

PREPARED BY THE COURT

COMPREHENSIVE
NEUROSURGICAL, P.C. c/b/a/ NORTH
JERSEY BRAIN AND SPINE CENTER,
PATRICK A. ROTH, MD, ROY D.
VINGAN, MD, GEORGE J. KAPTAIN,
MD, DANIEL E. WALZMAN, MD,
HOOMAN AZMI, MD, HARSHPAL
SINGH, MD, KANGMIN DANIEL LEE,
MD, REZA J. KARIMI, MD, BRUCE C.
ZABLOW, MD, UGO PAOLUCCI, MD,
MOHAMMED FARAZ KAHN, MD,

Plaintiffs,

v.

THE VALLEY HOSPITAL, THE
BOARD OF TRUSTEES OF THE
VALLEY HOSPITAL, VALLEY
HOSPITAL PRESIDENT AUDREY
MEYERS, NEUROSURGICAL
ASSOCIATES OF NEW JERSEY, P.C.,
and ANTHONY D'AMBROSIO, MD,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO.: **BER-L-6794-16**

CIVIL ACTION

OPINION

Argued: October 26, 2018
Decided: November 15, 2018

Honorable Robert C. Wilson, J.S.C.

Joseph B. Fiorenzo, Esq. and Stephen M. Klein, Esq. appearing on behalf of the Plaintiff Comprehensive Neurosurgical, P.C. (from Sills Cummis & Gross P.C.).

R. Scott Thompson, Esq. and Joseph A. Fischetti, Esq. appearing on behalf of Defendants The Valley Hospital, The Board of Trustees of the Valley Hospital, and Audrey Meyers (from Lowenstein Sandler LLP).

Lauren M. Levine, Esq. and Michael J. Keane Jr., Esq. on behalf of Defendant Neurological Associates of New Jersey (from Garfunkel Wild P.C.).

FACTUAL BACKGROUND

THIS MATTER arises from a hospital's replacement of a surgical group by signing an exclusive agreement with another, competitor surgical group. Plaintiff North Jersey Brain and Spine Center ("NJBSC") is a neurosurgical group that held privileges at The Valley Hospital ("Valley") in Ridgewood, NJ. NJBSC's responsibilities included, among other things, covering the Emergency Department ("ED") call, and performing services using specialized surgical equipment, specifically, a Gamma Knife and a biplane angiography suite.

While the relationship between NJBSC and Valley was amicable for years, concerns arose regarding NJBSC's practices at Valley. Specifically, Valley was concerned that NJBSC may be unnecessarily transferring certain patients admitted into Valley's ED to HackensackUMC ("HUMC") for follow-up surgical procedures. The NJBSC physicians also held privileges at HUMC. Valley also received reports from other physicians and staff members at the hospital of NJBSC's practices in the operating room that were concerning to the operating room ("OR") staff.

Around the same time, Valley was interested in creating a "Neurological Center of Excellency" ("Center") at the hospital. Valley would accomplish this by entering into an exclusivity agreement with a neurosurgical group. Valley hired an outside consulting firm to create a report on a detailed study of the cost, quality, and volume of neurosurgical services provided over several years by the two largest surgical groups at Valley – NJBSC and Neurological Associates of New Jersey ("NANJ"). A white paper was created as a result of this study, and circulated among the members of the Board of Trustees ("Board") and Valley's president, Audrey Meyers ("Meyers"), to aid in the creation of the Center.

Pursuant to the results of the study, Valley entered into an exclusivity agreement with NANJ to further its goal of creating the Center (the "Exclusivity Agreement"). Once the

Exclusivity Agreement was executed, NJBSC was notified that it was no longer permitted to use the biplane angiography suite or the Gamma Knife to treat patients or perform surgical procedures. NJBSC was also told that it would no longer be responsible for ED calls.

NJBSC filed this action against Valley, the Board, Meyers, and NANJ. NJBSC alleges, among other things, a breach of contract claim against Valley, the Board, and Meyers (collectively, “Valley Defendants”). They argue that preventing NJBSC from using the biplane suite, the Gamma Knife, and no longer allowing them to participate in ED calls is a termination of privileges. Valley’s by-laws state that physicians are entitled to a hearing before their privileges are revoked by the hospital. NJBSC’s physicians were required to sign the by-laws before working at Valley, and NJBSC argues that signing the by-laws created a contract between Valley, the Board, Meyers, and NJBSC. Therefore, in failing to provide them with a hearing, the Valley Defendants were in breach of contract.

The Valley Defendants argue that precluding NJBSC from using the biplane suite and Gamma Knife, as well as being assigned ED call, do not amount to a revocation of privileges. Since these are not privileges, there was no violation of the procedure laid out in the by-laws.

NJBSC also alleges tortious interference claims against Valley, the Board, Meyers, and NANJ. The tortious interference claims are rooted in arguments that the aforementioned defendants took part in activities that sought to prevent NJBSC from entering into an exclusivity agreement with Valley and further the Exclusivity Agreement to oust NJBSC. NANJ argues that the activities they undertook amounted to nothing more than fair, lawful competition, as nothing in the record rises to the level of tortious interference under New Jersey law.

NJBSC moves for partial summary judgment in its favor as to: (1) breach of contract against the Valley Defendants; and (2) breach of contract against the Valley Defendants for failure

to provide a hearing before termination of privileges. The Valley Defendants and NANJ also move for summary judgment in their favor, dismissing the complaint in its entirety. For the reasons below, and because there exist several questions of material fact, the motions for summary judgment are **DENIED** in part, with the exception that summary judgment is **GRANTED** with respect to the issues of: (1) liability of the Board and Meyers; and (2) the tortious interference claims.

SUMMARY JUDGMENT STANDARD

The New Jersey procedural rules state that a court shall grant summary judgment “if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.” R. § 4:46-2(c).

In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the Supreme Court set forth a standard for courts to apply when determining whether a genuine issue of material fact exists that requires a case to proceed to trial. Justice Coleman, writing for the Court, explained that a motion for summary judgment under R. § 4:46-2 requires essentially the same analysis as in the case of a directed verdict based on R. § 4:37-2(b) or R. § 4:40-1, or a judgment notwithstanding the verdict under R. § 4:40-2. Id. at 535-536. If, after analyzing the evidence in the light most favorable to the non-moving party, the motion court determines that “there exists a single unavoidable resolution of the alleged dispute of fact, that issue should be considered insufficient to constitute a ‘genuine’ issue of material fact for purposes of R. § 4:46-2.” Id. at 540.

RULE OF LAW AND DECISION

I. The Valley Defendants' Motion to Dismiss Breach of Contract Claims as to the Board and Meyers is Granted

It is clear that NJBSC has no viable claims against the Board or against Meyers. There is no evidence in the record to support a claim against the Board. Similarly, NJBSC's claims against Meyers are invalid as a matter of law.

NJBSC alleges contractual claims against the Valley Defendants. However, the record only supports a finding that NJBSC purportedly entered into a contractual relationship with Valley alone in signing the by-laws, not with the Board or with Meyers individually. New Jersey law construes by-laws as a contract between a hospital and members of its staff. Joseph v. Passaic Hospital Asso., 26 N.J. 557, 569 (1958); Raymond v. Cregar, 72 N.J. Super. 73, 85-86 (App. Div. 1962).

Considering the foregoing, the act of NJBSC signing Valley's by-laws does not create a contract between NJBSC and the Board. It also does not create a contract between NJBSC and Meyers. At best, it creates a contract between NJBSC and Valley only. Therefore, the breach of contract claims against the Board and Meyers must be dismissed.

II. The Valley Defendants' Motion to Dismiss NJBSC's Claim of an Invalid Exercise of Discretionary Healthcare Powers as to the Board and Meyers is Granted

NJBSC also alleges claims against the Board and Meyers for an invalid exercise of discretionary health care powers. The jurisprudence in this area of the law speaks to the procedural protections afforded to a physician against a hospital with respect to hospital decisions. Hurwitz v. AHS Hosp. Corp., 438 N.J. Super. 269, 296-70 (App. Div. 2014) ("[F]ederal immunity is applicable so long as the hospital and its participants acted in a fair and reasonable manner and

with a reasonable belief that the actions taken were in furtherance of quality of health care and warranted by the facts.”)

The Supreme Court of New Jersey determined that judicial intervention in hospital decisions should be exercised on a limited basis, and that reliance should be placed on internal hospital remedies. Guerrero v. Burlington County Mem. Hospital, 70 N.J. 344 (1976). The Court based its reasoning on the need to balance the procedural rights of physicians with the managerial expertise of the hospital administration. Id. at 90-91. Furthermore, “[s]o long as hospital decisions concerning medical staff are reasonable, are consistent with the public interest, and further the health care mission of the hospital, the courts will not interfere.” Zoneraich v. Overlook Hosp., 212 N.J. Super. 83, 90 (App. Div. 1986) (citing Desai v. Barnabas Medical Center, 103 N.J. 79 (1986)).

In light of the foregoing, there is nothing in the record to support the notion that either the Board or Meyers made their decisions regarding the Exclusivity Agreement in an unreasonable manner. In fact, they relied on an extensive report compiled by an outside company to assist them in selecting NANJ as its exclusive neurosurgical group. Therefore, this claim against the Board and Meyers individually must be dismissed.

III. The Valley Defendants’ Motion to Dismiss NJBSC’s Claim for Tortious Interference is Granted

NJBSC alleges that Valley’s entry into the Exclusivity Agreement constituted tortious interference with prospect economic advantage. Under New Jersey law, “[a]n action for tortious interference with a prospective business relation protects the right to ‘pursue one’s business, calling or occupation free from undue influence or molestation.’” Ideal Dairy Farms, Inc. v. Farmland Dairy Farms, Inc., 282 N.J. Super. 140, 198 (App. Div. 1995). To prevail on this claim, Plaintiffs must demonstrate “a reasonable expectation of economic advantage, which was lost as

a direct result of [the Valley Defendants'] malicious interference, and that [Plaintiffs] suffered losses thereby." Id. at 199 (citing Baldasarre v. Butler, 132 N.J. 278, 293 (1993)).

In the defamation context, "malicious" is used to describe harm that is "inflicted intentionally and without justification or excuse. Printing Mart-Morristown v. Sharp Elecs., Corp., 116 N.J. 99, 751 (1989). Plaintiffs bear the burden of demonstrating "the absence of justification" for the Valley Defendants' "actions in the context of the case presented." MacDougall v. Weichert, 144 N.J. 380, 404 (1996). New Jersey courts use an eight-factor balancing test to determine whether maliciousness was present:

- (a) The nature of the actor's conduct, (b) the actor's motive, (c) the interests of the other with which the actor's conduct interferes, (d) the interests sought to be advanced by the actor, (e) the social interests in promoting the freedom of the action of the actor and the contractual interests of the other, (f) the proximity or remoteness of the actor's conduct to the inference and (g) the relations between the parties.

MacDougall, 144 N.J. at 404-05 (citing Restatement (Second) of Torts § 767, at 26-27).

In this instance, the Valley Defendants undertook a rational and routine course of action in aligning with NANJ. This was designed to further Valley's longstanding alignment strategy to improve patient care and economic efficiency. On the contrary, NJBSC's only interest in Valley's agreement with NANJ is that they no longer have an additional hospital to practice within and gain an additional stream of revenue. Considering the foregoing, there insufficient evidence in the record to support a finding of maliciousness, let alone the remaining factors of a claim for tortious interference with prospective economic advantage.

IV. Defendant NANJ's Motion Must be Granted to Dismiss NJBSC's Claims for Tortious Interference with Contract and Tortious Interference with Prospective Economic Benefit

NJBSC has failed to provide evidence supporting a claim for tortious interference with contract. To establish a claim of tortious interference with contract, a plaintiff must prove the following: (1) an existing contractual relationship; (2) intentional and malicious interference with that relationship; (3) causation; and (4) damages resulting from that interference. Velop, Inc. v. Kaplan, 301 N.J. Super. 32 (App. Div. 1997).

NJBSC has also failed to support a claim for tortious interference with prospective economic advantage as to NANJ. As previously stated, plaintiff must show the following to succeed on such a claim: (1) a reasonable expectation of economic benefit or advantage; (2) intentional and malicious interference with that expectancy; (3) a reasonable probability that plaintiff would have realized the economic benefit but for the interference; and (4) actual damages resulting from defendant's interference. Printing Mart-Morristown, 116 N.J. at 739.

New Jersey courts do not draw a bright-line between actions for tortious interference with prospective economic advantage and for tortious interference with existing business relationships. Stinger v. Beach Trading Co., Inc., 379 N.J. Super. 63, 81 (App. Div. 2005).

As previously mentioned, tortious interference requires a finding of malice. Printing Mart, 116 N.J. at 751-52. In this context, "malice" means harm that was inflicted intentionally and without justification or excuse. Id. There is no malice when a defendant acts "to advance [its] own interest and financial position. Cedar Ridge Trailer Sales, Inc. v. Natl. Cmty. Bank of N.J., 312 N.J. Super. 51, 66 (App. Div. 1998).

Furthermore, New Jersey has adopted the Restatement (Second) of Torts § 768, which provides that direct competitors are privileged in the course of competition to interfere with each

company's prospective and existing business relationships, absent "wrongful means." Nostrame v. Santiago, 213 N.J. 109, 117 (2013). New Jersey courts have concluded that "violence, fraud, intimidation, misrepresentation, criminal or civil threats, and/or violations of the law" are examples of conduct that would rise to the level of "wrongful means" in the tortious interference context. EZ Sockets, Inc. v. Brighton-Best Socket Screw Mfg., 307 N.J. Super. 546, 559 (App. Div. 1997).

In this instance, it is undisputed that NJBSC and NANJ are competing neurosurgical groups. NJBSC bases its tortious interference claims against NANJ on five purported actions: (1) NANJ falsely accusing NJBSC of stealing clinical intellectual property from Valley and NANJ to use at HUMC; (2) maliciously asserting that NJBSC was transferring patients from Valley to HUMC, and transferred a specific patient from Valley to HUMC; (3) embellishing a complaint about NJBSC's scheduling practices to create concerns over "patient safety issues;" (4) inducing Valley physicians to cease prospective referrals to NJBSC, and prompting NJBSC's existing patients to receive a "second opinion" from Dr. D'Ambrosio; and (5) exerting wrongful economic pressure upon Valley to breach Valley's existing contract with NJBSC by threatening to take NANJ's patient volume to another hospital if Valley did not grant immediate exclusivity to NANJ.

Regarding the aforementioned purported actions by NANJ, NJBSC fails to establish that NANJ, a direct competitor, made any false or fraudulent statements concerning NJBSC, or did anything that would otherwise consist of wrongful conduct sufficient to establish claims for tortious interference. A successful business competitor is not a per se act of tortious interference with a contract or its economic benefit.

A. NJBSC Fails to Show that NANJ “Falsely” Accused NJBSC of Stealing Intellectual Property and Appropriating it for HUMC

1. *The Evidence is Insufficient to Find NANJ Falsely Accused NJBSC of Stealing Intellectual Property*

NJBSC alleges that NANJ made false or misleading statements to Valley leadership that NJBSC was absconding intellectual information from Valley to HUMC. This allegation is based on a single email from Dr. Anthony D’Ambrosio (“Dr. D’Ambrosio”), a partner at NANJ, to Valley leadership regarding a clinical concept initiated at Valley that resulted in a vaccine trial executed at HUMC. Dr. D’Ambrosio states that this email was solely expressing concern that on some level, Valley’s ideas, protocols, and concepts that they spent significant time and resources designing and refining might now be available outside of Valley’s systems. It is clear that these “concerns” are legitimate, and there is no evidence in the record that Dr. D’Ambrosio made such statements based on false information intended on misleading Valley leadership to enter into the Exclusivity Agreement.

2. *NANJ’s Expression of Concerns Regarding NJBSC Benefitting from NANJ’s Intellectual Capital is not Fraudulent, Dishonest, or Illegal Conduct*

In cases involving parties in direct competition in the same market, the line must be drawn where one competitor interferes with another’s economic advantage through conduct which is fraudulent, dishonest or illegal. Shebar v. Sanyo Business Sys. Corp., 218 N.J. 111, 115-16 (App. Div. 1987). There is nothing fraudulent, dishonest, or illegal about Dr. D’Ambrosio sending a publically available article regarding HUMC’s vaccine trial to Valley’s head of research and expressing his frustration that HUMC was ahead of Valley for marketing purposes. Furthermore, these statements were solely Dr. D’Ambrosio’s opinion, which cannot form the basis for a tortious interference claim. DeAngelis v. Hill, 180 N.J. 1, 14 (2004) (“Statements of opinion, as a matter of constitutional law, enjoy absolute immunity.”). Similarly, NANJ’s concerns that others may be

benefitting from their ideas also constitutes non-actionable opinion. Finally, NJBSC has not shown that NANJ's concerns were false or a misrepresentation.

3. The Evidence Does Not Show that NANJ's Expression of Concerns Induced Valley to Enter into the Exclusive Agreement with NANJ

To recover under a theory of tortious interference, a plaintiff must show that there was a reasonable likelihood the victim of the interference would have received the anticipated economic benefit but for the defendant's wrongful conduct. Leslie Blau Co. v. Alfieri, 157 N.J. Super. 173, 185-86 (App. Div. 1978). Dr. D'Ambrosio's email or NANJ's expression of its concerns cannot be shown to be the "but for" cause of the Exclusivity Agreement. In fact, the record supports an opposite conclusion, because the email at issue was sent three years before the execution of the Exclusivity Agreement.

B. The Allegation that NANJ Maliciously Asserted NJBSC was Transferring Patients from Valley to HUMC Does Not Support a Finding of Tortious Interference

1. The Evidence Does Not Show that NANJ Maliciously Asserted NJBSC was Transferring Patients from Valley to HUMC

NJBSC alleges that Dr. D'Ambrosio notified Valley leadership of one instance where a patient was transferred from Valley to HUMC. Other than this one instance, there is no evidence in the record that Dr. D'Ambrosio was involved in any conversations or investigations with Valley administration regarding cases being pulled out of Valley and transferred to HUMC. Similarly, Gail Callandrillo ("Ms. Callandrillo"), Valley's Vice President of Planning and Governmental Affairs, recalled only one situation where Dr. D'Ambrosio expressed concerns about a patient in critical condition being transferred out of Valley. There is nothing in the record that supports that this single incident constituted maliciousness by NANJ towards NJBSC. Dr. D'Ambrosio expressed legitimate concerns regarding the transfer of the patient at issue.

2. *Dr. D'Ambrosio's Single Report About This Patient Transfer Does Not Constitute Fraudulent, Dishonest, or Illegal Conduct*

This single disclosure of a patient transfer does not constitute “wrongful means.” It is generally recognized that a party cannot be held liable for tortious interference for merely providing truthful information to one of the contracting parties.” East Penn Sanitation, Inc. v. Grinnell Haulers, Inc., 296 N.J. Super. 158, 180 (App. Div. 1996).

The record lacks any evidence that the information Dr. D'Ambrosio relayed to Valley about what he was told about this one patient was false or a misrepresentation. In fact, NJBSC testified that the patient at issue was actually transferred from Valley to HUMC, supporting a finding that this report was not false or a misrepresentation. Therefore, the aforementioned actions do not meet the standard for tortious interference with competitors.

3. *The Evidence Does Not Show that this Report Caused Valley to Enter into the Exclusive Agreement with NANJ*

There is no evidence to claim that the “report” was the reason that Valley entered into the Exclusivity Agreement. Dr. D'Ambrosio's report took place in 2015. At this time, Valley had already approached NANJ about the possibility of a business arrangement and had already begun its clinical study.

While it may be possible that this report factored into Valley's decision to enter into the exclusive agreement with NANJ, a single report from Dr. D'Ambrosio, or any other report from anyone affiliated with NANJ, cannot be shown to be the sole reason that Valley entered into the Exclusivity Agreement. In fact, there is evidence to support that other individuals unrelated to NANJ had reported instances of NJBSC transferring patients to HUMC to Valley leadership. Therefore, one cannot make the causal connection that NANJ's actions, through its report, induced Valley to enter into the Exclusivity Agreement.

C. NJBSC's Allegation that NANJ Embellished an Operating Room Staff Complaint about NJBSC Does Not Support a Claim for Tortious Interference

1. *The Evidence Does Not Show that NANJ Embellished Such a Complaint*

NJBSC alleges that NANJ embellished a complaint about NJBSC's scheduling practices to create artificial concerns about patient safety issues. This allegation is based on an email from a Valley employee complaining that NJBSC engaged in "recurrent bad communication issues, poor scheduling practices, and doctors perform[ed] neurosurgical cases in the middle of the night." NJBSC then alleges that Dr. D'Ambrosio took this email and brought it to the attention of Valley leadership for the purpose of attacking NJBSC's quality of service.

However, the email was originally sent to Dr. D'Ambrosio because he was an Associate Director of Neuroscience & Subspecialty Director of Neurosurgery. Furthermore, there is no evidence that this report was in anyway "embellished" by Dr. D'Ambrosio. Several emails from Valley OR staff expressed concerns with NJBSC physicians to Dr. D'Ambrosio and Dr. Kaiser, the Director of the Spine Center at Valley. Dr. D'Ambrosio gave his opinion on the issues to Ms. Callandrillo, stating:

[in his] professional opinion, the email included below is an example of potentially dangerous physician communication, temperament and judgment that is not necessary. If these [operating room] scheduling scenarios are being reported accurately, this level of patient care and communication breakdown should not be tolerated within [Valley's] Neuroscience and Neurosurgery service lines.

Witness depositions and other evidence in the record support a conclusion that Dr. D'Ambrosio's opinion was not embellished or based on any inaccuracies. Therefore, the claim that this complaint about NJBSC was "embellished" by NANJ must fail.

2. This Report Does Not Constitute Fraudulent, Dishonest, or Illegal Conduct

Dr. D'Ambrosio's email to Valley administration about operating room staff complaints is not the "wrongful means" required for a tortious interference claim. As previously stated, "a party may not be held liable for tortious interference for merely providing truthful information to one of the contracting parties." East Penn Sanitation, 294 N.J. Super. at 180. "[T]he communication of truthful information" cannot support a finding of "malice" under the second prong of the test to determine tortious interference. Id. at 180-81.

Dr. D'Ambrosio's forwarding of the email at issue does not establish wrongful conduct because it was his responsibility as the Director to forward such reports of OR staff complaints to Valley administration. There is nothing in the record indicating that the staff's emails are untrue.

Furthermore, the portions of Dr. D'Ambrosio's email that were not comprised of staff complaints (in their own words) were his opinion of the reported complaints. As previously stated, an opinion accompanied by its factual basis is constitutionally protected and cannot be the basis for a cause of action. Lynch, 161 N.J. at 168. NJBSC cannot show that Dr. D'Ambrosio's opinion is false or that he did not actually hold that opinion. There is no evidence supporting this finding in the record.

3. The Evidence Does Not Support a Finding that the Report Caused Valley to Enter into the Exclusive Agreement with NANJ

NJBSC cannot establish that Dr. D'Ambrosio's report regarding operating room staff complaints was the reason Valley entered into the Exclusivity Agreement. The email was sent to Valley administration over two and a half years prior to the execution of the Exclusivity Agreement. Furthermore, Ms. Callandrillo testified that even after this email was received, Valley was still interested in a co-management agreement and not an exclusive agreement.

D. NJBSC’s Allegations that NANJ Induced Valley to Cease Prospective Referrals to NJBSC and Advise NJBSC’s Current Patients to Receive Second Opinions Does Not Support a Finding of Tortious Interference

1. *The Evidence Does Not Show that NANJ Induced Valley Physicians to Cease Referrals or Prompted Existing Patients to Receive a Second Opinion*

NJBSC alleges that Dr. D’Ambrosio contacted NJBSC’s patients at Valley and Valley physicians who refer patients to NJBSC, and instructed them to either: (1) not refer patients to NJBSC, or (2) induce current patients to receive a second opinion. Despite these allegations, the record is absolutely devoid of any evidence supporting such an allegation.

2. *To the Extent that any NJBSC Patients Received Second Opinions from NANJ, this does not Constitute Fraudulent, Dishonest, or Illegal Conduct*

NJBSC cannot establish that providing a second opinion to its patients, if it in fact occurred, constituted wrongful conduct. NJBSC has stated that providing a second opinion in their practice is the normal course of business. “[A]ny loss of business that is merely the incident of healthy competition is not compensable tort injury.” Lamorte Burns & Co. v. Walters, 167 N.J. 285, 306 (2001). Therefore, to the extent that any of NJBSC’s patients received a second opinion from NANJ, this would still be insufficient to constitute wrongful conduct for the purpose of tortious interference.

E. NJBSC’s Allegation that NANJ Exerted Wrongful Economic Pressure on Valley to Breach an Existing Contract with NJBSC Does Not Support a Finding of Tortious Interference

1. *The Evidence Does Not Show that NANJ Exerted Wrongful Economic Pressure Upon Valley to Breach the Contract with NJBSC*

NJBSC’s claim that NANJ exerted wrongful economic pressure on Valley to breach a contract with NJBSC is rooted in an allegation that NANJ threatened to take its patient volume to another hospital if Valley did not grant immediate exclusivity to NANJ. This allegation is based on an announcement in December 2014 that Mt. Sinai Health System and The Valley Health

System planned to collaborate on clinical programs, research, and educational initiatives. All NANJ did in response to this announcement was confirm that Valley would not be bringing Mt. Sinai neurosurgeons onto the Valley medical staff.

Aside from this concern, there is no other evidence suggesting that NANJ threatened to take patient volume to another hospital due to Valley's affiliation with Mt. Sinai. There is also no evidence in the record that NANJ physicians demanded an exclusivity agreement with Valley. They solely wanted assurances that Valley was committed to maintaining their personal long-standing relationship with the hospital.

2. *NANJ's Expression of Concerns Regarding an Affiliation with Mt. Sinai Does Not Constitute Fraudulent, Dishonest, or Illegal Conduct*

There is nothing fraudulent, illegal, or dishonest about NANJ questioning the extent of Valley's relationship with Mt. Sinai, or attempting to confirm that Valley was committed to maintaining their relationship. As previously mentioned, New Jersey law authorizes competitors to "use persuasion" and "exert limited economic pressure." It also provides that competitors "may refuse to deal with the third persons in the business in which he competes with the competitor if they deal with the competitor. Or he may refuse other business transactions with the third person relating to that business . . ." Restatement (Second) of Torts § 768. Therefore, NANJ's request for affirmation of its relationship with Valley does not constitute "wrongful conduct" sufficient for a tortious interference claim.

3. *The Evidence Does Not Show that NANJ Expressing Concerns about the Mt. Sinai Affiliation Caused Valley to Enter into the Exclusive Agreement with NANJ*

There is no evidence that Valley entered into the Exclusivity Agreement based on the alleged "wrongful economic pressure" by NANJ. NJBSC must show that there was a reasonable

likelihood they would have received the anticipated economic benefit but for NANJ's purported wrongful conduct. Printing Mart, 116 N.J. at 751-52.

Valley's testimony states that it entered into the Exclusivity Agreement based on NANJ's dedication to the Center and NJBSC's lack of interest in such an agreement. Dr. D'Ambrosio made "conscious efforts" to improve the Center from 2007 to the present, while NJBSC did not participate in such efforts. Moreover, Valley made it clear that it did not determine that it would enter into the Exclusivity Agreement until after its planning department conducted a clinical study to determine whether such an arrangement was in Valley's best interest. It was only after this independent study that Valley decided to enter into the Exclusivity Agreement.

F. NJBSC's Tortious Interference Claims Fail Because NJBSC had no Contractual Entitlement to, or Expectation of Emergency Department Calls

NJBSC did not have a reasonable expectation of economic advantage because it had no contractual entitlement or expectation of ED calls at Valley. Under New Jersey law, a company may assert a protected interest in a prospective relationship only if it has some "reasonable expectation of economic advantage." Printing Mart, 116 N.J. at 751-52. A reasonable expectation requires something more than mere contact with a potential client, and more than a general business relationship which may have included past dealings. Id. A plaintiff has a "reasonable expectation" only when there is a substantial likelihood that a contract would result. Id. at 754.

Here, the record shows that there was never the type of protectable business relationship required to sustain a claim for tortious interference. Plaintiffs allege that because they had previously been allocated part of the ED call responsibilities at Valley, they expected to be allocated such responsibilities on an ongoing basis. Even if NJBSC held these expectations, they are unreasonable because determinations for emergency department call schedules are made at the discretion of the department's director.

Furthermore, Valley's by-laws state that NJBSC could be relieved of their emergency department call obligations at any time. Therefore, NJBSC's claim for tortious interference on this ground must also fail.

V. **All Other Claims Sought to be Dismissed by NJBSC, the Valley Defendants, or NANJ are Denied**

Aside from the claims discussed in the opinion, all other claims sought to be dismissed via motion for summary judgment by NJBSC, the Valley Defendants, or NANJ shall abide a determination at trial.

For the reasons stated above, the Defendants' motion for summary judgment is **DENIED** in part and **GRANTED** in part.