Just Starting Up A Company? You Might Not Be Considered A “Competitor” To Those You Compete With

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Where a business begins operations for the purpose of hiring away employees and winning business from another, the new company might not be a “competitor” for purposes of certain legal claims. Med1 NC Services, LLC v. Med1 Plus, LLC, et al. 2020 NCBC 15 (J. McGuire). Because the plaintiff’s allegations question whether the new business-defendant was a competitor, the established business’ claim for tortious interference with economic advantage would not be dismissed.

Plaintiff Med1 NC Services, LLC (“Med1”) was the sole provider of non-emergency ambulatory services in Robeson County from 2012 until June 30, 2019. During that time, Defendant Bryant provided consulting services to Med1 and had access to Med1’s confidential information, including its employees’ personnel information. After his efforts to purchase Med1 failed, Defendant Bryant ceased working for Med1, incorporated Med1 Plus, LLC (“Med1 Plus”) in May 2019, commenced a
campaign to hire away Med1 employees and sought to compete against Med1. Weeks later, Robeson County solicited bids from companies seeking to be the sole provider of its non-emergency ambulance services. Only Med1 and Med1 Plus submitted bids. In June 2019, Robeson County awarded the contract to Med1 Plus. Med1 then sued Med1 Plus, asserting numerous claims including, *inter alia*, that Med1 Plus had tortiously interfered with Med1’s efforts to win the Robeson County contract. Med1 Plus sought to dismiss Med1’s tortious interference with prospective economic advantage claim, contending that it was justified in its actions because it was Med1’s competitor.

The Business Court disagreed. Although it recognized that a business is justified in its efforts to win business from a competitor—and therefore cannot tortiously interfere with a competitor’s prospective economic activity—the Business Court nonetheless found that because Med1 Plus was “only seeking to be in the business of providing” the same services as Med1 when it allegedly interfered, a dispute existed whether Med1 Plus was actually Med1’s competitor. (Opinion, ¶60). Such was true even though Med1 had alleged in its complaint that Med1 Plus was “its competitor.” (*Id.*, ¶¶6,58).

Based upon this decision, a new business should keep in mind that it might not be justified in competing with other companies during its infancy.

Additional legal points from this decision:

- While the doctrine of intra-corporate immunity usually prevents individuals within the same company from being liable for a conspiracy, an exception exists if one of the corporate agents has an independent, personal stake in achieving the company’s illegal objective. (Opinion, ¶76).

- In order to maintain a claim for tortious interference with a contract, a plaintiff must prove it suffered actual economic injury, usually in the form of lost revenue or from an inability to perform the contract. (Opinion, ¶54).

- In order to maintain a claim for breach of contract, the defendant must be a party to the contract. (Opinion, ¶34).

- With no factual support, mere conclusory allegations that an employee dominated, controlled and influenced a company is insufficient to establish the existence of a fiduciary relationship between the employee and the company. (Opinion, ¶41).

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