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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0232-10T4

PEDRO Q. DAYRIT, M.D. and
SHAUKAT M. QURESHI, M.D.,

Plaintiffs-Appellants,

v.

THE MEMORIAL HOSPITAL OF SALEM,
COMMUNITY HEALTH SYSTEMS, INC.,
GARY D. NEWSOME, and ANGELA M.
MARCHI,

Defendants-Respondents.

Argued: February 16, 2012 - Decided: June 5, 2012

Before Judges Axelrad, Sapp-Peterson and Ostrer.

On appeal from the Superior Court of New Jersey, Law Division, Salem County, Docket No. L-79-07.

Cheryl L. Cooper argued the cause for appellants (Oandasan & Cooper, PC, attorneys; Ms. Cooper, on the brief).

Matthew T. Newcomer argued the cause for respondents (Post & Schell, PC, attorneys; John N. Joseph, of the PA bar, admitted pro hac vice and Mr. Newcomer, on the brief).

PER CURIAM

Plaintiffs Drs. Pedro Dayrit and Shaukat Qureshi, former shareholders of the Surgery Center of Salem County, LLC (the Surgery Center), appeal from summary judgment dismissal of their

claims against the Memorial Hospital of Salem (the Hospital), a majority shareholder of the Surgery Center, for fraud, negligent misrepresentation, tortious interference with contract and with economic advantage, and breach of the implied covenant of good faith and fair dealing. They challenge the grant of summary judgment and argue the trial court failed to provide a sufficient statement of reasons for its decision as required by Rule 1:7-4. We affirm.

On March 2, 2007, plaintiffs filed suit against the Hospital, Community Health Systems, Inc. (CHS), Gary Newsome, CHS' vice president, and Angela Marchi, the Hospital's CEO, among other parties not pertinent to this appeal. Plaintiffs set forth ten claims relating to the creation and operation of the Surgery Center: injunctive relief (count one), fraud (count two), negligent misrepresentation (count three), conversion (count four), tortious interference with contract (count five), tortious interference with economic advantage (count six), breach of fiduciary duty (count seven), breach of the implied covenant of good faith and fair dealing (count eight), unjust enrichment (count nine), and unfair business practices (count ten). With leave of court, plaintiffs filed an amended verified complaint in May 2008, adding a claim for punitive damages (count eleven).

On or about June 18, 2009, defendants Hospital, Newsome and Marchi moved for summary judgment on all eleven counts. On the same day, defendant CHS filed a separate motion for summary judgment on the additional basis that it was not subject to personal jurisdiction in the State of New Jersey. Oral argument was conducted before Judge David W. Morgan in November 2009. The judge issued an oral opinion on the record on July 29, 2010, granting defendants' motions for summary judgment and dismissing all counts of plaintiffs' complaint with prejudice, memorialized in orders of the same date.

Plaintiffs filed a notice of appeal and case information statement, referencing only the order pertaining to the Hospital, Newsome and Marchi.[1] Plaintiffs seek reversal of the order granting summary judgment as to count two (fraud), count three (negligent misrepresentation), count five (tortious interference with contract), count six (tortious interference

[1] Plaintiffs argued in their reply brief that they were not aware of the second order pertaining to CHS, a Delaware corporation having its principal place of business in Tennessee, which was a holding company that owned all of the outstanding ownership interest in Community Health Investment Company, LLC, which in turn owned all of the issued and outstanding corporate stock of the Hospital. They requested leave to file an amended notice of appeal. At oral argument we denied this request based on numerous letters from the Hospital alerting plaintiffs to their omission. Accordingly, the only appeal we consider pertains to summary judgment dismissal against the Hospital, Newsome and Marchi.

with economic advantage), count eight (breach of the implied covenant of good faith and fair dealing), and count eleven (punitive damages).

I.

Dr. Dayrit is a gastroenterologist and Dr. Qureshi is a urologist; both are Board Certified. On March 4, 1997, plaintiffs, defendant Hospital, and other individuals executed an Operating Agreement, creating the Surgery Center and setting forth the rights and responsibilities of the owners, as well as the rules governing the Surgery Center's management. The Surgery Center was a joint venture between the Hospital, owning fifty percent, and five physicians, including plaintiffs, each owning ten percent for a combined physical ownership share of fifty percent. Pursuant to Section 5.1.5. of the Operating Agreement, the Surgery Center directors, including plaintiffs, voted to hire Dr. Thomas Mitros as its administrator in 2002. Dr. Mitros resigned on or about July 31, 2005.

On October 29, 2003, the Hospital proposed an amendment to the Operating Agreement that would reduce each physician's ownership from ten percent to four percent, and increase the Hospital's ownership to eighty percent. Dr. Dayrit testified in his deposition that the reason the physicians wanted to give the Hospital the majority ownership was because the Surgery Center's

$2 million loan was appearing on the individual physician members' credit reports and made it difficult for one doctor to obtain a loan. The record also demonstrates from a 2002 board meeting that the Hospital had been interested in increasing its share of equity in the Surgery Center because "equity re-distribution [would] enable the facility to more effectively access CHS resources and contracts" and "adding the facility's volume into the Hospital utilization reports will minimize financial considerations and facilitate choice of location for procedures based solely on appropriate patient care."

Dr. Dayrit and Dr. Qureshi testified that the Hospital paid them $60,000 each for sixty percent of their shares. Plaintiffs had originally invested $29,000, so at that point they had a net positive cash flow of $31,000. In November 2003, the Hospital and the physician members of the board entered into the Amended Operating Agreement. The amendment, in compliance with federal regulations, also required the individual physician members to certify annually that they derive one-third of their income from performing outpatient surgical procedures and perform one-third of their outpatient surgical procedures at the Surgery Center.

Dr. Qureshi testified at his deposition that until 2002, he performed approximately 100 surgeries per year at the Surgery

Center. In 2003, the number of cases he performed at the Surgery center was cut by more than half. According to a valuation report, Dr. Qureshi performed ninety surgeries in 2002, forty-one surgeries in 2003, and none in 2004 and 2005. The reason for his reduction is disputed. According to Dr. Qureshi, his surgeries were decreased because Dr. Mitros "started cancelling [his] cases." Dr. Qureshi believed "it was an organized attempt to try to run down the Surgery Center to devalue it and then eventually buy it." Dr. Qureshi, however, did not keep a written record of the cancellations. Also in 2003, Dr. Qureshi was ill as he began to suffer the effects of renal failure, and in October 2007 he had a kidney transplant. He testified in depositions that due to his tiredness and fatigue, he reduced the number of hours he worked, stopped taking emergency calls, and stopped doing major surgeries. On April 25, 2005, the Hospital, as majority shareholder of the Surgery Center, notified Dr. Qureshi that he failed to maintain his Class A member status, because he had not performed the requisite number of surgeries as required by the Amended Operating Agreement. Accordingly, Dr. Qureshi's Class A member status was terminated in December 2006.

From 1999 to 2003, Dr. Dayrit performed the highest number of surgical procedures at the Surgery Center. In 2004, he

performed the second highest number of surgeries, next to Dr. Mitros. In 2005, the number of surgeries Dr. Dayrit performed dropped from 957 to 459. Dr. Dayrit stated in depositions he believed the drop in volume of his surgeries was because of a "hostile atmosphere" when he stopped using Dr. Mitros as his anesthesiologist and began sedating his own patients. According to Dr. Dayrit, the nurses sympathized with Dr. Mitros, threatened to boycott working with Dr. Dayrit, and one nurse told him he was not her boss. Dr. Dayrit also testified it was difficult to increase the volume of his surgeries because there were "no nurses" at the Surgery Center and on one occasion, he had to perform a surgery in the Hospital on short notice.

In April 2005, pursuant to allegations received by the Surgery Center, an internal audit was performed there. The auditor found no major problems except for unexplained expenditures for food, limousine rides for patients, some payments that did not appear to be in compliance with the contract, and some payments to other physicians that were not well documented.

In September 2005, at the request of Dr. Dayrit, the Surgery Center's procedure for handling narcotics and medications was audited for compliance purposes. The internal audit found there were no serious or reportable problems

regarding the Surgery Center's handling of drugs and medications, although it did find some practices that needed improvement. A memorandum by Marchi informed the physician owners that the controlled substances audit had been performed and "[a]ppropriate modifications were immediately put in place and ongoing audits will be in place to assure compliance." Dr. Dayrit testified in depositions he was satisfied the end result of the medical audit was that the "laxities" which concerned him were "fixed."

At an undisclosed time the Surgery Center was closed. Newsome testified in depositions that he made the final determination to close it as "volumes had deteriorated, and it was not a viable center from a quality patient satisfaction or financial respect."

In their lawsuit, plaintiffs alleged that from June through August 2005, they began to question the financial record-keeping of defendants as well as the existence of any audits performed since the inception of the Amended Operating Agreement but were "rebuffed and ignored" until they received Marchi's brief response on September 13, 2005. They further alleged they also questioned the existence and validity of subsequent audits but their requests were also "rebuffed and ignored"; they received only another brief response from Marchi dated September 15,

2005. On October 24, 2005, Dr. Dayrit wrote to Marchi as a "formal request" for copies of the financial and drug audits. Marchi scheduled a meeting for November 7, 2005 with plaintiffs and interested parties to review the audits. However, the meeting was cancelled when Dr. Dayrit did not arrive on time.

According to plaintiffs' complaint, defendants "conspired to illegally and improperly block [them] from receiving access to the information requested in order to unfairly keep plaintiffs from realizing that defendants were devaluing [t]he Surgery Center through intentional acts in an attempt to unjustly enrich themselves." As to count two, fraud, and count three, negligent misrepresentation, they alleged defendants represented to them that they would be given updated financial statements, copies of audits and other documents related to and required by the Operating Agreement and that the managers and operators of the Surgery Center, including Dr. Mitros, would perform in a proper manner. Plaintiffs alleged they relied on the representations and were under the impression they would receive the requested and required documentation, which was not done, resulting in monetary losses.

As to count five, tortious interference with contract, plaintiffs alleged defendants had knowledge that Dr. Mitros, their agent, wrongfully cancelled surgeries, preventing

plaintiffs from performing surgeries, fulfilling their contractual duties to their patients, and fulfilling the contractual requirements of minimum income derived from surgeries in accordance with the Operating Agreement. According to plaintiffs, defendants "wrongfully and intentionally interfered with the operation and enforcement of the Agreements and plaintiffs' duties to their patients[,]" causing them loss of profits, business, future profits, legal fees and costs. As to count six, tortious interference with economic advantage, plaintiffs asserted they had a continuing reasonable expectation of economic benefit from their business with their patients, with which defendants "wrongfully and intentionally interfered," meriting compensatory and punitive damages.

In count eight, plaintiffs alleged that defendants' wrongful conduct was a breach of the implied covenant of good faith and fair dealing. In count eleven, punitive damages, plaintiffs alleged defendants "intentionally and maliciously conspired to close [t]he Surgery Center to force plaintiffs and plaintiffs' established and future patients" to utilize the Hospital's operating rooms for all outpatient procedures. According to plaintiffs, Dr. Dayrit had to perform all of his outpatient procedures in Delaware and Dr. Qureshi had to perform all of his outpatient procedures at the Hospital because he was

not on staff elsewhere; in both instances, they lost established and future patients who preferred not to have any procedures performed at the Hospital or had health insurance restrictions prohibiting medical treatment out-of-state.

In a lengthy oral opinion, Judge Morgan granted defendants' motion for summary judgment, finding there were no genuine issues of material fact and the evidence, viewed in the light most favorable to plaintiffs, was so one-sided that defendants must prevail as a matter of law on each of the counts. See R. 4:46-2; Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). This appeal ensued.

II.

On appeal, plaintiffs argue the trial court erred in granting summary judgment in favor of defendants without providing a sufficient statement of reasons as required by Rule 1:7-4, and erred in dismissing with prejudice their counts pertaining to fraud (two), negligent misrepresentation (three), tortious interference with contract and with economic advantage (five and six), breach of the implied covenant of good faith and fair dealing (eight), and punitive damages (eleven).[2]

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[2] Plaintiffs make no separate argument respecting punitive damages, which the court dismissed based on a finding that defendants were entitled to summary judgment on the other counts. Plaintiffs generally state that to the extent the order (continued)

When reviewing the grant of summary judgment, we apply the same standard as the trial court. Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div.), certif. denied, 154 N.J. 608 (1998). We first decide whether there is a genuine issue of fact, and if not, we decide whether the trial court's ruling on the law was correct. Ibid. Additionally, "[b]are conclusions in the pleadings, without factual support in tendered affidavits, will not defeat a meritorious application for summary judgment." U.S. Pipe & Foundry Co. v. Am. Arbitration Ass'n, 67 N.J. Super. 384, 399-400 (App. Div. 1961). The legal conclusions of the trial court are reviewed de novo, without any special deference. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). Based on our review of the record and oral arguments, we are not persuaded by any of plaintiffs' arguments and substantially affirm based on Judge Morgan's comprehensive opinion.

We first reject plaintiffs' argument that Judge Morgan failed to comply with Rule 1:7-4(a) by providing a clear record of his findings of fact and conclusions of law. The court rendered an extensive oral opinion on the record by teleconference, producing a seventy-five page transcript. The

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granting summary judgment is reversed, the reversal should include count eleven.

court referenced the facts and allegations, and individually discussed each of plaintiffs' eleven counts, addressing the arguments and factual disputes and stating the reasons summary judgment was warranted on each issue.

Plaintiffs assert as error the judge's reliance on a document prepared by the court marked as "III" and marked for identification as "Court's Exhibit No. 1," but never provided to the parties. We discern no error. Judge Morgan explained he "typed out" this document as a compilation of allegations taken from the complaint and plaintiffs' brief as to defendants' "conspiracy to try to maneuver the [p]laintiffs out and to try to get the Surgery Center closed." Although he intended to send the document to the parties, it was a compilation of his own notes that he used as a reference as he made findings with respect to each issue. The oral transcript contains the substance of the notes as the judge explained his findings individually with respect to each issue.

A. Fraud

Plaintiffs allege that as a part of a conspiracy to reduce plaintiffs' ownership interest of the Surgery Center with a goal of terminating the Surgery Center and forcing surgery back into the Hospital, defendants made fraudulent statements. Plaintiffs specified two separate acts they claimed constituted fraud. The

first statement involved defendants representing that plaintiffs would be provided updated financial statements, copies of audits, and documents related to the Operating Agreement, a claim defendants deny. The second statement was a purported promise by defendants that the Surgery Center would be properly managed by the individuals hired, with the breach of that promise focusing on Dr. Mitros. Plaintiffs claim the representations were false when they were made, defendants knew they were false, and plaintiffs reasonably relied on the representations because they were under the impression they would be provided all requested financial documents and medical compliance documents and the Surgery Center would be operated properly.

To prevail on a common law fraud claim, a plaintiff must prove the following elements: "(1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages." Gennari v. Weichert Co. Realtors, 148 N.J. 582, 610 (1997). Reasonable reliance "must be found to be justifiable under the circumstances." Nat'l Premium Budget Plan Corp. v. Nat'l Fire Ins. Co. of Hartford, 97 N.J. Super. 149, 211 (Law Div. 1967) (internal quotation marks

and citation omitted), aff'd, 106 N.J. Super. 238 (App. Div.), certif. denied, 54 N.J. 515 (1969).

Judge Morgan found these two statements did not constitute actionable fraud. He found no support in the record that the individual defendants stated they would give plaintiffs copies of the audits and financial documents. He noted plaintiffs' inconsistent claims that on one hand Marchi told them there would be documents provided, while on the other, she told them they could come down and look at the documents but she would not give them the copies because it was precluded by the Operating Agreement.

In contrast, he found defendants' depositions were consistent in that they would not provide copies of the documents "because they felt that it would violate the terms of the Operating Agreement." However, they would make the books and records available at the company's principal office for examination by any member at reasonable times during normal business hours in accordance with Section 8.2 of the Operating Agreement. The judge found the record was devoid of any evidence that the Surgery Center "did anything different than what the Operating Agreement expressly provides."

In finding the first statement did not constitute fraud, Judge Morgan stated:

> [T]he argument of the [d]efendants is basically that you can't have fraud without misrepresentation. And the question is, "Gees, where is this misrepresentation?" Is it really just, "All right, we'll give you copies." But the balance of the records seem to support that, "That's not what we said. What we said was we can make the records available to you, we just won't give you copies."
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> And then very little, if anything, on the record that shows that [p]laintiffs did anything to rely upon those representations. And again, the record appears to support [d]efendants' allegation that [Dr.] Dayrit explicitly testified he didn't rely.

He found the records were made available, and there was a date set up for plaintiffs to meet with personnel who were familiar with the records, but plaintiffs cancelled the meeting. As to the other claim, the court found plaintiffs failed to demonstrate the operation was run improperly, noting the strongest evidence of any improper management was Dr. Mitros canceling appointments.

The judge also found plaintiffs failed to demonstrate resulting damages, stating, "there's no showing that I can see from the opposition to the Motion how making records available as mandated by the Operating Agreement, i.e., 'Come on down and look at them,' as opposed to copying, in any way caused [p]laintiffs to be damaged."

The record is clear that there was no reasonable reliance on the first statement, the second statement was not a material misrepresentation to constitute fraud, and there was no showing of reasonable reliance or resulting damages. Plaintiffs argue their reliance on the first statement is demonstrated precisely by the fact that they did not view the documents. We disagree. Reliance needs to be reasonable or justifiable under the circumstances. Defendants complied with Section 8.2 of the Operating Agreement by making the company's books available at its principal office for examination by any member or authorized representative at reasonable times during normal business hours. The Operating Agreement provides for the members to view the documents but does not require copies to be given to them on demand.

Even if the individual defendants said they would give plaintiffs the documents, plaintiffs could not claim reasonable reliance on that statement, because they could have gone to view the documents on their own. Nothing in the record suggests that plaintiffs were ever prevented from viewing the documents at the principal office during normal business hours, as required by the Operating Agreement. Moreover, plaintiffs were given an opportunity to attend a meeting and discuss the documents and the audit reports with officials and personnel, but they never

showed up. It is uncontroverted that Marchi scheduled a meeting at Dr. Dayrit's request for November 7, 2005 at 5:30 p.m. in a conference room to review the information from the audits. Dr. Dayrit admitted in his deposition that he was running late and they cancelled the meeting. The record contains no request by plaintiffs for a rescheduled meeting.

Plaintiffs' allegation as to the managerial deficiency was general and they failed to demonstrate reliance or harm. Given that the results of the audits did not show any major problems, this statement is not even a misrepresentation, and therefore it cannot constitute fraud.

B. Negligent Misrepresentation

Plaintiffs rely on the same two statements for their negligent misrepresentation claim. Negligent misrepresentation consists of "'[a]n incorrect statement, negligently made and justifiably relied on, [and] may be the basis for recovery of damages for economic loss . . . sustained as a consequence of that reliance.'" McClellan v. Feit, 376 N.J. Super. 305, 317 (App. Div. 2005) (alterations in original) (quoting H. Rosenblum, Inc. v. Adler, 93 N.J. 324, 334 (1983)). Negligent misrepresentations are closely related to legal and equitable fraud. McClellan, supra, 376 N.J. Super. at 317.

Judge Morgan properly found this claim suffered from the same deficiencies as the fraud claim – a lack of reliance and damages. Additionally, he noted that as to the Hospital, Section 5.5.1 of the Operating Agreement specifically limited members from being held liable for damages, except for fraud, gross negligence, or an intentional breach of this agreement. He found plaintiffs' claim was a mere negligence one with "nothing to demonstrate that it rises to the level of gross negligence."

The judge further explained that under the economic loss doctrine, to bring a tort claim in a case that is primarily a contract claim, the negligence would need to be supported by a separate duty, and that does not exist here. He rejected plaintiffs' argument that the contract created an independent obligation of good faith and fair dealing, explaining that good faith and fair dealing itself is a contract claim with contract-based remedies and does not create a separate tort action.

Even assuming the statements constituted a prima facie case of negligent misrepresentation, defendant Hospital did not owe plaintiffs an independent duty outside of the contract so as to support a tort recovery. See Saltiel v. GSI Consultants, Inc., 170 N.J. 297, 316 (2002) ("Under New Jersey law, a tort remedy does not arise from a contractual relationship unless the

breaching party owes an independent duty imposed by law."). The implied covenant of good faith and fair dealing is implied in every contract, and does not create an independent tort action. See Wood v. N.J. Mfrs. Ins. Co., 206 N.J. 562, 577 (2011) ("[E]very contract in New Jersey contains an implied covenant of good faith and fair dealing[.]" (internal quotation marks and citations omitted)). Additionally, plaintiffs provide no support for their argument that the Oppressed Minority Shareholder Statute, N.J.S.A. 14A:12-7, creates an independent tort action for negligent misrepresentation against the Hospital.

C. Tortious Interference with Contract and With Economic Advantage

Plaintiffs claim defendants wrongfully and intentionally interfered with the operation and enforcement of the Operating Agreement and plaintiffs' duties to their patients. Specifically they allege Dr. Mitros wrongfully cancelled surgeries, preventing them from fulfilling the minimum number of surgeries required under the Operating Agreement. Plaintiffs also claim defendants wrongfully and intentionally interfered with plaintiffs' reasonable expectation of economic benefit, harming them.

To establish a claim for tortious interference with a contract, a plaintiff must prove: "(1) actual interference with

a contract; (2) that the interference was inflicted intentionally by a defendant who is not a party to the contract; (3) that the interference was without justification; and (4) that the interference caused damage." Russo v. Nagel, 358 N.J. Super. 254, 268 (App. Div. 2003).

An action for tortious interference with economic advantage "protects the right to pursue one's business, calling or occupation free from undue influence or molestation." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 750 (1989) (internal quotation marks and citation omitted). New Jersey law protects not only a party's interest in a contract already made, but the law protects a person's interest in reasonable expectations of economic advantage. Ibid.

To establish a tortious interference with economic advantage claim, a plaintiff must show: (1) the plaintiff was in "pursuit of business"; (2) "the interference was done intentionally and with malice"; (3) "the interference caused the loss of the prospective gain"; and (4) "the injury caused damage." Id. at 751-52 (internal quotation marks and citations omitted). For purposes of this tort, "malice is defined to mean that the harm was inflicted intentionally and without justification or excuse." Id. at 751.

Judge Morgan credited Dr. Qureshi's vague allegations that Dr. Mitros intentionally cancelled surgeries and the cancellations caused him to fall below the one-third percentage obligation required under the federal regulation and Amended Operating Agreement. He properly noted, however, that plaintiffs' argument was undermined by the fact that Dr. Mitros resigned in 2005, and Dr. Qureshi's surgeries did not increase. Moreover, neither Dr. Mitros nor the Surgery Center were named as party defendants. Judge Morgan explained:

> And the breakdown in that claim is that there's no facts that I saw that were put forth by the [p]laintiffs that ties the [d]efendants to controlling [Dr.] Mitros as a puppet in that cancellation effort. It's simply [Dr.] Mitros was cancelling and nothing that demonstrated that he was the hand-picked puppet doing that by the various [d]efendants that are named in this particular case. It's just something that's happening, and nothing more is proven by the [p]laintiff to demonstrate that [Dr.] Mitros acts for the other [d]efendants.
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> [Dr.] Mitros is effectively an employee of the Surgery Center. If [Dr.] Qureshi felt that there was a breach of the Operating Agreement or an interference with the contract, then you wonder well, why not a claim against Surgery Center which is the employer of [Dr.] Mitros? Why not a claim against [Dr.] Mitros? And we have neither.
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> Instead, the claims are against other entities that are either a co-member to the Surgery Center but no tie-in between them and [Dr.] Mitros to demonstrate that they were motivating [Dr.] Mitros to these

> cancellations. And it's the lack of that tie-in that really defeats the [p]laintiffs' claim on this point.

Plaintiffs presented no evidence that Dr. Mitros was told by Marchi, Newsome, or anyone else at the Hospital to cancel the surgeries or that he acted as their agent. Accordingly, plaintiffs' tortious interference claims against the named defendants fail as a matter of law. Additionally, plaintiffs' claim that Marchi interfered with the contract in not providing them with copies of the documents is not supported by the record.

D. Breach of the Implied Covenant of Good Faith and Fair Dealing

"'[E]very contract in New Jersey contains an implied covenant of good faith and fair dealing[.]'" Wood, supra, 206 N.J. at 577 (quoting Kalogeras v. 239 Broad Ave., L.L.C., 202 N.J. 349, 366 (2010)); Sons of Thunder, Inc. v. Borden, Inc., 148 N.J. 396, 420 (1997). This obligation requires that "'neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract[.]'" Wood, supra, 206 N.J. at 577 (quoting Kalogeras, supra, 202 N.J. at 366); Sons of Thunder, Inc., supra, 148 N.J. at 420.

None of defendants' actions had the effect of destroying plaintiffs' right to receive the benefits of the contract.

Judge Morgan correctly noted that this claim would apply solely to the Hospital, the only defendant that is a party to the Operating Agreement. As previously discussed, he found no bad faith by the individual defendants in declining to provide the documents and no evidence the claimed acts of interference by Dr. Mitros were done at the behest of defendants or as their agent. Nor did plaintiffs demonstrate a lack of good faith and fair dealing by the provision in the Amended Operating Agreement requiring one-third of surgeries to be performed at the Surgery Center because that was mandated through federal law. We are also in accord with Judge Morgan's conclusion that plaintiffs failed to demonstrate any mismanagement or impropriety in the management and financial affairs of the Surgery Center. Although plaintiffs apparently claim the tortious interference with economic advantage claim involves their relationship with patients, we are satisfied they are just recasting the claim, which pertains to the economic advantage they would have gained, in part by performing surgeries for their patients at the Surgical Center pursuant to the contract.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION