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

TRAIL SUPPLY LLC d/b/a
FACILITY SOLUTIONS GROUP,

Plaintiff,

Case No. 24-206207-CB
v **Hon. Michael Warren**

BRIAN S. KEELER and
TGS GEE HOLDINGS COMPANY INC.
d/b/a TRI-COUNTY CLEANING SUPPLY,

Defendants.

OPINION AND ORDER GRANTING
DEFENDANT TRI-COUNTY CLEANING SUPPLY'S
MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10)

At a session of said Court, held in the
County of Oakland, State of Michigan
May 12, 2025

PRESENT: HON. MICHAEL WARREN

OPINION

I

The present cause of action arises out of a contractual relationship between Plaintiff Trail Supply LLC d/b/a Facility Solutions Group and its former office manager and salesman Brian S. Keeler. Keeler was employed by Facility Solutions from April 2, 2018 to December 31, 2023. Facility Solutions alleges that Keeler has breached non-

competition and non-solicitation provisions in his employment agreement during his employment with TGS Gee Holdings Company, Inc. d/b/a Tri-County Cleaning Supply.[1] Facility Solutions alleges that despite knowledge of the restrictive covenants, Tri-County has intentionally and improperly interfered with the contractual relationship between Facility Solutions and Keeler and Keeler's obligations under the agreement, and has intentionally disrupted Facility Solutions' business relationships with the customers. In particular, the Plaintiff alleges Tortious Interference with Contractual Relations (Count II) and Tortious Interference with Business Relationships or Expectancies (Count III) against Tri-County.

Before the Court is Defendant Tri-County Cleaning Supply's Motion for Summary Disposition Pursuant to MCR 2.116(C)(10). Oral argument is dispensed as it would not assist the Court in its decision-making process.2

At stake is whether summary disposition of Facility Solutions' claim for Tortious Interference with Contractual Relations (Count II) is warranted? Because there is no

[1] Keeler terminated his employment with Tri-County on October 28, 2024.

[2] MCR 2.119(E)(3) provides courts with discretion to dispense with or limit oral argument and to require briefing. MCR 2.116(G)(1) specifically recognizes application of MCR 2.119(E)(3) to summary disposition motions. Subrule (G)(1) additionally authorizes courts to issue orders establishing times for raising and asserting arguments. This Court's Scheduling Order clearly and unambiguously set the time for asserting and raising arguments, and legal authorities to be in the briefing – not to be raised and argued for the first time at oral argument. Therefore, both parties have been afforded due process as they each had notice of the arguments and an opportunity to be heard by responding and replying in writing, and this Court has considered the submissions to be fully apprised of the parties' positions before ruling. Because due process simply requires parties to have a meaningful opportunity to know and respond to the arguments and submissions which has occurred here, the parties have received the process due.

evidence to demonstrate that Tri-County intentionally and improperly interfered with the contractual relationship between Facility Solutions and Keeler, the answer is "yes."

Also, at stake is whether Facility Solutions' claims for Tortious Interference with Business Relationships or Expectancies (Count III) is warranted? Because there is no evidence that Keeler solicited Facility Solutions' customers within the scope of his employment with Tri-County and multiple customers left Facility Solutions, the answer is "yes."

II
Background

Facility Solutions is a supplier of janitorial equipment and other industrial supplies to a range of customers, including cleaning companies, schools and industrial companies. [Complaint, ¶7.]

Tri-County also supplies janitorial and industrial supplies and services to several nationwide business, but its customer market is largely Tier 1, 2, and 3 automotive clients with large operations and office spaces, universities and transportation companies. Tri-County's supplies include janitorial and cleaning supplies, industrial safety supplies and facility-focused products, and customer-tailored products. [Affidavit of Charles Truan.]

Facility Solutions claims it competes with Tri-County "in the same industry and in the same labor market for their respective employees and for the same customers." [Complaint, ¶11.] Tri-County admits "an overlap in some janitorial and/or industrial

products," [Motion, p 5], but claims it has never been a direct competitor of Facility Solutions and and it exceeds Facility Solutions in size, customer base, and overall scope of customers, products and services. [Affidavit of Charles Truan.]

A
Keeler's Employment

Keeler was employed by Facility Solutions beginning on April 2, 2018. [Complaint, ¶8.] Keeler was allegedly responsible to develop new customers, sell to existing customers, and provide service and support to Facility Solutions' customers. [Complaint, ¶13.] On April 2, 2018, Keeler executed an Agreement Employment (the "Agreement"). The Agreement provides, in part:

> 8. **Noncompetition Agreement.** Employee acknowledges that during the course of his employment with Employer he will form customer relationships at Employer expense and will be made aware of proprietary, confidential, trade secret and other information of Employer not generally known to the public or to others engaged in similar businesses. This information includes, but it is not limited to, information regarding Employer's costs and pricing. Customers, suppliers and sales and support techniques. Employee agrees that it is reasonable and necessary for Employer to protect its business interests by securing from Employee his agreement not to compete with and not to assist others to compete with . (sic) Employer on the terms set forth herein.
>
> Employee therefore agrees that while employed by Employer, and for a three (3) year period following termination of his employment, regardless of the circumstances of termination, he will not directly or indirectly, as principal, agent, member, employee, shareholder, owner, or partner, do any of the following:
>
> a. Contact or solicit for the purpose of sales any business entity which was; a customer of Employer at any time within two (2) years preceding Employee's employment termination date; or,

b. Contact or solicit for the purpose of sales any purchaser of janitorial equipment and/or supplies located or for use within a 150 mile radius of Employer's offices located at 11581 Morrissey Road, Grass Lake, Michigan 49240; or
c. Solicit any employee of Employer to leave his or her employment

Employee recognizes that his violation of the terms of this section would cause irreparable harm to Employer for which monetary damages would not provide adequate compensation, and he therefore agrees that Employer shall be entitled to injunctive relief against any actual or threatened violation, in addition to such other relief as may be available to Employer.

[Agreement.][3]

On November 24, 2023, Keeler interviewed for a sales representative position with Tri-County. Tri-County's Chief Executive Officer Charles Truan ("Truan") asked Keeler if he had signed or was subject to any non-competition or non-solicitation agreement with any prior employer and Keeler denied the same. [Affidavit of Charles Truan; Interview Notes.]

Keeler terminated his employment with Facility Solutions on December 31, 2023. [Complaint, ¶8.]

On January 4, 2024, Tri-County hired Keeler as a sales representative to replace a retiring employee with an existing southeast Michigan sales territory in Monroe, Washtenaw, Jackson and Wayne counties, and to service more than 200 existing Tri-County customers. [Affidavit of Charles Truan.]

[3] Keeler does not believe he signed the Agreement. [Answer, ¶15.]

On February 13, 2024, Facility Solutions sent correspondence to Keeler reminding him of his obligations under the Agreement and demanding that he cease and desist contacting or soliciting Facility Solutions' customers and potential purchasers within 150 mile radius of Facility Solutions' office; that he identify customers he had communicated with; that he return items within his possession and control or wrongfully removed; and that he cease and desist from making defamatory statements concerning Facility Solutions and from soliciting its employees. [February 13, 2024 Correspondence.] Geri Gee, Tri-County President, was copied on the correspondence (with the Agreement attached), detailing the restrictive covenants.

In July 2024, Keeler was moved into an internal operation role and allegedly had no client contact nor involvement in sales activities. [Email Correspondence dated October 18, 2024.][4] Keeler terminated his employment on October 28, 2024. [Email Correspondence dated November 5, 2024.]

Tri-County claims it was wholly unaware of any agreement or restrictive covenants between Keeler and Facility Solutions until the Complaint was served and upon learning of the claims and allegations, Tri-County claims it immediately instructed Keeler (a) not to contact any known or former customers of Facility Solutions and (b) in the event any known or former customers of Facility Solutions contacted Keeler, he was to refer the customer to Tri-County's inside sales team.

[4] "Facility Solutions acknowledges that Tri-County moved Keeler to a non-sales role in July 2024." [Response, p 9.]

Tri-County claims it never instructed Keeler to take, transfer of share Facility Solutions' customer information; never solicited Facility Solutions' customers; and never encouraged Keeler to solicit Facility Solutions' customers. [Affidavit of Charles Truan.]

In his Answer to the Complaint, Keeler states "that he has not contacted any customers that were not his customers that he brought into the company [Facility Solutions] when he became employed in 2018, and has not solicited any customer of Facility Solutions but has solicited sales to purchases of janitorial equipment and/or supplies located within 150 miles of Facility Solutions." [Keeler Answer, ¶21.]

Jonathan Broner, Member and Chief Operating Manager of Facility Solutions, attests that "Since starting work for Tri-County, Keeler has solicited Facility Solutions' customers despite the prohibitions in his Agreement against (a) contacting or soliciting any customer of Facility Solutions and (b) soliciting sales to purchasers of janitorial equipment and/or supplies location within 150 miles of Facility Solutions' offices in Grass Lake, Michigan. Customers of Facility Solutions that Keeler has solicited on behalf of Tri-County Supply include at least the following: Pioneer Services, Hurricane Cleaning, Shekinah Christian Church, Emerson School and Navitas Systems, Jackson County Facilities and Trenton Corporation, all of which are or were customers of Facility Solutions and are located within the 150 mile radius of Grass Lake." [Broner Affidavit.]

Tri-County argues it did not tortiously interfere with Keeler and Facility Solutions contractual relationship; it did not disrupt Facility Solutions' business relationships; it took affirmative steps to avoid benefiting from Keeler's prior relationships with Facility Solutions' customers; and Keeler is no longer a Tri-County employee.

III
Standard of Review

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim or defense. See, e.g., MCR 2.116(G)(3)(b); *Quinto v Cross & Peters Co*, 451 Mich 358, 362 (1996). Accordingly, "[i]n evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Maiden v Rozwood*, 461 Mich 109, 119-120 (1999); MCR 2.116(C)(10); MCR 2.116(G)(4); *Quinto*, 451 Mich at 358. The moving party "must specifically identify the issues" as to which it "believes there is no genuine issue" of material fact and support its position as provided in MCR 2.116. MCR 2.116(G)(4).

Under Michigan law, the moving party may satisfy its burden of production under MCR 2.116(C)(10) by demonstrating to the court that the non-moving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. *Quinto*, 451 Mich at 361. If the moving party properly supports its motion, the burden "then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Id.*

the moving party fails to properly support its motion for summary disposition, the nonmoving party has no duty to respond and the trial court should deny the motion. MCR 2.116(G)(4). See also *Meyer v City of Center Line*, 242 Mich App 560, 575 (2000) (concluding that the trial court erred when it granted an improperly supported motion for summary disposition under MCR 2.116[C][10]).

In all cases, MCR 2.116(G)(4) squarely places the burden on the parties, not the trial court, to support their positions. A reviewing court may not employ a standard citing mere possibility or promise in granting or denying the motion. *Maiden*, 461 Mich at 121-120 (citations omitted), and may not weigh credibility or resolve a material factual dispute in deciding the motion. *Skinner v Square D Co*, 445 Mich 153, 161 (1994). Rather, summary disposition pursuant to MCR 2.116(C)(10) is appropriate if, and only if, the evidence, viewed most favorably to the non-moving party fails to establish any genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362, citing MCR 2.116(C)(10) and (G)(4); *Maiden*, 461 Mich at 119-120 (1999). A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160 (2019) (citation omitted). Granting a motion for summary disposition under MCR 2.116(C)(10) is warranted if the substantively admissible evidence shows that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362-363.

IV
Summary Disposition is Warranted

A
Tortious Interference with Contractual Relations (Count II)

1
The Law

"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 Servs, Inc,* 268 Mich App 83, 89–90 (2005). "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 (2004) (quotation marks and citation omitted).

2
The Allegations

In its Complaint, Facility Solutions alleges:

> 42. Facility Solutions has a valid contract with Keeler that precludes him from (a) contacting or soliciting customers of Facility Solutions and (b) soliciting sales to purchasers of janitorial equipment and/or supplies within 150 miles of Facility Solutions' offices.
>
> 43. Tri-County Supply had knowledge about the restrictive covenants in the Agreement as of no later than its receipt of Facility Solutions' February 14, 2024, letter.

44. Tri-County Supply has intentionally and improperly interfered with the contractual relationship between Facility Solutions and Keeler.

45. Tri-County Supply's conduct was intended to, and did, interfere with Keeler's obligations under the Agreement, causing breaches and disruption of the Agreement.

46. Facility Solutions has suffered, and is continuing to suffer, damages as a result of Tri-County Supply's intentional and improper interference with the Agreement.

[Complaint.]

C
Analysis

Tri-County argues that it did not unjustifiably instigate or induce Keeler to breach his Agreement with Facility Solutions where it inquired whether Keeler was subject to any employment agreement during his November 24, 2023 interview, Keeler denied the existence of any such agreement, and Tri-County was unaware of the Agreement until it was served with the Complaint.[5] Tri-County further argues that it restricted Keeler from interacting with any prior clients or customers and eventually placed Keeler in an internal operations role without any client-facing responsibilities.

In response, Facility Solutions argues that even after the February 2024 correspondence was sent and the Complaint was filed, "Tri-County continued to employ Keeler is (sic) sales position in which he was clearly violating the Agreement, continued

[5] Facility Solutions has demonstrated that Tri-County had knowledge of the Agreement on or about February 13, 2024 when Tri-County was copied on correspondence which detailed the restrictive covenants and attached the Agreement. [Correspondence dated February 13, 2024.]

to accept orders from customers who were being serviced by Keeler in violation of the Agreement, and continued accepting revenue from such customers despite knowing that they were being serviced in violation of the Agreement. Tri-County played a direct role in facilitating Keeler's breaches of the Agreement from at least February 14, 2024, through at least July 2024." [Response, p 7.]

However, Facility Solutions does not challenge Truan's attestations that "Tri-County has never instructed Keeler to take, transfer, or otherwise share any Facility Solutions customer information;" he "never instructed Keeler to contact any known current or former customers of Facility Solutions in the course of his employment with Tri-County;" and he made clear to Keeler that he is to forward any current or former Facility Solutions customers to Tri-County's inside sales team in the event that he is contacted." [Truan Affidavit.] Stated another way, Facility Solutions' assertions and argument that Tri-Facility violated the Agreement are just that – assertions. There is no evidence to support the assertions.

Indeed, Facility Solutions "acknowledges that Tri-County moved Keeler to a non-sales role in July 2024." [Response, p 9.] Further, Facility Solutions has failed to present any evidence to demonstrate that Tri-County intentionally and improperly interfered with the contractual relationship between Facility Solutions and Keeler, or evidence that Tri-County accepted orders and revenue from customers who were serviced by Keeler in violation of the Agreement.

In his Affidavit, Broner (Facility Solutions' Member and Chief Operating Manager) attests that "On information and belief, Tri-County Supply continues to utilize Facility Solutions' confidential and proprietary information to its competitive advantage over Facility Solutions," but the law is well settled that "information and belief" statements in an affidavit are inadequate because they do not satisfy the personal knowledge requirement of MCR 2.119(B)(1) regarding affidavits.[6] Further, "such [an information and belief] affidavit does not set forth with particularity facts that are admissible as evidence." *Durant v Stahlin,* 375 Mich 628, 639 (1965) (Adams, J., with Dethmers and O'Hara, JJ. concurring); *Id.* at 657 (Souris, J., with T.M. Kavanagh, C.J and Smith, J., concurring); *Remes v Duby,* 87 Mich App 534, 537 (1978) ("supporting affidavits must be based on personal knowledge, not merely information and belief, so that the affiant can testify competently if sworn as a witness"); *Davis v Great American Ins Co,* 136 Mich App 764 (1984) (affidavit submitted upon information and belief is inadequate as it fails to comply with the requirement that the supporting affidavit be sworn to by a person having personal knowledge of and competent to testify to the facts averred). The Broner Affidavit fails to demonstrate there is issue of material fact regarding whether Tri-County intentionally and improperly interfered with the contractual relationship between Facility Solutions and Keeler.[7] After all, an affidavit that provides mere conclusory

[6] Under MCR 2.119(B)(1) "If an affidavit is filed in support of or in opposition to a motion, it must: (a) be made on personal knowledge; (b) state with particularity facts admissible as evidence establishing or denying the grounds stated in the motion; and (c) show affirmatively that the affiant, if sworn as a witness, can testify competently to the facts stated in the affidavit."

[7] Tri-County also argues that the Broner Affidavit is riddled with inadmissible hearsay statements that do not constitute evidence sufficient to establish a genuine issue of material fact. However, our Court of Appeals in *Brendel's Septic Tank Service, LLC v Vickers*, unpublished per curiam opinion of the Court of

allegations and is devoid of detail is insufficient to avoid summary disposition under MCR 2.116(C)(10). *Quinto*, 451 Mich at 371-372.

Accordingly, summary disposition of Facility Solutions' claim for Tortious Interference with Contractual Relations (Count II) is warranted.

B
Tortious Interference with Business Relationships or Expectancies (Count III)

1
The Law

The elements of tortious interference with a business relationship or expectancy are "(1) the existence of a valid business relationship or expectancy that is not necessarily predicated on an enforceable contract, (2) knowledge of the relationship or expectancy on the part of the defendant interferer, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resulting damage to the party whose relationship or expectancy was disrupted." *Health Call of Detroit v Atrium Home & Health Care Servs, Inc*, 268 Mich App 83, 90 (2005).

To establish the third element of the tort plaintiff must demonstrate that the defendant acted intentionally, and the interference was improper or without justification:

Appeals, issued February 21, 2025 (Docket No. 369492) recently held that "In order to properly consider evidence when determining the propriety of summary disposition, it must be substantively admissible, but need not be in admissible form. Stated otherwise, the trial court may consider evidence that would be admissible if a proper foundation is established." *Brendel's*, unpub op at 6-7 (citation omitted) (an affidavit containing hearsay statements was sufficient to create a factual issue precluding summary disposition).[7] Thus, hearsay in an affidavit can create an issue of fact.

> In other words, the intentional act that defendants committed must lack justification and purposely interfere with plaintiffs' contractual rights or plaintiffs' business relationship or expectancy. *Winiemko v Valenti*, 203 Mich App 411, 418 n 3 (1994) (citations omitted); *Feldman v Green*, 138 Mich App 360, 369 (1984). The "improper" interference can be shown either by proving (1) the intentional doing of an act wrongful per se, or (2) the intentional doing of a lawful act with malice and unjustified in law for the purpose of invading plaintiffs' contractual rights or business relationship. Id.
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> [*Advocacy Organization for Patients & Providers v Auto Club Ins Ass'n*, 257 Mich App 365, 383 (2003).]

"If the defendant's conduct was not wrongful per se, the plaintiff must demonstrate specific affirmative acts that corroborate the unlawful purpose of the interference." *Feldman v Green*, 138 Mich App at 369-370.

2
The Allegations

In its Complaint, Facility Solutions alleges that

> 48. Facility Solutions has continuing and existing business relationships with its customers, including customers which Keeler and Tri-County Supply have solicited and encouraged to cease doing business with Facility Solutions.
>
> 49. Facility Solutions' business relationships with its customers provide an economic benefit to Facility Solutions.
>
> 50. Defendants had knowledge of Facility Solutions business relationships when they solicited Facility Solutions' customers.
>
> 51. Defendants intended to and did disrupt Facility Solutions' business relationships by using Facility Solutions' confidential information to solicit and encourage customers to terminate their relationship with Facility Solutions.

52. Defendants' actions were intentional, wrongful and were unjustified in law in order to disrupt Facility Solutions' business relationships.

53. Facility Solutions has suffered, and is continuing to suffer, damages as a result of Defendants' intentional and improper interference with Facility Solutions' business relationships and expectancies.

[Complaint.]

3
Analysis

Tri-County argues that Facility Solutions cannot demonstrate that Tri-County had knowledge of Facility Solutions' business relationships; that Tri-County induced or caused a breach of termination of Facility Solutions' business relationships or expectancies; and that damage resulted from any act by Tri-County.

Facility Solutions argues that regardless of whether it has such evidence, Tri-County remains liable under the doctrine of respondeat superior. Facility Solutions argues that Keeler was acting within the scope of his employment when he tortiously interfered with Facility Solutions' business relationships by soliciting Facility Solutions' existing customers and defaming Facility Solutions. Facility Solutions claims that Keeler caused multiple customers to leave Facility Solutions and go to Tri-County including Jackson County Facilities and Trenton Corporation.

First, Facility Solutions does not challenge Tri-County's claim that it was unaware of the Agreement at the time Keeler was hired; that it hired Keeler to replace a retiring employee with an existing sales territory and to service more than 200 existing Tri-

County customers; that upon learning of the claims, Tri-County instructed Keeler (a) not to contact any known or former customers of Facility Solutions and (b) in the event any known or former customers of Facility Solutions contacted Keeler, he was to refer the customer to Tri-County's inside sales team.

Further, even if Facility Solution could demonstrate that Keeler solicited its customers within the scope of his employment with Tri-County, Facility Solutions' claim that multiple customers left Facility Solutions is entirely unsupported. Facility Solutions cites to Broner's Affidavit alone, but Broner's Affidavit merely claims that certain customers were solicited:

> 13. Since starting work for Tri-County, Keeler has solicited Facility Solutions' customers despite the prohibitions in his Agreement against (a) contacting or soliciting any customer of Facility Solutions and (b) soliciting sales to purchasers of janitorial equipment and/or supplies located within 150 miles of Facility Solutions' offices in Grass Lake, Michigan.
>
> 14. Customers of Facility Solutions that Keeler has solicited on behalf of Tri-County Supply include at least the following: Pioneer Services, Hurricane Cleaning, Shekinah Christian Church, Emerson School and Navitas Systems, Jackson County Facilities and Trenton Corporation, all of which are or were customers of Facility Solutions and are located within the 150 mile radius of Grass Lake.
>
> 15. Keeler also has made numerous defamatory statements about Facility Solutions. Keeler's defamatory statements include false statements to customers that Facility Solutions is out of business or going out of business, in order to induce Facility Solutions' customers to switch to Tri-County. Keeler made such defamatory, false, and misleading statements to representatives of at least the following: Shekinah Christian Church, Hurricane Cleaning, Emerson School, Jackson County Facilities, and Navitas Systems.

> 16. On information and belief, Keeler has utilized Facility Solutions' confidential and proprietary information during the course of his employment with Tri-County, including pricing information, and has used that information to obtain a competitive advantage over Facility Solutions.
>
> 17. On information and belief, Tri-County Supply continues to utilize Facility Solutions' confidential and proprietary information to its competitive advantage over Facility Solutions.
>
> [Broner Affidavit.]

In the end, Facility Solutions has failed to prove the essential fourth element of the tort; Facility Solutions has failed to demonstrate that any of its customers left its business. Accordingly, summary disposition of Facility Solutions' claim for Tortious Interference with Business Relationships or Expectancies (Count III) is warranted.

V
Sanctions Are Not Warranted

Tri-County moves to recover the attorney fees and costs incurred in defending this action because it claims Facility Solutions' primary purpose was to harass, embarrass or injure Tri-County.

MCL 600.2591 provides that "(1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney." MCL 600.2591(3) defines "frivolous" as: "(i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass,

or injure the prevailing party[;] (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true[;] [or] (iii) The party's legal position was devoid of arguable legal merit."

"To determine whether sanctions are appropriate under MCL 600.2591, it is necessary to evaluate the claims or defenses at issue at the time they were made." *In re Costs and Attorney Fees,* 250 Mich App 89, 94 (2002). "'Not every error in legal analysis constitutes a frivolous position.'" *Id.* quoting *Kitchen v Kitchen,* 465 Mich 654, 663 (2002).

In the end, even though "Facility Solutions acknowledges that it has not vigorously prosecuted this case since the preliminary injunction hearing, and that it has not fulfilled its discovery obligations," Tri-County has failed to demonstrate that sanctions are warranted. Indeed, the higher courts have established an exceedingly high threshold for granting sanctions and have reversed trial courts for awarding them under similar circumstances. See, e.g., *Davis v Wayne County Commission,* unpublished per curiam opinion of the Court of Appeals, issued May 11, 2023 (Docket No. 362547), p 1 ("The trial court clearly erred in concluding that Davis's complaint was devoid of arguable legal merit and intended to harass"); *Thayer v Dipple*, unpublished per curiam opinion of the Court of Appeals, issued May 11, 2023 (Docket No. 362213), p 1 ("The circuit court granted the Thayers' motion to impose sanctions against Siudara based on 'deliberate misrepresentations to the Court.' We vacate the court's order and remand for further proceedings consistent with this opinion"); *Mass2Media, LLC v Cimini,* unpublished per curiam opinion of the Court of Appeals, issued March 30, 2023 (Docket

Nos. 357973, 360357) (finding that sanctioning a party who was found to have based his entire case on lies was erroneous when the dispute boils down to a contract dispute). Accordingly, Tri-County's request for sanctions is denied.

ORDER

In light of the foregoing, Defendant Tri-County Cleaning Supply's Motion for Summary Disposition Pursuant to MCR 2.116(C)(10) is GRANTED.

THIS IS A FINAL ORDER THAT RESOLVES THE LAST PENDING CLAIM AND CLOSES THE CASE.

/s/ Michael Warren

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HON. MICHAEL WARREN
CIRCUIT COURT JUDGE