

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
BUSINESS COURT**

**EVERWORKS, INC.,**

**Plaintiff/Counter-Defendant,**

**Case No. 23-203516-CB**

**Hon. Victoria A. Valentine**

**v.**

**JULIE RINALDI, KRYSTAL WILLIS, SPARKS  
TALENT ACQUISITION CORP., FLEX WORKFORCE  
SOLUTIONS, INC., & AARON OPALEWSKI,**

**Defendants/Counter-Plaintiff.**

---

**COURT’S OPINION AND ORDER REGARDING MOTION TO DISMISS COUNTS II-  
IV OF RINALDI’S COUNTERCLAIM UNDER MCR 2.116(C)(8)**

This matter is before the Court on Plaintiff Everworks, Inc.’s Motion to Dismiss Counts II-IV of Rinaldi’s Counterclaim under MCR 2.116(C)(8). This Court has reviewed the pleadings as well as the motion, response and reply brief. Oral argument was held on the motion.

**OPINION**

**I.**

**Overview**

From April 2020 until October 2023 Defendant/Counter-Plaintiff Julie Rinaldi (“Rinaldi”) was employed by Plaintiff/Counter-Defendant Everworks, Inc. (“Everworks”) as the Director of Manpower and Recruiting. “Part of Everworks’ business and the part that Rinaldi was in charge

of, was to provide staffing/manpower for various industrial and automation projects throughout the country.”<sup>1</sup>

After Rinaldi’s resignation, Everworks filed this action against Rinaldi and other defendants. Everworks alleged claims of breach of contract; tortious interference with advantageous business relations; tortious interference with contract; breach of duty of loyalty; aiding and abetting in the breach of duty of loyalty; theft of trade secrets; defamation; and civil conspiracy. Rinaldi filed a Counterclaim against Everworks alleging breach of contract (Count I); Violation of the Michigan Sales Representative Commission Act (MCL 600.2961) (Count II); Conversion (Count III); Abuse of Process (Count IV). Everworks now moves for dismissal of Counts II-IV of Rinaldi’s Counterclaim pursuant to MCR 2.116(C)(8). Rinaldi opposes the motion and seeks judgment in her favor under MCR 2.116(I)(2).

## II.

### Standard of Review

A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, not whether the complaint can be factually supported. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160; 934 NW2d 665 (2019); *Pawlak v Redox Corp*, 182 Mich App 758, 763; 453 NW2d 304 (1990). A motion for summary disposition based on the failure to state a claim upon which relief may be granted is to be decided on the pleadings alone. *Bailey v Schaaf*, 494 Mich 595, 603; 835 NW2d 413 (2013); *Parkhurst Homes, Inc v McLaughlin*, 187 Mich App 357, 360; 466 NW2d 404 (1991).

---

<sup>1</sup> First Amended Complaint and Answer ¶ 10.

“All well-pleaded factual allegations are accepted as a true and construed in a light most favorable to the nonmovant.” *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999); *Wade v Dep’t of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). Summary disposition is proper when the claim is so clearly unenforceable as a matter of law that no factual development can justify a right to recovery. *Parkhurst Homes*, 187 Mich App at 360; *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

### III.

#### Analysis

#### *Count II - Violation of the Michigan Sales Representative Commission Act (MCL 600.2961)*

Everworks argues that Count II fails as a matter of law because the staffing/manpower services upon which Rinaldi’s alleged commissions were based are not “goods” or “products” as required under the Michigan Sales Representative Commission Act (the “MSRCA”), MCL 600.2961.

Under MCL 600.2961(4):

All commissions that are due at the time of termination of a contract between a sales representative and principal shall be paid within 45 days after the date of termination. Commissions that become due after the termination date shall be paid within 45 days after the date on which the commission became due.

Pursuant to MCL 600.2961(5):

A principal who fails to comply with this section is liable to the sales representative for both the following:

- (a) Actual damages caused by the failure to pay the commissions when due.
- (b) If the principal is found to have intentionally failed to pay the commission when due, an amount equal to 2 times the amount of commissions due but not paid as required by this section or \$100,000.00, whichever is less.

For purposes of the MSRCA, a “sales representative” is defined as:

a person who contracts with or is employed by a principal for the solicitation of orders or sale of *goods*, and is paid, in whole or in part, by commission. Sales representative does not include a person who places an order or sale for a product on his or her own account for resale by the sales representative. [MCL 600.2961(e) (emphasis added)]

The term “principal” means a person who does either of the following:

- (i) Manufactures, produces, imports, sells, or distributes a *product* in this state.
- (ii) Contracts with a sales representative to solicit orders for or sell a *product* in this state. [MCL 600.2961(d) (emphasis added)]

Everworks argues that the MSRCA does not apply in this case because Rinaldi was not a “sales representative” under the act because she was not employed for the solicitation of orders or sales of “goods.” Additionally, Everworks argues that it cannot be considered a “principal” because it does not “manufacture, produce, import, sell, or distribute a product” and did not contract with a sales representative to solicit orders for or sell a “product.” Rinaldi argues that the definition of the term “product” includes the provision of services and therefore, the MSRCA is applicable. Rinaldi also argues that commissions owed to her were based, in part, upon the sale of goods.

The term “goods” and the term “product” as used in the MSRCA do not include “services.” The term “goods” and the term “product” are not defined in the MSRCA. However, in *Mahnick v Bell Co*, 256 Mich App 154; 662 NW2d 830 (2003) the Court, employing the rules of statutory interpretation, stated as follows:

If a term is not expressly defined in a statute, this Court may consult dictionary definitions in construing the term according to its plain and ordinary meaning. *Stanton v Battle Creek*, 466 Mich 611, 617; 647 NW2d 508 (2002).

The word “product” is defined as “a thing produced by labor,” “the totality of goods or services that a company produces,” and “material created or produced and viewed in terms of potential sales.” *Random House Webster's College*

*Dictionary* (2001), p. 1055. “Goods” are defined as “possessions, esp[ecially] movable effects or personal property” and as “articles of trade; merchandise.” *Id.* at 565, 647 N.W.2d 508. The fair and natural import of the terms employed, in view of the subject matter of the law, should govern. *In re Wirsing*, 456 Mich. 467, 474, 573 N.W.2d 51 (1998). [*Mahnick*, 256 Mich App at 162.]

The Court of Appeals in *Mahnick* determined that “the defendant, as a general contractor, was not engaged in the manufacture, production, importation, sale or distribution of products. Rather, as general contractor, defendant provides professional construction *services* to the project owner. As a project estimator, plaintiff assisted defendant’s efforts to bid to provide *services* to the project owner by providing a professional service to defendant.” *Id.* at 162-163. The court concluded that “[*s*]ervices do not constitute goods or products within the meaning of the [*MSRCA*].”<sup>2</sup> *Id.* at 163 (emphasis added).

Alternatively, Rinaldi argues that “even assuming that the MSRCA only applies to employers that produce a tangible product . . . Everwork’s Motion completely fails to acknowledge

---

<sup>2</sup> Likewise, the Court of Appeals in *Klapp v United Ins Grp Agency, Inc*, 259 Mich App 467, 474; 674 NW2d 736 (2003) determined that the MSRCA “does not apply to commissions generated from the sale of insurance policies. The court concluded “that plaintiff’s arguments that his sales of insurance policies were the sale of *goods* and that defendant [*m*]anufactures, produces, imports, sells, or distributes a *product* in this state . . . are contrary to the plain wording of the statute and common and accepted meaning of its terms.” In addition to citing the reasoning in *Mahnick*, the Court of Appeals noted that Article 2 of the Uniform Commercial Code defines of “goods” as:

all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than money in which the price is to be paid, investment securities (article 8) and things in action. “Goods” also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (section 2107). [MCL 440.2105(1).]

The court in *Klapp* observed that at the time the MSRCA was enacted without a definition of the term “goods” the UCC provided the above-quoted comprehensive definition and therefore, the court assumed that at the time the MSRCA was enacted the Legislature “was fully aware of this widely known and accepted definition of goods.” *Klapp*, 259 Mich App at 474.

that Everworks is, in fact, in the business of selling products, and that Rinaldi's commission, which is based on the real profits of Everwork's 'manpower' unit, included the sales of goods."<sup>3</sup>

The Court concludes that, under Rinaldi's alternative argument, a claim under the MSRCA has been sufficiently pled. Paragraph 62 alleges that Everworks is a "principal" as defined in the MSRCA and Paragraph 63 alleges that Rinaldi was a "sales representative" as defined in the act.<sup>4</sup>

Based upon the foregoing, summary disposition under MCR 2.116(C)(8) is denied as to Count II of the Counterclaim.

#### *Count III- Conversion*

In her response to Everworks' motion, Rinaldi states that she does not oppose the motion as it relates to Count III (Conversion). Accordingly, summary disposition under MCR 2.116(C)(8) is granted as to Count III.

#### *Count IV- Abuse of Process*

"Abuse of process is the wrongful use of the process of a court." *Lawrence v Burdi*, 314 Mich App 203, 211; 886 NW2d 748 (2016) (quotation marks and citation omitted). A claim for abuse of process "lies for the improper use of the process after it has been issued, not for

---

<sup>3</sup> Response, p 7. In support of this argument, Rinaldi points out that a "Commission Report" attached to the Counterclaim contains a line item entitled "Cost of Goods Sold."

<sup>4</sup> Paragraph 63 alleges as follows:

Everworks acted as a "Principal" as defined in MSRCA, as Everworks "[m]anufactures, produces, imports, sells, or distributes a product in this state" or "contracts with a sales representative to solicit order for or sell a product in this state." MCL 600.2961(1)(d).

Paragraph 63 alleges:

Rinaldi was a "Sales Representative" of Everworks as defined in MCL 600.2961(1)(e) as she was employed by Everworks "for the solicitation of orders or sales of goods and is paid, in whole or in part, by commission."

maliciously causing it to issue. To restate the proposition, the tort concerns the willful use of a valid process to obtain a result the law did not intend." *Rowbotham v DAIIE*, 69 Mich App 142, 146; 244 NW2d 389 (1976) (citations omitted). The gravamen of the tort "is not the wrongful procurement of legal process or the wrongful initiation of criminal or civil proceedings; it is the misuse of process ... for any purpose other than that which it was designed to accomplish." *Moore v Michigan Nat'l Bank*, 368 Mich 71, 75; 117 NW2d 105 (1962), quoting 3 Restatement Torts, § 682.

"To recover upon a theory of abuse of process, a plaintiff must plead and prove (1) an ulterior purpose and (2) an act in the use of process which is improper in the regular prosecution of the proceeding." *Friedman v Dozorc*, 412 Mich 1, 30; 312 NW2d 585 (1981). "A complaint [asserting an abuse of process] must allege more than the mere issuance of the process, because an action for abuse of process lies for the improper use of process after it has been issued, not for maliciously causing it to issue." *Dalley v Dykema Gossett*, 287 Mich App 296, 322; 788 NW2d 679 (2010), quoting *Friedman*, 412 Mich at 31. "The pleadings must allege a use of process for a purpose outside of the intended purpose and must allege with specificity an act which itself corroborates the ulterior motive." *Early Detection Center, PC v New York Life Ins Co*, 157 Mich App 618, 629; 403 NW2d 830 (1986). "[T]he ulterior purpose alleged must be more than harassment, defamation, exposure to excessive litigation costs, or even coercion to discontinue business." *Id.* at 629-630.

"A meritorious claim of abuse of process contemplates a situation where the defendant has availed himself of a proper legal procedure for a purpose collateral to the intended use of that procedure, e.g., where the defendant utilizes discovery in a manner consistent with the rules of procedure, but for the improper purpose of imposing an added burden and expense on the opposing

party in an effort to conclude the litigation on favorable terms.” *Vallance v Brewbaker*, 161 Mich App 642, 646; 411 NW2d 808 (1987).

It is alleged in Count IV of Rinaldi’s Counterclaim

75. On October 27, 2023, Everworks filed its Complaint with this Court.

76. Everworks has abused the civil process of this Court by using it for its ulterior motives to cause vexation, trouble, embarrassment, and damage to Rinaldi’s professional reputation, damage to Rinaldi’s community reputation, and as retaliation for Rinaldi’s tendering her resignation from Everworks and then becoming employed by Flex.

77. As corroborating acts of Everwork’s improper purpose, Everworks filed its Complaint while knowing (and explicitly acknowledging to Rinaldi) that it was in breach of the Agreement and owed Rinaldi at least \$126,000 in unpaid commissions, unused PTO, and reimbursements.

78. Everworks submission of its frivolous Complaint was willful and intentional.

79. Everworks use of this civil process was improper since Everworks knew, or should have known, that its allegations regarding Rinaldi in its Complaint are false and its claims are frivolous.

80. As a direct result of Everwork’s abuse of process, Rinaldi’s reputation and status has been damaged and she has incurred a great deal of expense.<sup>5</sup>

The Court agrees with Everworks that the abuse of process claim fails as a matter of law because the Counterclaim does not allege “an act in the use of process which is improper in the regular prosecution of the proceeding.” *Friedman v Dozorc*, 412 Mich at 30. The act in the use of process is the filing of the Complaint. However, this is not sufficient to state a claim for abuse of process. *Id.* at 31 (“The only act in the use of process that plaintiff alleges is the issuance of a summons and complaint in the former malpractice action. However, a summons and complaint are properly employed when used to institute a civil action, and thus plaintiff has failed to satisfy the second element required . . . .”)

---

<sup>5</sup> Counterclaim ¶¶ 75-80.

Rinaldi argues that the Counterclaim does allege a corroborating act separate from the mere filing of the Complaint, i.e.- “that Plaintiff has, knowingly, asserted false allegations in its Complaint.”<sup>6</sup> In support of this argument Rinaldi cites paragraphs 76-79 of the Counterclaim which allege the intentional filing of a frivolous complaint containing allegations that Everworks knew or should have known were false. However, Rinaldi’s attempt to establish an “act” other than the filing of a complaint or an “act” in addition to the “mere” filing of a complaint by alleging that false statements were made in a frivolous Complaint is not persuasive.

A claim that there was no factual basis for a complaint is not sufficient to state a claim for abuse of process. *See Dalley*, 287 Mich App at 322-323. *See also Early Detection Center*, 157 Mich App at 629 (“Plaintiffs have alleged as the irregular acts no more than the filing of a ‘groundless’ suit. This is not sufficient to make out a claim for abuse of process.”); *Bedford v Abushmaies*, unpublished per curiam opinion of the Court of Appeals, issued March 26, 2013 (Docket No. 310078), p 3 (emphasis in original) (“Processes exist for punishing attempts to gain *frivolous* access to the courts. Notably, however, a claim for abuse of process lies only for the improper *use* of a legal process, not the bare *issuance* of the process, irrespective of any improper motive for doing so.”)

In support of the argument that the Counterclaim sufficiently alleges a claim of abuse of process Rinaldi relies on *Lindros v Sanderson*, unpublished per curiam opinion of the Court of Appeals, issued September 2, 2003 (Docket No. 237568). Rinaldi asserts that in that case the Michigan Court of Appeals “found that a prima facie case of abuse of process was sufficiently pled where the plaintiff alleged that the defendants’ ulterior motives were to, among other things,

---

<sup>6</sup> Response, pp 9-10.

damage plaintiff's professional reputation, and further alleged that the corroborating act was making false allegations and lying during proceedings.”<sup>7</sup> However, contrary to this assertion, the Court of Appeals did not “rule” that a prima facie case had been alleged. Rather, the Court of Appeals stated:

In regard to the improper act, plaintiff alleged that [defendant] made false allegations in filing that grievance. During the trial, plaintiff also attested that [defendant] lied during the grievance proceedings. Thus, at first glance, it would appear that plaintiff sufficiently pleaded a prima facie case of an abuse of process . . . [*Lindros*, at p 3.]

However, the court went to analyze whether the defendant had absolute immunity for “her statements and testimony made to the grievance commission” under MCR 9.125. *Id.* at p 4. The court determined that “the trial court did not err in ruling that plaintiff could not rely on those statements and testimony to establish an ‘improper act,’ as necessary to support plaintiff’s abuse of process claim. *In the absence of any other allegation of an improper act*, we conclude that the trial court did err as a matter of law in dismissing plaintiff’s abuse of process claim.” *Id.* (emphasis added).

This Court concludes that the decision in *Lindros* does not support Rinaldi’s argument. *Lindros* is an unpublished decision and is not binding on this Court but may be considered persuasive authority. MCR 7.215(C)(1); *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 145 n 3; 783 NW2d 133 (2010). However, *Lindros* is not persuasive in this case because the Court of Appeals’ decision in *Lindros* was based upon the immunity issue which is not an issue presented in this case. The Court of Appeals merely stated that “at first glance, it would appear”

---

<sup>7</sup> Response, p 9.

that a prima facie case was pleaded, it did not decide the issue of whether a prima facie case was pleaded in the first instance. *See Griswold Prop, LLC v Lexington Ins Co*, 276 Mich App 551, 563; 741 NW2d 549 (2007) (“stare decisis does not arise from a point addressed in obiter dictum.”) Additionally, the facts in *Lindros* differ from the facts in this case. In *Lindros* the abuse of process claim was based on statements made and testimony given during the grievance proceeding, i.e.- the improper use of process after it has been issued. *See Lindros*, p 4. In fact, the court in *Lindros* apparently found that aside from the excluded statements/testimony, the Plaintiff did not allege another improper act. *Id.* Thus, *Lindros* appears to contradict the argument that false allegations in a complaint are grounds for an abuse of process case.

Based upon the foregoing, the Court concludes that Rinaldi fails to state a claim of abuse of process and summary disposition pursuant to MCR 2.116(C)(8) is granted as to Count IV of the Counterclaim.<sup>8</sup>

### **ORDER**

Based upon the foregoing Opinion:

**IT IS HEREBY ORDERED** that Everworks’ Motion to Dismiss under MCR 2.116(C)(8) is **DENIED** as to Count II of the Counterclaim (Violation of the Michigan Sales Representative Commission Act (MCL 600.2961));

---

<sup>8</sup> Rinaldi, in her response, states “[t]o the extent that Count IV is unclear regarding the allegations as to what specifically is alleged as a corroborating act, Rinaldi respectfully requests that the Court grant Rinaldi leave to amend her Counterclaim to clarify these allegations. MCR 2.118(A)(2).” Because this Court grants summary disposition under MCR 2.116(C)(8), the Court “shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified.” MCR 2.116(I)(5). Accordingly, Rinaldi is granted leave to amend the Counterclaim as to Count IV (Abuse of Process).

**IT IS FURTHER ORDERED** that Everworks' Motion to Dismiss under MCR 2.116(C)(8) is **GRANTED** as to Count III of the Counterclaim (Conversion);

**IT IS FURTHER ORDERED** that Everworks' Motion to Dismiss under MCR 2.116(C)(8) is **GRANTED** as to Count IV of the Counterclaim (Abuse of Process);

**IT IS FURTHER ORDERED** that Counter-Plaintiff Rinaldi has until February 6, 2024, to amend Count IV of the Counterclaim (Abuse of Process);

**IT IS FURTHER ORDERED** that Rinaldi's request for judgment in her favor pursuant to MCR 2.116(I)(2) is **DENIED**.

**IT IS SO ORDERED.**

**This Order does NOT resolve the last pending matter and does NOT close the case.**

---

HON. VICTORIA A. VALENTINE  
CIRCUIT COURT JUDGE

Dated: 1/30/24