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

MOTOR CITY ACCIDENT ATTORNEYS, PLLC,

Plaintiff/Counter-Defendant,

v

Case No. 23-202303-CB
Hon. Michael Warren

VAHDAT WEISMAN, PLC,

Defendant/Counter-Plaintiff.

OPINION AND ORDER REGARDING DEFENDANT/COUNTER-PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION TO DECLARE THE AGREEMENT VOID AS UNLAWFUL, UNETHICAL, AND AGAINST PUBLIC POLICY AND FOR SANCTIONS
&
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY DISPOSITION

At a session of said Court, held in the County of Oakland, State of Michigan
October 24, 2024

PRESENT: HON. MICHAEL WARREN

OPINION

I

The present cause of action arises out of a dispute between two law firms over referral fees. Motor City Accident Attorneys, PLLC ("MCAA") alleges that Vahdat Weisman, PLC ("Weisman") agreed to pay MCAA a portion of the attorney fees Weisman received on matters referred by MCAA but has failed to pay MCCC its share of attorney

fees earned on almost $2,500,000 in settlements on matters MCAA referred to Weisman. In particular, MCAA alleges Breach of Contract – of Monetary Damages (Count I); Contract Duties – Declaratory Judgment (Count II); Breach of Contract – Injunctive Relief (Count III); Embezzlement – Common Law and Statutory (Count IV); and Fraud (Count V). In its Counterclaim, Weisman alleges Fraud/Misrepresentation (Count I); Breach of Contract/Illegal Contract (Count II); Interstate Mail/Wire Fraud (Count III); Tortious Interference with Business Relationships (Count IV); and Declaratory Relief/Voiding "Agreement" *Ab Initio* (Count V).[1]

Before the Court is (a) Defendant/Counter-Plaintiff's Motion for Summary Disposition to Declare the Agreement Void as Unlawful, Unethical, and Against Public Policy and for Sanctions, and (b) Plaintiff's Motion for Partial Summary Disposition.[2] Oral argument is dispensed as it would not assist the Court in its decision-making process.[3]

[1] On May 6, 2024, Count III of the Counterclaim was dismissed by way of stipulated order.

[2] MCAA seeks summary disposition of Counts I, II and III of its Complaint and dismissal of the Counterclaim.

[3] 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.

At stake is whether the relief sought in Weisman's Motion for Summary Disposition is warranted when Weisman fails to cite the applicable Rule of Court under which the Motion is to be reviewed? Because Weisman fails to cite MCR 2.116 and the corresponding standard of review, its argument is deemed abandoned, and the answer is "no."

Also, at stake is whether the relief sought in MCAA's Motion for Partial Summary Disposition is warranted? Because MCAA has failed to proffer sufficient evidence to meet its burden of demonstrating there is no genuine issue of material fact for trial, the answer is "no" as to MCAA's claims for Breach of Contract – of Monetary Damages (Count I), Contract Duties – Declaratory Judgment (Count II), and Breach of Contract – Injunctive Relief (Count III). Because Weisman does not challenge MCAA's arguments and has abandoned any contra argument, the answer is "yes" as to Weisman's counterclaims for Fraud/Misrepresentation (Count I); Breach of Contract/Illegal Contract (Count II) and Tortious Interference with Business Relationships (Count IV); however, because Weisman has demonstrated questions of material fact exist, the answer is "no" as to Weisman's counterclaim for Declaratory Relief/Voiding "Agreement" *Ab Initio* (Count V).

II
Background

During October 2020, MCAA and Weisman executed a "Co-Counsel Agreement (the "Agreement") to "cover any and all matters and clients that MCAA refers to

[Weisman]." [Agreement, ¶A.]. Under the Agreement, the parties agreed, in part, as follows:

> B. In return for any referral from MCAA, [Weisman] agrees that MCAA shall receive 40% of all Fees received by [Weisman] on any Gross Recovery less than $100,000.00 in a matter. [Weisman] further agrees that MCAA shall receive 50% of all Fees received by [Weisman] on any Gross Recovery of $100,000.00 or more in the matter. "Gross Recovery" means any monetary compensation of any kind obtained by [Weisman] on behalf of Client arising from, but not limited to, any settlement, payment, award, judgment or interest on judgments, both pre-suit and post-suit. "Fees" means any monetary compensation of any kind to [Weisman] arising from, but not limited to, any settlement, payment, award, judgment or interest on judgments, both pre-suit and post-suit.
>
> C. [Weisman] represents that "Attachment A" is their (sic) client retainer agreement that will be offered to any referred Client's matters.
>
> D. [Weisman] agrees to notify MCAA within 7 days of the receipt of any fees in any and all matters covered by this agreement. On non-litigated PIP matters, [Weisman] shall pay MCAA every two weeks any outstanding fees.
>
> E. MCAA's portion of the fees payable under Paragraph A above, shall be paid within 10 days of the fees being received by [Weisman].
>
> F. [Weisman] agrees to provide MCAA notice of the resolution of any and all matters covered by this Agreement within 7 days.
>
> G. [Weisman] agrees to provide MCAA proof of the resolution of any and all matters covered by this Agreement within 7 days of any request for same.
>
> * * *
>
> [Agreement.]

MCAA claims it advertises its legal services which generates potential client leads and MCAA refers those leads to other law firms, including Weisman. MCAA claims it

also refers clients leads received from medical providers and claims by medical providers for payment of outstanding bills. Weisman claims MCAA is engaged in a scheme between medical providers and lawyers to defraud the Michigan No Fault System.

MCAA claims that for a period of approximately two years, Weisman purportedly paid MCAA $582,591.40 for client matters MCAA referred to Weisman and Weisman's last payment was made on November 16, 2022. MCAA alleges that Weisman has continued to litigate and settle claims which MCAA referred totaling $2,423,679.27 and Weisman has received $759,950.94 in attorney fees but has failed to pay MCAA its portion totaling $319,411.27.

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.* at 362. If 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]).

IV
Defendant/Counter-Plaintiff's Motion for Summary Disposition to Declare the Agreement Void as Unlawful, Unethical, and Against Public Policy and for Sanctions is Defective and is Denied

MCR 2.119(A)(1)(b) requires that a motion "state with particularity the grounds and authority on which it is based." MCR 2.116(B)(1) provides that "A party may move for dismissal of or judgment on all or part of a claim in accordance with this rule. A party against whom a defense is asserted may move under this rule of summary disposition of the defense." Each basis for summary disposition has its own standard of review. See, e.g., *RDM Holdings, Ltd v Continental Plastics Co*, 281 Mich App 678, 687 (2008) (with regard to MCR 2.116(C)(7): "this Court must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or

submitted by the parties. The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. This Court must consider the documentary evidence in a light most favorable to the nonmoving party. If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. If a factual dispute exists, however, summary disposition is not appropriate"); *Maiden v Rozwood,* 461 Mich 109, 120 (1999) (with regard to MCR 2.116(C)(8): "A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are 'so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.' When deciding a motion brought under this section, a court considers only the pleadings" [citations omitted]); *Maiden v Rozwood,* 461 Mich 109, 119-120 (1999) (with regard to MCR 2.116(C)(10): "In 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. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law").

Weisman's Motion fails to cite the appropriate Rule of Court under which the Motion is to be reviewed. Indeed, the Motion lacks any citation to MCR 2.116 or any other Rule of Court. By failing to cite the applicable Rule of Court and the corresponding

standard of review, Weisman's argument is deemed abandoned. See, e.g., *Houghton v Keller*, 256 Mich App 336, 339-340 (2003) (a party "may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims . . . nor may he give issues cursory treatment with little or no citation of supporting authority" (citations omitted)). Conclusion without authority is insufficient to warrant dispositive relief or even to bring an issue before the Court for review. *Mitcham v City of Detroit*, 355 Mich 182, 203 (1959) ("It is not enough . . . to simply announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and rationalize the basis for his arguments, and then search for authority either to sustain or reject his position"); *Wilson v Taylor*, 457 Mich 232, 243 (1998) ("A mere statement without authority is insufficient to bring an issue before this Court"). After all, "[t]rial [c]ourts are not the research assistants of the litigants; the parties have a duty to fully present legal arguments for its resolution of their dispute." *Walters v Nadell*, 481 Mich 377, 388 (2008). Accordingly, Weisman's Motion is denied.[4]

[4] MCAA's request for summary disposition in its favor under MCR 2.116(I)(2) is denied because it is predicated upon issues and arguments that go beyond the matter specifically identified in Weisman's Motion.

V
Plaintiff's Motion for Partial Summary Disposition is Partially Granted

A
Summary Disposition of MCAA's Claims for Breach of Contract – of Monetary Damages (Count I), Contract Duties – Declaratory Judgment (Count II), and Breach of Contract – Injunctive Relief (Count III) is Not Warranted

1
The Law of Contracts

A claim for breach of contract lies when the following elements are established: "(1) parties competent to contract; (2) a proper subject matter; (3) legal consideration; (4) mutuality of agreement; and (5) mutuality of obligation." *Thomas v Leja*, 187 Mich App 418, 422 (1991). "It is well settled that the appropriate measure of damages for breach of contract . . . is that which would place the injured party in as good a position as it would have been in had the promised performance been rendered." *Jim–Bob, Inc v Mehling*, 178 Mich App 71, 98 (1989). See also *Allison v AEW Capital Mgmt, LLP*, 481 Mich 419, 426 n 3 (2008).

2
The Allegations

MCAA alleges that it performed all of its obligations under the Agreement and Weisman has breached the Agreement by:

> a. Not notifying MCAA each and every time that Defendant received fees on matters covered by the Agreement MCAA within seven days of the receipt of these fees as required by paragraph D of the Agreement;

b. Not paying MCAA all of its share of attorney fees from non-litigated PIP matters every two weeks as required by paragraph D of the Agreement;

c. Not paying MCAA's portion of attorney fees from other matters within 10 days of their receipt as required by paragraph E of the Agreement;

d. Not providing MCAA with proof of resolution of all matters covered by the Agreement within seven days of the resolution as required by Paragraph F of the Agreement;

e. Not providing MCAA with proof of resolution of all matters covered by the Agreement within seven days of the resolution as required by paragraph G of the Agreement; and

f. Such other breaches as may be uncovered during discovery.

[Complaint, ¶29; See also ¶37 and ¶41.]

3
Analysis

MCAA argues that Weisman has breached the Agreement and owes MCAA at least $319,411.27. In all cases, MCR 2.116(G)(4) squarely places the burden on the parties, not the trial court, to support their positions. 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.

Pursuant to MCR 2.116(G)(6), "[a]ffidavits, depositions, admissions, and documentary evidence offered in support of or in opposition to a motion based on subrule (C)(l)-(7) or (10) shall only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion." The Affidavit of Jonathan K. Wright upon which MCAA relies is not notarized and is therefore invalid. *In re Estate of Franklin*, unpublished per curiam opinion of the Court of Appeals, issued April 18, 2024 (Docket No. 364036), p 5 ("[A] document that is not notarized is not a valid affidavit. Consequently, that document may not be considered in relation to defendant's motion for summary disposition." (quotation marks and citation omitted)). In addition, MCAA relies upon two self-created charts, Exhibits D and G, purportedly based on documents Weisman produced during discovery, [Motion, fn 1 ("Exhibit D is based primarily upon documents produced by Defendant during discovery;" fn 2 ("Exhibit G is also based primarily upon discovery from Defendant, including the spreadsheets attached as Exhibit E")], and a spreadsheet, Exhibit E, titled "Vahdat Weisman Spreadsheet 1 listing its assertion as to status of matters, Served on June 17, 2024." However, standing alone, these are hearsay documents with no explanation of how they would be admitted. These documents do not demonstrate the absence of a genuine issue of material fact for trial. In short, MCAA has not proffered

sufficient evidence to meet its burden of demonstrating there is no genuine issue of material fact for trial. See *Meyer*, 242 Mich App at 575 (concluding that the trial court erred when it granted an improperly supported motion for summary disposition under MCR 2.116(C)(10)). Accordingly, summary disposition of MCAA's claims for Breach of Contract – of Monetary Damages (Count I), Contract Duties – Declaratory Judgment (Count II), and Breach of Contract – Injunctive Relief (Count III) is denied

B
Summary Disposition of Weisman's Counterclaim for Fraud/Misrepresentation (Count I) is Warranted

1
The Law of Fraud

To sustain a claim for common-law fraud, a plaintiff must prove "(1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage." *M&D, Inc v WB McConkey*, 231 Mich App 22, 27 (1998).

Under Michigan law, "[f]raud in the inducement occurs where a party materially misrepresents future conduct under circumstances in which the assertions may reasonably be expected to be relied upon and are relied upon." *Samuel D Begola Servs v*

Wild Brothers, 210 Mich App 636 (1995). To prevail on a claim for fraud in the inducement, a plaintiff must show "(1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth and as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage." *Custom Data Solutions, Inc v Preferred Capital, Inc*, 274 Mich App 239, 243 (2006) (quotation marks and citation omitted).

When pleading a cause of action involving fraud, the circumstances alleged to constitute fraud must be stated with particularity. MCR 2.112(B)(1). See also *Stephens v Worden Ins Agency, LLC*, 307 Mich App 220, 229–30 (2014) ("Fraud claims must be pleaded with particularity, addressing each element of the tort"). Because of this heightened pleading standard, fraud "is not to be lightly presumed, but must be clearly proved . . . by clear, satisfactory and convincing" evidence. *Cooper v Auto Club Ins Ass'n*, 481 Mich 399, 414 (2008) (citations and quotations omitted). Michigan courts have relied on the federal "who, what, when, where, and how" requirement for particularity in fraud claims. See *Bell v Keller*, unpublished per curiam opinion of the Court of Appeals, issued May 20, 2021 (Docket No. 352421), p 7, quoting *Dileo v Ernst & Young*, 901 F2d 624, 627 (CA 7, 1990).

2
The Allegations

In its Counterclaim, Weisman alleges MCAA fraudulently induced Weisman to enter into an illegal and unethical contract by misrepresenting that MCAA would provide referrals in accordance with Michigan law and ethical standards:

> 5. On or about October 16, 2020, and continuing forward, Plaintiff induced Defendant into entering into an "Agreement" (See Plaintiffs Exhibit 1; hereinafter "Contract/ Agreement") by misrepresenting that it would provide "referrals" to Defendant "in accordance with Michigan law and Ethical standards." Paragraph 3 of the Agreement states as follows:
>
> > WHEREAS, MCAA represents that the referrals provided to Law Finn are obtained by MCAA in accordance with Michigan law and Ethical standards;
>
> 6. Contrary to the representations made by Plaintiff, however, the "referrals" that Plaintiff bargained are unlawfully solicited claims in violation of MCL 750.410, as well as in violation of other Michigan Law, Ethical Standards, and Michigan Public Policy.
>
> 7. On or about October 21, 2022, Defendant's main point of contact with Plaintiff, C.S., was released from the company. It was at this time that C.S. informed Defendant that Plaintiff was unlawfully soliciting auto-accident victims through various persons and/or runners, one in particular, C.P., who was directly soliciting No Fault victims in and around Detroit.
>
> 8. For purposes of this narrative and cause of action, Plaintiff Motor City Accident Attorneys ("MCAA") also operates in Michigan as what is known as "411 Pain" - even on 411 Pain's website (https://411painmichigan.com/), the two companies are synonymous:
>
> * * *
>
> 9. After October 26, 2022, Defendant was again informed by C.S. and another person, S.S., that Plaintiff (411) was directly soliciting accident victims at the scenes of motor vehicle accidents, and someone at the company (including but not limited to J.W.) was involved in directing auto

accident victims to specific medical providers as well as compensating accident victims to undergo unnecessary and invasive procedures at selected providers.

10. Shortly after being informed that Plaintiff was unlawfully soliciting auto accident victims at the scene of the accident, Defendant was informed by another Michigan Law Firm ("H.L." who had entered into a similar Contract/Agreement with Plaintiff) that it had a client who was directly solicited by Plaintiff at the scene of the accident, and the solicitation nearly led to H.L. being investigated by the Attorney Grievance Commission.

11. It was at this time that Defendant came to the realization that Plaintiff had misrepresented the lawfulness of its "referrals" and was in breach of the Contract/Agreement by illegally soliciting clients, among other things, and that Defendant was no longer obligated to perform under the contract.

12. While Defendant had hoped that the two parties could just go their separate ways, Plaintiff has instead filed a frivolous lawsuit based on an illegal, unethical, and voidable contract in order to intimidate, harass, and embarrass Defendant into continuing to pay it illegal and unethical referral fees.

13. As result of being fraudulently induced into entering an illegal and unethical Contract/Agreement, Defendant has now been served with a frivolous lawsuit to enforce an illegal contract. In having to hire counsel and defend against the spurious allegations contained within this lawsuit, Plaintiff has suffered damages.

14. As a result of being fraudulently induced to enter into an illegal and unethical Contract/Agreement, Defendant has sustained harm and/or special harm including but not limited to damages to his reputation, loss of business, among other harms.

3
Analysis

MCAA argues that Weisman cannot prove it was fraudulently induced to enter into the Agreement or that MCAA unlawfully solicited a client that was referred to Weisman. Weisman has identified Michael Powels as a client it contends was unlawfully,

unethically, or improperly referred to Weisman by MCAA. [Defednat (sic)/Counter-Plaintiff's First Supplemental Response to Plaintiff's Interrogatories #6 and #10.] However, Powels' deposition transcript reflects that Powels was referred to Hague Legal, not Weisman, and there is no evidence MCAA even solicited Powels. [Deposition of Michael Powels, pp 51-53.]

Weisman argues that "Michigan is a notice-pleading jurisdiction" and "[t]here is clearly enough facts alleged for Counts II and IV to survive summary disposition." [Response, p 11.] However, MCAA's Motion seeks summary disposition under MCR 2.116(C)(10), not (C)(8).[5] "The distinction between MCR 2.116(C)(8) and (C)(10) is one with an important difference: a claim's legal sufficiency as opposed to a claim's factual sufficiency." *El-Khalil v Oakwood Healthcare, Inc,* 504 Mich 152, 159 (2019). Further, Weisman claims it "cannot fully address the Motion without first completing discovery" but discovery closed on August 15, 2024 and Weisman's Response was filed over a month later (September 26, 2024). [June 28, 2024 Stipulated Order Adjourning Discovery and Expert Reports]. Moreover, Weisman does not articulate how additional discovery would produce evidence to support its allegations that MCAA induced it to enter into the Agreement. See *Caron v Cranbrook Ed Community*, 298 Mich App 629, 645-646 (2012) (quotation marks and citations omitted) ("A party opposing a motion for summary disposition because discovery is not complete must provide some independent evidence that a factual dispute exists. Mere speculation that additional discovery might produce

[5] Weisman again fails to address the standard of review in its Response to MCAA's Motion.

evidentiary support is not sufficient"). In the end, Weisman does not challenge MCAA's substantive argument. Thus, Weisman has abandoned any contra argument to MCAA's position that Weisman has not demonstrated any misrepresentation by MCAA that allegedly induced Weisman to enter into the Agreement. Summary disposition of Weisman's Counterclaim for Fraud/Misrepresentation (Count I) is granted.

C
Summary Disposition of Weisman's Counterclaim for Breach of Contract/Illegal Contract (Count II) is Warranted

1
The Law of Contracts

A claim for breach of contract lies when the following elements are established: "(1) parties competent to contract; (2) a proper subject matter; (3) legal consideration; (4) mutuality of agreement; and (5) mutuality of obligation." *Thomas*, 187 Mich App at 422.

2
Allegations and Analysis

In its Counterclaim, Weisman alleges that MCAA has breached the Agreement as a result of the illegal and unethical solicitations and referrals:

> 16. Because the contract is based off unlawful and unethical solicitation, the subject matter/purpose of the contract is illegal and/or unethical and, therefore, cannot be enforced by this Court.
>
> 17. Because enforcement of the Contract/Agreement would violate Michigan Law and/or Public Policy, the contract is illegal and/or must be void *ab initio.*

> 18. As a result of the illegal and unethical "referrals", Plaintiff breached the Contract/Agreement and Defendant has sustained harm and/or special harm including but not limited to damages to his reputation, loss of business, among other harms.
>
> [Counterclaim.]

MCAA argues that Weisman cannot identify any client that MCAA unlawfully solicited and referred to Weisman. Michael Powels' deposition transcript reflects that Powels was referred to Hague Legal, not Weisman, and there is no evidence MCAA even solicited Powels. [Deposition of Michael Powels, pp 51-53; Deposition of Jordan Vahdat, p 74 ("Q. So Michael Powels wasn't referred to your law firm, right? A. He was not."] Further, Jordan Vahdat refused to provide the name of a client that was unlawfully, unethically or improperly referred to Weisman by MCAA because he claims the information is privileged. [Deposition of Jordan Vahdat, p 77.] Weisman does not challenge MCAA's argument. Accordingly, there is no genuine issue of material that Weisman cannot sustain its counterclaim for Breach of Contract/Illegal Contract (Count II) and summary disposition is granted.

D
Summary Disposition of Weisman's Counterclaim for Tortious Interference with Business Relationships (Count IV) is Warranted

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:

> 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.
>
> [*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 Counterclaim, Weisman alleges as follows:

> 24. Upon information and belief, an agent/employee of Plaintiff ("J.W.") has communicated disparaging remarks to various business contacts of Defendant in retaliation to Defendant.
>
> 25. The disparaging remarks made by Plaintiffs agents/employees were intentionally designed to intimidate, harass, and or embarrass Defendant and/or Defendant's business contacts as well as to disrupt and/or discourage Defendant's business connections from doing business with Defendant.
>
> 26. As a result of the illegal and unethical "referrals", Plaintiff breached the Contract/Agreement and Defendant has sustained harm and/or special harm including but not limited to damages to his reputation, loss of business, among other harms.

3
Analysis

MCAA argues that Weisman has failed to describe with specificity the disparaging remarks Weisman contends were made in paragraph 24 of its Counterclaim. In particular, Weiman's supplemental response to MCAA's Interrogatory No. 6 provides as follows:

> 6. Please describe, with specificity, the allegedly disparaging remarks that you contend were made in paragraph 24 of your Counterclaim. Please

include in your answer the name(s) of the persons to whom these allegedly disparaging remarks were allegedly communicated.

ANSWER:
Defendant objects to this Request as it is vague and overly broad. Subject to and without waiving said objections, and upon information and belief, employee(s) of Plaintiff, particularly Jon Wright, has made disparaging comments about Defendant/its employees to employees of Plaintiff, including but possibly not limited to Cisi Seda, as well as medical providers within Plaintiff and 411-Pain's network, including but possibly not limited to Michigan Spine Management and/or US Rehab. Further, Defendant is continuing to gather information both for its defenses and counterclaims and will supplement discovery within a reasonable time of obtaining additional information, including but not limited to the depositions of the individuals previously noticed for deposition, as well as several medical providers within Plaintiff and 411-Pain's network and who have been identified in Defendant's initial disclosures.

[Supplemental Response to Interrogatory No. 6.]

Weisman principal Jordan Vahdat testified he believes Jon Wright said providers should send work to 411 not Weisman, but Vahdat could not identify what Wright specifically said. [Deposition of Jordan Vahdat, pp 79-80 ("Again, this is secondhand from these individuals, but just generally negative -- specially negatively about us and our firm"). Further, Vahdat admits that despite Dr. Raychouni from Michigan Spine Management and Jefferson from US Rehab telling Vahdat about the alleged disparaging comments, both continued to send Weisman work. [Deposition of Jordan Vahdat, p 80.]

Weisman argues that "[i]f the Court is considering granting Plaintiff;s (sic) motion with regards to tortious interference, it should do so AFTER the deposition of Jon Wright

occurs."[6] [Response, p 12.] However, discovery closed on August 15, 2024 and the Response was filed more than a month later. [June 28, 2024 Stipulated Order Adjourning Discovery and Expert Reports].

Again, Weisman does not challenge the balance of MCAA's substantive argument. Thus, Weisman has abandoned any contra argument to MCAA's position that Weisman has not presented evidence to support its allegations of tortious interference. Accordingly, summary disposition of Weisman's counterclaim for Tortious Interference with Business Relationships (Count IV) is granted.

E
Summary Disposition of Weisman's Counterclaim for Declaratory Relief/Voiding "Agreement" *Ab Initio* (Count V) is Not Warranted

1
The Law

"A declaratory judgment is a binding adjudication of the rights and status of litigants . . . [which] is conclusive in a subsequent action between the parties as to the matters declared . . . ." *Associated Builders & Contractors v Dep't of Consumer & Indus Servs Dir*, 472 Mich 117, 124 (2005), overruled in part on other grounds by *Lansing Sch Ed Ass'n MEA/NEA v Lansing Bd of Ed*, 487 Mich 349 (2010). MCR 2.605(A)(l) empowers the Court to issue a declaratory judgment. The Rule of Court provides:

[6] On September 9, 2024, the Court denied Weisman's motion to compel the deposition of Jon Wright because "the Defendant is not entitled to an order when the delay in taking the deposition is a self-inflicted wound." [September 9, 2024 Order.]

> In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.
>
> [MCR 2.605(A)(1).]

MCR 2.605 "incorporates the doctrines of standing, ripeness, and mootness." *Pontiac Police & Fire Prefunded Group Health and Ins Trust Bd of Trustees v Pontiac No 2*, 309 Mich App 611, 624 (2015). A litigant has standing to seek a declaratory judgment where the requirements of MCR 2.605 are satisfied. *League of Women Voters of Mich v Secretary of State*, 506 Mich 561, 586 (2020). "'The existence of an 'actual controversy' is a condition precedent to invocation of declaratory relief.'" *Shavers v Attorney General*, 402 Mich 554, 588 (1978). The Supreme Court has explained:

> An actual controversy exists when a declaratory judgment is needed to guide a party's future conduct in order to preserve that party's legal rights. Though a court is not precluded from reaching issues before actual injuries or losses have occurred, there still must be a present legal controversy, not one that is merely hypothetical or anticipated in the future.
>
> [*League of Women Voters of Mich*, 506 Mich 561, 586 (2020) (quotation marks and citations omitted.]

"Assuming the existence of a case or controversy within the subject matter of the court, the determination to make such a declaration is ordinarily a matter entrusted to the sound discretion of the court." *Allstate Ins Co v Hayes*, 442 Mich 56, 74 (1993). See also *Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 545 (2017) ("The language in

[MCR 2.605] is permissive, and the decision whether to grant declaratory relief is within the trial court's sound discretion").

2
The Allegations

In its Counterclaim, Weisman seeks declaratory relief because it alleges the Agreement is illegal and unenforceable:

> 28. In its Complaint, Plaintiff urges the Court to, among other things, enforce the contract between the parties; however, and for the reasons set forth above, enforcement of the contract would require Defendant to violate the Michigan Rules of Professional Conduct's prohibition against attorneys profiting from solicited claims.
>
> 29. Because the performance of the Contract/Agreement is in itself unethical because the referrals are unethical/solicited claims, the contract is unenforceable.
>
> 30. Because the referrals of Plaintiff are in violation of Michigan Law, performance of the Contract/Agreement is also in violation of Michigan Law, therefore, the Court cannot enforce the contract; rather, the Court is required to void the contract as against both public policy and law.
>
> 31. Defendant's reputation is being continually harmed by its association with Plaintiff, as well as Plaintiff bringing this frivolous lawsuit.
>
> 32. Pursuant to MCL 2.605, Plaintiff is entitled to declaratory relief as further set forth below.
>
> [Counterclaim.]

3
Analysis

"Referral agreements are a proper subject matter for contracts—that much is shown by the existence of MRPC 1.5(e), which authorizes contracts on this subject.

Accordingly, the subject matter of the contract is not illegal or improper[.]" *Law Offices of Jeffrey Sherbow, PC v Fieger & Fieger, PC*, 507 Mich 272, 305 (2021). MRPC 1.5(e) provides that "[a] division of a fee between lawyers who are not in the same firm may be made only if: (1) the client is advised of and does not object to the participation of all the lawyers involved; and (2) the total fee is reasonable." Under the Agreement, Weisman agreed to offer a client retainer agreement (Attachment A to the Agreement) for any referred matters. Weisman's Client Retainer Agreement provides, in part:

> 9. As you know, Motor City Accident Attorneys, PLLC (MCAA) referred you to the firm to represent you and that MCAA will assist the firm in prosecuting your case. It is customary when one attorney refers a client to another attorney in legal matters and/or assists in prosecuting a case such as yours, for the representing attorney to share any fee that results from the representation with the referring attorney. The ethics rules governing lawyers encourage lawyers to explain to a client, in writing, the financial aspects of the referral fee, and the rules require that the client consent to the referral fee. We have agreed that the firms fee will consist of 33 1/3% (one-third) of all sums obtained on your behalf in this matter either though trial, settlement, or otherwise, after deduction of the out of pocket costs incurred in pursuing this matter. The firm will share a percentage of the fee with MCAA. Sharing part of the fee with MCAA will not increase the fee you have agreed to pay to the firm. MCAA will be paid strictly out of the firm's portion of the fee.
> **BY MY SIGNATURE BELOW, I ACKNOWLEDGE I HAVE READ THIS AGREEMENT IN ITS ENTIRETY AND AGREE TO ITS TERMS AND CONDITIONS[.]**
>
> [Contingent Fee Agreement.]

Jordan Vahdat claims Weisman always had clients and providers sign retainer agreement on claims referred by MCAA. [Deposition of Jordan Vahdat, p 101.]

Here, Weisman bears the burden of proving the Agreement is unenforceable. *Sherbow*, 507 Mich at 305 ("a plaintiff carries the ultimate burden of persuasion and must prove the elements of his or her claim[.]") Although Weisman's Response is less than a model of clarity, there is a least some evidence that supports its argument that the Agreement violates public policy. Credibility is an issue that must be submitted to the trier of fact. *White v Taylor Distributing Company, Inc*, 275 Mich App 615, 625 (2007) ("courts may not resolve factual disputes or determine credibility in ruling on a summary disposition motion") (citations omitted). In short, material facts exist as to the enforceability of the Agreement. Accordingly, summary disposition of Weisman's counterclaim for Declaratory Relief/Voiding "Agreement" Ab Initio (Count V) is denied.

ORDER

In light of the foregoing Opinion, Defendant/Counter-Plaintiff's Motion for Summary Disposition to Declare the Agreement Void as Unlawful, Unethical, and Against Public Policy and for Sanctions is DENIED and Plaintiff's Motion for Partial Summary Disposition is GRANTED, IN PART.

Vahdat Weisman, PLC's counterclaims for Fraud/Misrepresentation (Count I), Breach of Contract/Illegal Contract (Count II) and Tortious Interference with Business Relationships (Count IV) are dismissed.

All other relief is denied.

/s/ Michael Warren

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HON. MICHAEL WARREN
CIRCUIT COURT JUDGE