



inVentiv Health Consulting, Inc. v. Equitas Life Sciences, LLC et al

2017 | Cited 0 times | D. Massachusetts | December 22, 2017

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS INVENTIV HEALTH CONSULTING, INC.,

Plaintiff, v. CIVIL ACTION NO.

17-10410-MBB EQUITAS LIFE SCIENCES, ALAN D. FRENCH, PRIYA GOGIA, SUMMER ATKINSON, JASON DEBASITIS, and DENNIS MELETICHE, Defendants.

MEMORANDUM AND ORDER RE: PLAINTIFF'S MOTION TO RE MAND OR, ALTERNATIVELY, JURISDICTIONAL DISCOVERY (DOCKET ENTRY # 17); DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM (DOCKET ENTRY # 4); DEFENDANTS'

MOTION TO TRANSFER VENUE (DOCKET ENTRY # 6)

December 22, 2017 BOWLER, U.S.M.J. Pending before this court are cross motions by the parties, plaintiff inVentiv Health Consulting, Inc. ("plaintiff") and defendants Equitas Life Sciences, LLC ("Equitas"), Alan D. French ("French"), Priya Gogia ("Gogia"), Summer Atkinson ("Atkinson"), Jason Debasitis ("Debasitis"), and Dennis Meletiche ("Meletiche") (collectively, "defendants"). Plaintiff seeks to remand this action pursuant to 28 U.S.C. § 1447(c) or, alternatively, to conduct limited jurisdictional discovery. (Docket Entry # 17). Defendants oppose the motion to remand. (Docket Entry # 20). Meletiche filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) ("Rule 12(b)(6)") (Docket Entry # 4) and French, Gogia, Atkinson, and Debasitis (collectively, "Former Employees") as

2 well as Equitas filed a motion to transfer venue pursuant to 28 U.S.C. § 1404(a). (Docket Entry # 6). After conducting a hearing on September 6, 2017, this court took the motions (Docket Entry ## 4, 6, 17) under advisement.

PROCEDURAL HISTORY On March 2, 2017, plaintiff filed a complaint in Massachusetts Superior Court Department (Middlesex County) against the Former Employees, Equitas, and Meletiche. (Docket Entry # 1-1). Plaintiff alleges that defendants engaged in a civil conspiracy to form Equitas, a company that would compete with plaintiff, "secretly take inVentiv's clients," and "misappropriate [its] trade secrets." (Docket Entry # 1-1). The complaint sets out the following claims: tortious interference with contractual relations against Equitas (Count I); tortious interference with contractual relations against French (Count II); tortious interference with advantageous business



inVentiv Health Consulting, Inc. v. Equitas Life Sciences, LLC et al

2017 | Cited 0 times | D. Massachusetts | December 22, 2017

relations against all defendants (Count III); trade secret misappropriation under the common law and Massachusetts General Laws chapter 93, section 42 (“chapter 93”) against Equitas and the Former Employees (Count IV); 1

unfair or deceptive trade practices in violation of Massachusetts General Laws chapter 93A, section 11 (“chapter 93A”), against Equitas and the

1 In the complaint, Count IV is erroneously listed as a second Count III.

3 Former Employees (Count V); 2

and civil conspiracy against all defendants (Count VI). 3

(Docket Entry # 1-1). On March 13, 2017, defendants removed this action on the basis of diversity jurisdiction pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. (Docket Entry # 1). Debasitis and Meletiche, however, defeat diversity jurisdiction because, as Massachusetts residents, they are citizens of Massachusetts. See 28 U.S.C. § 1441(b)(2). Defendants therefore contend that plaintiff fraudulently joined Debasitis and Meletiche and diversity jurisdiction is therefore proper. (Docket Entry # 1). Plaintiff moves to remand this action on the basis that defendants fail to demonstrate fraudulent joinder. (Docket Entry # 17).

FACTUAL BACKGROUND Plaintiff is incorporated in North Carolina with a principal place of business in Raleigh, North Carolina. (Docket Entry # 1- 1). Equitas is a Delaware limited liability company with a principal place of business in Cambridge, Massachusetts. (Docket Entry # 1-1). Defendants assert that Equitas’ members are not citizens of Massachusetts. 4

2 Because the complaint lists two Count IIIs, Count V is mislabeled as Count IV. 3 Because the complaint lists two Count IIIs, Count VI is mislabeled as Count V. 4 “The citizenship of a limited liability company ‘is determined by the citizenship of all of its members.’” D.B. Zwirn Special Opportunities Fund, L.P. v. Mehrotra, 661 F.3d 124, 125 (1st

4 Plaintiff provides “strategic management consulting services to biopharmaceutical and medical technology companies.” (Docket Entry # 1-1). Plaintiff’s clients are pharmaceutical and/or biotechnology companies, medical device companies, and diagnostics companies in North America, Europe, and Japan. (Docket Entry # 1-1). Plaintiff’s consulting services include:

[N]ew product planning for development-stage assets, launch planning for assets in the critical product launch window, strategy development and tactical solutions for in-line products, portfolio strategy, and organizational development. (Docket Entry # 1-1). Plaintiff also helps clients develop commercialization strategies and market development plans for new products. (Docket Entry # 1-1). Over 85% of plaintiff’s business consists of repeat clients. (Docket Entry # 1-1). Plaintiff’s employees



inVentiv Health Consulting, Inc. v. Equitas Life Sciences, LLC et al

2017 | Cited 0 times | D. Massachusetts | December 22, 2017

bear responsibility for developing and maintaining relationships with its clients. (Docket Entry # 1-1). Plaintiff invested “considerable amounts of time, money and effort” to maintain and develop goodwill with its clients. (Docket Entry # 1-1). According to the complaint, throughout the course of its business, plaintiff “developed, accumulated, maintained, and refined trade secrets and other confidential and proprietary

Cir. 2011) (quoting *Pramco, LLC ex rel. CFSC Consortium, LLC v. San Juan Bay Marina, Inc.*, 435 F.3d 51, 54 (1st Cir. 2006)).

5 information” at “great expense.” (Docket Entry # 1-1). Such trade secrets and information include:

[B]usiness plans, account plans, business policies, client proposals, client deliverables, financial plans and forecasts, research, pricing information, business forecasts, product information, expert data and reports, business strategies, statements of work, market access strategies, value propositions, client and prospect lists and information, client usage, data sources, industry and company analyses, market information and analysis, methodologies, templates, techniques, and other information relating to inVentiv, its clients, and its contractors . . . (Docket Entry # 1-1). Plaintiff protects its trade secrets and confidential and proprietary information on secure, password-protected computer systems. (Docket Entry # 1-1). Plaintiff terminates its employees’ access to such systems “immediately upon termination of employment” and requires the employees to return company property and information upon termination. (Docket Entry # 1-1). Plaintiff also requires employees to sign an employment agreement, which includes covenants regarding confidentiality, noncompete, and/or nonsolicitation. (Docket Entry # 1-1). The confidentiality covenants specifically restrict former employees from disclosing plaintiff’s confidential information. (Docket Entry # 1-1). Debasitis’ employment agreement contained a forum selection clause that states:

This Agreement shall be subject to and governed by the laws of the State of North Carolina, without regard to the conflicts of law rules of such states. All disputes

6 pertaining to this Agreement shall be decided exclusively by a state or federal court located in Wake County, North Carolina, and Employee hereby consents to personal jurisdiction of such courts. (Docket Entry # 1-1, Ex. A). French formerly served as a managing director for plaintiff. (Docket Entry # 1-1). In this role, French supervised a number of plaintiff’s employees, including other Former Employees. (Docket Entry # 1-1). While employed by plaintiff, each of the Former Employees signed an employment agreement, which included restrictive covenants regarding the “confidentiality and protection of inVentiv’s information,” customer relationships, and goodwill. (Docket Entry # 1-1, Ex. A). The employment agreements also contained noncompete covenants, which prohibited the Former Employees from “competing against inVentiv for at least one year” following termination of employment. (Docket Entry # 1-1). The confidentiality restriction prohibited the Former Employees from disclosing confidential information belonging to plaintiff, or “using such information on behalf of anyone other than inVentiv.” (Docket Entry # 1-1). From 2013 to 2016,



inVentiv Health Consulting, Inc. v. Equitas Life Sciences, LLC et al

2017 | Cited 0 times | D. Massachusetts | December 22, 2017

French served as the primary point of contact for two of plaintiff's clients ("the Clients"), with whom plaintiff had relationships prior to French's involvement. (Docket Entry # 1-1). The Clients generated "several million dollars" in revenue for plaintiff between 2013 and 2016. (Docket

7 Entry # 1-1). One of the Clients, "Client A," was plaintiff's second largest client in terms of annual revenue and, from 2014 to 2015, plaintiff's revenue from Client A significantly increased. (Docket Entry # 1-1). While employed by plaintiff, French worked on a specific project for Client A called "Project One." Meletiche was employed by Client A during the time that Client A was plaintiff's client. (Docket Entry # 1-1). In or around "the summer of 2014," French informed plaintiff's employee, Keith Kelly ("Kelly"), about a discussion or discussions with Meletiche concerning the formation of a new health economics and outcomes research company. (Docket Entry # 18-2). According to Kelly's affidavit, a health economics and outcomes research company provides companies in pharmaceutical and biotech industries with information needed to "demonstrate the value of their innovations to providers, healthcare decision makers, payers, and ultimately, stakeholders."

5 (Docket Entry # 18-2). Kelly told French that he was not interested in joining a new company, but would speak with Meletiche about the opportunity as a courtesy. (Docket Entry # 18-2). Kelly subsequently spoke to both Meletiche and French, at which time Meletiche asked Kelly if he would be interested in joining Meletiche to start a health

5 Plaintiff began offering health economics and research services in November 2015. (Docket Entry # 18-2).

8 economics and outcomes research company. (Docket Entry # 18-2). Kelly declined Meletiche's offer. (Docket Entry # 18-2). French and Meletiche incorporated Equitas more than a year later on November 3, 2015, at which time French was still employed by plaintiff. (Docket Entry # 1-1). French requested to work part time for plaintiff in November 2015, citing his desire to "devote more time to completing his doctorate." (Docket Entry # 1-1). Plaintiff approved French's request, after which French began working part time in or around February 2016. (Docket Entry # 1-1). The complaint alleges that French requested to work part time in order to devote more time to Equitas. (Docket Entry # 1-1). Equitas' application for registration, filed with the Massachusetts "Secretary of the Commonwealth Corporations Division," lists French and Meletiche as the founding members of Equitas and Equitas' focus as "consulting in the life sciences industry." (Docket Entry # 1-1, Ex. B). The domain name "equitasls.com" was created on December 3, 2015. (Docket Entry # 1-1). On December 17, 2017, Equitas applied for an H-1B Visa to allow Equitas to hire a foreign worker to fill a managing director position. (Docket Entry # 1-1). The H-1B Visa application listed Meletiche's home as Equitas' business address. (Docket Entry # 1-1). Equitas' principal place of business was

9 located in Meletiche's home as recently as February 2017. (Docket Entry # 1-1). In early 2016, French informed plaintiff that business with Client A "was winding down." (Docket Entry # 1-1).



inVentiv Health Consulting, Inc. v. Equitas Life Sciences, LLC et al

2017 | Cited 0 times | D. Massachusetts | December 22, 2017

Plaintiff subsequently experienced a corresponding decline in revenue from Client A. (Docket Entry # 1-1). Beginning in January 2016, several of plaintiff's employees, supervised by French, began submitting resignations. (Docket Entry # 1-1). Gogia resigned as of January 15, 2016, stating that she needed "to take out some time to both focus on her family and take a break to think about her career direction." (Docket Entry # 1-1). On March 22, 2016, Client A sent an email to French at his Equitas email, "adf@equitasls.com," at which time French was still employed by plaintiff. (Docket Entry # 1-1). French neither sought nor obtained authorization from plaintiff to work on behalf of Equitas or to perform work for Client A on the side. (Docket Entry # 1-1). On May 25, 2016, Equitas posted a classified advertisement seeking a managing director, which directed applicants to send applications to Meletiche's home address. (Docket Entry # 1-1). The advertisement described the managing director's role as, among other responsibilities, "[s]erv[ing] as a subject-matter expert at global prices" and market access, including "European, Asian, & Latin American" markets. (Docket Entry # 1-1). As set

10 out in the advertisement, Equitas required applicants to have a master's degree in "health policy, health care [management], public health, health econ[omics], pharmacy/biotech, bus[iness] admin[istration], or a relevant discipline" (Docket Entry # 1-1). The advertisement further required a minimum six years of management consulting experience "focusing on the pharmaceutical/biotech industry." (Docket Entry # 1-1). Atkinson resigned as of May 27, 2016, citing her desire to "enter graduate school." (Docket Entry # 1-1). Around June 21, 2016, French requested an unpaid leave of absence claiming he "was dealing with family medical issues that were causing him stress." (Docket Entry # 1-1). French's unpaid leave lasted approximately six weeks. (Docket Entry # 1-1). On June 3, 2016, Equitas amended its application for registration with the Massachusetts Secretary of the Commonwealth Corporations Division naming Kerry Seagle as Equitas' sole manager. (Docket Entry # 1-1, Ex. B). Debasitis resigned as of July 8, 2016, claiming a personal reason for "why [he] sought employment elsewhere." (Docket Entry # 1-1). French resigned as of July 25, 2016 to "focus on [his] own health and wellbeing." (Docket Entry # 1-1). In total, between January 15 and July 25, 2016, eight of plaintiff's employees resigned "citing personal reasons for their departure." (Docket Entry # 1-1).

11 The complaint asserts, upon information and belief, that French orchestrated "at least some of" plaintiff's employees' resignations and encouraged the Former Employees to work for Equitas. (Docket Entry # 1-1). None of the Former Employees informed plaintiff that they were resigning to work for Equitas and each of the Former Employees began working for Equitas after resigning. (Docket Entry # 1-1). On January 18, 2017, plaintiff received an electronic calendar invitation from Client A. (Docket Entry # 1-1). The calendar invitation was addressed to French's previous inVentiv email address, "Alan.French@inventivhealth.com." (Docket Entry # 1-1). The calendar invitation was also addressed to Atkinson at "ssa@equitasls.com" and Gogia at "pmg@equitasls.com." (Docket Entry # 1-1). On January 19, 2017, a Client A employee addressed an email to French's previous inVentiv email address and Atkinson's Equitas email address. (Docket Entry # 1-1). This second email concerned work on Project One by both Client A and Equitas. (Docket Entry # 1-1). It was this



inVentiv Health Consulting, Inc. v. Equitas Life Sciences, LLC et al

2017 | Cited 0 times | D. Massachusetts | December 22, 2017

second email, according to the complaint, that provided the first indication to plaintiff that the Former Employees were employed by Equitas and that French, Gogia, and Atkinson were working with Client A on Project One. (Docket Entry # 1-1). Plaintiff performed forensic analysis of the computers previously used by certain Former Employees. (Docket Entry # 1-

12 1). Plaintiff discovered that French accessed plaintiff's confidential information on July 23, 2016, two days prior to his resignation. (Docket Entry # 1-1). When French accessed such confidential information, he immediately inserted a USB device into the computer. (Docket Entry # 1-1). Plaintiff contends that the USB device could be used to transport a copy of confidential information elsewhere. (Docket Entry # 1-1). Based on these findings, the complaint alleges that defendants used, or are currently using, plaintiff's confidential information and goodwill in connection with operating Equitas. (Docket Entry # Docket Entry # 1-1). On January 24, 2017, plaintiff delivered demand letters to French, Gogia, and Atkinson. (Docket Entry # 1-1). The letters stated that French, Gogia, and Atkinson were working for Equitas in violation of their employment agreements with plaintiff. (Docket Entry # 1-1). The letters requested a written response by January 27, 2017. (Docket Entry # 1-1). The response from the Former Employees was to include: "a description of their work for Equitas"; "written assurance that they will honor their obligations to inVentiv and not solicit or service any clients of inVentiv – including Client A"; "written assurances that they will not solicit other employees of inVentiv to leave the company"; "written assurances that they will cease and desist from further solicitation of, or work for, inVentiv's clients,

13 including the Clients"; and "written assurances that they have returned or destroyed all confidential or proprietary information, as well as other information, that belongs to inVentiv." (Docket Entry # 1-1). French, Gogia, and Atkinson responded to the demand letters on February 16, 2017, but did not provide the requested information or the written assurances. (Docket Entry # 1-1). Two weeks later, plaintiff filed the complaint in Massachusetts Superior Court (Middlesex County). (Docket Entry # 1-1).

DISCUSSION I. Jurisdiction and Standard of Review In general, "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed" by a defendant to federal court. 28 U.S.C. § 1441. This court has original, diversity jurisdiction over state law claims where the amount in controversy exceeds \$75,000 and where there is "complete diversity among the parties." 28 U.S.C. § 1332; *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373 (1978). Where, as here, a defendant "is a citizen of the state in which [the] action is brought," 28 U.S.C. § 1441(b)(2) precludes removal. Plaintiff, however, "may not thwart the exercise of a defendant's right of removal by fraudulently joining a non-diverse defendant who has no real connection to the case." In re

14 Fresenius Granuflo/Naturalyte Dialysate Prods. Liability Litig., 76 F. Supp. 3d 321, 322 (D. Mass. 2015). As explained by the First Circuit:



inVentiv Health Consulting, Inc. v. Equitas Life Sciences, LLC et al

2017 | Cited 0 times | D. Massachusetts | December 22, 2017

[U]nder the doctrine of fraudulent joinder, removal is not defeated by the joinder of a non-diverse defendant where there is no reasonable possibility that the state's highest court would find the complaint states a cause of action upon which relief may be granted. *Universal Truck & Equip Co., Inc. v. Southworth-Milton, Inc.*, 765 F.3d 103, 108 (1st Cir. 2014). Stated differently, "if plaintiff fails to state a cause of action against a resident defendant and the failure is obvious according to the settled rules of the state, the joinder of the resident defendant is fraudulent." In re: *Stryker Lift v. 40 Femoral Head Products Liability Litigation*, 2017 WL 3815937, at *1 (D. Mass. Aug. 31, 2017) (quoting *Universal Truck*, 765 F.3d at 108 n.3). More specifically, defendants must establish:

[B]y clear and convincing evidence either that there has been outright fraud committed in the plaintiff's pleadings, or that there is no possibility, based on the pleadings, that the plaintiff can state a cause of action against the non-diverse defendant in state court. *Suburban Realty Co., Inc. v. Cuna Mutual Group & Cumis*, No. 16-40073-TSH, 2017 WL 1164491 at *1 (D. Mass. 2017) (citing *Mills v. Allegiance Healthcare Corp.*, 178 F. Supp. 2d 1, 5 (D. Mass. 2001) (adopting Second Circuit test articulated in *Whitaker v. Am. Telecasting, Inc.*, 261 F.3d 196, 207 (2nd Cir. 2001), and quoting

15 *Whitaker*); see In re *New Eng. Mut. Life Ins. Co. Sales Practices Litigation*, 324 F. Supp. 2d 288, 298 (D. Mass. 2004) (recognizing use of *Whitaker* by judges in this district); see also *Universal Truck*, 765 F.3d at 108. The doctrine of fraudulent joinder requires this court to consider whether "there is no reasonable possibility that the state's highest court would find that the complaint states a cause of action upon which relief may be granted against the non-diverse defendant." In re: *Stryker Lift*, 2017 WL 3815937, at *1; see also *Universal Truck*, 765 F.3d at 108. The linchpin of this analysis is whether "joinder of the non-diverse party has a reasonable basis in law and fact." *Mills*, 178 F. Supp. 2d at 4. Stated another way, a non-diverse party is fraudulently joined "if existing state law squarely precludes a plaintiff's claim against a non-diverse defendant, and such deficiency is 'apparent from the face of the original complaint.'" *Rosbeck v. Corin Group, PLC*, 140 F. Supp. 3d 197, 202 (D. Mass. 2015). Therefore, a defendant's burden to prove fraudulent joinder is often cited as "heavy." *Id.*; see, e.g., *Pampillonia v. RJR Nabisco, Inc.*, 138 F.3d 459, 461 (2d Cir. 1998) ("defendant seeking removal bears a heavy burden of proving fraudulent joinder"); *Phillips v. Medtronic, Inc.*, 754 F. Supp. 2d 211, 217 (D. Mass. 2010). A fraudulent joinder analysis is similar to a Rule 12(b)(6) analysis, but is "more lenient than that for a motion to

16 dismiss." *Rosbeck*, 140 F. Supp. 3d at 203 (citing *Mayes v. Rapoport*, 198 F.3d 457, 466 n.16 (4th Cir. 1999)). When assessing a claim of fraudulent joinder, the court "is not bound by the allegations in the complaint, and may consider affidavits and other materials that bear on the question of whether there is a reasonable basis for joinder of a defendant." *Suburban Realty Co.*, 2017 WL 1164491, at *2; *Mills* 178 F. Supp. 2d at 6; see also *Badon v. RJR Nabisco Inc.*, 236 F.3d 282, 285 n.3 (5th Cir. 2000) (considering "undisputed summary judgment type evidence" when determining whether any reasonable possibility of recovery under state law existed); *Antony v. Duty Free Americas, Inc.*, 705 F. Supp. 2d 112, 115 (D. Mass. 2010) ("fraudulent joinder doctrine provides an exception to the general rule prohibiting courts from considering evidence extrinsic to the facts in the complaint") (citing



inVentiv Health Consulting, Inc. v. Equitas Life Sciences, LLC et al

2017 | Cited 0 times | D. Massachusetts | December 22, 2017

Mills, 178 F. Supp. 2d at 6). Furthermore, “in determining whether a plaintiff has the possibility of recovery against a defendant, the court is to resolve all disputed issues of fact and ambiguities in favor of the non-moving party.” Suburban Realty Co., No. 16-40073-TSH, 2017 WL 1164491, at *2 (citing Fabiano Shoe Co., Inc. v. Black Diamond Equipment, Ltd., 41 F. Supp. 2d 70, 71-72 (D. Mass. 1999)). II. Plaintiff's Arguments Plaintiff contends that this case must be remanded pursuant to 28 U.S.C. § 1447(c) because diversity of citizenship does not

17 lie between the parties and plaintiff only asserted Massachusetts statutory and common law claims. (Docket Entry # 17). Defendants counter that the complaint fails to allege sufficient facts to state any claim for relief against Meletiche and, therefore, plaintiff fraudulently joined Meletiche and cannot rely on his joinder to defeat diversity jurisdiction. (Docket Entry # 20). Defendants further maintain that the forum selection clause in Debasitis' employment agreement dictates that plaintiff may only bring claims against Debasitis in North Carolina and, accordingly, plaintiff fraudulently joined Debasitis. (Docket Entry # 20). A. Tortious Interference with Business Relations against Meletiche Plaintiff asserts a tortious interference with advantageous business relations claim and a civil conspiracy claim against Meletiche. (Docket Entry # 18). With respect to the tortious interference claim, defendants initially argue that plaintiff fails to allege that Meletiche ever “personally engaged in any business contact with any of [p]laintiff's customers on behalf of Equitas.” (Docket Entry # 20) (emphasis in original). Defendants note that plaintiff did not list Meletiche as one of the Former Employees and did not include Meletiche in the allegation that Equitas and the Former Employees failed to comply with their “contractual, common law, and statutory

18 obligations.” (Docket Entry # 20) (quoting Docket Entry # 1-1, ¶ 85). Plaintiff counters that the complaint “alleges sufficient facts to support a claim for tortious interference against Meletiche.” (Docket Entry # 24). Plaintiff points out that it had a “beneficial business relationship with Client A,” Meletiche knew of the relationship, and he “misappropriated inVentiv's confidential information,” and currently uses such confidential information to service plaintiff's former clients. (Docket Entry # 24). Plaintiff further contends that Meletiche, along with the other defendants, used plaintiff's relationships to divert business away from plaintiff, which constitutes intentional interference with “advantageous business relationships.” (Docket Entry # 24). Under the doctrine of fraudulent joinder, “removal is not defeated by the joinder of a non-diverse defendant where there is no reasonable possibility that the state's highest court would find that the complaint states a cause of action upon which relief may be granted against the non-diverse defendant.” In re: Stryker, 2017 WL 3815937, at * 1 (quoting Universal Trucking Co., 765 F.3d at 108). In analyzing whether there is a “reasonable possibility” that the Massachusetts Supreme Judicial Court would find that the complaint states a cause of action, it is necessary to examine the required elements of an interference

19 with advantageous business relations claim. Those elements are as follows:

“(1) [T]he plaintiff has a business relationship for economic benefit with a third party, (2) the defendants knew of that relationship, (3) the defendant interfered with that relationship through



inVentiv Health Consulting, Inc. v. Equitas Life Sciences, LLC et al

2017 | Cited 0 times | D. Massachusetts | December 22, 2017

improper motive or means, and (4) the plaintiff's loss of the advantage resulted directly from the defendants' conduct." *Brewster Wallcovering Co. v. Blue Mountain Wallcoverings, Inc.*, 864 N.E. 2d 518, 541 (Mass. App. Ct. 2007) (quoting *McName v. Jenkins*, 754 N.E. 2d 740, 745 (Mass. App. Ct. 2001)); see *Swanset Development Corp. v. City of Taunton*, 668 N.E. 2d 333, 338 (Mass. 1996) (citing *United Truck Leasing Corp. v. Geltman*, 551 N.E. 2d 20 (Mass. 1990)). Under the first element, a defendant's interference must be with an advantageous business relationship between plaintiff and a third party. See *Cavicchi v. Koski*, 855 N.E. 2d 1137, 1141 (Mass. App. Ct. 2006); *Guest-Tek Interactive Entertainment Inc. v. Pullen*, 731 F. Supp. 2d at 80, 86 (D. Mass. 2010). Thus, to satisfy the first element, "the plaintiff must prove that he had a business relationship for economic benefit with a third party." *Cavicchi v. Koski*, 855 N.E. 2d at 1141 (setting out elements of a "claim for interference with advantageous business relations"); *Guest-Tek Interactive Entertainment Inc. v. Pullen*, 731 F. Supp. 2d at 86. Here, plaintiff sufficiently demonstrates a "relationship for economic benefit with a third party,"

20 specifically with the Clients, including Client A. *Cavicchi v. Koski*, 855 N.E.2d at 1141; (Docket Entry # 1-1). The complaint states that plaintiff's economic benefit from the Clients, specifically Client A, constituted "several million dollars in revenue for inVentiv." (Docket Entry # 1-1). With respect to the second element, the complaint sufficiently alleges that Meletiche knew of plaintiff's relationship with the Clients, including Client A, because Meletiche was employed by Client A at the same time Client A conducted business with plaintiff. (Docket Entry # 1-1).

Regarding the third element of an "improper motive or means," the improper conduct must extend "beyond the interference itself." *Cavicchi v. Koski*, 855 N.E. 2d at 1142; accord *United Truck Leasing Corp. v. Geltman*, 551 N.E. 2d at 23- 24; *James L. Minter Ins. Agency, Inc. v. Ohio Indemnity Co.*, 112 F.3d 1240, 1250 (1st Cir. 1997) (plaintiff "must demonstrate wrongfulness beyond the interference itself"). Violation of "a statute or a rule of common law" or use of threats, misrepresentations of facts or "other improper means" provides a sufficient improper motive or means. *United Truck Leasing Corp. v. Geltman*, 551 N.E. 2d at 24; *Bhammer v. Loomis, Sayles & Co., Inc.*, No. 15-14213-FDS, 2016 WL 3892371, at *7 (D. Mass. July 14, 2016) (finding it "well-established" that "a

21 misrepresentation is an improper means of interference") (citing *Draghetti v. Chmielewski*, 626 N.E.2d 862, 869 (Mass. 1994)). Further, the standard considers the use of "improper motive or improper means; the plaintiff need not prove both." *Kurker v. Hill*, 689 N.E. 2d 833, 838 (Mass. App. Ct. 1998). A "legitimate advancement of [defendant's] own economic interest" does not constitute an improper motive. *Pembroke Country Club, Inc. v. Regency Savings Bank, F.S.B.*, 815 N.E. 2d 241, 246 (Mass. App. Ct. 2004); see *United Truck Leasing Corp v. Geltman*, 551 N.E. 2d at 24 (defendant's motives "to benefit his customers and himself financially" are insufficient); see, e.g., *TalentBurst Inc. v. Collabera, Inc.*, 567 F. Supp. 2d 261, 269 (D. Mass. 2008) ("offering of a job to a competitor's at-will employee, including one that provides better pay and benefits, does not as a matter of law constitute improper means").



inVentiv Health Consulting, Inc. v. Equitas Life Sciences, LLC et al

2017 | Cited 0 times | D. Massachusetts | December 22, 2017

Courts, however, inquire whether the defendant “interfered with a restrictive covenant governing a competitor’s employee” and such interference “creates a presumption that [the defendant] had an improper motive.” *TalentBurst Inc.*, 567 F. Supp. 2d at 269. For example, in the context of a motion to dismiss, an improper motive exists “where plaintiff has established that it had a non-competition agreement with [its former employee], and that the defendants . . . solicited [the employee] to leave the plaintiff to accept employment with [the

22 defendant], it has stated a sufficient cause of action to survive a motion to dismiss.” *Id.* at 269 (quoting *Cambridge Internet Sols. Inc. v. Avicon Group*, No. 99-1841, 1999 WL 959673, at *3 (Mass. Sept. 21, 1999)) (brackets in original). Although *TalentBurst* addressed a tortious interference with contractual relations claim rather than a tortious interference with an advantageous business relations claim, the elements of the two torts are similar. 6

See *Coyle v. Kittredge Ins. Agency, Inc.*, No. 12-40014-TSH, 2014 WL 1330859, at *9 (D. Mass. Mar. 28, 2014) (noting that “substantive elements of tortious interference with contractual relationships and tortious interference with advantageous business relationships are substantially similar”) (citing *Cavicchi v. Koski*, 855 N.E.2d at 1141). Notably, “The same knowledge and improper means that are required to prove a claim for interference with an existing contract are also required to prove a claim for interference with a prospective or advantageous business relationship.” *Holmes Products Corp. v. Dana Lighting, Inc.*, 958 F. Supp. 27, 32 (D. Mass. 1997) (collecting cases). Defendants’ argument that Meletiche did not contact any of plaintiff’s customers is misguided in light of the facts and

6 “An ‘advantageous relation[,]’” however, “is a ‘contemplated contract’ or prospective business relationship.” *Buster v. George W. Moore, Inc.*, 783 N.E.2d 399, 416 (Mass. 2003).

23 reasonable inferences in the complaint. Meletiche founded a competing company and operated it out of his home. (Docket Entry # 1-1). Drawing reasonable inferences, see *In re: Stryker*, 2017 WL 3815937, at *1, he was intimately familiar with Equitas and its operations. Indeed, Meletiche’s home served as the principle business address for Equitas. Meletiche spoke to Kelly, plaintiff’s employee, about joining a new company covering the same business as plaintiff, i.e., health economics and research, albeit in the summer of 2014. (Docket Entry # 18- 2). French, a co-founder of Equitas along with Meletiche, accessed and likely copied plaintiff’s confidential information shortly before French resigned. The Former Employees left plaintiff to work at Equitas. French, plaintiff’s managing director prior to his resignation, likely knew about the restrictive covenants in the Former Employee’s employment agreements due, in part, to the pretextual reasons the Former Employees gave for their resignations. Meletiche worked for Client A when it was one of plaintiff’s major clients. French communicated with Client A through his Equitas email address and Client A worked with Equitas on Project One. A reasonable possibility exists that Meletiche improperly solicited one or more of the Former Employees to leave plaintiff in order to work for Equitas in violation of their noncompetition agreements. Meletiche’s reasonably inferred intimate familiarity



inVentiv Health Consulting, Inc. v. Equitas Life Sciences, LLC et al

2017 | Cited 0 times | D. Massachusetts | December 22, 2017

24 with Equitas and his relationship with French render it more than a reasonable possibility that French informed Meletiche about the noncompete restriction in one or more of the Former Employee's employment agreements. The reasonable possibility of an improper motive on the part of Meletiche is further bolstered by the Kelly affidavit, which demonstrates that Meletiche spoke to at least one of plaintiff's employees about the prospect of leaving plaintiff to join a new company covering the same business as plaintiff. (Docket Entry # 18-2). With respect to the fourth element, the complaint states that plaintiff experienced a decline in its advantageous and economically beneficial relationship with Client A, and other clients, as a result of Meletiche's and the other defendants' actions. (Docket Entry # 1-1). Hence, although defendants are correct that the complaint did not include Meletiche as a "Former Employee" or in certain allegations of wrongdoing, the complaint and the record as a whole presents a reasonable possibility of a tortious interference with business relations claim against Meletiche. Based on the facts set out in the factual background, there is a "reasonable possibility that the state's highest court would find that the complaint states a cause of action" for tortious interference with business relations against Meletiche. In re: Stryker, 2017 WL 3815937, at *1. Indeed, defendants fail to show

25 no reasonable possibility not only by clear and convincing evidence, but also by a lesser preponderance of the evidence standard. 2. Civil Conspiracy by Meletiche Plaintiff also alleges that Meletiche committed civil conspiracy because he was aware of plaintiff's restrictive covenants by virtue of his "long-standing working relationship with French" and his role, together with French, in forming Equitas. (Docket Entry # 18). Plaintiff submits that Meletiche used, or at least knew the other defendants were using, plaintiff's confidential information to service plaintiff's clients, namely Client A. (Docket Entry # 18). Furthermore, plaintiff argues that Meletiche provided "substantial assistance in furthering the scheme" because "he founded Equitas, hired the Former Employees, and runs Equitas from his home." (Docket Entry # 18). Defendants dispute such allegations, claiming that plaintiff was required to, and failed, to show "substantial assistance, with the knowledge that such assistance is contributing to a common tortious plan." (Docket Entry # 20); (citing Kurker v. Hill, 689 N.E. 2d 833 (Mass. App. Ct. 1998)). Defendants also assert that plaintiff did not allege that Meletiche accessed "[p]laintiff's purportedly confidential information, used such information, took any steps to attract

26 clients to Equitas or even encouraged any of the other Defendants to do so." (Docket Entry # 20). Defendants maintain that, without such allegations, "[p]laintiff cannot state a claim of civil conspiracy against Mr. Meletiche, individually." (Docket Entry # 20). Defendants further argue that Kelly's affidavit undercuts plaintiff's civil conspiracy claim because it depicts conduct in 2014. (Docket Entry # 20). Defendants contend that plaintiff "fails to explain how any action Mr. Meletiche undertook in 2014 can possibly shed any substantive light on actions he allegedly took two years later." (Docket Entry # 20). Defendants note that, while Kelly "declined Mr. Meletiche's entreaty," Kelly's affidavit does not show that Kelly mentioned any restrictive covenants to Meletiche in 2014 "as a reason for declining the opportunity." (Docket Entry # 20). To establish a civil conspiracy, plaintiff must "show an underlying tortious act in which two or more persons acted in concert and in



inVentiv Health Consulting, Inc. v. Equitas Life Sciences, LLC et al

2017 | Cited 0 times | D. Massachusetts | December 22, 2017

furtherance of a common design or agreement.” *Bartle v. Berry*, 953 N.E. 2d 243, 253 (Mass. App. Ct. 2011); accord *Orellana v. Deutsche Bank National Trust Co.*, No. 12– 11982–NMG, 2013 WL 5348596, at *11 (D. Mass. Aug. 30, 2013) (“[t]he concerted action theory of civil conspiracy requires an underlying tort”); see *Aetna Casualty Surety Co. v. P & B Autobody*, 43 F.3d 1546, 1565 (1st Cir. 1994). This “form of

27 civil conspiracy” imposes liability “on one individual for the tort of another.” *Kurker v. Hill*, 689 N.E. 2d 833, 836 (Mass. App. Ct. 1998); see *Grant v. John Hancock Mut. Life Ins. Co.*, 183 F. Supp. 2d 344, 363 (D. Mass. 2002) (“defendant may be held liable for actions done by others pursuant to a common design or with the defendant’s substantial assistance or encouragement”); see also *Metropolitan Property and Casualty Ins. Co. v. Boston Regional Physical Therapy, Inc.*, 550 F. Supp. 2d 199, 203 (D. Mass. 2008); *Massachusetts Laborer’s Health & Welfare Fund v. Philip Morris, Inc.*, 62 F. Supp. 2d 236, 244 (D. Mass. 1999) (“a defendant may be held liable for actions done by others pursuant to a common design or with the defendant’s substantial assistance or encouragement”). Furthermore, under the doctrine of fraudulent joinder, “all disputed questions of fact and any ambiguities in the current controlling substantive law” must be resolved in plaintiff’s favor. In re: *Stryker*, 2017 WL 3815937, at *1 (quoting *Phillips v. Medtronic, Inc.*, 754 F. Supp. 2d at 215); see also *Suburban Realty Co.*, 2017 WL 1164491, at *2 (citing *Fabiano Shoe Co.*, 41 F. Supp. 2d at 71– 72). With respect to defendants’ allegation that Meletiche did not provide any “substantial assistance” in assisting with a “tortious plan,” as established above, there is a reasonable possibility that Meletiche engaged in tortious interference with

28 plaintiff’s advantageous business relations and such tortious interference satisfies the “underlying tort” requirement for civil conspiracy. See *Orellana*, 2013 WL 5348596, at *11 (“[t]he concerted action theory of civil conspiracy requires an underlying tort”). More to the point, the complaint reflects a reasonable possibility that Meletiche engaged in substantial assistance in furtherance of a common design. Meletiche incorporated Equitas together with French on November 3, 2015 and, together with French, spoke to at least one of plaintiff’s employees, Kelly, about leaving plaintiff to join a new company in the summer of 2014. (Docket Entry # 18-2). Meletiche worked for Client A while Client A was serviced by French in his capacity as a managing director for plaintiff. (Docket Entry # 1-1). Although defendants argue that Meletiche’s actions in 2014 cannot shed light on Meletiche’s actions two years later, as previously stated and drawing reasonable inferences from the facts in the complaint, Meletiche was intimately familiar with Equitas and communicated with French, who likely knew about the restrictive covenants. Together, these facts demonstrate a “reasonable possibility” that Meletiche acted in concert with French and/or the Former Employees in furtherance of a common design. Furthermore, any ambiguities with respect to the alleged facts in the complaint regarding civil conspiracy, are resolved

29 in favor of plaintiff. See In re: *Stryker*, 2017 WL 3815937, at * 1. In sum, based on the facts in the complaint, there is a reasonable possibility that the Massachusetts Supreme Judicial Court would find that the “complaint states a cause of action upon which relief may be granted against the



inVentiv Health Consulting, Inc. v. Equitas Life Sciences, LLC et al

2017 | Cited 0 times | D. Massachusetts | December 22, 2017

non-diverse defendant,” Meletiche, both as to the interference with business relations claim and the civil conspiracy claim. In re: Stryker, 2017 WL 3815937 at *1. In light of the foregoing, Meletiche, is properly joined and diversity jurisdiction is therefore lacking. See 28 U.S.C. § 1441(b)(2). It is therefore not necessary to address the reasonable possibility vis-à-vis the claims against Debasitis. Furthermore, because a remand is required and this court lacks diversity jurisdiction, this court declines to address either the motion to dismiss (Docket Entry # 4) or the motion to transfer venue (Docket Entry # 6).

CONCLUSION

In accordance with the foregoing discussion, the motion to remand (Docket Entry # 17) is **ALLOWED** and this case is **REMANDED** to the Massachusetts Superior Court Department (Middlesex County). In light of the remand and lack of diversity jurisdiction, this court declines to address either the motion to

30 dismiss (Docket Entry # 4) or the motion to transfer venue (Docket Entry # 6).

/s/ Marianne B. Bowler

MARIANNE B. BOWLER United States Magistrate Judge

