IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL

CCBRM-MULTIMODAL TRANSPORTATION OPERATORS, INC.,	:	July Term 2023
Plaintiff,	:	No. 2784
v.	:	
NOLAN TRANSPORTATION GROUP, LLC,	:	COMMERCE PROGRAM
Defendant.	:	Control Nos. 24123221/24123328

ORDER

AND NOW, this 13th day of November 2025, upon consideration of Motion for Summary Judgment filed by Defendant Nolan Transportation Group, LLC (Defendant NTG) (cn 24123221) and the Response in Opposition filed by Plaintiff CCBRM-Multimodal Transportation Operators, Inc. (Plaintiff CCBRM), and the Partial Motion for Summary Judgment filed by Plaintiff CCBRM (cn 24123328) and the Response in Opposition filed by Defendant NTG, Replies and the Opinion attached to this Order, it is **ORDERED** that

1. Plaintiff CCBRM's Partial Motion for Summary Judgment is **DENIED.**
2. Defendant NTG's Motion for Summary Judgment is **GRANTED** and judgment is entered in favor of Defendant NTG and against Plaintiff CCBRM on all claims in the Amended Complaint.

BY THE COURT:

MICHAEL E. ERDOS, J.

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Defendant.	:	Control Nos. 24123221/24123328

OPINION

This is a breach of contract action. Presently pending before the Court is Plaintiff CCBRM-Multimodal Transportation Operators, Inc.'s partial motion for summary judgment on the claim of breach of contract only and Defendant Nolan Transportation Group, LLC's motion for summary judgment. For the reasons discussed below, Plaintiff's partial motion for summary judgment is denied and Defendant's motion for summary judgment is granted.

BACKGROUND

I. The Statement of Work

On January 23, 2023, Defendant, a third-party logistics company, entered into an agreement, the Statement of Work (SOW), with Plaintiff, for warehouse space on behalf of its client Inxeption Corporation, a manufacturer of solar panels. (Docket (Dkt.) 12-16-24, Plaintiff's Motion for Summary Judgment ¶¶ 2, 3 and Dkt. 1-16-25, Defendant's Response in Opposition ¶¶ 2.3; Dkt. 12-16-24, Plaintiff's Motion Summary Judgment, Exhibit 5, SOW). The SOW included the scope of warehousing services to be provided to Inexption Corporation, the warehouse fees for these services, and the term. (Dkt. 12-16-24, Plaintiff's Motion for Summary Judgment, Exhibit 5, SOW). The space requirement in the SOW was very specific; it required

> "200 k sq. ft (pallets are always double stacked 2 high in warehouse) 1 year, renewed on an annual basis." (Id.).

The Warehouse Fees were also specific:

> Transload: $550 per container
> Storage: $20 per double stack per month (unit, crate, etc.) (Id.).

At the time the SOW was executed by the parties, Plaintiff offered four possible warehouse locations that met the space requirement. (Id.). Defendant selected the warehouse in Chino, California to store the solar panels, which was owned by Motivational Fulfillment & Logistics Services ("MFALS"). (Dkt. 12-16-24, Defendant's Motion for Summary Judgment, Exhibit 10).

Other than the space requirement, the SOW does not contain any other requirements. (Dkt. 12-16-24, Plaintiff's Motion for Summary Judgment, Exhibit 5, SOW). While a minimum charge was suggested by Plaintiff during negotiations of the SOW, the executed SOW does not include such a charge. (Dkt. 12-16-24, Defendant's Motion for Summary Judgment, Exhibit 3, Email dated January 19, 2023). It does not specify the number of containers required to be stored in the warehouse per week, month or year, it does not require Defendant to pay rent based on square footage, it does not require Defendant to pay Plaintiff for unused minimum space nor does it require it to use a particular amount of space by a specific period of time. (Dkt. 12-16-24, Plaintiff's Motion for Summary Judgment, Exhibit 5, SOW).

II. The Chino Warehouse

Plaintiff contracted with MFALS for the warehouse space in Chino, California. Plaintiff agreed to pay MFALS monthly rent for the full space regardless of space utilization or number of pallets on hand at any one time. (Dkt. 12-16-24, Defendant's Motion for Summary Judgment, Exhibit 10).

III. The Alleged Breach

After the SOW was executed and the warehouse location was secured, Plaintiff became concerned with the amount of unused space in the warehouse. (Dkt. 12-16-24, Defendant's Motion for Summary Judgment, Exhibit 4). On March 8, 2023, Plaintiff initiated a conversation with Defendant via email. (Id.). The email identified nine concerns including payment status updates, ensuring its name was correct on all paperwork, discussing the potential of additional CCBRM facilities in the network with longer payment terms, discussing rate cons issues, response timing, billing and staff, and plans to bring in other facilities inventory to Chino. (Id.).

Additionally, Plaintiff posed the following questions:

> 8. "1 year 200,000 sqf + 1700 loads 35000k master panel creates (sic) that was requested and committed to by Nolan and Nolans customers, and secured by CCBRM Multimodal Transport Operators, Inc. Is there an updated plan, schedule to date between deposits, securities and rent CCBRM Multimodal Transport Operators Inc. is into this contact (sic) for over 500K."
>
> 9. Should we be concerned, has something changed, as we are way off with the turnkey program-obligation and the commitment associated with it?" (email Exhibit D to the complaint). (Id.).

Defendant responded to each of Plaintiff's concerns. (Id.). With respect to questions 8 and 9 above, Defendant responded as follows:

> 8. Our agreement for 200,000 sq ft for 1 year, renewed annually, still stands. We're showing roughly 44,000 sq being used now in 30 ship days. We will continue to flood all we can into Chino.
>
> 9. Nothing has changed on our side. We hope the approval of 1-Day Pay proves our partnership remains a priority for NTG. (Id.).

On May 18, 2023, Plaintiff sent an email to Defendant claiming that it had fallen short of the 100% fulfillment for the agreed upon space requirement. (Dkt. 12-16-24, Defendant's Motion for Summary Judgment, Exhibit 8). Plaintiff further stated

> "**Due to this contracted 200,000 square foot warehouse requirement in the agreement by NTG/Nolan and CCBRM…**, we must initiate and back date a mandatory square footage charge for the 200,000 square feet of warehouse space we secured **based on the signed contracted agreement promise** that NTG/Nolan would utilize and support for one year with annual renewal if agreed upon. (Id.). (Emphasis Added)."

The email set forth a square footage rate of $2.95 per month. (Id.).

On June 7, 2023, Plaintiff initiated a lockdown of Inexption Corporation's inventory as a result of not receiving a response from Defendant. (Dkt. 12-16-24, Defendant's Motion for Summary Judgment, Exhibit 9). Plaintiff also attached revised backdated invoices and demanded that the monies be paid in full with rate confirmations before any further movement. (Id.).

IV. Negotiations

After the lockdown, negotiations began between Defendant, Inexption Corporation and MFALS. (Dkt. 12-16-24, Plaintiff's Motion for Summary Judgment, Exhibit 7). Plaintiff refused to participate in the negotiations until it retained counsel. (Id.). In the meantime, MFALS sent an email to Defendant with the hope of finding an amicable resolution. (Dkt. 12-16-24, Defendant's Motion for Summary Judgment, Exhibit 10). MFALS stated that Defendant should disregard the invoices sent by Plaintiff reflecting a square footage rate $2.95/SF. (Id.). Instead, MFALS offered to contract with Defendant directly based on a square footage rate of $2.00/SF, excluding Plaintiff from the negotiations. (Id.).

V. This Action

On July 27, 2023, Plaintiff filed a complaint against Defendant alleging breach of contract, breach of the duty of good faith and fair dealing, tortious interference with contract and prospective business relationships, promissory estoppel/detrimental reliance, fraudulent misrepresentations, negligent misrepresentations, and commercial disparagement. (Dkt. 7-27-25, Complaint). Defendant filed preliminary objections and a motion to transfer the case based on improper venue. The preliminary objections and the motion to transfer were denied by the Court. (Dkt. 9-18-24, Order and 9-27-24, Order).

On February 29, 2024, Plaintiff filed an amended complaint to which Defendant filed preliminary objections to the amended complaint. (Dkt. 2-29-24, Amended Complaint). On August 29, 2024, the Court overruled the preliminary objections as to failure to conform to a rule of court, personal jurisdiction, venue and the claim for tortious interference with contact. (Dkt. 8-29-24, Order). The Court sustained the preliminary objections as to the claim for breach of the duty of good faith and fair dealing and negligent misrepresentation. (Id.) Defendant requested permission from the Court to appeal the Order addressing personal jurisdiction and venue, which was denied on December 5, 2024. (Dkt. 12-5-24, Order). Defendant then sought permission from the Superior Court to appeal the preliminary objection order, which was also denied. (Dkt. 9-12-25, Order). The parties have now filed motions for summary judgment, which are ripe for consideration. [1]

DISCUSSION

I. Defendant did not breach the SOW. [2]

[1] In addition to this action, there is an action pending in California. *See Motivational Marketing LLC v. CCBRM Multimodal Transport Operators, Inc. et al.* CIV – SB – 23-26495 (San Bernardino Cnty).

[2] Summary Judgment is granted in favor of Defendant on the claim for promissory estoppel. Promissory estoppel is invoked when there is no enforceable agreement between the parties. *Crouse v. Cyclops Industries*, 745 A.2d 606, 610 (Pa. 2000). In this case, the SOW is an enforceable agreement. Consequently, the claim for promissory estoppel fails and Defendant's motion for summary judgment is granted on this claim. Notwithstanding the foregoing, there is no evidence that Defendant promised to pay Plaintiff $680,000 per month for the reserved warehouse space (1700 x 20 x $20) or $3.40 per square foot for a minimum of one year. See *id.* (In order to maintain an action in promissory estoppel, the aggrieved party must show that 1) the promisor made a promise that he should have reasonably expected to induce action or

It is well-established that three elements are necessary to prove a cause of action for breach of contract: (1) the existence of a contract, including its essential terms, (2) a breach of contract; and (3) resultant damages. *Kelly v. Carman Corporation*, 229 A.3d 634, 653 (Pa. Super. 2020) quoting *Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.*, 137 A.3d 1247, 1258 (2016) (citations and internal quotation marks omitted).

The fundamental rule in interpreting the meaning of a contract is to ascertain and give effect to the intent of the contracting parties. *Mitch v. XTO Energy*, 212 A.3d 1135, 1138-39 (Pa. Super. 2019), quoting *Maisano v. Avery*, 204 A.3d 515, 520 (Pa. Super. 2019). The whole instrument must be taken together to arrive at the contractual intent. Courts do not assume that a contract's language was chosen carelessly, nor do they assume that the parties were ignorant of the meaning of the language they employed. *Id.*

When the language of a contract is clear and unequivocal, courts interpret its meaning by its content alone, within the four corners of the document. *Stephan v. Waldron Elec. Heating & Cooling LLC*, 100 A.3d 660, 665 (Pa. Super. 2014) (citation omitted). The Court need only examine the writing itself to give effect to the parties' understanding. *Id.* The Court must construe the contract only as written and may not modify the plain meaning under the guise of interpretation. *Id.*

However, when a contract is ambiguous because it is reasonably susceptible to different constructions and capable of being understood in more than one sense, parol evidence is

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forbearance on the part of the promisee; 2) the promisee actually took action or refrained from taking action in reliance on the promise; and 3) injustice can be avoided only by enforcing the promise.).

admissible to explain or clarify or resolve the ambiguity. *Kripp v. Kripp,* 849 A.2d 1159, 1163 (2004) (citation omitted). Parole evidence is admissible irrespective of whether the ambiguity is patent, created by the language of the instrument, or latent, created by extrinsic or collateral circumstances." *Id.*

In this case, Plaintiff alleges that Defendant breached the SOW by failing to

> -fill the 200,000 square feet of warehouse space with tens of thousands of solar panels that would be delivered in 1700 containers with approximately 20 solar panel crates each,
> - to pay $550 per container in transload fees and $20 per solar crate based on 34,000 crates in storage fees per month,
> - to store the solar panels in the 200,000 square feet of warehouse space for one year, which could be renewed annually and
> - to pay $680,000 per month for the reserved warehouse space (1700 x 20 x $20) or $3.40 per square feet for a minimum of one year. (AC 68-71).

The terms that Plaintiff alleges Defendant breached are not contained within the SOW. The only payment terms in the SOW are the "Warehouse Fees" and the "Transload Fees". While Plaintiff suggested a minimum charge (Dkt. 12-16-24, Defendant's Motion for Summary Judgment, Exhibit 3, Email dated January 19, 2023), no such charge was included in the SOW and there is no evidence that Defendant agreed to such a charge. The SOW was the product of negotiations and the parties were acting in conformity with the SOW until Plaintiff realized the agreement was not in its best interest. (Dkt. 12-16-24, Defendant's Motion for Summary Judgment, Exhibit 3; Exhibit 4; Exhibit 6; Exhibit 8; Exhibit 10).

The SOW does not include a square foot rate. Additionally, there are no provisions in the SOW that Defendant pay Plaintiff for any unused minimum space and there is no requirement that it use a particular amount of space within a particular time. Lastly, the SOW does not contain any minimum requirements for solar panel storage or monthly fee payments. The only requirement in the SOW was for space, 200,000 square feet to be exact, for which there was no fee associated. The SOW was a transaction-based contract and payment was due based on the transaction.

Plaintiff argues that the SOW is not a complete contract and that parole evidence, in the form of an affidavit and emails, is necessary to determine the obligations and duties of Defendant. This argument fails. The parol evidence rule states:

> Where the parties, without any fraud or mistake, have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the only, evidence of their agreement. All preliminary negotiations, conversations and verbal agreements are merged in and superseded by the subsequent written contract ... and unless fraud, accident or mistake be averred, the writing constitutes the agreement between the parties, and its terms and agreements cannot be added to nor subtracted from by parol evidence. *Yocca v. Pittsburgh Steelers Sports, Inc.,* 854 A.2d 425, 436–37 (Pa. 2004), citing *Gianni v. Russell & Co.,* 126 A. 791, 792 (Pa. 1924) (citations omitted); *see also Scott v. Bryn Mawr Arms, Inc.,* 312 A.2d 592, 594 (Pa. 1973).

The SOW contains all the material terms.[3] While it does not contain an integration clause, it remains the parties' entire agreement. An integration clause is not the only means to determine if an agreement constitutes the parties' entire agreement for purposes of the parole evidence rule. If it appears to be a contract complete within itself, couched in such terms as import a complete legal obligation without any uncertainty as to the object or extent of the parties' engagement, it is conclusively presumed that the writing represents the whole engagement of the parties. *Yocca v. Pittsburgh Steelers Sports, Inc.*, 854 A.2d 425, 436, 578 Pa. 479, 497–98 (Pa. 2004) (citations omitted).

Here, the SOW is a contract complete within itself. It addresses payment, space and the parties' respective duties and obligations. Moreover, the SOW is not ambiguous. Since it is an

[3] The failure to identify the exact warehouse to store the solar panels and the point of contact information for the warehouse does not make the SOW ambiguous or make it unenforceable. The SOW did identify four possible warehouse locations and Inexption Corporation selected one of the four.

unambiguous complete contract, any parole evidence is barred including the affidavit of Mark Pearsall and emails exchanged between the parties prior to the SOW's execution. The SOW is the best and only evidence of the parties' agreement.

Contracting parties are bound by their agreements, without regard to whether the terms thereof were read and fully understood and irrespective of whether the agreements embodied reasonable or good bargains. *Simeone v. Simeone*, 581 A.2d 162, 165–66 (Pa.1990), Since there is no evidence that the terms allegedly breached were agreed to by the parties, Defendant did not breach the SOW. Accordingly, Defendant's motion for summary judgment is granted. [4]

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[4] Plaintiff argues that it is entitled to summary judgment on its breach of contract claim because Defendant admitted facts by giving general denials and averring that a writing speaks for itself in its answer. Under Rule 1029(b), a general denial, whether in good faith or not, has the effect of an admission. *Discover Bank v. Repine,* 157 A.3d 978, 982 (Pa.Super. 2017). However, it must be emphasized that '. . . the rights of litigants should not be made to depend on the skill of the pleaders but rather on the justice of their claims.' *Avondale Cut Rate, Inc. v. Assoc. Excess Underwriters, Inc.,* 178 A.2d 758, 762 (Pa. 1962).

In this case, while Defendant's denial in paragraphs 25,28,42,50,51,52, 60, 63 and 64 viewed in isolation might support a holding that Defendant admitted a portion of the breach of contract claim, the answer as a whole does not. In fact, Defendant specifically denied the terms that Plaintiff alleges it breached. In paragraph 27 of its answer Defendant specifically averred that it:

> "never made representations to deliver 1,700 containers of solar panels taking up all 200,000 square feet of the warehouse. The SOW does not include anything about the delivery of 1,700 containers of solar panels. Instead the SOW sets forth the basis for shipping and storage payments to Plaintiff in Article II, which provides that Plaintiff shall be paid for 'Transload: $500 per container', and for 'Storage: $20 per double stack per month." Par 27.

Additionally, Defendant also averred that "there is no provision anywhere in the SOW that call for NTG to pay Plaintiff by the square foot or requires it to use a particular amount of space. Id. This denial is sufficient to defeat Plaintiff's reliance on Pa. R. Civ. P. 1029. Moreover, Pa. R. Civ. P. 126 specifically allows the Court to liberally construe the rules to secure the just, speedy

II. Plaintiff's claim for fraud is barred by the parole evidence rule and the gist of the action doctrine.

In count V of the amended complaint, Plaintiff alleges a claim for fraud. Plaintiff alleges that Defendant made the following material misrepresentations including: (1) that it was going to pay $680,000 in monthly warehouse fees for twelve months with an annual renewal at NTG's option, (2) repeatedly representing that "nothing has changed" and (3) that is was going to pay Plaintiff ASAP. (Dkt. 1-15-25, Plaintiff's Memo of Law, pp. 14-15).

"Fraud is a generic term used to describe anything calculated to deceive, whether by a single act or combination, or by suppression of the truth, or suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or silence, word of mouth, or look or gesture." *Hart v. Arnold*, 884 A.2d 316, 339, fn. 7 (Pa. Super. 2005) quoting *Blumenstock v. Gibson,* 811 A.2d 1029, 1034 (Pa. Super. 2003), *appeal denied,* 828 A.2d 349 (2003). To state a claim for fraudulent misrepresentation under Pennsylvania law, it is necessary to plead sufficient facts to satisfy six elements: (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance. *Seguro Medico, LLC v. Humphreys*, 313 A.3d 298, 312 (Pa. Cmwlth. 2024) citing *Eigen v. Textron Lycoming Reciprocating Engine Div.*, 874 A.2d 1179 (Pa. Super. 2005).

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and inexpensive determination of every action or proceeding to which they are applicable and disregard any error or defect of procedure which does not affect the substantial rights of the parties. Id. Accordingly, Plaintiff's partial motion for summary judgment on this ground is denied.

In this case, Plaintiff's fraud claim implicates two types of fraud—fraud in the performance of contract and fraud in the inducement of contract. With respect to the fraud in the performance of contract, the claim is barred by the gist of the doctrine. The gist of the action doctrine is designed to maintain the conceptual distinction between breach of contract claims and tort claims. *eToll, Inc. v. Elias/Savion Adver., Inc.*, 811 A.2d 10, 14 (Pa. Super. 2002). As a practical matter, the doctrine precludes plaintiffs from re-casting ordinary breach of contract claims into tort claims. *Id.*

Plaintiff's claim for fraud in the performance of the contract is integrally related to the breach of contract claim, that is, the failure to pay $680,000 for 200,000 square feet of warehouse space for 12 months with the representation that nothing has changed. The performance duties of Defendant arise and are grounded solely from the SOW making the fraud claim duplicative of the breach of contract claim. Consequently, since the parties' obligations to perform are defined by the terms of the SOW, Plaintiff's fraud claim is barred by the gist of the action doctrine as it is collateral to the SOW.

Plaintiff's claim for fraud in the inducement of contract also fails. It is well-settled that fraud in the inducement claims may be barred if the contract at issue is fully integrated. *Blumenstock v. Gibson*, 811 A.2d 1029, 1035 (Pa. Super. 2002). This Court has already determined that the SOW is a fully integrated contract. As such, the claim for fraud in the inducement is barred by the parole evidence rule.

Based on the foregoing, Defendant's motion for summary judgment to the claim for fraud is granted.

III. Plaintiff failed to produce any evidence of publication, a necessary element to prove a claim for Commercial Disparagement.

In count VII of the amended complaint, CCBRM alleges a claim for commercial disparagement. In order to prove a claim for commercial disparagement, also known as injurious falsehood, the plaintiff must prove that: 1) the defendant published a disparaging statement concerning the business of the plaintiff, 2) the statement was false, 3) the defendant intended that the publication cause pecuniary loss or reasonably should have recognized that publication would result in pecuniary loss, 4) the publication caused actual pecuniary loss, and 5) the publisher knew the statement was false or acted in reckless disregard of its truth or falsity. *Pro Golf Mfg. v. Tribune Review Newspaper Co.,* 809 A.2d 243, 246 (2002) (*citing* Restatement (Second) Torts § 623(A) (1977)).

In this case, Plaintiff relies upon a letter dated July 12, 2023 to CCBRM's principal, Mark Pearsall, from Defendant's counsel to support its claim for commercial disparagement.[5] However, Plaintiff's reliance on this letter fails because there is no evidence that the contents of the letter were published by Defendant to third parties. Since there is no evidence that the July 13, 2023 letter was published, an essential element of the claim for commercial disparagement is missing and the claim fails.

Additionally, notwithstanding the lack of publication, the July 2023 letter is privileged. It has long been the law in Pennsylvania that statements made by judges, attorneys, witnesses and parties in the course of or pertinent to any stage of judicial proceedings are absolutely privileged and therefore cannot be a basis for defamation. *Pawlowski v. Smorto,* 588 A.2d 36, 40 (Pa.

[5] Plaintiff takes issue with the following sentences in the July 12, 2023 letter: "Mr. Sarno [representative of Plaintiff] then claimed that CCBRM 'must initiate and back date a mandatory square footage charge…There is no term in the SOW regarding a 'mandatory square footage charge', which Mr. Sarno appears to have concocted in order to deceive NTG into paying amounts not due under the SOW."

Super. 1991) *citing Binder v. Triangle Publications, Inc.* 274 A.2d 53 (Pa. 1971). The policy behind this principle is manifest:

> The reasons for the absolute privilege are well recognized. A judge must be free to administer the law without fear of consequences. This independence would be impaired were he to be in daily apprehension of defamation. This privilege is also extended parties to afford freedom of access to the courts, to witnesses to encourage their complete and unintimated testimony in court, and to counsel to enable him to best represent his client's interests. Likewise, the privilege exists because the courts have other internal sanctions against defamatory statements, such as perjury or contempt proceedings. Id.

This privilege does not only extend to communications made in open court but also encompasses pleadings and even less formal communications such as preliminary conferences and correspondence between counsel in furtherance of the client's interest. *Id.* (citations omitted.). Here, the statements contained in the July 2023 letter were made by counsel for Defendant in the interest of discussing the contractual dispute between Plaintiff and Defendant. The letter was preliminary to any judicial proceeding and is absolutely privileged. Consequently, the July 2023 letter may not be the basis of any commercial disparagement claim and the motion for summary judgment on this claim is granted in favor of Defendant.

IV. Plaintiff failed to produce any evidence of interference necessary for a tortious interference claim.

In count III of the amended complaint, Plaintiff alleges that Defendant tortiously interfered with its contract with the owner of the Chino warehouse to "cut out the 'middleman' (Multimodal) and thereby increase its profit margin by contracting directly with the warehouse." (Dkt. 2-29-24, Amended Complaint ¶¶ 81-82). Plaintiff also alleges that Defendant blacklisted it in the industry by publishing false and misleading information to the warehouse and others. (Id. ¶¶ 83/84). Despite these allegations, there is no evidence in the record supporting these claims.

The necessary elements of a cause of action for interference with existing contractual relations are as follows: (1) the existence of a contractual relationship between the complainant and a third party; (2) an intent on the part of the defendant to harm the plaintiff by interfering with that contractual relationship; (3) the absence of privilege or justification on the part of the defendant; and (4) the occasioning of actual damage as a result of defendant's conduct. *Phillips v. Selig*, 959 A.2d 420, 429 (Pa. Super. 2008), citing *Restatement (Second) of Torts* § 766 (1979).

The second element requires proof that the defendant acted "for the specific purpose of causing harm to the plaintiff." *Id.*, citing *Glenn v. Point Park College,* 272 A.2d 895, 899 (Pa. 1971). The third element requires proof that the defendant's actions were improper under the circumstances presented; which is determined in accordance with the factors listed in Restatement Section 767: (a) the nature of the actor's conduct; (b) the actor's motive; (c) the interests of the others with which the actor's conduct interferes; (d) the interests sought to be advanced by the actor; (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other; (f) the proximity or remoteness of the actor's conduct to the interference; and (g) the relations between the parties. *Phillips v. Selig,* 959 A.2d, at 429–30.

In this case, Plaintiff has produced no evidence that Defendant interfered with its contractual relationship with MFALS. As discussed supra., the Court has found that Defendant did not breach the SOW. Therefore, Plaintiff cannot now argue that Defendant interfered with its contractual relationship with MFALS by causing financial strain. [6]

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[6] Plaintiff relies upon *Empire Trucking Co., Inc. v. Reading Anthracite Coal Co.*, 71 A.3d 923 (Pa. Super. 2013) to support its claim of "financial strain". In *Empire*, the Court found that the Defendant had created a situation by not paying Empire and ignoring its request for payment while at the same time informing the subcontractors who worked with Empire that the contract was terminated. Here, Defendant did not owe Plaintiff any monies under the SOW and was not the cause of the breach of the lease between Plaintiff and MFLAS.

Additionally, Plaintiff's reliance on the July 12, 2023 letter from counsel and MFLAS's email of June 12, 2023 are not evidence of tortious interference. First, as discussed above, in addition to being privileged, the July 12, 2023 letter was never published to a third party and therefore it cannot be the basis of a tortious interference claim. The question of whether the contents of the letter are true is not material unless the letter was published. Therefore, since there is no evidence that the letter was published to a third party, the letter by itself is not evidence of tortious interference.

Nor is the email from MFLAS to Defendant evidence of tortious interference because it was not written by Defendant and there is no evidence that Defendant initiated any contact with MFLAS. While the lease between Plaintiff and MFLAS was terminated, there was no collusion with MFLAS to cause harm to Plaintiff. Moreover, even if there was evidence of interference, which there is not, the interference may be sanctioned by the rules of the game given Defendant's interest in protecting its client Inexption Corporation's solar panels. *See, Phillips v. Selig*, 959 A.2d 420, 435 (Pa. Super. 2008) ("Because in our society the free expression of opinions is encouraged, we cannot conclude that the criticisms of Hirschbeck and Brinkman violated any of the "rules of the game." As such, the expression of their opinions, however annoying or embarrassing they might have been to Appellants, was not "improper" for purposes of a tortious interference claim."). [7]

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[7] Additionally, Plaintiff also alleged a claim for tortious interference with protective contractual relations. One of the requisite elements of a cause of action for interference with prospective contractual relations is the likely existence of a prospective contractual relationship, which requires more evidence than the existence of a current business or contractual relationship. *Phillips v. Selig*, 959 A.2d 420, 428–29, (Pa. Super. 2008). Not only has Plaintiff failed to produce any evidence of harm, it has also failed to identify the prospective business relationship that was lost because of Defendant's conduct. Consequently, summary judgment is appropriate on this claim as well.

At this stage in the litigation, Plaintiff may not rely simply upon allegations in its amended complaint to defeat summary judgment. On the contrary, Plaintiff has the burden of proof on this issue and must produce evidence of facts demonstrating a genuine issue for trial. *Fennell v. Nationwide Mut. Fire Ins. Co.,* 603 A.2d 1064, 1067 (Pa. Super. 1992).

BY THE COURT:

MICHAEL E. ERDOS, J.