

STATE OF MICHIGAN

IN THE THIRD CIRCUIT COURT FOR THE COUNTY OF WAYNE

NUCAST, LLC

Plaintiff / Counter-Defendant,

Hon. David J. Allen

Case No. 21-016662-CB

v

LIVONIA PRE CAST LLC

Defendant / Counter-Plaintiff,

and

GIULIO LEDDA, BRUNO LEDDA, and

JOE CICCARELLI

Defendants.

OPINION AND ORDER

Pending before the Court is Defendant/Counter-Plaintiff Livonia Pre Cast LLC's Motion for Summary Disposition as to the primary Complaint pursuant to MCR 2.116(C)(10); Defendant/Counter-Plaintiff Livonia Pre Cast LLC's Motion for Summary Disposition as to the Counter-Complaint pursuant to MCR 2.116(C)(10); and Plaintiff/Counter-Defendant's Motion for Summary Disposition as to the Counter-Complaint pursuant to MCR 2/116(C)(10).

After having reviewed the Motions, Responses and Replies, and otherwise being fully advised in the premises, the Court issues the following Opinion and Order GRANTING IN PART (as to breach of contract, only) and DENYING IN PART Livonia Pre Cast LLC's Motion for Summary Disposition as to the balance of the primary Complaint; DENYING Livonia Pre Cast LLC's Motion for Summary Disposition as to the Counter-Complaint; and GRANTING Nucast, LLC's Motion for Summary Disposition as to the Counter-Complaint.

BACKGROUND

Individual Defendants, Giulio Ledda, Bruno Ledda and Giuseppe (Joe) Ciccarelli, owned and operated Nu-Cast Step & Supply Co (Nucast I), a concrete step manufacturing business. Individual Defendants were in talks with the Rosati family to sell Nucast I. The sale fell through but. Plaintiff's Complaint alleges the Individual Defendants reached out again to the Rosati family to enter a global agreement to purchase the business. The agreement essentially provided that the Individual Defendants would file for bankruptcy and allow the Rosatis to bid for Nucast I's assets. Nucast I filed for bankruptcy in 2011. This agreement was disclosed to and approved by all creditors and the Bankruptcy Court. After the purchase was complete, the Rosati's eventually formed Plaintiff Entity, Nucast. The Individual Defendants represented Nucast I had no known competitor and they would no longer engage in the step-making business. Plaintiff also alleges Individual Defendants stated Nucast I would assign all assets, including intellectual property and trade secrets to the Rosati family and their successor entity.

After dealing with Plaintiff Nucast as a customer, John Ledda, Individual Defendants' relative, formed Defendant Livonia Pre Cast LLC ("LPC"). Plaintiff Nucast alleges that LPC's manufacturing steps are indistinguishable from Nucast's steps. Plaintiff's Complaint alleges the Individual Defendants are either owners of LPC or assist LPC's business operations and disclosed Nucast I's trade secrets to LPC. Plaintiff also alleges LPC hired Nucast's former employee, Homer Ellis, to create an identical product. Homer Ellis's employment with LPC began six months before he quit his employment with Plaintiff. Plaintiff alleges Individual Defendants improperly disclosed the trade secrets and LPC knew these trade secrets were improperly acquired, but used them to create their product.

Plaintiff Nucast, represented by Nicholas Camargo, filed its initial lawsuit against Defendant LPC in November, 2019 (19-015671-CB) seeking a preliminary injunction to stop LPC

from “using, selling, or disclosing” Nucast’s proprietary information, violating the Michigan Consumer Protection Act, violating the Michigan Uniform Trade Secrets Act and unfairly competing with Nucast. (“2019 Lawsuit”). This court dismissed the 2019 Lawsuit for lack of subject matter jurisdiction but refused to impose sanctions. The Court of Appeals affirmed but found the dismissal should be held without prejudice and the bankruptcy court should determine whether it has jurisdiction over one or all claims. The Bankruptcy Court determined it held concurrent jurisdiction with this Court to hear Nucast’s claims and abstained from exercising its jurisdiction.

Plaintiff Nucast then filed this lawsuit restating its claims from the 2019 lawsuit, alleging Individual Defendants improperly allowed Defendant LPC to use the trade secrets Legacy (Plaintiff’s predecessor) purchased in the bankruptcy sale; Individual Defendants violated a non-compete agreement with Plaintiff Nucast; and Defendant LPC’s manufacture of a product identical to Plaintiff’s product violates the Michigan Consumer Protection Act (MCPA).

After this Court denied Defendant LPC’s MSD in lieu of an Answer, LPC filed its counterclaim against Nucast and a Third-Party Complaint against Plaintiff Nucast’s attorney Nicolas Camargo, alleging malicious prosecution in filing the 2019 lawsuit, abuse of power for seeking an injunction and prolonging the 2019 lawsuit and attempting to re-open the Bankruptcy case, tortious interference with business expectancy and civil conspiracy between Nucast and its attorney.

STANDARD OF REVIEW

A summary disposition motion brought under MCR 2.116(C)(10) tests the factual support of a claim. In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions or other documentary evidence.

Neubacher v Globe Furniture Rentals, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* Where the burden on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCarl v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Mccormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

ANALYSIS

I. Complaint

A. Breach of Contract

Plaintiff stipulates to the dismissal of the breach of contract claim against Defendants. Therefore, this Court shall grant summary disposition as to the breach of contract claim without analysis.

B. Trade Secrets

To prove a party has misappropriated a trade secret, the Michigan Uniform Trade Secrets Act (MUTSA) requires a showing of (1) a protectable trade secret and (2) the improper acquisition, disclosure, or use of the trade secret. MCL 445.1902. A trade secret is defined as information that “derives independent economic value . . . from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use” and “is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” MCL 445.1902(d). “A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity

to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers.” *Hayes-Albion v Kuberski*, 421 Mich 170, 181; 364 NW2d 609 (1984) (quotations omitted). The law does not protect general knowledge nor does it recognize well-known or easily ascertainable ideas as trade secrets. *Insealator, Inc v Wallace*, 357 Mich 233,250; 98 NW2d 643,653 (1959). Courts should consider

(1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Hayes-Albion v Kuberski, 421 Mich at 182 (quoting The Restatement of Torts, § 757).

To show a violation of MUTSA, a plaintiff must show defendant misappropriated the trade secret. MUTSA defines misappropriation as:

- (i) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means.
- (ii) Disclosure or use of a trade secret of another without express or implied consent by a person who did 1 or more of the following:
 - (A) Used improper means to acquire knowledge of the trade secret.
 - (B) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was derived from or through a person who had utilized improper means to acquire it, acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use, or derived from or through a person who owed a duty to the person to maintain its secrecy or limit its use.
 - (C) Before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

MCL 445.1902(b). “‘Improper means’ includes theft, bribery, misrepresentation, breach, or inducement of a breach of a duty to maintain secrecy or espionage through electronic or any other means.” MCL 445.1902 (a).

Nucast’s expert indicated Nucast uses an original concrete mixer with a “unique formula” of specialized material which is not easily ascertainable due to its complexity, which unlike other precast operations, it is able to demold within minutes. Companies within the precast industry keep their manufacturing process a highly guarded secret. Since the bankruptcy sale, Plaintiff has expended time, money, and effort to develop and build onto this process giving Plaintiff a competitive edge. Although Plaintiff could have had more precautions in place to protect its process, it did require third-parties sign non-disclosure and/or confidentiality agreements and upon LPC’s formation, it requested its employees do the same. It would take more than several years to develop a process similar to Plaintiff’s process, let alone the exact process. The Court therefore agrees with Plaintiff that its manufacturing process is a trade secret and there is no genuine issue of material fact as to same.

Plaintiff alleges its predecessor purchased Nucast I’s trade secrets, including the process and formula for the mixture used to manufacture their steps, in the bankruptcy sale. Defendant contests this point. Plaintiff alleges Defendant LPC improperly acquired the trade secret from the former Nucast I owners (i.e. Individual Defendants) and former Nucast employee, Homer Ellis, and uses Nucast’s process to produce its own steps. Competitors in the market do not use the same formula and all parties agree competitor quality is not comparable. Taking the facts in a light most favorable to the non-moving party, but for the improper disclosure of Plaintiff’s trade secret by either Individual Defendants and/or Homer Ellis, LPC could not have developed an identical

product. This Court is denying Defendants' motion for summary disposition as to misappropriation of a trade secret.

C. MCPA Violation

In order to sustain a claim under the MCPA, Plaintiff must show Defendant is engaged in trade or commerce and Defendant's conduct is prohibited. MCL 445.902(l)(g); MCL 445.903(1). "Trade or commerce" is "the conduct of a business providing goods, property, or service, primarily for personal, family, or household purposes and includes the advertising, solicitation, offering for sale or rent, sale, lease, or distribution of a service or property, tangible or intangible, real, personal, or mixed, or any other article, or a business opportunity." MCL 445.902(d). MCL 445.903(a) describe prohibited conduct as conduct that (1) causes a probability of confusion or misunderstanding as to the source of the goods.

Defendant LPC sells its product to retail stores or building supply businesses who then sell to contractors and homeowners. Their product is intended to be used in residential settings. Defendant LPC's own representative testified that without LPC's logo, the average consumer could not tell whether the step was from LPC or Nucast. LPC has even admitted that some suppliers have been confused as to the source of their product. Nucast alleges because LPC is using their proprietary information, consumers cannot determine if they are purchasing a Nucast step or an LPC step. Therefore, this Court is denying Defendant's motion for summary disposition as to the MCPA violation.

D. Fraudulent Representation

In Michigan, fraudulent misrepresentation requires proof that (1) defendant(s) made a material misrepresentation; (2) the representation was false; (3) the defendant knew the misrepresentation was false when it was made; (4) the misrepresentation was made with the intention to induce reliance by the plaintiff; (5) the plaintiff acted in reliance on it; and (6) the

plaintiff was damaged as a result. *M&D, Inc v McConkey*, 231 Mich App 22, 27; 585 NW2d 33 (1998) (internal citations omitted).

Nucast alleges Individual Defendants induced them to purchase Nucast I because they would no longer be in the step business and they would have no competitors. Plaintiff could not have reasonably relied on any such representation that it would not have any competitors in the future. At most, Plaintiff could have relied on the representation that Individual Defendants would not be one of those competitors.

Individual Defendants allege they are not partners, owners, employees, or representatives of Defendant LPC. Bruno Ledda, however, testified he, as well as Giulio Ledda and Ciccarelli, are owners of Defendant LPC. The Individual Defendants also funded Defendant LPC through loans amounting to \$400,000 written to “Livonia Precast.” Individual Defendants own the real estate in which Defendant LPC operates but Defendant LPC does not pay rent. It is clear that Individual Defendants did not leave the business. There remains a question of fact as to whether Individual Defendants ever made the alleged representation to Plaintiff. Therefore, this Court is denying Defendants’ motion for summary disposition as to fraudulent misrepresentation against Individual Defendants.

II. Counterclaim

A. Malicious Prosecution

A claim of civil malicious prosecution requires the plaintiff prove: (1) a prior proceeding terminated in defendant’s favor; (2) absence of probable cause for the prior proceeding; (3) a malicious purpose rather than 'securing the proper adjudication of the claim in which the proceedings are based;' and (4) a special injury. *Friedman v Dozor*, 412 Mich 1, 48; 312 NW2d 585 (1981) (internal citations omitted). Michigan only recognizes malicious prosecution of civil

proceedings “in circumstances where . . . an interference with the plaintiff’s person or property occurred.” *Id.* at 35. This Court is not inclined to change or challenge Michigan Courts’ requirement of the special injury to prove malicious prosecution in civil cases.

This Court’s order dismissing the 2019 Lawsuit clearly states “neither party prevailed and the matter was decided on jurisdictional grounds.” Further, in conjunction, the Court of Appeals and the Bankruptcy Court found concurrent jurisdiction. Therefore, the Court of Appeals and Bankruptcy Court found this Court in fact held jurisdiction. Further, the Court of Appeals stated Nucast’s “claims were not frivolous on their face” and were not filed in bad faith. The Bankruptcy Court ruled Nucast’s filing was appropriate in this Court. LPC alleges injury to profits, and that is not enough to support an action for malicious prosecution. Nucast’s lawsuit does not rise to the level of criminal anti-trust violations. Protecting a business from a competitor’s alleged unfair practices is not the same as creating a monopoly. LPC failed to meet any of the elements of malicious prosecution, and therefore this Court shall dismiss LPC’s counterclaim for malicious prosecution.

B. Abuse of Process

To sustain a claim for abuse of process, the plaintiff must prove (1) an ulterior motive, and (2) an act in the use of process that is improper in the regular prosecution of the claim. *Friedman*, 412 Mich at 30. Abuse of process is "the wrongful use of the process of a court." *Spear v Pendill*, 164 Mich 620, 623; 130 NW 343 (1911). This Court is not satisfied that Nucast’s actions in the prior lawsuit nor in the Bankruptcy Court rises to the level of abuse of process. Although this case has a long history, this on its own does not show any evidence of abuse of process. Nucast and its counsel completed their due diligence in arguing their case through means established by court procedure and went to the Bankruptcy Court after the Court of Appeals advised as much. This

Court agrees with Nucast's sentiment that these claims are outrageous. LPC's counterclaim as to abuse of process is dismissed.

C. Tortious Interference with Business Expectancy

To succeed on a claim of tortious interference with business expectancies, the plaintiff must prove (1) the existence of a valid business relationship or expectancy, (2) knowledge the accused party of the relationship or expectancy, (3) an intentional interference inducing or causing a breach or termination of a relationship or expectancy, and (4) damages. *Dalley v Dykema Gossett*, 87 Mich App 296, 323; 788 NW2d 679 (2010).

John Ledda, the owner and manager of LPC, stated he did not believe he lost any profits from any customers based upon Nucast's lawsuit. He also stated he did believe Nucast or its members interfered with his business's relationship with customers. He did not lose any sales from existing customers. Further, LPC's sales have either stayed the same or increased since 2019. LPC's counterclaim for tortious interference with a business expectancy is dismissed.

D. Conspiracy

"An allegation of conspiracy, standing alone, is not actionable." *Magid v Oak Park Racquet Club Assocs*, 84 Mich App 522, 529; 269 NW2d 661 (1978) (citations omitted). "It must be based on an underlying actionable tort." *Cleary Tr v Edward-Mariah Muzyl TR*, 262 Mich App 485, 507; 686 NW2d 770 (2004). Since the underlying torts fail, this Court is dismissing LPC's claim for conspiracy. LPC's arguments that Nucast and its attorney's longstanding relationship should indicate either malicious prosecution, abuse of process, or conspiracy of the same is yet another claim that is neither supported by law or fact. LPC's counterclaim for conspiracy is dismissed.

CONCLUSION

Therefore, this Court is GRANTING IN PART and DENYING IN PART Defendant/Counter-Plaintiff's Motion for Summary Disposition as to the Complaint; GRANTING

Plaintiff/Counter-Defendant's Motion for Summary Disposition as to the Counterclaim; and DENYING Defendant/Counter-Plaintiff's Motion for Summary Disposition as to the Counterclaim. This resolves the counterclaim in its entirety. This Court denies any request for sanctions.

IT IS SO ORDERED.

THIS IS NOT A FINAL ORDER.

/s/ David J. Allen

Hon. David J. Allen
Circuit Court Judge

Date: 7/14/2023