

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

OAKWOOD HEALTHCARE, INC.,

Plaintiff/Counter-Defendant,

Case No: 20-004385-CB
HON. BRIAN R. SULLIVAN

-vs-

ANESTHESIA ASSOCIATES OF
ANN ARBOR, PLLC,

Defendant/Counter-Plaintiff.

ANESTHESIA ASSOCIATES OF
ANN AROBR, PLLC,

Plaintiff,

Case No: 20-015468-CB
HON. BRIAN R. SULLIVAN

-vs-

NORTHSTAR ANESTHESIA OF MICHIGAN, III,
PLLC, ANESTHESIA CONSULTING AND MANAGEMENT,
L.P., LEIGH APPLE, D.O., MARINA DYMENT, M.D.,
JONATHAN KAPER, M.D., PETER PANAGOPOULOS,
M.D., ALLISON PREMO, M.D., CHRISTINA RHEE, M.D.,
JENNIFER RHEE, M.D., TOM STATHAKIOS, M.D., and
CHINWE BLAIR, M.D.,

Defendants.

**ORDER DENYING DEFENDANT, ANESTHESIA
ASSOCIATES OF ANN ARBOR'S, MOTION TO FILE
ITS SECOND AMENDED COUNTER COMPLAINT**

At a session of said Court, held in the City
County Building, City of Detroit, County of
Wayne, State of Michigan, on
6/17/2021

PRESENT: HONORABLE BRIAN R. SULLIVAN

On March 23, 2020, plaintiff, Oakwood Healthcare Inc. (Oakwood) filed suit for declaratory judgment and breach of contract against defendant, Anesthesia Associates of Ann Arbor, PLLC (A4). Oakwood sued A4 over their agreement to provide anesthesia services to plaintiff's hospitals in Dearborn, Garden City, Trenton and Wyandotte. A4 answered that complaint and filed a counterclaim on April 24, 2020. A4 filed an amendment to its original counter-complaint on May 27, 2020. A4 has filed this motion for leave to file a second amended complaint (not counter complaint) against Oakwood.

The amendment of a complaint is normally freely granted. This motion, however, seeks to do many things in its 40 pages and 13 counts, and not all of them are done explicitly. A4 seeks to add Oakwood's parent company, Beaumont Healthcare Inc., Beaumont's President and Chief Executive Officer, John Fox, and its Executive Vice President and Chief Operating Officer, Carolyn Wilson as defendants. A4 also seeks to add several counts, realign the parties in the case, and consolidate this Oakwood-A4 case with the case A4 filed in Washtenaw Circuit Court (filed while this case pended). That case pits A4 against A4's replacement anesthesia group, NorthStar Anesthesia of Michigan III, PLLC (NorthStar), as well as the nine doctors who left A4 and joined NorthStar and its principal doctor and another entity and its head. Finally, A4 proposes, by the presentation of this amended complaint, that the two cases be consolidated in one complaint with A4 as the plaintiff and Oakwood's complaint reconfigured as a counter complaint against A4. Oakwood is realigned as a defendant with the other proposed defendants, NorthStar and the doctors. The final result is that A4 is the plaintiff in one unified case and the hospitals,

Oakwood and Beaumont, the two individuals who work for Beaumont, Fox and Wilson, NorthStar and its nine doctors who work for it, Anesthesia Consulting and Management, LP and Adam Spiegel, are realigned as defendants.

A4's motion is denied. Oakwood remains the plaintiff and its complaint viable. A4's motion to amend the complaint for a second time to add Beaumont, Fox and Wilson as new party defendants is denied. A4's motion to add counts to these new defendants is also denied.

Standard for Amendment

MCR 2.118 controls Amended and Supplemental Pleadings

(A) Amendments.

(1) A party may amend a pleading once as a matter of course within 14 days after being served with a responsive pleading by an adverse party, or within 14 days after serving the pleading if it does not require a responsive pleading.

(2) Except as provided in subrule (A)(1), a party may amend a pleading only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires.

(3) On a finding that inexcusable delay in requesting an amendment has caused or will cause the adverse party additional expense that would have been unnecessary had the request for amendment been filed earlier, the court may condition the order allowing amendment on the offending party's reimbursing the adverse party for the additional expense, including reasonable attorney fees.

(4) Amendments must be filed in writing, dated, and numbered consecutively, and must comply with MCR 2.113. Unless otherwise indicated, an amended pleading supersedes the former pleading.

The standard for amending a complaint is set forth MCR 2.118(A)(2). Amendment should be freely granted where justice requires.

MCR 2.113. Form, Captioning, Signing, and Verifying of Documents

(A) Applicability. The form, captioning, signing, and verifying of all documents are prescribed in MCR 1.109(D) and (E).

(B) Paragraphs; Separate Statements.

(1) All allegations must be made in numbered paragraphs, and the paragraphs of a responsive pleading must be numbered to correspond to the numbers of the paragraphs being answered.

(2) The content of each paragraph must be limited as far as practicable to a single set of circumstances.

(3) Each statement of a claim for relief founded on a single transaction or occurrence or on separate transactions or occurrences, and each defense other than a denial, must be stated in a separately numbered count or defense.

MOTION

A4's second amended complaint proposes three things: 1. dismiss or displace Oakwood's complaint, and consolidate and reconfigure these two cases into one case with A4 as plaintiff; 2. add new parties, Beaumont, Fox and Wilson; and 3. add new causes of action and bolster existing ones in a single case.

A4's request is not entirely direct, so it is difficult to unravel to sort out the merits of the request, which is not the function of the court. *See Mitcham v City of Detroit*, 355 Mich 182, 203 (1959). The apparent relief requested is straight forward, to allow A4 to amend its (counter) complaint. But it implicitly seeks to restructure the case by realignment of the parties, add new parties and add new causes of action. The procedure used to get there is not a sound legal procedure. The court rules provide a vehicle to accomplish these same goals by consolidation of cases. The allegations in the proposed complaint, in part, do not comply with the rules of pleading. They are to a great extent, argumentative, imprecise, conclusory, and emotivistic opinions. They are not facts and do not comply with the general rules of pleading. The amended complaint seeks to introduce an improper tone into this case, probably a carryover from the earlier tensions between the parties. The

court denies the motion.

LAW

1. Leave to Amend.

The rule of law is that leave to amend “shall be freely given when justice so requires.” MCR 2.118(A)(2). Amendment is generally a matter of right. *In re Kostin Estate*, 278 Mich App 47, 51 (2008). But not always. “[A]n amendment is not justified if it would be futile.” *Liggett Restaurant Group, Inc. v Pontiac*, 260 Mich App 127, 138 (2003). “Leave to amend should be denied only for particularized reasons, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the opposing party, or where amendment would be futile.” *Miller v Chapman Contracting*, 477 Mich 102, 105 (2007); *Lane v Kinder Care Learning Ctrs., Inc.*, 231 Mich App 689, 697 (1998).

“Michigan's procedural rules recognize and account for the fact that it may not be possible to plead fraud, or indeed anything else, with particularity at the commencement of a case. A party may move to amend “at any time, and leave should be granted freely unless doing so would prejudice the other party.” *Glasker-Davis v Auvenshine*, ____ Mich App ____, ____ (2020) slip op at 5 citing *SE Mich Surgical Hospital, LLC v Allstate Insurance Co.*, 316 Mich App 657, 663 (2016); *Stanke v State Farm Mutual Auto Insurance Company*, 200 Mich App 307, 320-321 (1993). MCR 2.118(C) provides that amendments can even be made to conform to the evidence and “may be made on a motion of a party at any time, even after judgments[.]” Amendment is to be aligned with justice of the matter.

A request to amend a pleading “pursuant to MCR 2.118 should be freely granted, unless the amendment would not be justified.” *Ormsby v Capital Welding, Inc.*, 471 Mich 45, 53; 684 NW2d 320 (2004). An amendment is not justified if it would be futile. *Id.* An amendment would be futile if “ignoring the substantive merits of the claim, it is legally insufficient on its face” *P.T. Today, Inc. v Comm’r of the Office of Fin & Ins Servs*, 270 Mich App 110, 143 (2006). “Delay, alone, does not warrant denial of a motion to amend.” *Weymers v Khera*, 454 Mich 639, 650 (1997). A trial court must find that delay was the result of bad faith, or the opposing party suffered prejudice. *Id.*

2. Rules of Pleading.

The law and court rules require that a valid complaint under MCR 2.111(B)(1) state, without repetition, the facts the pleader relies on to state a cause of action with the specific allegations reasonably necessary to specify the nature of the cause of action the opposing party is required to defend.

MCR 1.111 General Rules of Pleading

(A) Pleading to Be Concise and Direct; Inconsistent Claims.

- (1) Each allegation of a pleading must be clear, concise, and direct.
- (2) Inconsistent claims or defenses are not objectionable. A party may
 - (a) alleges two or more statements of fact in the alternative when in doubt about which of the statements is true;
 - (b) state as many separate claims or defenses as the party has, regardless of consistency and whether they are based on legal or equitable grounds or on both.All statements made in a pleading are subject to the requirements of MCR 1.109(D)(3) and E.

(B) Statement of Claim. A complaint, counterclaim, cross-claim, or third-party complaint must contain the following:

- (1) A statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary

reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend; and

(2) A demand for judgment for the relief that the pleader seeks an award of money, a specific amount must be stated if the claim is for a sum certain or a sum that can by computation be made certain, or if the amount sought is \$25,000 or less. Otherwise, a specific amount may not be stated, and the pleading must include allegations that show that the claim is within the jurisdiction of the court. Declaratory relief may be claimed in cases of actual controversy. See MCR 2.605. Relief in the alternative or relief of several different types may be demanded.

The rule requires the complaint contain facts sufficient to state a cause of action and to put the defending parties on notice of that cause of action it is required to answer and defend. To the extent this was not done, the motion is denied.

DISCUSSION

1. A4's "request" to dismiss Oakwood's complaint is denied.

A4 first seeks to realign itself as the plaintiff in the case by changing the heading of the case and do away with Oakwood's complaint. A4 did not seek to do so by motion. The court denies this "request". In some circumstance it may be a good idea. In this case, there was no legal authority cited to the court for accomplishing this act by this manner. It is abandoned. *Mitcham v City of Detroit*, 355 Mich 182, 203 (1959). It is denied.

2. Consolidation of cases.

The court consolidated the two cases for discovery purposes only. The court did not order consolidation for trial and left that question reserved for decision at a later time. No party sought that decision be revisited. The request can be made at the conclusion of discovery. Oakwood and A4 attended several status conferences, several settlement conferences, performed discovery and facilitations and participated willingly in all those court efforts.

A4s second amended complaint assumes a consolidation of these two cases, the one Oakwood filed in Wayne and the one A4 filed in Washtenaw. “A party may not simply announce its position and ‘leave it to this Court to discover and rationalize the basis for the party's claim.’ ” *Badiee v Brighton Area Schools*, 265 Mich App 343, 357 (2005). The court considers this issue abandoned. *Tyra v Organ Procurement Agency of Mich*, 498 Mich 68, 88 (2015); *Blackburne & Brown Mfg. Co. v Ziomek*, 264 Mich App 619 (2005); *Mitcham v City of Detroit*, 355 Mich 182, 203 (1959). It is denied.

3. Scheduling Order.

A4 also stated no scheduling order has been entered. That terse statement does not really tell the full tale of the enormous efforts, the conferences, discovery, and vast amount of settlement time which has occurred in this case. There have been status conferences, settlement discussions, motions, TRO's, Injunctive relief, facilitation, the appointment of a discovery master (sometimes used by the parties), all at a time when COVID cases were on the rise, no vaccine was in place, anesthesiologists were in high demand working many hours and hospitals filled to and beyond capacity. The parties shall enter a scheduling order forthwith if one is not in place.

4. A4's motion to add new parties is denied.

A4 seeks to add several parties, Beaumont, Fox and Wilson, in its proposed second amended complaint. Beaumont is Oakwood's parent entity. Fox and Wilson work for Beaumont as CEO and COO. The court concludes the complaint does not allege a sound legal basis to add Beaumont, Fox or Wilson as defendants in this case. The complaint fails to factually allege a clear nexus between them and any cause of action in the

complaint. If that basis exists, it can be clearly spelled out vis a vis facts and not theory or argument. It does come well after the case has been developed and these parties were well known to A4 before any suit was filed. No new fact has been adduced from discovery which explains why the parties are added at this late point in the case. Delay alone is not a reason to deny the motion, but there is more, no facts alleged to support the claims. The motion is denied.

A. Short background to this case.

A4 provided anesthesia services since 2011 at four Beaumont owned hospitals, all which were a part of Oakwood Healthcare, Inc., in Dearborn, Taylor, Trenton and Wayne.

In its complaint, Oakwood alleged A4 attempted to either terminate and/or renegotiate several of the contracts it had with commercial or insurance providers because A4 believed it was undercompensated by them. Oakwood further alleged that termination or renegotiation was contrary to A4's agreement with Oakwood and Oakwood's agreement with those insurers and providers. Those contracts between A4 and those groups were later reinstated or further agreement reached between them and A4. Oakwood and A4 entered into a Resolution Agreement which was signed in August 2019. In December 2019, A4 alleged Oakwood shorted it \$4,400,000.00 and if Oakwood did not pay it, A4 would terminate their contract. Tension set in between the parties due to their respective competing positions. A4 alleges it was squeezed out because of differences in pricing and billing and Oakwood, Beaumont and others could obtain services at a lesser price.

On February 21, 2020 A4 submitted written notice to Oakwood that their contract was terminated for convenience, and would end in 180 days on August 19, 2019.

Oakwood accepted the termination and acknowledged the last date for A4 was to be August 19, 2020.

A4 announced the last day it would provide services would not be August but instead would be June 10, 2020. A4 asserted another basis of the termination: breach of contract identified as Oakwood's failure to pay the demanded \$4,400,000.00 debt and defamation and asserted Oakwood was squeezing it out.

Oakwood denied the debt but paid it under protest. A4 did not withdraw the June termination date. A4 and Oakwood were both aware of all the parties, the individual players and all the conduct by this time. The parties had dialogue via e-mails etc. Oakwood and A4 did not reach concurrence as to the date of termination. The dispute was highly contested and the parties were in bitter opposition.

Oakwood filed this suit against A4 for breach of contract. It sought a Temporary Restraining Order or Declaratory Judgment and enforcement of the August 19, 2020 termination date for A4 to discontinue rendering services. Both Oakwood and A4 filed motions for Injunctive relief, and the court decided those motions on June 16, 2020 (after extensive negotiations, settlement conferences, etc.). The court granted Oakwood's motion for Injunctive relief, which required A4 to fulfill the contract through August, 2020. In the meantime, Oakwood contracted with a medical firm called NorthStar to provide anesthesia services to the four hospitals.

B. First Amended Complaint

On May 27, 2020 A4 filed its first Amended Counterclaim against Oakwood for:

I. Breach of the Anesthesia Services Agreement, specifically that Oakwood breached confidential terms in the contract;

- II. Declaratory Judgment, that Oakwood solicited the physicians of A4, contrary to their services agreement;
- III. Injunctive Relief, against solicitation of doctors of A4;
- IV. Breach of the Resolution Agreement, through Oakwood's disclosure of negotiations with A4;
- V, Defamation, that A4 failed to properly perform;
- VI. Tortious Interference with a Contract, Oakwood interfered with A4's physicians' contract not to compete with A4.

While this case was pending in Wayne County Circuit Court, A4 filed suit in Washtenaw County Circuit Court against NorthStar, the company that succeeded it in providing anesthesia services, nine of A4's former employee doctors who left it and went to work with NorthStar and the medical officer in charge. It also sued Anesthesia Consulting Management. A4 knew this case was pending in the Wayne County Circuit Court when it filed suit in Washtenaw Circuit Court and asked for a Temporary Restraining Order. The Washtenaw Circuit Court: a) denied the motion for a TRO, and b) transferred the case to Wayne County Circuit Court.

The Wayne County Circuit Court consolidated the transferred case with this case for discovery only. The court reserved the trial consolidation which was made clear to the parties in the conference(s). Whether an order was entered to that effect is not revealed in this motion, but sometimes parties do not instantly comply with that obligation. If that order has not been filed it must be filed with the scheduling order.

A4 now has a proposed Second Amended Complaint which it seeks to file it by permission of this motion. The discovery master examined it, but made no decision on it.

C. New parties and new counts in the second amended complaint.

The second amended complaint seeks to add new parties: Beaumont, Fox and Wilson. It also seeks to reconfigure the counts to:

- I. Breach of Contract against Shareholder Physicians;
- II. Breach of Contract Blair;
- III. Breach of Contract Oakwood;
- IV. Tortious Interference with Employment Agreement Contracts, Beaumont, OHI Fox Wilson, NorthStar and Spiegel;
- V. Tortious Interference Contracts, Services Agreement, Fox, Wilson, NorthStar and Spiegel and Physician defendants;
- VI. Tortious Interference Contracts, Resolution Agreement, Fox, Wilson;
- VII. Tortious Interference with Prospective Economic Advantage NorthStar Spiegel and Physician Defendants;
- VIII. Tortious Interference with Prospective Economic Advantage Beaumont, OHI, Fox, Wilson, NorthStar, Spiegel and Physician Defendants;
- IX. Unfair Competition NorthStar;
- X. Unjust Enrichment NorthStar and Physician Defendants;
- XI. Defamation Beaumont, OHI, Fox and Wilson;
- XII. Civil Conspiracy Beaumont, OHI, Fox and Wilson, NorthStar, Spiegel and Physician Defendants; and
- XIII. Injunction Beaumont, OHI, Fox and Wilson, NorthStar, Spiegel and Physician Defendants.

The proposed second amended complaint blends all the causes of action against Oakwood and other defendants. Oakwood responds that the thirteen alleged counts are legally duplicative of those already alleged in the existing First Amended Complaint filed by A4: I. Breach of Anesthesia Services Agreement; II. Declaratory Judgment; III. Preliminary and Permanent Injunction; IV. Breach of Resolution Agreement; V. Defamation; and VI. Tortious Interference with a Contract. The court agrees.

There is no authority cited to the court which would support the consolidation of the cases. It is abandoned. *Mitcham v City of Detroit*, 355 Mich 182, 203 (1959); *Dower v Oxford Charter Township*, 233 Mich App 62, 76 (1998).

D. New defendants.

The new parties A4 seeks to add are John Fox, Tracy Wilson, and Beaumont Health Care Services. These parties were well known to A4 throughout the contract and this

litigation. They were not mentioned in the first response, the first amended complaint or other suit. The factual basis adding them as parties is not clearly stated in the complaint. Apparently, they are named because they acted for the entity, Oakwood and/or Beaumont, as well as their individual capacity. The failure to spell it out factually in the complaint is defective. The failure to spell it out in the brief is fatal. It is abandoned. *Mitcham*, 359 Mich at 203.

. The proposed additional defendants, Beaumont, Fox and Wilson, are alleged to have tortuously interfered with the contract, the service agreement, the resolution agreement and with A4's economic advantage.

Oakwood's contends A4 has failed to allege facts as to specific wrongful action on behalf of the Beaumont individuals. The court agrees. For instance, in support of the tortious interference claim A4 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." *CMI Int'l v Intermit Int'l Corp.*, 251 Mich App 125, 131 (2002). Oakwood claims A4 has failed to factually allege any solicitation by the individual defendants (Fox or Wilson) to support these allegations. Alternatively, when an allegation is made against a corporate representative, the defendant must be alleged to have been a third party to that contract or that business relationship. *Reed v Michigan Metro Girl Scout Council*, 201 Mich App 10, 13 (1993). Neither Fox nor Wilson is alleged to be in this capacity. Finally, the single reference of "personal gain" (a conclusion) by A4 in the proposed complaint against these two defendants is insufficient to satisfy this requirement. It is a conclusion not a fact.

The court rules require the cause of action be spelled out in facts, not conclusions and this has not been done. If Fox or Wilson did something which amounts to a cause of action it must be spelled out in the complaint via facts and that was not done.

Oakwood also claims the addition of these counts addition is futile, a valid legal reason to deny the amendment. Oakwood identifies further deficiency that there are no allegations of fact that either Fox or Wilson solicited any A4 physician or caused any of them to breach their contract with A4 or a conspiracy. The allegation in the complaint is that Oakwood, the entity, contracted with NorthStar after A4 gave notice to Oakwood it was terminating its agreement to provide services. Oakwood claims that the hiring of NorthStar as A4's replacement does not state a cause of action.

The claim against Beaumont, Fox and Wilson as to the invasion of a contractual right or business relationship must also be supported by facts to show the act was an intentional doing of a per se wrongful act, or the doing of a lawful act performed with malice and which is unjustified in law. *CMI International v Internet International Corp.*, 251 Mich App 125, 131 (2002). Without such factual allegations the count is futile. *Ben Fyke, supra*. The court agrees.

Moreover, there are no facts which support the assertion Fox or Wilson acted strictly for their own purpose and not for the Beaumont entity (despite the assertion they stand to "profit handsomely"). *Reed v Michigan Metro Girl Scout Council*, 201 Mich App 10, 13 (1993). The court finds the failure to properly allege these facts after all this time before this case was filed and during discovery to be significant.

Delay alone is not a reason to deny an amendment of a complaint. But the lack of

facts can render the allegations futile and only serve to conflate or mask the real issues in the case.

There are no facts which support the assertion Fox and Wilson have a financial interest in NorthStar. If that is true, it should have been stated in the complaint or the brief in support of it. If it is not true, it is a scandalous assertion. (“Upon information and belief, Fox and Wilson stood/stand to personally profit handsomely.” Paragraph 42, page 11 Second Amended complaint). (...“force A4 out”...“Beaumont, OHI, Fox and Wilson began their scheme by going out of their way to oppress A4...” paragraph 44, p 12) and (“...a physician warned Beaumont “in the strongest possible terms” they have “serious concerns about NorthStar Anesthesia”..., Paragraph 93, page 22); (...“Beaumont and OHI had a different plan in mind that involved breaching contractual obligations to A4 and conspiring with a third party to tortuously interfere...” paragraph 61, page 15). These are not “FACTS COMMON TO ALL CLAIMS FOR RELIEF.” They are assertions, conclusions and accusations intended to depict the defendants poorly. Moreover, Fox and Wilson can only be held liable to A4 if they were acting for their own personal benefit and not that of the corporation. *Reed v Michigan Metro Girl Scout Council*, 201 Mich App 10, 13 (1993). A4’s failure to produce any support for these assertions after all this extensive briefing is unpersuasive. A4 has not met its low burden.

The motion to add Beaumont, Fox and Wilson is denied. A4 has not alleged any such facts, nor cited any from the discovery done so far. If and when that arises, A4 can reassert it at that time or at the time of any motion for consolidation.

E. New Causes of Action.

Oakwood further asserts there is no basis in fact, or in the discovery so far performed, that supports or justifies the counts of Tortious Interference of Contracts (Counts IV-VI as to A4's doctors, the contract with Oakwood, the contract of the Resolution Agreement; Interference with Prospective Economic Advantage as to the doctors who left A4 and went to NorthStar); Defamation; Civil Conspiracy; and Injunction. To a large extent they have already been asserted in the first amended complaint and those counts stand. To allow the restructuring is duplicative.

The court denies the addition of the new counts in the manner it is plead. A4 can file a motion at a time and in a manner which complies with the rules of pleading, by facts to state a cause of action.

F. Futility.

Oakwood contends A4's second proposed complaint is futile and has been asserted in bad faith. *Ben Fyke & Sons v Gunter*, 390 Mich 649, 656 (1973). MCR 2.118(A)(2) provides amendment should be freely, but not always, granted. The guiding principle is that it should be done "when justice so requires." MCR 2.118(A)(2). That determination is difficult without the assertion of the factual basis to support the cause of action. Oakwood claims the futility is to be "based on the legal insufficiency of the claim on its face. *Ligget Restaurant Group Inc. v Pontiac*, 260 Mich App 127, 138 (2003). It applies to counts where the counts are elaborated or restated. *Dowork Oxford Charter Twp*, 233 Mich App 62, 76 (1998).

The claims in the initial counter (first amended) complaint and the second proposed

amended complaint are fundamentally the same insofar as they both primarily rely on the same facts and seek the same relief through generally the same counts.

The fundamental proposition of futility at the base of Oakwood's argument is that A4 terminated the contract with Oakwood, not the other way around. It is difficult, maybe impossible, to interfere with a contract that is terminated. The truth of that proposition is in dispute.

There is also a claim of tortious interference with contractual relations. "The elements of tortious interference with a contract are (1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant." *Health Call of Detroit v Atrium Home & Health Care Services, Inc.*, 268 Mich App 83, 89-90; 706 NW2d 843 (2005). "To maintain a cause of action for tortious interference, the plaintiff must establish that the defendant was a 'third party' to the contract rather than an agent of one of the parties acting within the scope of its authority as an agent." *Lawsuit Fin., LLC v Curry*, 261 Mich App 579, 593; 683 NW2d 233 (2004).

A4 is correct that this is not a motion for summary disposition. However, the quantum of the argumentative narrative and the conclusions in the proposed second amended complaint are not facts in support of the proposed causes of action and do not warrant the amendment as proposed. The party advancing the motion must properly support the relief requested. The court notes there are numerous scurrilous and improper allegations in this proposed complaint which exceeds proper pleading allowed by Michigan court rule. It is a daunting task to try to separate that which is allowed and that which is not in this style of pleading.

In this case, the law requires facts, not argument, theory or (negative) assertion, to state a cause of action. A4 has not done so. The court must deal with that information that is presented to it. A4's motion to amend the complaint as to Oakwood is denied; and

IT IS SO ORDERED.

/s/ Brian R. Sullivan 6/17/2021
BRIAN R. SULLIVAN
Circuit Court Judge

ISSUED: 6/17/2021