; 803 NW2d 237 (2011)[Footnotes omitted]. The *Hamed* court explained that “within the scope of employment” means “engaged in the service of his master, or while about his master's business. Independent action, intended solely to further the employee's individual interests, cannot be fairly characterized as falling within the scope of employment.” *Id* [Internal quotation marks and footnotes omitted]. Thus, once this Court assesses Plaintiff’s defamation claim against Dr. Farrow, it must then determine whether or not it was done in the “scope of” Dr. Farrow’s employment.

CCIH asserts<sup>6</sup> that the slander and/or libel claim fails because Lepper was not specifically identified by Dr. Farrow in the Crain’s press release. It was Crain’s that identified him. CCIH also maintains that this claim also fails because Lepper is a “public figure” and has not presented clear and convincing evidence “that the defamatory falsehood was published with actual knowledge that it was false or with reckless disregard of whether or not it was false.” MCL 600.2911(6).

Lepper argues that he has a viable claim for defamation per se and that he is neither a public figure or a limited purpose public figure. He contends that he did not deliberately inject himself into a public controversy.

---

<sup>6</sup> Dr. Farrow has adopted CCIH’s arguments in support of her motion.

“The elements of a defamation claim are: (1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged communication to a third party, (3) fault amounting at least to negligence on the part of the publisher, and (4) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by publication.” *Mitan v Campbell*, 474 Mich 21, 24; 706 NW2d 420 (2005). A communication is “defamatory” if it tends to lower an individual's reputation in the community or deters third persons from associating or dealing with that individual. *Ireland v Edwards*, 230 Mich App 607, 614; 584 NW2d 632 (1998). “A plaintiff claiming defamation must plead a defamation claim with specificity by identifying the exact language that the plaintiff alleges to be defamatory.”

*Thomas M Cooley Law Sch v Doe 1*, 300 Mich App 245, 262; 833 NW2d 331 (2013)[Footnote omitted]. An accusation of the commission of a crime is defamatory per se, meaning that special harm need not be proved. *Kevorkian v Am Med Ass'n*, 237 Mich App 1, 8; 602 NW2d 233 (1999)

“A plaintiff must also comply with constitutional requirements that depend on the public- or private-figure status of the plaintiff, the media or nonmedia status of the defendant, and the public or private character of the speech.” *Thomas M Cooley Law Sch v Doe 1*, 300 Mich App 245, 262; 833 NW2d 331 (2013)[Internal quotation marks and footnote omitted][Emphasis added].

“While the question whether a person is a public figure for purposes of a defamation action is initially a question for the trial court, the determination is in effect one of law, and can be made by a reviewing court in the first instance on the record as submitted.” *Bufalino v Detroit Magazine, Inc*, 433 Mich 766, 774; 449 NW2d 410 (1989). “A private person can become a limited-purpose public figure when he voluntarily injects himself or is drawn into a particular controversy and assumes a special prominence in the resolution of that public controversy. However, a private person is not automatically transformed into a limited-purpose public figure

merely by becoming involved in or associated with a matter that attracts public attention. The court must look to the nature and extent of the individual's participation in the controversy.” *New Franklin Enterprises v Sabo*, 192 Mich App 219, 222; 480 NW2d 326, 328 (1991), citing *Lins v Evening News Ass'n*, 129 Mich App 419, 432; 342 NW2d 573 (1983). Whether Defendants are afforded qualified constitutional privilege status is a question of law. *Lins v Evening News Ass'n*, 129 Mich App 419, 432; 342 NW2d 573 (1983). “This means that, under the federal decisions, plaintiffs, as limited public figures, are prohibited from collecting damages from defendants for libel unless plaintiffs can show by clear and convincing proof that defendants made the complained of publication with actual malice.” *Id.* Actual malice is defined as knowledge that the published statement was false or as reckless disregard as to whether the statement was false or not. *Ireland v Edwards*, 230 Mich App 607, 622; 584 NW2d 632 (1998).

Finally, “[g]enerally speaking, a public figure attains that status by voluntarily assuming a role of special prominence in the affairs of society, whereas a private figure has not assumed an influential role in society.” *Lakeshore Cmty Hosp, Inc v Perry*, 212 Mich App 396, 403; 538 NW2d 24 (1995).

In the Court’s view, Lepper is a public figure and Defendants are “afforded qualified constitutional privilege status.” *Lins, supra*. He was involved in an agency that provided services to the public using “public” money. Moreover, Lepper testified that he made numerous television and radio appearances. He also stated that there was press coverage in which he was a part for groundbreaking ceremonies on every building opening in which CCIH was involved. He agreed that he was “the face” of CCIH. Because he is a public figure, he must show by clear and convincing evidence that the alleged publications or statements were made with actual malice.

The relevant portions of Dr. Farrow’s press release include:

Former CCIH leadership and certain former staff are alleged to have been active participants in malfeasance, mismanagement,



gross negligence, fraud and other improprieties committed against our nonprofit organization. We have severed our relationships with individuals who are alleged to have played a primary or supportive role in suspected criminal activities and other wrongdoing that is currently under investigation.

CCIH has zero tolerance for any criminal activity committed within our organization. When evidence regarding improprieties began to surface within our organization, I, along with key leadership, engaged CCIH's legal counsel, the board of directors, and appropriate focal, state and federal agencies.

We are fully cooperating with authorities and support all criminal and civil action that may be taken. This was a shameful breach of public trust and we remain hopeful these investigations will quickly bring responsible parties to justice.

Lepper testified that the bases of his defamation claim are the Crain's press release and other negative things said about him and his wife. However, he was unable to recall what particular statements were made about him. Thus, his claim as it relates to statements made regarding him and his wife fail for lack of specificity because Lepper fails to state the exact language alleged to be defamatory. *Thomas M Cooley Law Sch, supra*. Not only was he unable to recall the exact language used, but he could not state who made the alleged defamatory statements and when the statements were made.

As indicated above, Lepper was not identified by Dr. Farrow in the Crain's press release. Instead, it was Crain's that identified him in a related article. There are questions of fact as to whether Dr. Farrow, herself, rather than Crain's, made the statements attributing malfeasance Lepper's malfeasance in either the press release or in the related Crain's article. There are also questions of material fact as to whether or not the allegations, if they were made by Dr. Farrow, were true. "Substantial truth" is an absolute defense to a defamation claim. *Collins v Detroit Free Press, Inc*, 245 Mich App 27, 33; 627 NW2d 5 (2001). "[T]he 'substantial truth doctrine' ... states that a statement or defamatory implication need only be substantially accurate as opposed to being literally and absolutely accurate." *Kevorkian v American Med Ass'n*, 237 Mich

App 1, 9-10; 602 NW2d 233 (1999). “This obviously presents a genuine issue of material fact for the jury. See *Locricchio v Evening News Ass'n*, 438 Mich 84, 137; 476 NW2d 112 (1991) (Cavanagh, J., concurring) (The Supreme Court has “consistently viewed the determination of truth or falsity in defamation cases as a purely factual question which should generally be left to the jury.”). Thus, in this case, summary disposition would not be appropriate with regard to the question of falsity.” *Ireland, supra* at 621-622.

Therefore, summary disposition is not appropriate as to the Dr. Farrow’s Crain’s statement because there is a question of material fact that Dr. Farrow herself made defamatory statements about Lepper and whether the statements were substantially truthful. However, Lepper has failed to demonstrate a question of material fact that defamatory statements were made by Dr. Farrow outside of the Crain’s article. Finally, at trial, Lepper must prove by clear and convincing evidence that the statements were made with actual malice, i.e., they were made with knowledge that the published statement was false or with reckless disregard as to whether the statement was false. *Ireland, supra* at 622.

#### **4. False Light Invasion of Privacy against Dr. Farrow (Count IV)**

As to Lepper’s false light invasion of privacy claim, Dr. Farrow contends that everything she stated in her press release was true. She maintains that Lepper did, in fact, engage in malfeasance, mismanagement, gross negligence, unlawful credit card use, fraudulent Financial Status Reports (“FSRs”) seeking reimbursement of rent that had not been paid, fraudulent reports to the Board, renting and furnishing an apartment on agency funds, submitting false financial records to secure loans, and other acts of malfeasance. In response, Lepper makes essentially the same arguments he has made regarding his defamation claims.

To maintain an action for false light invasion of privacy, a plaintiff must show that the defendant broadcast to the public in general, or to a large number of people, information that was

unreasonable and highly objectionable by attributing to the plaintiff characteristics, conduct, or beliefs that were false and placed the plaintiff in a false position. *Duran v Detroit News*, 200 Mich App 622, 631–632; 504 NW2d 715 (1993)[Authority omitted]. “This tort ‘is limited to situations where the plaintiff is given publicity.’” *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 385; 689 NW2d 145 (2004), quoting *Sawabini v Desenberg*, 143 Mich App 373, 381; 372 NW2d 559 (1985). In addition, like a defamation claim, truth is also an absolute defense to a false light claim. Where the information is true, “it could not place plaintiff in a false light.” *Morganroth v Whitall*, 161 Mich App 785, 794; 411 NW2d 859 (1987).

Furthermore, a private plaintiff claiming the tort of false light invasion of privacy must establish that, when the defendant disseminated the information, it was done with actual knowledge or reckless disregard of the truth or falsity of the publicized matter. In other words, the plaintiff must prove malice. *Foundation for Behavioral Resources v W E Upjohn Employment Trustee Corp*, 332 Mich App 406; \_\_\_NW2d\_\_\_ (2020); 2020 WL 2781718 at \*2.

No doubt, the Crain’s press release was “broadcast to the public or to a large number of people.” *Duran, supra*. However, as explained above, there is a question of material fact upon which reasonable minds may differ as to the matter of truthfulness or falsity of the information and whether the statements attributed characteristics, conduct, or beliefs to Lepper that were false and placed Lepper in a false position. Therefore, summary disposition in favor of Defendants is not appropriate as to the false light claim.

## **B. SUMMARY DISPOSITION AS TO CCIH’S COUNTER-CLAIMS**

### **1. Conspiracy to Commit Common Law Conversion and Statutory Conversion against Cato and Lepper (Count I and Count II)**

CCIH contends that “Lepper used the agency’s credit cards for his own purposes and he exerted control over the chattel belonging to CCIH in the apartment he rented with CCIH funds

and used personally.” It claims that these acts satisfy its claims for common law and statutory conversion including embezzlement.

A civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means. *Admiral Ins Co v Columbia Cas Ins Co*, 194 Mich App 300, 313; 486 NW2d 351 (1992). An allegation of conspiracy, standing alone, is not actionable; plaintiffs must allege a civil wrong resulting in damage caused by defendants. *Magid v Oak Park Racquet Club Associates, Ltd*, 84 Mich App 522; 269 NW2d 661 (1978). As such, “a claim for civil conspiracy may not exist in the air; rather, it is necessary to prove a separate, actionable tort.” *Advocacy Org for Patients & Providers v Auto Club Ins Ass'n*, 257 Mich App 365, 384; 670 NW2d 569 (2003), quoting *Early Detection Center, PC v New York Life Ins Co*, 157 Mich App 618, 632; 403 NW2d 830 (1986).

Here, the unlawful purpose alleged by CCIH against Cato and Lepper is conversion.

Common law and statutory conversion differ. Common law conversion has been defined as follows:

The tort of “conversion” is an intentional exercise of dominion and control over personal property or a chattel, that so seriously interferes with right of another to control that property that the tortfeasor may justly be required to pay the other the full value of the property.

18 Am Jur 2d Conversion §1, p 154.

“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), quoting Prosser & Keeton, Torts (5th ed), § 15, p 102.

Statutory conversion is governed by MCL 600.2919a, which involves “[a]nother person's stealing or embezzling property or converting property to the other person's own use” and allows for treble damages.

CCIH offers Lepper’s testimony that he knew the agency’s credit card could not be used for personal purchases. As evidence, CCIH offers a forensic audit, which concluded that Lepper’s use of the credit cards for just food and beverages totaled over \$90K.

In addition, CCIH avers that Lepper rented the apartment and furnished it with CCIH funds for his personal use. He testified that it was rented and furnished to show investor. However, he was unable to identify an investor who he took to the apartment. He did say Lepper that he needed the apartment to attract money to land the Lee Plaza project. CCIH states that the bid for Lee Plaza ended a year earlier. It also contends that the text messages he sent to Dr. Farrow show that he intended that apartment to be “his” place. This Court cannot determine that the messages indicate what is in Lepper’s mind such that he believe the apartment to be “his” place. These are matters of credibility for the trier of fact to determine.

In addition, CCIH offers photographs of Lepper and his work friends entering the apartment, which it argues, also demonstrate that the apartment was for personal use. Again, it is impossible to discern whether these “work friends” actually conducted business in the apartment or merely used it for personal entertainment.

It is also unclear from CCIH’s claim whether it is claiming conversion of money, conversion of the apartment, conversion of the personal items in the apartment or other personal items allegedly purchased with CCIH’s funds. “To support an action for conversion of money, the defendant must have obtained the money without the owner's consent to the creation of a debtor-creditor relationship and must have had an obligation to return the specific money entrusted to his care.” *Lawsuit Fin, LLC v Curry*, 261 Mich App 579, 591; 683 NW2d 233, 240

(2004)[Internal quotation marks and citations omitted]. In the Court's view, there is a genuine issue of fact regarding Lepper's ability to use CCIH's funds to purchase items to further the goals of CCIH and whether CCIH consented to his use of the funds. Additionally, common law conversion does not encompass alleged conversion involving real property, only personal property. *Embrey v Weissman*, 74 Mich App 138, 143; 253 NW2d 687 (1977). Nevertheless, CCIH still controls the apartment because it was leased in CCIH's name.

The Court is also aware that CCIH makes no specific allegations as to Cato and how she conspired with Lepper to convert or embezzle CCIH funds. There are no specific factual allegations of how and when Cato acted in concert with Lepper to convert property or money. Indeed, as a subordinate, there are no factual allegations that she did not act at the direction of Lepper, her employer. Thus, the conspiracy claim against Cato fails and no fact issues present themselves sufficient to implicate her in a conspiracy.

With respect to the conversion claims, statutory or common law, against Lepper, there are numerous questions of material fact regarding whether Lepper exercised dominion over the alleged converted property to the extent that it interfered with CCIH's right to control the property. *Sarver, supra*. All assertions CCIH makes involve the credibility of Lepper, which this Court cannot determine. Thus, summary disposition in favor of CCIH as to conversion and/or embezzlement is inappropriate.

## **2. Breach of Contract against Lepper (Count III)**

In support of its motion, CCIH asserts that, assuming Lepper has an enforceable employment agreement, CCIH relies on its argument that Lepper's first material breach excuses CCIH's performance of the contract. As indicated above, the Court has determined that Lepper's affidavit and deposition testimony create a question of material fact that he violated federal law and breached his contract. There is also a question of material fact whether his alleged breach

was substantial. Nevertheless, it has not yet been established that the contract exists. Assuming the contract does exist, Lepper's termination for violation of federal law would be "for cause" and the severance provision would still be enforceable. Hence, the Court denies CCIH's motion as to its breach of contract claim.

### **3. Fraud against Lepper (Count IV)**

In support of its claim for fraud against Lepper, CCIH presents the following examples:

Lepper committed fraud in a series of communications to the Executive Committee of the Board in order to secure the pay raise.

Lepper committed fraud when he approved the FSRs for submission to DWIHN to secure reimbursement of consumer rents which had not been paid.

Lepper tried to have \$12,000 wire transferred to him from CCIH (through Chemical Bank) because he was refinancing his home and there were tax liens on it that had to be paid before the loan could close.

Lepper submitted false financial records with inflated accounts' receivables to obtain a loan from IFF for the dental space.

Lepper approved payment of \$9,500 to Antoine Clark for the purchase of a nearly 10-year old Dodge Caravan (more than \$5000 over its Blue Book value, and more than \$7000 than actually paid over to the real owner of the vehicle

As explained above, the circumstances constituting fraud must be delineated with particularity. MCR 2.112(B)(1). "As a general rule, actionable fraud consists of the following elements: (1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage." *M&D, Inc v W B McConkey*, 231 Mich App 22, 27; 585 NW2d 33 (1998).

In his affidavit, Lepper makes the following statements:

41. My use of CCIH funds was always for the benefit of CCIH and not for my personal benefit nor was I accused of same by CCIH during my employment.

42. No audit prepared for CCIH up to the time of my termination disclosed any improper use of CCIH funds.

43. Throughout my tenure as both CFO and CEO, I acted in the best interest of CCIH and its clientele.

44. As CFO and CEO, I relied upon both inside financial employees and outside professionals in taking significant decisions affecting CCIH.

...

52. At no time did I make representations of material fact that were knowingly false at the time they were made to CCIH or make such representations of fact recklessly without regard to whether they were true or not, instead relying upon personal knowledge or information provided to me by responsible parties within CCIH or outside of CCIH.

In addition, in his deposition Lepper testified as follows:

A. I was responsible for putting someone in charge, so I would just oversee the finances, and it was clear she wasn't doing her job and I had started talks with an auditing firm to come over and outsource that whole function.

[Transcript, p. 323, ln 12-16].

A. I didn't have this problem until it was brought to my attention. How could I fix something that was not brought to my attention?

[Id, ln 21-23].

Q. Is it your testimony that at all times while you were the CEO, you were a good steward of the agency's finances?

A. Yes.

[Id, p. 324, ln 4-7].

A. As she know -- yeah, as she knew it, but I don't know if you have my response to that, but I will tell you that around that time, we had developer fees coming, there's lots of things that just



happen to come in, there's lots of ways that we have access to money when there is a shortfall, that's why we have a second line of credit, we -- it just happens.

[Id, p. 328, Ln 10-16].

A. Yeah, the Board actually wanted a half -- yeah. The Board actually wanted a half a million line of credit, we got approved for 200,000, and then we needed another 200,000.

[Id, p. 329, ln 11-14].

Q. So we'll look at that, but actually, the numbers are in December of 2017 you increased the \$200,000 line of credit to \$500,000, and now here you are just like not even a year later looking for more money to borrow --

A. Yep.

Q. right?

A. That's pretty standard, yep. There's nonprofits that do payday loans, they can finance all of their equipment, their telephones, everything, just to make payroll. You don't understand the business.

[Id, ln 15-24].

Q. Who is the -- who is IFF, is that the company that you borrowed money from for the dental clinic?

A. That's a company that finances nonprofits' projects, grant-funded projects that need capital.

Q. And was the money that you borrowed from IFF for the dental clinic?

A. Yeah, I would think so, I think, yeah.

Q. And were payments to IFF expected to be made on time by IFF?

A, Yes.

Q. And were you late on IFF payments also at the time you were discharged?

A. I don't recall. They were late on a lot of things, like a lot of nonprofits around that time, I would guess.

[Id, p. 343, ln 2-16].

A. I don't know any -- if there is a CEO that has that much time to dig down into detail of a title, then they're not a very good CEO or they're doing something significantly wrong. I put people around me that I trust, so if they break that trust, then I would have to deal with them. I would have probably eventually found out whatever you showed me, if that's even legit, but like I said, a lot of people do that all the time with titles, so it doesn't really surprise me.

[Id, p. 394, ln 5-13].

Q. Well, the amount was filled in by the purchaser and signed by Emerson.

A. I have nothing to do with any of that, so...

Q. Would you say --

A. I can prove the car to be bought at 95 -- whatever the dollar amount you gave, 9,000 or 9,500 is what I approved.

[Id, 14-20].

Thus, Lepper's affidavit and testimony indicate that his practices were normal for non-profit organization and that he depended on others in the organization to provide accurate information to him. CCIH does not explain with specificity how the FSRs that Lepper submitted are false. It merely alleges that Lepper presented an untrue picture of CCIH's financial health. Lepper has not addressed all of CCIH's allegations, but has given plausible explanations for all his actions. Hence, in the Court's view, there are questions of material fact to be resolved by a finder of fact and CCIH's motion on the allegation of fraud is denied.

#### **4. Breach of Fiduciary Responsibility and Duties against Lepper (Count V)**

In support of its motion as to Lepper's alleged breach of fiduciary duty, CCIH argues that Lepper committed numerous breaches of his duties. They include: (1) misuse of the agency credit card; (2) misuse of agency funds by leasing and furnishing an apartment; (3) failing to

negotiate more favorable terms in a specific storefront leases; (4) misrepresenting CCIH's financial condition; (5) mismanagement of construction funds; (6) causing an accrual of over \$2,000,000 in delinquent account payables; and (7) entering into contracts and loan agreements without Board approval.

Michigan law requires that a corporate director or officer discharge his duties in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner that he reasonably believes to be in the best interests of the corporation. MCL 450.1541a(1)(a), (b), and (c). "It is beyond dispute that in Michigan, directors and officers of corporations are fiduciaries who owe a strict duty of good faith to the corporation which they serve." *Production Finishing Corp v Shields*, 158 Mich App 479, 486; 405 NW2d 171 (1987). Directors of a corporation also owe a fiduciary duty to their creditors. *Vesser v Robsinson Hotel Co*, 275 Mich 133, 137; 266 NW 54 (1936). Generally, relief for a breach of fiduciary duty may be sought when a "position of influence has been acquired and abused, or when confidence has been reposed and betrayed." *Vicencio v Ramirez*, 211 Mich App 501, 508; 536 NW2d 280 (1995).

Under Michigan law, the elements of a breach of fiduciary duty claim are: (1) the existence of a fiduciary duty; (2) a breach of that duty; (3) proximately causing damages. 10 Mich Civ Jur Fraud and Undue Influence § 70. 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 and 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 Co v Blue Cross Blue Shield Michigan*, 297 Mich App 1, 20; 824 NW2d 202 (2012).

Lepper's affidavit states in relevant part:

14. In my position as CFO I relied upon the accuracy of information provided to me by employees within the finance department of CCIH.

15. In my position as CFO I relied upon the accuracy of information provided to me by the independent auditor for CCIH.

16. In my position as Chief Executive Officer I relied upon the accuracy of information provided to me by my CFO and those working below her in the finance department, as well as Dr. Farrow who had become responsible for the Accounts Receivable/billing department.

...

30. The original 'check cashing store' lease was negotiated and executed by CCIH employees before I ever worked at CCIH and it was a lease that was air tight and written for the pure benefit of the tenant.

31. Those who negotiated the original lease failed to include any rent increase or 'escalators' based upon factors such as cost of living despite having provided the tenant with significant options to renew at the then current rate.

...

48. At no time prior to my termination on October 15, 2019, was I ever accused of or questioned about any alleged improprieties by me in my capacity as CEO of CCIH.

...

51. At no time from the execution of my February 1, 2019 employment agreement through my termination of October 15, 2019 did the Board take any of the following actions: ... (v) declare the agreement null and void based upon an allegation of fraud; (vi) withhold pay based upon some allegation of breach; (vii) accuse me of a specific breach of some term of the agreement or a breach of any fiduciary duty to CCIH outside of the agreement itself.

...

55. None of my business travel was used as an excuse for personal matters, nor was I ever accused of that by CCIH prior to my termination. All of my business travel was for legitimate business purposes to promote the business of CCIH.

Lepper also testified as follows:

Q. Okay. It also states that you shall perform your duties in accordance with the highest commercial and professional standards in the industry. Would you agree that that would require you to act ethically and with fiduciary obligations?

A. As I always did, yes.

[Transcript, p. 196, ln 15-20].

Thus, Lepper contends that his actions were taken for the best interests of CCIH and he complied with standards for a fiduciary and the behavior of other CEOs. The Court notes that pages 197 through 210 of the deposition transcript are missing from CCIH's Exhibit 7. It appears that there are questions and answers that are absent from the exhibit. This information may be relevant for a resolution of the issues presented here.

Although CCIH argues that Lepper's mere denials in his affidavit are insufficient to overcome his burden, the Court finds that the statements in the affidavit coupled with Lepper's testimony provide the Court with a question of the parties' credibility. Lepper has responded with sufficient specificity to create a genuine question of material fact showing that a genuine issue of material fact exists. *Jewett, supra*. He has gone "beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists" *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 475; 776 NW2d 398 (2009). Therefore, the Court denies CCIH's motion for a grant of summary disposition in its favor for Lepper's alleged breach of his fiduciary duty. MCR 2.116(C)(10).

#### **IV. CONCLUSION**

CCIH's motion as to the Lepper's breach of contract claim is denied because there are numerous genuine issues of material fact to be decided before deciding whether a breach has occurred. MCR 2.116(C)(10). Lepper has failed to demonstrate a question of material fact that Dr. Farrow tortuously interfered with his contract or his relationship with CCIH and that she acted solely for her own benefit "with no benefit to the corporation." *Reed, supra*.

As to Lepper's defamation claim, summary disposition is not appropriate regarding Dr. Farrow's Crain's statement because there is a question of material fact whether Dr. Farrow herself made defamatory statements about Lepper and whether the statements were substantially truthful. However, Lepper has failed to demonstrate a question of material fact that defamatory statements were made by Dr. Farrow outside of the Crain's article. Lepper is a public figure and must prove by clear and convincing evidence that the statements were made with actual malice. *Ireland, supra*. There is also a question of material fact with respect to Lepper's false light claim and as to the matter of truthfulness or falsity of the information and whether the statements attributed characteristics, conduct, or beliefs to Lepper that were false and placed Lepper in a false position.

With respect to CCIH's third-party claim against Cato, there are no specific factual allegations of how and when Cato acted in concert with Lepper to convert property or money. Indeed, as a subordinate, there are no factual allegations that she did not act at the direction of her Lepper, her employer. Thus, the conspiracy claim against Cato fails and no fact issues present themselves sufficient to implicate her in a conspiracy. Pursuant to MCR 2.116(I)(2), summary disposition is granted in favor of Cato.

With respect to the remainder of CCIH's motion for its counter-claims, there genuine issues of material fact as to all of CCIH's claims and summary disposition is not appropriate.

For the reasons stated in the foregoing opinion,

**IT IS ORDERED** that the motion for summary disposition filed by Defendant/Counter-Plaintiff/Third-Party Plaintiff Detroit Central City Community Mental Health, Inc. d/b/a Central City Integrated Health is hereby **DENIED** as to Plaintiff Ryan Lepper's claims for breach of contract against CCIH (Count I) and Slander and/or Libel as to both Dr. Farrow and CCIH (Count III);

**IT IS FURTHER ORDERED** that the motion for summary disposition filed by Defendant Kimberly Farrow is hereby **DENIED** as to Plaintiff's claims for Slander and/or Libel as to both Dr. Farrow and CCIH (Count III) and False Light Invasion of Privacy against Dr. Farrow (Count IV);

**IT IS FURTHER ORDERED** that the motion for summary disposition filed by Defendant Kimberly Farrow is hereby **GRANTED** as to Plaintiff's claim for Tortious Interference (Count II);

**IT IS FURTHER ORDERED** that Plaintiff claim for Tortious Interference (Count II) against Dr. Kimberly Farrow is hereby **DISMISSED**;

**IT IS FURTHER ORDERED** that the motion for summary disposition filed by Defendant/Counter-Plaintiff/Third-Party Plaintiff Detroit Central City Community Mental Health, Inc. d/b/a Central City Integrated Health is hereby **DENIED** as to its counter-claims against Plaintiff/Counter-Defendant Ryan Lepper;

**IT IS FURTHER ORDERED** that, pursuant to MCR 2.116(I)(2), the motion for summary disposition filed by Defendant/Counter-Plaintiff/Third-Party Plaintiff Detroit Central City Community Mental Health, Inc. d/b/a Central City Integrated Health as to its third-party claim of Conspiracy to Commit Common Law Conversion and Statutory Conversion against Cato and Lepper (Count I and Count II) against Brittany Cato is hereby **GRANTED**;

**IT IS FURTHER ORDERED** that Brittany Cato is hereby **DISMISSED** from the case as a third-party defendant;

**IT IS FURTHER ORDERED** that this **DOES NOT RESOLVE** the last pending claim and **DOES NOT CLOSE** the case.

**SO ORDERED.**

**DATED:** 12/21/2021

/s/ Muriel D. Hughes 12/21/2021

\_\_\_\_\_  
Circuit Judge