

STATE OF MICHIGAN  
IN THE 6TH JUDICIAL CIRCUIT FOR THE COUNTY OF OAKLAND

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CASTERDEPOT, INC., a Michigan  
corporation,

Plaintiff/Counter-Defendant,

v

MICHAEL MILLER,

Defendant/Counter-Plaintiff.

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**OPINION AND ORDER REGARDING PLAINTIFF/ COUNTER-DEFENDANT’S  
MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)**

At a session of said Court held on the  
22<sup>st</sup> day of October 2024 in the County of  
Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter is before the Court on Plaintiff/Counter-Defendant’s second Motion for Summary Disposition under MCR 2.116(C)(10).<sup>1</sup> Plaintiff/Counter-Defendant, CasterDepot Inc (“CasterDepot and/or Plaintiff”), once again asks the Court to dismiss the one-count

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<sup>1</sup> Oral argument on CasterDepot’s first Motion for Summary Disposition under MCR 2.116(C)(10) was heard on June 6, 2023, which the Court denied. At that time, after hearing oral arguments and after reviewing the briefs, the Court found that a question of fact existed as to whether the December 21, 2022, letter sent by CasterDepot’s attorney to Ms. Chang, Durable’s President, constitutes per se wrongful conduct. Subsequent to this hearing, depositions were taken which are now relied upon by the parties.

Countercomplaint filed against it by Counter-Plaintiff/Defendant Michael Miller (“Miller and/or Defendant”), which alleges that CasterDepot tortiously interfered with Miller’s contract and job opportunity with non-party Durable Superior Casters (“Durable”). Miller alleges that CasterDepot, knowing of Miller’s agreement and job opportunity with Durable, caused its attorney to send a letter to Durable, which resulted in Durable withdrawing its job offer to Miller. For the reasons set forth below, CasterDepot’s Motion is GRANTED.

### OVERVIEW

The facts are largely undisputed and revolve around the December 21, 2022, letter sent by CasterDepot’s attorney to Ms. Chang, Durable’s President, who had offered Miller a job. After Ms. Chang’s receipt of the following letter, and after her own investigation, Mr. Miller’s job offer was revoked.<sup>2</sup>



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December 21, 2022

***Via Email to [lily@ durableusa.com](mailto:lily@ durableusa.com)***  
***and Overnight Delivery***

Ms. Lily Chang  
Durable Superior Casters  
2801 E. Abram St., Arlington, TX 76010

**Re: Michael Miller/Casterdepot, Inc.**

Dear Ms. Chang:

This firm represents Castordepot, Inc. (the "Company"). I write with respect to Michael Miller's sudden resignation of from the Company and his subsequent, prompt employment by Durable Superior Casters ("DSC"), a supplier to the Company. The Company values its relationship with DSC, and I am writing you as a courtesy to inform you of serious development regarding Mr. Miller and the Company's confidential information.

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<sup>2</sup> Plaintiff’s MSD Exhibit K: Chang Dep, pp 72-74.

As you may be aware, Mr. Miller is subject to an Employee Confidentiality and Technology Agreement (the "Agreement") with the Company. A copy of the Agreement is enclosed for your convenience. In particular, please draw your attention to paragraphs 1-3 of the Agreement, which include expansive confidentiality restrictions. Among other things, the Agreement prohibits Mr. Miller from taking, using, or disclosing any of the Company's confidential or proprietary information, including but not limited to plans, strategies, drawings, methods, specifications, financial information, customer information, and similar confidential information belonging to the Company. These restrictions were not only necessary, but also appropriate, given his position with the Company and his broad access to the Company's most sensitive information.

Unfortunately, it has come to our attention that prior to Mr. Miller's departure from the Company, he wrongfully removed and/or retained extensive amounts of confidential and proprietary electronic information from the Company, a clear violation of his contractual obligations and fiduciary duties to the Company. ***This includes assisting DSC, through its Vice-President of Sales, James Wood, to actively compete against the Company, using the Company's own information.*** In fact, prior to his departure, Mr. Miller sent hundreds of emails to his personal email address, including the Company's customer information, bids, customer specifications, pricing, customer leads, and other

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highly confidential information belonging to the Company. He then passed on much of this information to Mr. Wood, for use on behalf of DSC. Mr. Miller did not disclose his wrongful conduct to the Company at the time of his resignation, raising serious questions as to his motivations and intent—as well as that of Mr. Woods—with respect to the Company's confidential information.

The Company takes this matter very seriously. In light of these developments, I am informing you of Mr. Miller's and Mr. Woods's conduct now so that you and DSC can take appropriate steps to protect the Company's confidential information. Should you have any questions about the matters raised in this letter, please do not hesitate to contact me, directly or through counsel.

Sincerely yours,

**VARNUM**



Timothy P. Monsma

TPM/mke

cc: Jason Popma  
President, Casterdepot, Inc.

CasterDepot argues that this letter was for a legitimate business purpose--to protect its confidential information. It relies on its 2015 Employee Confidentiality and Technology

Agreement, which Miller admitted he signed in 2015 and by which he admitted he agreed to be bound.<sup>3</sup> This Confidentiality Agreement provides in pertinent part:



**Employee Confidentiality and Technology Agreement**

Employee's Name: MICHAEL Miller  
Date: 9/10/15  
Company: CasterDepot

I understand and agree that CasterDepot has made significant and extensive investments in time, materials, and money to develop confidential and proprietary trade secrets which provide CasterDepot with a business advantage. In consideration for my continued employment in any capacity with CasterDepot, and as consideration for the salary and benefits paid for my services during my employment, I agree as follows:

1. Confidential Information. Except as required by my work for CasterDepot, during and after my employment with CasterDepot, I agree to not use or disclose to others any of CasterDepot's confidential and proprietary information including, but not limited to, production methods and processes, financial data, customer information (including names, needs, and contacts), computer data and software, work in process, research and development, vendors, and technological developments. During my employment by CasterDepot, I will not improperly use or disclose any confidential or proprietary information of any former employer or any other person to whom I have an obligation of confidentiality unless consented to in writing by that former employer or person.

3. Removal or Duplication of Company Property. Except as required by my work for CasterDepot, I agree that I will not remove any Company property from CasterDepot's premises or duplicate any of CasterDepot's property, whether by photocopy, computer, photograph, videotape, audio tape, or otherwise.

Mr. Miller admitted that while employed by CasterDepot, he was approached in November of 2022 by James Wood, a Durable<sup>4</sup> employee, about whether Mr. Miller was interested in a potential sales position with Durable.<sup>5</sup> Thereafter, on December 5<sup>th</sup> Mr. Miller flew to Texas for an interview with Mr. Wood and Steve Twining, Durable's President at that time.<sup>6</sup>

CasterDepot alleges that immediately following the interview, Miller sent CasterDepot-

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<sup>3</sup> Defendant's MSD Exhibit H: Miller Dep, p 11.

<sup>4</sup> Durable is both a supplier and a competitor of CasterDepot. See Plaintiff's MSD Ex B: J. Popma Dep, p 45.

<sup>5</sup> Defendant's MSD Exhibit H: Miller Dep, pp 37, 39-40.

<sup>6</sup> Defendant's MSD Exhibit H: Miller Dep, pp 43-44.

related emails and screenshots of information from CasterDepot's Maven system to Durable's Mr. Wood and/or to Mr. Miller's own personal Email account, (See Plaintiff's Exhibit E, F and G):<sup>7</sup>

- On December 7, 2022, Mr. Miller forwarded a quote to Mr. Wood he had prepared on CasterDepot's behalf for an entity known as Adrian Steel. Mr. Miller described this as a "good opp." Attached to that email were several screenshots of information from CasterDepot's Maven system.<sup>8</sup>

- On December 7, 2022, Mr. Miller emailed additional photos of CasterDepot's Maven system to both Mr. Wood and to Mr. Miller's own personal Gmail address, with a subject line of JB Webb, which is a CasterDepot customer.<sup>9</sup> This email contains contact information for JB Webb and the text indicates "Potential monster."<sup>10</sup>

- On December 6, 7 and 8, 2022, Mr. Miller blind copied CasterDepot-related communications to his own personal Gmail account, including quotes, purchase orders, and drawing.<sup>11</sup>

On December 8, 2022, Durable tendered Mr. Miller an offer of employment.<sup>12</sup> In response to the offer, Mr. Miller represented that he believed he would be able to "migrate sale[s] over with [him], which is super badass I think."<sup>13</sup>

After Mr. Miller accepted employment with Durable, and while still employed by CasterDepot, Mr. Miller emailed even more information to Mr. Wood, which he described as "[t]ribal knowledge while I have it."<sup>14</sup>

Mr. Miller formally resigned from CasterDepot on December 16, 2022. Immediately after Mr. Miller's resignation, CasterDepot's president, Jason Popma, reviewed Mr. Miller's email account. As he described:<sup>15</sup>

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<sup>7</sup> Mr. Miller argues that he routinely used personal and work emails to conduct business on behalf of CasterDepot. (Miller's Response Br, p 3).

<sup>8</sup> Plaintiff's MSD Exhibit E. See also Plaintiff's MSD Exhibit B: Popma Dep, p 82, where he testified that "Maven was strategically built by CasterDepot to be very difficult to export data . . ."

<sup>9</sup> Plaintiff's MSD Exhibit B: J. Popma Dep, p 82.

<sup>10</sup> Plaintiff's MSD Exhibit F.

<sup>11</sup> Plaintiff's MSD Exhibit G.

<sup>12</sup> Plaintiff's MSD Exhibit H.

<sup>13</sup> Plaintiff's MSD Exhibit H.

<sup>14</sup> Plaintiff's MSD Exhibit H.

<sup>15</sup> Plaintiff's MSD Exhibit B: J. Popma's Deposition, pp 34-35.

[W]e found several emails where he had forwarded information to his personal Gmail account. We found situations where he had taken photos of the screen of Maven and e-mailed himself the picture of the photo, and then forwarded it to his personal Gmail account. We found files from prior trade show lists that he was involved in exhibiting for CasterDepot that he forwarded to his personal Gmail account. We had drawings from customers and suppliers of ours – customers that we have NDA agreements with as a company that he forwarded to his personal Gmail account. There were customers that were not affiliated or that Mike Miller never were involved in that he had information from that he forwarded to his personal Gmail account. . . . So Maven was strategically built by CasterDepot to be very difficult to export data from for this exact reason. So because it is not easy to export he would use his cell phone camera, take a picture of the screen that had customer pricing, customer contacts, margin, other details that are proprietary to CasterDepot and then email that to himself. And somewhere in that loop it crossed through the CasterDepot email to his personal Gmail.

He then instructed his counsel to send the above-referenced letter to Durable's owner and president, Lily Chang. Mr. Popma testified that his intent was not to interfere with Mr. Miller's employment with Durable. In fact, both Mr. Miller and Mr. Popma testified that CasterDepot would have benefited more if Mr. Miller had been employed by Durable than by another competitor.<sup>16</sup>

After receiving the letter, Ms. Chang undertook her own investigation into Mr. Miller's actions, including speaking with Mr. Wood. Mr. Wood relayed that Mr. Miller had claimed he had just "forgotten" he was bound by a confidentiality agreement, and that Mr. Miller had been sending CasterDepot customer information to him.<sup>17</sup> Thereafter, Ms. Chang terminated the hiring process with Mr. Miller.

CasterDepot then filed its three count Complaint against Mr. Miller, alleging breach of contract, breach of fiduciary duty and misappropriation of trade secrets. Mr. Miller then filed his one-count Counterclaim alleging tortious interference. This instant matter relates to CasterDepot's

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<sup>16</sup> Plaintiff's MSD Exhibit B: J. Popma Dep, p 151; Plaintiff's MSD Exhibit D: Miller Dep, pp131-132.

<sup>17</sup> Plaintiff's MSD Exhibit K: Chang Dep, pp 72-74.

Motion for Summary Disposition under MCR 2.116(C)(10) as to Mr. Miller’s Counterclaim.<sup>18</sup> CasterDepot argues that the letter at issue was sent for a legitimate business purpose. CasterDepot further argues that Miller cannot establish causation because Durable’s Ms. Chang testified that the receipt of the letter triggered her own investigation into Miller’s conduct, which eventually led to the termination of Mr. Miller’s hiring process.

Miller argues that the contents of the letter contain false accusations: CasterDepot did not possess any trade secret or confidential information to be misappropriated; Miller did not have access to any such information; and Miller, was an employee, not an officer, director or shareholder, and did not breach any fiduciary duties to CasterDepot.

#### STANDARD OF REVIEW

“‘A motion under MCR 2.116(C)(10) tests the factual sufficiency of a claim.’” *Wittenberg v Bulldog Onsite Solutions, LLC*, 345 Mich App 550, 554 (2023) quoting *El-Khalil v Oakwood Healthcare Inc*, 504 Mich. 152, 159 (2019). When deciding a motion under MCR 2.116(C)(10), the trial court must “consider all evidence submitted by the parties in the light most favorable to the party opposing the motion.” *Id.* (quotation marks and citation omitted). “Such a motion may only be granted when there is no genuine issue of material fact.” *Id.* (quotation marks and citation omitted). “A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ.” *Id.*

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.” *Quinto v Cross & Peters Co*, 451 Mich 358, 362 (1996). Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings,

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<sup>18</sup> Mr. Miller filed his own Motion for Summary Disposition under MCR 2.116(C)(10) relating to CasterDepot’s Complaint, which will be addressed in a separate Opinion.

but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.” *Smith v Globe Life Ins Co*, 460 Mich 446, 455 (1999).

## ANALYSIS

It is unclear whether Miller is alleging a claim for tortious interference with a business expectancy or with a contractual relationship. Such claims are distinct from each other. *Health Call of Detroit v Atrium Home & Health Care Servs, Inc*, 268 Mich App 83, 89-90 (2005). It has also been recognized that “tortious interference with business relations may be caused by defamatory statements.” *Lakeshore Community Hosp v Perry*, 212 Mich App 396, 401 (1995). Nevertheless, under both causes of action, “[o]ne who alleges tortious interference with a contractual or business relationship must allege [1]the intentional doing of a per se wrongful act or [2] 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).

It is undisputed that the third element is at issue-- 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. Regarding this third element, interference alone will not support a claim under this theory. *Hope Network Rehab Servs v Mich Catastrophic Claims Ass’n*, 342 Mich App 236, 246 (2022). “A plaintiff ‘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, Inc v Internet Int’l Corp*, 251 Mich App 125, 131. “A wrongful act per se is an act that is inherently



wrongful or an act that can never be justified under any circumstances.” *Knight Enterprises v RPF Oil Co*, 299 Mich App 275 (2013) (quotation marks and citation omitted); *Prysak v. R.L. Polk Co.*, 193 Mich App 1, 12–13 (1992).

Absent a per se wrongful act, “a plaintiff must demonstrate that the defendant acted both intentionally and either improperly or without justification.” *Dalley v Dykema Gossett*, 287 Mich App 296, 323 (2010). This requires identifying specific, affirmative acts to show malice or lack of justification. *Id.* at 324. Improper motives include motives that are illegal, unethical or fraudulent. *Dolenga v Aetna Cas & Sur Co.*, 185 Mich App 620, 626 (1990). “Where the defendant's actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference.” *BPS Clinical Laboratories v Blue Cross & Blue Shield of Mich*, 217 Mich App 687, 699 (1996). “Further, under Michigan law, preventing the anticompetitive use of confidential information is a legitimate business interest.” *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 158 (2007) (internal quotation marks and citation omitted).

After review, the Court concludes that Miller has failed to provide evidence of actions rising to the level of an 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. There is no evidence to support the conclusion that CasterDepot’s actions were malicious or without justification. The letter did not threaten any action against Durable, a fact Mr. Miller admitted in his deposition.<sup>19</sup> Rather, it reflects CasterDepot’s efforts to protect its legitimate business information. It expressed CasterDepot's legitimate concern about Mr. Miller's undisputed actions and his potential to misuse information relating to customer information,

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<sup>19</sup> Defendant’s MSD Exhibit H: Miller Dep pp 83-84, 133.

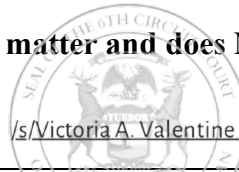
including names, need and contact, which would be undisputedly prohibited under the Confidentiality Agreement. Like in *Prysak v RL Polk, Co*, 193 Mich App 1 (1992), the letter here does not request Durable to fire Miller. Rather, while it may have used strong language, it only requested Durable to "take appropriate steps to protect [CasterDepot's] confidential information."

### **ORDER**

Based upon the foregoing Opinion:

**IT IS HEREBY ORDERED** that the CasterDepot's Motion for Summary Disposition of is GRANTED.

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



/s/Victoria A. Valentine

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HON. VICTORIA A. VALENTINE  
CIRCUIT COURT JUDGE

Dated: 10/22/24