

STATE OF MICHIGAN
OAKLAND COUNTY CIRCUIT COURT

KUKA ASSEMBLY AND
TESTING CORPORATION,
a Michigan corporation,

Plaintiff,

Case No. 2021-189111-CB

v

Hon. Victoria A. Valentine

AI23 SYSTEMS, LLC,
a Delaware limited liability company, and
WANXIANG AMERICA CORPORATION
d/b/a Wanxiang Group, a Kentucky Corporation

Defendants.

OPINION AND ORDER

At a session of said Court held on the
11th day of August 2022 in the County of
Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter is before the Court on Defendant Wanxiang America Corporation's ("WAC") motion for summary disposition pursuant to MCR 2.116 (C)(7) and (C)(8), which seeks to dismiss Counts III (Tortious Interference with Contract), IV (Fraudulent Misrepresentation) and V (Piercing the Corporate Veil/Alter Ego) of Plaintiff's Second Amended Complaint ("SAC").

There were or are several entities that all begin with the name Wanxiang. The SAC caption states

KUKA ASSEMBLY AND
TESTING CORPORATION,
a Michigan corporation,

Plaintiff,

AI23 SYSTEMS, LLC,
a Delaware limited liability company, and
WANXIANG AMERICA
CORPORATION d/b/a Wanxiang Group, a
Kentucky Corporation

Defendants.

The Court, after reviewing the briefs, hearing oral argument on August 10, 2022, and being fully advised in the premises, DENIES Defendants' Motion for Summary Disposition on the tortious interference, fraudulent misrepresentation and alter ego/pierce the corporate veil claims.

PROCEDURAL HISTORY

Plaintiff Kuka Assembly and Testing Corporation ("Kuka") filed its original 2-count complaint against Defendant A123 in Saginaw County Circuit Court. After the case was transferred to Oakland County, Kuka sought leave to amend its Complaint to add WAC as a defendant and a tortious interference claim and a fraud/alter ego claim against it. This Court's predecessor denied that request, finding several deficiencies in Kuka's request.¹

On September 24, 2022, this Court's predecessor entered its scheduling order, which set forth dates by which to amend pleadings.² Kuka then filed its First Amended Complaint, which added WAC as a Defendant and alleged claims of tortious interference, fraudulent misrepresentation and piercing the corporate veil/alter ego against it. On November 19, 2021, WAC moved for summary disposition. On March 25, 2022, this Court's predecessor granted WAC's motion and dismissed WAC from this lawsuit. In doing so, this Court's predecessor

¹ See Order dated September 9, 2021.

² See Order dated September 24, 2021.

also held that an amendment to the pleadings would not be justified because Kuka's claims against WAC fail as a matter of law.³

On June 1, 2022, Plaintiff filed a Motion under MCR 2.604 to Revise Order Dismissing WAC and/or for leave to file amended complaint. Plaintiff claimed that two months after the March 25, 2022, Order was entered, Defendant produced 236,460 pages of documents, which Plaintiff alleges confirms that WAC is a proper party to this action. On June 22, 2022, this Court's predecessor granted Plaintiff's motion. And on June 23, 2022, Plaintiff filed its SAC, which added WAC as a defendant and alleged counts of tortious interference with contract, fraudulent misrepresentation and piercing the corporate veil/alter ego against it. Defendant WAC now files its Motion for Summary Disposition under MCR 2.116 (C)(7) and (C)(8), seeking to dismiss all three claims.

PERTINENT FACTS

On December 19, 2018, Plaintiff Kuka and Defendant A123 agreed in a Letter of Intent to explore the potential for Kuka's design and manufacture of two battery assembly lines for A123, with the first assembly line to be designed and manufactured for a fixed price of \$13.5 million for A123's plant in Ostrava, Czech Republic, and a second duplicate assembly line manufactured for \$9.9 million for another plant in China.⁴

On February 5, 2019, Kuka and A123 executed the Equipment Purchase Agreement for Kuka's design and manufacture of the first assembly line for the Czech Republic (the Agreement).⁵

³ See Order Granting Defendant Wanxiang America Corporation's Motion for Summary Disposition as to the First Amended Complaint dated March 25, 2022.

⁴ See Second Amended Complaint, ¶ 20.

⁵ See Second Amended Complaint, ¶ 22.

Kuka alleges during the initial project execution, the parties agreed to March 8, 2019, as the drop-dead date for A123 to provide all detailed mechanical customer data affecting Kuka's designs.⁶

After the initial purchase order, A123 allegedly made multiple changes to the Assembly Line which resulted in a net increase price above the initial \$13.5 million.⁷

Kuka argues that as it was completing the Assembly Line for A123 in March 2020, WAC began its interference - ultimately causing A123's breach. Wanxiang's President, Mr. Ni, induced A123's main customer, BMW, to switch production of its batteries from A123 (on the Kuka line in Ostrava) to production of the BMW batteries in China supplied by an A123 affiliate.⁸

It is alleged that Mr. Ni attended the March 2020 meeting with A123's customer, BMW.⁹ During the meeting, "Mr. Ni misrepresented to BMW that the Kuka line was delayed due entirely to the fault of Kuka, and that the Kuka Assembly Line could not be purchased because the funds had never been approved through the proper Delegation of Authority."¹⁰

Kuka nonetheless completed the design and manufactured the Assembly Line. In June 2020, A123 confirmed the Assembly Line passed the specified manufacturing requirements for preliminary acceptance and shipment. A123 then refused to accept delivery. A123 allegedly owes Kuka more than \$14.6 million in damages.¹¹ This lawsuit then ensued.

⁶ See Second Amended Complaint, ¶ 28.

⁷ See Second Amended Complaint, ¶ 29.

⁸ See Second Amended Complaint, ¶¶ 4 & 46.

⁹ See Second Amended Complaint, ¶ 19.

¹⁰ See Second Amended Complaint, ¶ 47.

¹¹ See Second Amended Complaint, ¶ 2.

STANDARD OF REVIEW

Summary disposition may be granted under MCR 2.116(C)(7) where “[e]ntry of judgment, dismissal of the action, or other relief is appropriate because of release, payment, prior judgment, immunity granted by law, statute of limitations, *statute of frauds*, an agreement to arbitrate or to litigate in a different forum, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action.(emphasis added)” A party is not required to submit any material in support of a motion under MCR 2.116(C)(7); the motion can be evaluated on the pleadings alone. *Maiden v Rozwood*, 461 Mich 109, 119 (1999). “The contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant.” *Id.*

“A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence.” *Maiden*, 461 Mich at 119. In reviewing the motion, a court must review all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict them.” *Yono v Dep’t of Transp (Yono I)*, 495 Mich 982, 982-983 (2014); see also MCR 2.116(G)(5). “If the movant properly supports his or her motion by presenting facts that, if left unrebutted, would show that there is no genuine issue of material fact that the movant [is entitled to summary disposition], the burden shifts to the nonmoving party to present evidence that establishes a question of fact.” *Yono v Dep’t of Transp (On Remand) (Yono II)*, 306 Mich App 671, 679-680 (2014), rev’d on other grounds, 499 Mich 636 (2016). “If the trial court determines that there is a question of fact as to whether the movant [is entitled to summary disposition], the court must deny the motion.” *Yono II*, 306 Mich App at 680, citing *Dextrom v Wexford Co*, 287 Mich App 406, 431 (2010).

A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the Complaint on *the basis of the pleadings alone*. *Beaudrie v Henderson*, 465 Mich 124, 129 (2001). All well-pleaded factual allegations are accepted as true and construed in the light most favorable to the nonmovant. *Wade v Dep't of Corrections*, 439 Mich 158, 162-63 (1992). A motion under MCR 2.116(C)(8) may be granted when the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* at 163. And once a document is attached as part of the pleading, the instrument becomes part of that pleading "even for purposes of review under MCR 2.116(C)(8)." See *Laurel Woods Apartments v Roumayah*, 274 Mich App 631, 635, (2007).

MCR 2.116(C)(8) "requires the court to consider evidence only from the pleadings, while (C)(10) motions denounce a claim's factual sufficiency and allow the court to consider evidence beyond the pleadings. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160 (2019). Here, the Court must only consider the pleadings and not any evidence outside of the pleadings when considering the motion under (C)(8). Therefore, regarding the issues relating to the (C)(8) motion, the Court is only considering the pleading.

ANALYSIS

Tortious Interference with Contract

The elements of a cause of action for tortious interference with a contract or a business relationship or expectancy are:

1. a contract or a business relationship or expectancy with a *third party*;
2. knowledge by the defendant of the contract or the business relationship or expectancy;

3. intentional and improper interference by the defendant, inducing or causing a breach, disruption, or termination of the contract or the business relationship or expectancy; and
4. resultant damage to the party whose contract or business relationship or expectancy has been breached, disrupted, or terminated.

Total Quality, Inc v Fewless, 332 Mich App 681, 704-705 (2020), *leave to appeal denied*, 507 Mich 899 (2021) (emphasis added).

As a general rule, a contracting party may not be held liable in tort for interfering with their *own* contract. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 382 (2004). Only those who are not parties to a contract may be said to interfere with the performance of the contract. *Dzierwa v Michigan Oil Co*, 152 Mich App 281, 287 (1986) citing *Seven D Enters, Ltd v Fonzi*, 438 F Supp 161 (ED Mich 1977).

Accordingly, Kuka must establish that Defendant WAC was a “third party” to the contract or business relationship. *Dzierwa v Michigan Oil Co*, 152 Mich App 281, 287 (1986). “Corporate agents [however] are not liable for tortious interference with the corporation's contracts unless they acted solely for their own benefit with no benefit to the corporation. *Bradley v Philip Morris, Inc*, 194 Mich App 44, 50-51; 486 NW2d 48 (1992); *Feaheny v Caldwell*, 175 Mich App 291, 305-306; 437 NW2d 358 (1989).” *Reed v Michigan Metro Girl Scout Council*, 201 Mich App 10, 13 (1993).

Defendant WAC argues that Kuka’s SAC fails to correct the deficiencies of the first amended complaint--that the alleged wrongdoing was **not** done “by Defendant WAC.”¹² Defendant WAC argues that instead of correcting this, Kuka continues to wrongfully conflate the alleged wrongdoing of other entities--Wanxiang Group Corporation, Wanxiang A123 Systems Asia Ltd, and individuals unaffiliated with WAC. WAC also cites to paragraphs of

¹² See Order dated March 25, 2022.

the SAC to support its claim that Plaintiff failed to allege wrongdoing by Defendant WAC; rather the wrongdoing was committed by the related/affiliated corporations. The Court has reviewed these numerous paragraphs of the SAC that Defendant claims supports its motion. For example, the SAC alleges:

37. In February 2020, Mr. Thomas Chen, who identified himself as a representative of **Wanxiang 123 Systems Asia Co., Ltd.**, a subsidiary of **Wanxiang Group**, advised that **Wanxiang Group** was interested in the Assembly Line for use at its facility in China.

38. Mr. Chen stated in an email on February 19, 2020, that **Wanxiang Group** was "formally requesting that Kuka review the pricing and come back to Wanxiang A123 before Wednesday (Feb 26) with a reasonable new pricing proposal."

39. Mr. Chen made clear that if KUKA refused to agree to a lower price he would "have A123 Systems LLC cancel the original contract." Mr. Chen confirmed further, "If Wanxiang A123 has to cancel the Agreement, Kuka will be immediately put onto **Wanxiang Groups'** 'blocked supplier list' and Kuka and their affiliates will no longer have the opportunity to work with Wanxiang Group or any of its affiliates in the future." (Emphasis in original.)

40. Despite threats from **Wanxiang Group** that it would have A123 cancel the Agreement, KUKA continued to complete the Assembly Line pursuant to its Agreement with A123.

54. On or about April 30, 2020, Mr. Chen Jun, Vice President of **Wanxiang Group** and President of **Wanxiang A123**, among others from Wanxiang A123, met with representatives of KUKA and advised that **Wanxiang Group** wanted the Assembly Line in China, and further made clear that **Wanxiang Group** had control over A123's performance, including payment.

55. At the April 30, 2020, meeting, **Wanxiang Group** demanded KUKA cancel the Agreement with A123 and negotiate a new contract for delivery to China, at a discounted price, or A123 would not pay and would not receive funding from Wanxiang Group to pay for the Assembly Line.¹³

¹³ See Second Amended Complaint, ¶¶ 55-56 (emphasis added).

The Defendant, however, fails to review the SAC as a whole and fails to acknowledge that Plaintiff sued Wanxiang America Corporation d/b/a Wanxiang Group, a Kentucky Corporation. Plaintiff Kuka's SAC deals with different legal entities, which Defendant claim are conflated. However, a reading of the SAC, in its entirety, reveals that the conflating relates to the manner in which **Defendants** treated the companies. Wanxiang America Corporation, Wanxiang A123 Systems Asia Co., Ltd and Wanxiang Group Corporation all appear to be intertwined.

Further, to the extent that Defendants claim that the latter is the parent corporation of Wanxiang America Corporation¹⁴ or Wanxiang A123 Systems Asia Co. Ltd, such has not been stated by the Plaintiff. Instead, Plaintiff indicates that some of the companies are subsidiaries, which does not necessarily mean parent company. Therefore, the Court finds that Plaintiff properly alleges intentional and improper interference *done by Defendant WAC*.

This Court DENIES Defendant WAC's Motion for summary disposition under (C)(8) as to the claim of tortious interference with a contract.

Fraudulent Misrepresentation

Defendant WAC also seeks dismissal of Kuka's fraudulent misrepresentation claim against it. Defendant WAC claims that although Kuka's claim is titled "fraudulent misrepresentation," it is actually a disguised breach of contract claim barred by the statute of frauds; it is a contract claim to pay the debt of another not in writing signed by WAC. This Court's predecessor previously dismissed this claim alleged in the first amended complaint on these same grounds. The Court previously found "[f]urthermore,

¹⁴ See Second Amended Complaint, ¶17.

the Court finds that Plaintiff's claim for fraudulent misrepresentation constitutes a disguised claim for breach of contract, which is barred by the statute of frauds. MCL 566.132(1)(b),¹⁵ compelling dismissal under MCR 2.116(C)(7)."¹⁶

Kuka's SAC alleges that before the Assembly Line was completed, WAC agreed that it "would take delivery and pay for" the Assembly Line, and, because it did not, Kuka was damaged in the amount of "14,668,670," which is the alleged amount of damages owed under the contract.¹⁷ Even if Plaintiff claimed a breach of contract for the promise to pay the debt of another, the statute of frauds only applies to collateral promises, not original promises. See *Huntington v Wellington*, 12 Mich 10 (1863).

Kuka's claim satisfies the requirement of a fraud claim. "It is well settled that the gravamen of an action is determined by reading the complaint as a whole, and by looking beyond mere procedural labels to determine the exact nature of the claim." *Adams v Adams*, 276 Mich App 704, 710-11 (2007).

Based on the above, Defendant's Motion to dismiss the "fraudulent misrepresentation" claim under MCR 2.116(C)(7) is DENIED.

Piercing the Corporate Veil/Alter Ego

"Michigan law presumes that, absent some abuse of corporate form, parent and subsidiary corporations are separate and distinct entities." *Seasword v. Hilti, Inc.*, 449 Mich. 542, 547 (1995). The Michigan Supreme Court explained that the presumption that parent and subsidiary corporations are distinct entities, also called the "corporate veil," "may be pierced only where an

¹⁵ MCL 566.132(1)(b) provides: "(1) In the following cases an agreement, contract, or promise is void unless that agreement, contract, or promise, or a note or memorandum of the agreement, contract, or promise, is in writing and signed with an authorized signature by the party to be charged with the agreement, contract, or promise:

(b) A special promise to answer for the debt, default, or misdoings of another person."

¹⁶ See Order dated March 25, 2022.

¹⁷ See Second Amended Complaint, ¶¶108, 111-112, 117, and 122.

otherwise separate corporate existence has been used to ‘subvert justice or cause a result that [is] contrary to some other clearly overriding public policy.’” *Id.* quoting *Wells v. Firestone*, 421 Mich. 641, 650 (1984). The Court has also held that “[i]n determining whether the corporate entity should be disregarded and the parent company held liable on the contracts of its subsidiary because the latter served as a mere instrumentality or adjunct of the former, each case is sui generis and must be decided in accordance with its own underlying facts.” *Herman v. Mobile Homes Corp.*, 317 Mich. 233, 243 (1947).

Michigan courts will not pierce the corporate veil unless, “(1) the corporate entity was a mere instrumentality of another entity or individual; (2) the corporate entity was used to commit a fraud or wrong; and (3) the plaintiff suffered an unjust loss.” *Foodland Distrib. v. Ali-Naimi*, 220 Mich App 453, 457 (1996)). “The corporate veil may be pierced as long as, “the injustice sought to be prevented [is] in some manner relate[d] to a misuse of the corporate form short of fraud or illegality.” *Soloman v Western Hills Dev. Co.*) 110 Mich App 257, (1981).

The Court finds Defendant’s arguments disingenuous. On one hand it argues that WAC is not a third party and cannot, as a matter of law, interfere with an entity it allegedly controls, citing to paragraphs of the SAC that Defendant claims evidence this alleged control.¹⁸ Then, on the other hand, it argues that “KUKA has not plead facts (as opposed to bald conclusions) that WAC somehow controlled A123.”¹⁹ While the claims may be inconsistent, the parties are entitled to plead inconsistently. MCR 2.111(A)(2). The SAC alleges in 2018, WAC approved A123’s capital investment for the design and manufacture of a lithium-ion battery assembly line for use in Ostrava, Czech Republic.²⁰ But, “[a]s early as May 2020, obtained approval from BMW to

¹⁸ Defendants MSD Brief, p 13.

¹⁹ Defendants MSD Brief, p 19.

²⁰ See Second Amended Complaint, ¶ 1.

switch production, citing costs for the Assembly Line, COVID-19 delays, and the inability to obtain funding authorization from the Chinese Delegation of Authority.²¹ The SAC also alleges that:

- “the only way Kuka would be paid is if it gave in to the demand to sell the Assembly Line to Wanxiang or its affiliates at a lower price;”²²
- “Wanxiang’s President Mr. Pin Ni and Project Manager Daniel Li convinced BMW to change the manufacturing location for the batteries from Ostrava, Czech Republic, to China.²³
- WAC’s “use and control of A123 caused Kuka to suffer an unjust loss.”²⁴
- “The leverage and control Wanxiang asserted to ensure A123 failed to pay for the completed Assembly Line was an exercise over A123, making A123 a mere instrumentality of Wanxiang.”²⁵

The Court finds that the SAC sufficiently alleges alter ego and piercing the corporate veil. As WAC previously argues, the SAC alleges that Wanxiang controlled A123, which in turn satisfies the requirement that the corporate entity of A123 was a mere instrumentality of WAC. The SAC also alleges that the corporate entity, A123, was used to commit a wrong. As Kuka argues, Wanxiang “undercapitalized” and used A123 “as a sham” for WAC’s benefit. WAC approved the initial investment. However, when the Assembly Line was nearing completion, WAC refused A123’s requests for funds.

Lastly, the SAC alleges that WAC’s use and control of A123 caused Kuka to suffer an unjust loss.²⁶ As a direct and proximate result of Wanxiang’s actions, KUKA alleges it has sustained damages exceeding \$14, 668, 670.”²⁷

²¹ See of Second Amended Complaint, ¶ 58.

²² See Second Amended Complaint, ¶ 72.

²³ See Second Amended Complaint, ¶ 97.

²⁴ See Second Amended Complaint, ¶ 133.

²⁵ See Second Amended Complaint, ¶ 134.

²⁶ See Second Amended Complaint, ¶ 133.

²⁷ See Second Amended Complaint, ¶ 138.

Based upon the above, the Court finds that under MCR 2.116 (C)(8), Plaintiff has stated claim upon which relief may be granted for piercing the corporate veil/alter ego. Defendants' Motion for Summary Disposition under MCR 2.116(C)(8) as to Count V of the SAC is **DENIED**.

CONCLUSION

For the reasons set forth above:

Defendant WAC's Motion for Summary Disposition under MCR 2.116(C)(8) is DENIED as to the tortious interference with a contract count set forth in Count III of the SAC.

Defendant WAC's Motion for Summary Disposition under MCR 2.116(C)(7) is DENIED as to the fraudulent misrepresentation count set forth in Count IV of the SAC.

Defendant WAC's Motion for Summary Disposition under MCR 2.116(C)(8) is DENIED as to the piercing the corporate veil/alter ego count set forth in Count V of the SAC.

IT IS SO ORDERED

THIS IS NOT A FINAL ORDER AND DOES NOT CLOSE OUT THE CASE.



/s/ Victoria A. Valentine