STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

HANTZ GROUP, INC., et al.,

Plaintiffs,

Case No. 2023-002986-CB

vs.

CHARLES FRANK TOURANGEAU, STEPHEN PAUL SOLVERSON, NICHOLAS OMICIOLI, NICOLE BELL, and RAYMOND JAMES & ASSOCIATES, INC.

Defendants,

and

CHARLES FRANK TOURANGEAU, STEPHEN PAUL SOLVERSON, NICHOLAS OMICIOLI, NICOLE BELL, and RAYMOND JAMES & ASSOCIATES, INC.

Counter-Plaintiffs,

vs.

HANTZ FINANCIAL SERVICES, INC.

Counter-Defendant.
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OPINION AND ORDER

Defendants Charles Frank Tourangeau, Stephen Paul Solverson, Nicholas Omiciolo, Nicole Bell, and Raymond James & Associates, Inc. ("Defendants") have filed a motion for summary disposition pursuant to MCR 2.116(C)(7) and (8). Plaintiffs Hantz Group, Inc, et. al. ("Plaintiffs") have filed a response requesting that the motion be denied. Defendants have filed a reply in further support of their motion.

I. Factual and Procedural History

This case involves the alleged solicitation and transfer of clients' securities accounts from Hantz Financial Services, Inc. ("HFS") to Raymond James & Associates, Inc. ("RJA") in violation of non-solicitation, non-compete, and confidentiality agreements. The Hantz Plaintiffs are all subsidiaries of Hantz Group. Plaintiff HFS and Defendant RJA are registered broker-dealers. The individual Defendants are financial advisors and registered brokers. Plaintiffs allege that Tourangeau, Solverson, Omicioli, and Bell, who all previously worked for HFS and moved to RJA, impermissibly solicited clients to transfer their securities accounts from HFS to RJA in violation of their post-employment obligations. There is currently a pending Financial Industry Regulatory Industry ("FINRA") arbitration between HFS and Defendants related to these claims.

On September 22, 2023, Plaintiffs filed their first amended nine count complaint alleging the following: count I –injunctive relief against Defendants, count II – temporary injunctive relief against Tourangeau and Omiciolo on behalf of Plaintiff, Hantz Financial Services, Inc. only, count III - breach of contract against individual Defendants, count IV – accounting, count V - tortious interference against Defendants, count VI – breach of fiduciary duties as to Tourangeau, count VII – conversion against all Defendants, count VIII – civil conspiracy, count IX – intentional infliction of emotional distress upon Laurain against Defendants. On October 2, 2023, Defendants filed their verified counterclaim for injunctive relief.

On October 2, 2023, Defendants filed the instant motion for summary disposition arguing that Plaintiffs' claims should be determined in the FINRA arbitration pursuant to MCR 2.116(C)(7) and that Plaintiffs have failed to state a valid claim pursuant to MCR 2.116(C)(8). On November 20, 2023, Plaintiffs filed a response to the motion arguing that they should not be compelled into FINRA arbitration, that their claims are valid, and requesting that the motion be

denied. On November 30, 2023, Defendants filed a reply in further support of the motion. On November 17, 2023, this Court entered an order granting Defendants' emergency motion for a temporary restraining order and preliminary injunction. On December 4, 2023, the Court heard the motion and took it under advisement.

II. Standards of Review

MCR 2.116(C)(7) permits summary disposition where the claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action. In reviewing a motion under MCR 2.116(C)(7), the Court accepts as true the plaintiff's well-pleaded allegations, construing them in the plaintiff's favor. *Hanley v Mazda Motor Corp*, 239 Mich App 596, 600; 609 NW2d 203 (2000). The Court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed or submitted by the parties when determining whether a genuine issue of material fact exists. *Id.* Where a material factual dispute exists such that factual development could provide a basis for recovery, summary disposition is inappropriate. *Kent v Alpine Valley Ski Area, Inc*, 240 Mich App 731, 736; 613 NW2d 383 (2000). Where no material facts are in dispute, whether the claim is barred is a question of law. *Id*

Summary disposition may be granted pursuant to MCR 2.116(C)(8) when 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; 631 NW2d 308 (2001). "In assessing a motion brought under MCR 2.116(C)(8), all factual allegations are accepted as true, as well as any

reasonable inferences or conclusions that can be drawn from the facts." *Carter*, 271 Mich App at 427. "Conclusory statements, unsupported by factual allegations, are insufficient to state a cause of action." *Churella v Pioneer State Mut Ins Co*, 258 Mich App 260, 272; 671 NW2d 125 (2003). "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 of Michigan, Inc*, 239 Mich App 311, 315; 608 NW2d 62 (2000).

III. Arguments and Analysis

Defendants make the following arguments: 1) that this Court should compel Plaintiff's into arbitration pursuant to MCR 2.116(C)(7), or in the alternative this case should be stayed pending the outcome of the FINRA arbitration and 2) that Plaintiffs have failed to state a claim pursuant to MCR 2.116(C)(8) and their claims should be dismissed.

1. MCR 2.116(C)(7) – FINRA Arbitration

Defendants argue that this Court should compel Plaintiffs into FINRA arbitration because the claims flow from claims already before FINRA, or in the alternative, stay the case pending the outcome of the FINRA arbitration. In response, Plaintiffs argue that their claims should not be compelled into FINRA arbitration and that this matter should not be stayed in the alternative.

Michigan has "strong public policy in this state in favor of arbitration as a simple expeditious means of resolving disputes without necessitating resort to the court system." *Detroit Auto. Inter-Ins Exch v Reck*, 90 Mich App 286, 289; 282 NW2d 292 (1979). "The policy in favor of this expeditious system is thwarted if all disputed issues in an arbitration proceeding must be segregated into categories of 'arbitrable sheep and judicially-triable goats.'" *Id.* FINRA Rule 13200 states that "a dispute must be arbitrated under the Code if the dispute arises out of the business activities of a member or an associated person and is between or among: Members,

Members and Associated Persons, or Associated Persons." FINRA Rule 1011(b) defines an "Associated Person" as "(1) a natural person registered under FINRA rules."

a. Laurain's Intentional Infliction of Emotional Distress Claim

Plaintiff Brian Laurain ("Laurain") is a financial advisor at HFS and previously worked in the same group practice as Defendant Tourangeau. Laurain has filed an intentional infliction of emotional distress ("IIED") claim. See Count IX of the Complaint. Defendants argue that Laurain's IIED claim is "subject to mandatory FINRA arbitration because it meets the definition set forth in FINRA Rule 13200 for claims that ***must*** be arbitrated." See Defendants' Motion, p. 5. In support of this position, Defendants argue that Laurain's IIED claim arises out the business activities of a member or an associated person because it relates to the alleged effects that the resignation of the financial advisor Defendants had on Laurain and because he is an associated person.

In response, Plaintiffs argue that Laurain's IIED claim does not arise out of business activities regulated by FINRA and therefore cannot be compelled into FINRA arbitration. In support of this position, Plaintiffs argue that Laurain's IIED claim does not concern business activities, rather "it concerns Defendants' extreme and outrageous conduct of advantageously using Laurain's personal tragedy to inflict actionable pain on Laurain." See Plaintiffs' Response, p. 8.

In this case, Laurain's IIED claim stems directly from the business activities of Defendants as they allegedly resigned their employment with HFS and moved to RJA when Laurain was not available to participate in the protocol of calling the clients in his practice group upon their departure. Laurain was not available to participate in this protocol and he took a leave of absence from work following a personal family tragedy. Laurain's IIED claim is based on the effect those

business activities, and the transfer of securities accounts, had on him. Laurain and the individual Defendants are all "associated persons" under FINRA Rule 1011(b). Therefore, as this claim relates to one associated person asserting claims against other associated persons arising out of their business activities, FINRA arbitration is appropriate pursuant to FINRA Rule 13200. Accordingly, this Court compels Laurain's IIED claim to FINRA arbitration.

b. The Hantz Plaintiffs' Claims

Defendants argue that "[t]his Court should compel Plaintiffs into arbitration because FINRA already mandates that HFS and Defendants/Counter-Plaintiffs arbitrate their claims. Having some parties arbitrate while other parties litigate the same claims, agreements, and facts would be inefficient and waste the Court's and the parties' resources." See Defendants' Motion p. 7. In response, Plaintiffs argue that the Hantz Plaintiffs claims cannot be compelled into FINRA arbitration. In support of this position, Plaintiffs rely on *Hantz Group, Inc et al v Van Duyn, et al,* unpublished per curiam opinion of the Court of Appeals, decided June 30, 2011 (Docket No. 294699). In *Van Duyn,* despite the fact that HFS was the only FINRA member, the trial court ordered all of the parties, including the non-FINRA member Hantz entities, into FINRA arbitration. *Id.* at 2. The Court of Appeals reversed the trial court and held that "the trial court erred in dismissing plaintiffs' claims and ordering them into arbitration as they did not agree in writing or otherwise to arbitrate claims arising out of the non-solicitation agreements and cannot be compelled to do so." *Id.* at 4.

In their motion, Defendants acknowledged the unpublished *Van Duyn* opinion and "recognize the Court's jurisdiction here but properly contend that the Court should send all parties and all claims to join RJA and HFS in arbitration, or stay this action, for judicial economy and to

avoid divergent results in separate litigations." See Defendants' Motion, p. 7. This Court agrees. Accordingly, this Court compels the Hantz Plaintiffs' claims to FINRA arbitration.

2. MCR 2.116(C)(8) – Failure to State a Claim

As this Court has compelled Plaintiffs' claims to FINRA arbitration, as further discussed above, the remainder of Defendants' motion is moot.

IV. Conclusion

For the reasons set forth above, Defendants' motion to compel FINRA arbitration is GRANTED. The remainder of Defendants' motion is moot. Pursuant to MCR 2.602(A)(3), the Court states that this *Opinion and Order* resolves the last claim and closes the case.

IT IS SO ORDERED.

Richard L. Caretti

HONORABLE RICHARD L. CARETTI
Circuit Court Judge

DATE: January 11, 2024

cc: David J. Shea, Esq.
Peter A. Torrice, Esq.
Rian C. Dawson, Esq.