

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

**ROSHELLE BROCKMAN,**

**Plaintiff,**

**v**

**Case No. 24-206668-CB  
Hon. Michael Warren**

**MVC MSO, LLC,  
d/b/a Metro Vein Centers, and  
ASHLEY DeSANTIS,**

**Defendants.**

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**OPINION AND ORDER REGARDING DEFENDANTS'  
MOTION FOR PARTIAL SUMMARY DISPOSITION**

**At a session of said Court, held in the  
County of Oakland, State of Michigan  
November 13, 2024**

**PRESENT: HON. MICHAEL WARREN**

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**OPINION**

**I  
Overview**

The claims in this matter arise out of Roshelle Brockman's employment with MVC MSO, LLC ("MVC"), which ended with her termination in January 2024. Brockman was a Physician Liaison business development representative and, beginning in early 2021, Ashley DeSantis was Brockman's supervisor. Brockman alleges she was wrongfully terminated after complaining about not being paid her full commissions.

Before the Court is the Defendants' Motion for Partial Summary Disposition as to Counts III, IV and V under MCR 2.116(C)(4) and MCR 2.116(C)(8). Oral argument is dispensed as it would not assist the Court in its decision-making process.<sup>1</sup>

At stake is whether the Defendants are entitled to summary disposition pursuant to MCR 2.116(C)(4) as to claims relating to violations of the Michigan Wages & Fringe Benefits Act (the "WFBA") because Brockman failed to exhaust her administrative remedies under the act? Because the claims made do not fall directly within WFBA, but are premised on a violation of public policy, the answer is "no" and summary disposition on this basis is denied.

Also at stake is whether the Defendants are entitled to summary disposition pursuant to MCR 2.116(C)(8) as to the claims for tortious interference (Counts IV and V)? Because the Complaint contains no allegations that DeSantis acted for her own benefit, and because she is not a third party to the alleged contract, the answer is "yes" and these counts are dismissed.

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<sup>1</sup> 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.

## II Background

Brockman began working for MVC on July 30, 2018, as a “Physician Liaison business development representative.” [Complaint, ¶ 12.] Her compensation included an annual salary, paid time off, monthly phone and car allowances, 401k retirement contributions, and commissions based upon patient referral goals. Brockman’s annual salary increased in April 2019, and her commission structure changed in August 2019. In August 2020, Brockman resigned from her position. She alleges that MVC’s CEO recruited Brockman to return in late-September or October 2020 because of her prior success in her position. [Complaint, ¶ 19.] Brockman alleges the CEO “promised her that she would be entitled to receive commissions for patient referrals to [MVC] in accordance with [MVC’s] commission program.” [Complaint, ¶ 21.] DeSantis became Brockman’s supervisor in early 2021. According to Brockman, she once again excelled in her position, and MVC’s revenues increased because of her efforts. Brockman alleges that in 2023, DeSantis refused to approve commissions for which Brockman was eligible, causing a reduction in her compensation. [Complaint, ¶ 28.] Brockman alleges that she complained on multiple occasions to DeSantis about “unjustified and retroactive changes made by Ms. DeSantis’s (*sic*) to criteria determinative of Ms. Brockman’s eligibility for commission payments due to Ms. Brockman for certain patient referrals that she had procured for [MVC].” [Complaint, ¶ 29.]

Brockman complained in writing on January 4, 2024 (in an employee survey) and January 18, 2024 (in a self-evaluation form) about the failure to pay commissions and DeSantis's refusal to approve commissions. On January 25, 2024, Brockman was terminated and was told the company had eliminated her position. Brockman alleges that she was terminated because she continued to complain about DeSantis's refusal to pay commissions. [Complaint, ¶ 39.] MVC argues that Brockman's employment was at-will and she was terminated for valid non-pretextual reasons. [Answer, Affirmative Defense 2.]

### **III Standard of Review**

A motion for summary disposition pursuant to MCR 2.116(C)(4) tests the court's jurisdiction over the subject matter. "When [re]viewing a motion under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact." *Cork v Applebee's of Mich, Inc*, 239 Mich App 311, 315 (2000). A genuine issue of material fact exists if reasonable minds could differ on the issue. *Johnson v Detroit Edison Co*, 288 Mich App 688, 695 (2010).

A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, not whether the complaint can be factually supported. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160 (2019); *Pawlak v Redox Corp*, 182

Mich App 758, 763 (1990). A motion for summary disposition based on the failure to state a claim upon which relief may be granted is to be decided on the pleadings alone. *Bailey v Schaaf*, 494 Mich 595, 603 (2013); *Parkhurst Homes, Inc v McLaughlin*, 187 Mich App 357, 360 (1991).

“All well-pleaded factual allegations are accepted as a true and construed in a light most favorable to the nonmovant.” *Maiden v Rozwood*, 461 Mich 109, 119 (1999); *Wade v Dep’t of Corrections*, 439 Mich 158, 162 (1992). Summary disposition is proper when the claim is so clearly unenforceable as a matter of law that no factual development can justify a right to recovery. *Parkhurst Homes*, 187 Mich App at 360; *Spiek v Dep’t of Transportation*, 456 Mich 331, 337 (1998).

#### IV Summary Disposition in Defendants’ Favor as to Count III is not Warranted

##### A Allegations

Brockman makes the following allegations relating to violation of public policy against Defendants:

61. An employee’s right to be fully paid her wages, including but not limited to earnings determined by commission or other method of calculation, in the time frame prescribed by the Michigan Wages and Fringe Benefits Act (the "WFBA"), MCLA § 408.471, et. seq., MCLA § 408.472, in particular, is a clearly mandated public policy in the state of Michigan.

62. The WFBA, MCLA § 408.483 in particular, prohibits an employer from discharging or otherwise discriminating against an employee because of the exercise by the employee on behalf of an employee or others of any right afforded by the WFBA.

63. Although the WFBA contains the aforementioned anti-retaliation provision, it does not prescribe an administrative remedy for acts of retaliatory discharge against an employee who engaged in conduct protected by the WFBA on her own behalf. *Reo v. Lane Bryant, Inc.*, 211 Mich App 364 (1995).

64. Plaintiff engaged in activity protected by the WFBA during the period between the Summer, 2023, and January 25, 2024, when she complained on multiple occasions to her supervisor, Ms. DeSantis, about Ms. DeSantis's unjustifiable refusal to approve commission payments due to Plaintiff for certain patient referrals that she had procured for Metro Vein Centers and about unjustified and retroactive changes made by Ms DeSantis's to criteria determinative of Plaintiffs eligibility for commission payments due to her for certain patient referrals that she had procured for Metro Vein Centers.

65. Defendants through their representatives illegally, maliciously, and wrongfully conspired with each other with the intent to and for the illegal purpose of retaliating against Plaintiff because of her exercise of rights protected by the WFBA and Michigan public policy when they:

A. Terminated Plaintiffs employment on January 25, 2024, without cause and in breach of the promise made to her by Mr. Ivanov because she complained since the Summer, 2023, about Ms. DeSantis's unjustifiable refusal to approve commission payments due to Ms. Brockman for certain patient referrals that she had procured for Metro Vein Centers and about unjustified and retroactive changes made by Ms. DeSantis's to criteria determinative of Ms. Brockman's eligibility for commission payments due to Ms. Brockman for certain patient referrals that she had procured for Metro Vein Centers.

66. The retaliatory practices at issue were intentional and willful and were committed with malice or with reckless indifference to Plaintiffs rights.

67. As a direct and proximate result of Defendants' violations of the WFBA and Michigan public policy, Plaintiff has sustained pecuniary damages that include, but are not limited to: lost salary, bonuses, commissions, and 401 K contributions; the value of and costs to replace other benefits; loss of past, present and future earnings and earning capacity; and lost interest and

investment earnings on these amounts, and she has suffered mental and emotional distress, anguish, and anxiety, humiliation and embarrassment; lost the enjoyment of the ordinary pleasures of everyday life; and lost the ability to pursue gainful employment of choice.

[Complaint, pp. 13-14.]

## **B Law**

Generally, employment in Michigan is at the will of either party and the employer/employee relationship may be terminated by either party for any or no reason. *Suchodolski v Mich Consol Gas Co*, 412 Mich 692, 694-95 (1982); *Landin v Healthsource Saginaw, Inc*, 305 Mich App 519, 523 (2014). But there are three recognized public policy exceptions to the at-will employment doctrine:

(1) the employee is discharged in violation of an explicit legislative statement prohibiting discharge of employees who act in accordance with a statutory right or duty; (2) the employee is discharged for the failure or refusal to violate the law in the course of employment; or (3) the employee is discharged for exercising a right conferred by a well-established legislative enactment.

[*McNeil v Charlevoix County*, 484 Mich 69, 79 (2009) (citations omitted).]

If there is a statute that prohibits a particular adverse employment action, a party may not bring a public-policy claim for that action because the statute is the exclusive remedy. *Kimmelman v Heather Downs Mgmt Ltd*, 278 Mich App 569, 573 (2008).

## C Analysis

The Defendants argue that this Court does not have subject matter jurisdiction over Brockman's claims under the WFBA because she has not exhausted her administrative remedies, relying upon an unpublished case of *Kilpatrick v Lansing Comm'y College*, 2023 Mich App LEXIS 5961 (August 22, 2023) and *Cockels v Int'l Bus Expositions, Inc*, 159 Mich App 30 (1987).

Brockman relies on the WFBA to support her claims that her termination violated public policy. It provides in pertinent part:

An employer shall not discharge an employee or discriminate against an employee because the employee filed a complaint, instituted or caused to be instituted a proceeding under or regulated by this act, testified or is about to testify in a proceeding, or because of the exercise by the employee on behalf of an employee or others of a right afforded by this act.

[MCL 408.483(1).]

Although the section could appear on its face to be applicable and require Brockman to exhaust administrative remedies, Michigan jurisprudence holds otherwise. Under *Reo v Lane Bryant, Inc*, 211 Mich App 364 (1995), "in order to fall within the plain meaning of [Section 483(1)] an employee must be exercising a right afforded by the act on behalf of *another* employee or other person." *Id.* at 367 (emphasis in original). As the latest published opinion, the holding in *Reo* is binding upon this Court. The Court of Appeals has recently affirmed this reality in *Wilk v The State Bank*, unpublished decision

per curiam of the Michigan Court of Appeals, decided August 18, 2022, \*12 (Docket No. 357707) (2022 Mich App LEXIS 4928):

This Court has concluded that this anti-retaliatory provision applies only if an employee is “exercising a right afforded by the act on behalf of *another* employee or other person. Simply exercising a right on one’s own behalf would not bring an employee within the purview of [MCL 408.483].” *Reo v Lane Bryant, Inc*, 211 Mich App 364, 367 (1995) (emphasis in original). We do not agree with this interpretation, but we are bound by it.

This Court is likewise bound by the holding in *Reo*. As such, Brockman’s claim does not fall within the purview of MCL 408.483. Accordingly, she is not required to exhaust her administrative remedies before filing suit.

Based on the foregoing, the Defendants’ Motion for Summary Disposition of Count III under MCR 2.116(C)(4) fails.

**V**  
**Summary Disposition in Defendants’ favor as to Count IV and V is Warranted**

**A**  
**Allegations**

Brockman makes the following allegations relating to her claims of DeSantis’s tortious interference with advantageous business relationship and expectancy and with employment and employment contract:

69. Ms. DeSantis was personally aware that during the period between 2021, and January 25, 2024, Plaintiff enjoyed a favorable employment and business relationship with Metro Vein Centers.

70. Ms. DeSantis knew that Plaintiff had reason to be confident that her favorable employment and business relationship with Metro Vein Centers would continue indefinitely and at least until she chose to voluntarily terminate or retire from her Metro Vein Centers employment.

71. Ms. DeSantis knew that Plaintiff annually earned a substantial salary, commissions, and bonuses and received health care, retirement, and other fringe benefits from Metro Vein Centers because of her favorable employment and business relationship with Metro Vein Centers.

72. Ms. DeSantis intentionally and tortiously interfered with Plaintiff's advantageous employment and business relationship with Metro Vein Centers when on January 25, 2024, she terminated Plaintiff's employment without cause and in breach of the promises made to her by Mr. Ivanov because she complained since the Summer, 2023, about Ms. DeSantis's unjustifiable refusal to approve commission payments due to Plaintiff for certain patient referrals that she had procured for Metro Vein Centers and about unjustified and retroactive changes made by Ms. DeSantis's to criteria determinative of Plaintiff's eligibility for commission payments due to Plaintiff for certain patient referrals that she had procured for Metro Vein Centers.

73. As a direct and proximate result of Defendants' violations of the WFBA and Michigan public policy, Plaintiff has sustained pecuniary damages that include, but are not limited to: lost salary, bonuses, commissions, and 401 K contributions; the value of and costs to replace other benefits; loss of past, present and future earnings and earning capacity; and lost interest and investment earnings on these amounts, and she has suffered mental and emotional distress, anguish, and anxiety, humiliation and embarrassment; lost the enjoyment of the ordinary pleasures of everyday life; and lost the ability to pursue gainful employment of choice.

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75. Plaintiff was employed by Metro Vein Centers in accordance with an express or implied employment contract which specified that:

A. She would be employed by Defendants for as long as she chose to be employed by them if she continued to effectively generate new and

continuing sources of business and patient referrals for Metro Vein Centers in Michigan; and

B. She was entitled to receive commissions for patient referrals to Metro Vein Centers in accordance with the Metro Vein Centers commission program, which provided commissions that ranged from \$50 to \$300 per patient referral depending on the number of patient referrals she had procured, achievement of patient referral goals, and the type of procedures for which the referred patients received treatment at Metro Vein Centers during a monthly commission period.

76. Ms. DeSantis was personally aware of and familiar with Plaintiff's employment contract and that during the period between 2021, and January 25, 2024, Plaintiff enjoyed a favorable employment relationship with Metro Vein Centers.

77. Ms. DeSantis knew that Plaintiff had reason to be confident that her favorable employment relationship with Metro Vein Centers would continue indefinitely and at least until she chose to voluntarily terminate or retire from Metro Vein Centers employment.

78. Ms. DeSantis knew that Plaintiff annually earned a substantial salary, commissions, and bonuses and received health care, retirement, and other fringe benefits from Metro Vein Centers because of her favorable employment relationship with Metro Vein Centers.

79. Ms. DeSantis intentionally and tortiously interfered with Plaintiff's employment contract with Metro Vein Centers when on January 25, 2024, she terminated Plaintiff's employment without cause and in breach of her employment contract because she complained since the Summer, 2023, about Ms. DeSantis's unjustifiable refusal to approve commission payments due to Plaintiff for certain patient referrals that she had procured for Metro Vein Centers and about unjustified and retroactive changes made by Ms. DeSantis's to criteria determinative of Plaintiffs eligibility for commission payments due to Plaintiff for certain patient referrals that she had procured for Metro Vein Centers.

80. As a direct and proximate result of Defendants' violations of the WFBA and Michigan public policy, Plaintiff has sustained pecuniary damages that include, but are not limited to: lost salary, bonuses, commissions, and 401 K contributions; the value of and costs to replace other benefits; loss of past, present and future earnings and earning capacity; and lost interest and investment earnings on these amounts, and she has suffered mental and

emotional distress, anguish, and anxiety, humiliation and embarrassment; lost the enjoyment of the ordinary pleasures of everyday life; and lost the ability to pursue gainful employment of choice.

[Complaint, pp. 15-16.]

## **B Law**

Tortious interference with a business relationship and tortious interference with a contract are separate claims. *Knight Enterprises, Inc v RPF Oil Co*, 299 Mich App 275, 279 (2013). “The elements of tortious interference with a contract are (1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant.” *Id.* at 280. To maintain a cause of action for tortious interference, the plaintiff must establish that the defendant was a “third party” to the contract or business relationship. *Reed v Michigan Metro Girl Scout Council*, 201 Mich App 10, 13 (1993).

“The basic elements which establish a prima facie tortious interference with a business relationship are the existence of a valid business relation (not necessarily evidenced by an enforceable contract) or expectancy; knowledge of the relationship or expectancy on the part of the interferer; an intentional interference inducing or causing a breach or termination of the relationship or expectancy; and resultant damage to the party whose relationship or expectancy has been disrupted. One is liable for commission of this tort who interferes with business relations of another, both existing and prospective, by inducing a third person not to enter into or continue a business relation

with another or by preventing a third person from continuing a business relation with another.” *Feaheny v Caldwell*, 175 Mich App 291, 301 (1989), quoting 45 Am Jur 3d, Interference, § 50, p. 322.

A subjective expectation of continued employment will not justify an expectation of termination for cause only. *Dzierwa v Michigan Oil Co*, 152 Mich App 281, 285 (1986).

### C Analysis

DeSantis argues that Brockman has failed to establish her tortious interference claims because DeSantis’s status as a co-employee means that she is not a “third party” to the alleged contract, as is required. Brockman responds by indicating that DeSantis’s status as a co-employee is a defense to the allegation and subject to discovery, making it improper for summary disposition under MCR 2.116(C)(8).

Michigan law is clear: co-employees are not liable for tortious interference with the company’s contracts unless they acted solely for their own benefit with no benefit to the corporation. *Reed v Michigan Metro Girl Scout Council*, 201 Mich App 10, 13 (1993), citing *Bradley v Philip Morris, Inc*, 194 Mich App 44, 50-51 (1991); *Feaheny v Caldwell*, 175 Mich App 291, 305-306 (1989). In *Reed*, the Executive Director and CEO allegedly persuaded the Council (her employer) not to sell to the plaintiff. Because the plaintiff had sued the Council over a real estate transaction, the employee’s motives could not be

found to be strictly personal, and there was no tortious interference. In *Bradley*, the Court of Appeals granted a judgment notwithstanding the verdict against two individual employees because they were acting on behalf of their employer, with no personal motivation or personal benefit.

In *Tash v Houston*, 74 Mich App 566 (1977), an employee alleged that she was fired by her supervisor because she refused his sexual advances. The supervisor denied the allegations and cited her poor work performance. The supervisor sought summary disposition for failure to state a claim, which was granted. The Michigan Court of Appeals held that there was a question of fact as to whether the firing was based upon the strictly personal motive of avoiding sexual harassment claims or the poor work performance. Justice Beasley issued a dissenting opinion in which he reasoned that there could be no claim of tortious interference with a contract between an employee and employer, but rather, the claim would be simply breach of contract. Justice Beasley reasoned that the defendant was exercising his power of supervision, and if he fired the employee for an improper reason, that does not alter the fact that he was acting for the common employer. For that reason, Justice Beasley found that there could be no tortious interference claim. The Michigan Court of Appeals later rejected the majority's Opinion in *Tash*, and specifically adopted the dissenting opinion. *Dzierwa v Michigan Oil Co*, 152 Mich App 281, 287 (1986). The court in *Dzierwa* reasoned that, because the employee was responsible for hiring and firing, and made the decision in his capacity as supervisor, he was the company and not a third party to the contract. *Id.*

Michigan law is clear that an employee is not a third party to a contract between a co-employee and a company by which both employees are employed. The only exception to this rule is where the employee is acting completely outside of their employment capacity. In this matter, there is no allegation whatsoever that DeSantis had personal motivations for Brockman's termination of employment. Brockman does not even allege that DeSantis did not like her, let alone that she had a purely personal motivation for firing Brockman. Without an allegation that DeSantis was acting purely outside of her capacity as an employee, the Complaint fails to state a claim for tortious interference under either theory presented because DeSantis is not a third party to the contract.

Based on the foregoing, the Defendants' Motion for Summary Disposition of Counts IV and V under MCR 2.116(C)(8) is GRANTED.

### **ORDER**

In light of the foregoing Opinion, the Defendants' Motion for Partial Summary Disposition pursuant to MCR 2.116(C)(4) as to Count III is DENIED; and

The Defendants' Motion for Partial Summary Disposition pursuant to MCR 2.116(C)(8) as to Counts IV and V is GRANTED.

ANY REQUEST TO AMEND THE COMPLAINT IN LIGHT OF THIS OPINION  
MUST BE MADE VIA A MOTION TO BE FILED NO LATER THAN DECEMBER 5, 2024,  
OR SUCH MOTION SHALL BE DEEMED ABANDONED.

/s/ Michael Warren

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**HON. MICHAEL WARREN**  
**CIRCUIT COURT JUDGE**

