

**IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL ACTION**

MASON CLASSICAL ACADEMY, INC.,

Plaintiff,

v.

CASE NO. 19-CA-011779

JOSEPH M. BAIRD,

Defendant.

**DEFENDANT JOSEPH M. BAIRD'S MOTION FOR PARTIAL SUMMARY JUDGMENT
AS TO COUNTS II AND III OF THE SECOND AMENDED COMPLAINT**

Defendant JOSEPH M. BAIRD ("BAIRD"), by and through his undersigned counsel, pursuant to Rule 1.510, Fla. R. Civ. P., moves for summary judgment in his favor on Counts II and III of the Second Amended Complaint and states:

Summary Judgment Standard

1. Summary judgment "shall be rendered forthwith 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 and that the moving party is entitled to a judgment as a matter of law." Rule 1.510(c), Fla. R. Civ. P.

2. The purpose of a motion for summary judgment is to avoid the expense and delay of trial when no dispute exists concerning material facts. *National Airlines, Inc. v. Florida Equipment Co. of Miami*, 71 So.2d 741, 744 (Fla. 1954). When the facts are so clear that nothing remains but questions of law, the Court should enter summary judgment. *Morris v. Morris*, 475 So.2d 666, 668 (Fla. 1985).

Background

3. BAIRD is the former treasurer of Plaintiff MASON CLASSICAL ACADEMY, INC. ("MCA"). (Docket No. 60, ¶¶ 9-10; Docket No. 64, ¶¶ 9-10).

4. MCA is a charter school. (Docket No. 60, ¶ 6; Docket No. 64, ¶ 6).

5. Hillsdale College (“Hillsdale”) provides curricular support and related services to classical charter schools through its Barney Charter School Initiative (BCSI). At one time, MCA was a BSCI affiliate school and had an agreement with Hillsdale College (the “Hillsdale Agreement”) to support MCA’s classical curriculum. (Docket No. 60, ¶ 8; Docket No. 64, ¶ 8). Hillsdale terminated that agreement in or about early August of 2019.

6. On November 18, 2019, MCA filed a two-count Complaint against BAIRD. Count II was labeled as a cause of action for “Tortious Interference (Hillsdale Agreement)” alleging that BAIRD tortiously interfered in the relationship between MCA and Hillsdale. MCA alleged that BAIRD “had been communicating with Hillsdale College with the intent to harm MCA’s relationship with Hillsdale” and that “Hillsdale College improperly terminated the Hillsdale Agreement in violation of its covenant of good faith and fair dealing.” (Docket No. 4, ¶¶ 30-31).

7. Subsequent amendments to the complaint retained these allegations and added Count III, “Tortious Interference (Business Relationship),” in the alternative to Count II. MCA alleged in Count III that BAIRD “intentionally and without justification interference (sic) with MCA’s business relationship with Hillsdale College.” (Docket No. 60, ¶ 53).

8. Under Florida law, “tortious interference with a contract and tortious interference with a business relationship are basically the same cause of action. The only material difference appears to be that in one there is a contract and in the other there is only a business relationship.” *Smith v. Ocean State Bank*, 335 So.2d 641, 642 (Fla. 1st DCA 1976).

9. “Four elements are required to establish tortious interference with a contractual or business relationship: (1) the existence of a business relationship or contract; (2) knowledge of the business relationship or contract on the part of the defendant; (3) an intentional and unjustified interference with the business relationship or procurement of the contract’s breach; and (4) damage to the plaintiff **as a result of the interference.**” *Howard v. Murray*, 184 So.3d 1155, 1166 (Fla. 1st DCA 2015) (emphasis added), *citing Tamiami Trail Tours, Inc. v. Cotton*, 463 So.2d 1126, 1127 (Fla. 1985).

10. On the morning of November 3, 2020, MCA deposed Michael Harner, who serves as College Chief of Staff at Hillsdale. A true and correct copy of Mr. Harner's deposition transcript ("Harner Depo") has previously been filed with the Court. See Docket Nos. 116, 118, and 120-125.

11. On the afternoon of November 3, 2020, MCA deposed Eric Coykendall, who serves as the Associate Director of BCSI at Hillsdale. A true and correct copy of Mr. Coykendall's deposition transcript ("Coykendall Depo") has previously been filed with the Court. See Docket Nos. 117 and 126-129

12. On November 4, 2020, MCA deposed Phil Kilgore, a former Hillsdale employee who served as the Director of BCSI during the time period relevant to MCA's claims. A true and correct copy of Mr. Kilgore's deposition transcript ("Kilgore Depo") has previously been filed with the Court. See Docket No. 119.

13. Mr. Harner, Mr. Coykendall, and Mr. Kilgore (collectively the "Hillsdale Witnesses") have direct personal knowledge of the relationship between MCA and Hillsdale. Their uncontroverted testimony, summarized below, conclusively establishes that BAIRD did not interfere in that relationship. Accordingly, BAIRD is entitled to summary judgment on Counts II and III.

Undisputed Facts

14. Although Hillsdale did not formally terminate its relationship with MCA until the summer of 2019, Hillsdale employees had significant concerns about MCA long before the decision to terminate was made—and for that matter, long before BAIRD submitted his complaint about MCA to the Florida Department of Education (FDOE) in June 2018. Hillsdale's concerns emerged over many years and from numerous sources.

15. Mr. Coykendall had concerns about MCA beginning in the fall of 2016. At that time, he testified, he had been working for the Barney Charter School Initiative for about a year and "I was beginning to learn about what boards looked like at charter schools" (Coykendall Depo pp. 128-129, In. 24-2). With the benefit of that experience, he observed conflicts on the MCA board and "I

think that's when it became clear to me that there might be a problem there." (Coykendall Depo p. 129, In. 3-8).

16. By the spring of 2018, Mr. Coykendall arrived at the conclusion that David Hull should be removed from his role as principal of MCA. (Coykendall Depo p. 125, In. 16-20). Mr. Kilgore similarly testified that before BAIRD submitted his complaint to the FDOE in June of 2018, Mr. Kilgore was already concerned about Principal Hull's harshness toward students and poor communication style (Kilgore Depo p. 174-175, In. 22-11). In the late spring of 2018, a BSCI employee accidentally forwarded an email to Principal Hull expressing her frustration with him; "he responded to that by effectively shutting out . . . the entire BCSI office and made clear that he wanted no further communication with [Hillsdale]." (Coykendall Depo pp. 125-126, In. 20-2).

17. All three Hillsdale Witnesses expressed concern over the high volume of complaints Hillsdale received about MCA from 2014 onward. These complaints came from various people in the MCA community, including parents and staff. Hillsdale received more complaints about MCA than it received about all the other approximately two dozen charter schools in the BCSI program **combined**. (Kilgore Depo p. 177, lines 6-9; Coykendall Depo p. 135, lines 3-19; Harner Depo p. 98, lines 9-19). A timeline of those complaints, most of which predate BAIRD's June 2018 complaint to the FDOE, is Exhibit 13 to Mr. Harner's deposition.

18. Hillsdale received feedback from "numerous folks" regarding "how the school was on a day-to-day basis." (Harner Depo p. 97, In. 10-17). From that feedback, Hillsdale noted a "disconnect between the school's achievements academically and on standardized tests and the culture and climate at the school, that those two things looked like they may be in conflict." (Harner Depo p. 97, In. 4-9).

19. Hillsdale's concerns about MCA were wide-ranging and included, without limitation:

- a. MCA's board had only three members, one of whom was not local. (Kilgore Depo p. 187, In. 13-18). This created the potential for Sunshine Law violations. (Kilgore Depo p. 43, In. 12-23). The two local board members, Kelly Lichter and Laura

Miller, were “insular” and failed to hold Principal Hull accountable. (Coykendall Depo pp. 39-40, In. 22-1). Mr. Kilgore testified that he became concerned when he “was encouraging [Kelly Lichter] to expand the board” and she responded that she was “having a hard time trusting people, finding people to trust. And that concerned me because that meant that the trust factor was exclusively residing in Kelly and Laura’s relationship, for all practical purposes...” (Kilgore Depo pp. 187-188, In. 19-3). The MCA board was also dismissive toward parent complaints. (Coykendall Depo p. 40, In. 1-3).

- b. Kelly Lichter, Principal Hull, and MCA employee Gena Smith formed a charter school consulting firm together called Classical Charter Management Group (CCMG). Hillsdale was concerned that Lichter, Hull, and Smith being in business together created a conflict of interest with respect to their supervisory relationships at MCA. (Coykendall Depo p. 37, In. 12-21; Harner Depo p. 65, In. 8-11; Kilgore Depo p. 39-40, In. 19-8). When Kelly Lichter stepped down from CCMG only to be replaced by her husband, Hillsdale was not satisfied that the conflict of interest had been eliminated. (Harner Depo p. 66-67, In. 22-10).¹
- c. MCA received multiple complaints about Principal Hull’s demeanor. (Harner Depo p. 92, In. 21-22; Coykendall Depo p. 37, In. 10-11). Hillsdale did not “have any reason to doubt” the multiple reports it received of Principal Hull yelling at students. (Coykendall Depo pp. 117-118, In. 20-4). Mr. Coykendall testified:

There was concern that David Hull was handling things in a manner that wasn’t befitting of good school culture, that wasn’t befitting of good leadership. He would respond to complaints from parents with very long diatribe-like emails that I think by copying us on those he was hoping to kind of clear his name and show us look at these crazy people I’m dealing with, but in the process of that was probably exposing people in a way that wasn’t appropriate for his

¹ Some Hillsdale employees were also concerned that CCMG’s business model put CCMG in competition with BSCI. However, Mr. Kilgore did not share that concern. (Coykendall Depo pp. 41-42, In. 5-13; Kilgore Depo p. 172, In. 6-22).

role, wasn't appropriate to the privacy concerns of their complaints, and ultimately cast him in a light where we thought this is somebody who needs to bring these people into his office and speak with them or call them at least and that, you know, an email format is not an appropriate format for this. And he's not appropriately meeting, you know, real concerns that are being brought forward by parents.

(Coykendall Depo p. 40, In. 4-21). MCA faculty members echoed that concern.

(Coykendall Depo pp. 40-41, In. 22-5).

20. The Hillsdale Witnesses testified unequivocally that they did not learn of the above-listed issues from BAIRD. Mr. Coykendall never had any communication with BAIRD. (Coykendall p. 121, In. 4-5; p. 136, In. 17-20). Mr. Harner could not recall any communication with BAIRD. (Harner Depo pp. 47-48, In. 25-3). On or about November 8, 2018, Mr. Kilgore received an email from BAIRD, copying Kelly Lichter, outlining BAIRD's concerns about MCA (Kilgore Depo Ex. 40). Mr. Kilgore testified that "[t]hat one email is actually I believe the only contact or exchange I ever had with Joe Baird, and it was my desire to keep it limited, brief, and not invite reply." (Kilgore Depo p. 168, In. 5-13).

21. Hillsdale became aware of BAIRD's complaint to the FDOE shortly after it was submitted in June of 2018. Mr. Kilgore testified that reading BAIRD's complaint to the FDOE did not lead him to conclude that the relationship between Hillsdale and MCA should be severed. (Kilgore Depo pp. 167-168, In. 17-3). The Sunshine Law violations alleged in BAIRD's complaint to the FDOE came as no surprise to Hillsdale, since that was a concern Hillsdale already had. (Kilgore Depo p. 44, In. 9-20). Hillsdale considered the financial oversight concerns raised in BAIRD's complaint to the FDOE and "didn't think any of those concerns were based on malfeasance but maybe just a lack of understanding of what needed to be done." (Harner Depo p. 54, In. 12-22).

22. In November of 2018, Mr. Harner and Mr. Kilgore traveled to Florida and met with members of the MCA board. Mr. Harner's notes from that trip are Exhibit 14 to his deposition, which he authenticated. (Harner Depo p. 76, In. 14-23). He wrote that during their conversation with Kelly Lichter, "we addressed multiple issues to include board composition, conflict of interest,

oversight of the school executive, financial management processes, and parental complaints. Too frequently, Kelly attempted to pivot the conversation back to the theme of ‘a mob out to get the school.’ Phil and I repeated our belief that, while there may be such a mob, the actions of a board in their oversight role can do much to quell dissent.” (Harner Depo Ex. 14). He further noted:

Executive oversight is highly problematic. Kelly holds the principal in high regard and has been his business partner. Complaints regarding his leadership are almost universally dismissed as examples of bad parenting or personal animus against the principal. The sheer volume of complaints would dictate at least some circumspection regarding the principal’s leadership. Additionally, the assistant principal has engaged in extremely unproductive communications publicly via a local radio show, and through social media. The first case he characterized a local reporter as a slut and a skank. In the second, he contributed a Facebook post where he opined that he would like to end certain individuals, (presumably those who have problems with the school) “lease on life.” This sentiment was enthusiastically agreed to by a current board member in a subsequent post. In neither case was he disciplined.

(Harner Depo Ex. 14).

23. Mr. Harner and Mr. Kilgore’s meeting with MCA board member Laura Miller during the same trip was similarly unproductive:

I would characterize Laura as defensive, irrational, and obsessed with the personalities involved rather than the issues at hand. Her view is that this is a mob conspiracy by disaffected people out to get the school. Every instance of alleged misconduct is attributed to bad parenting. [. . .] Her behavior throughout the meeting was irrational and in keeping with her social media posts. Other than begrudging openness to new board members, she gave no indication of any willingness to consider any recommendations we brought up.

(Harner Depo Ex. 14).

24. Mr. Harner followed up on the November 2018 visit with an email to Kelly Lichter dated December 6, 2018, which is Exhibit 11 to his deposition. The December 6, 2018 email set forth seven recommendations which Hillsdale recommended to “help alleviate some of the contention MCA is currently experiencing.” (Harner Depo Ex. 11). These included “Expand the MCA board from 3 to no fewer than five members” and “Conduct conflict of interest reviews of all board members as they pertain to the board’s oversight of MCA employees.” (Harner Depo Ex. 11). The

purpose of this communication “was as both a preventative and a corrective to keep any kind of deterioration in the future from occurring on various fronts.” (Kilgore p. 35, In. 17-21).

25. As late as December 2018—well after BAIRD’s complaint to the FDOE and his publication of “What’s Wrong with MCA?”²—Hillsdale still was not considering terminating its relationship with MCA. (Kilgore Depo p. 37, In. 5-7). Instead, Hillsdale was “trying to figure out how to save the school, so it wasn’t about severing the relationship, it was about a way forward to keep MCA going.” (Harner Depo p. 50, In. 13-23).

26. Between December of 2018—when Hillsdale still desired to keep its relationship with MCA intact—and Hillsdale’s decision to terminate the relationship with MCA, Hillsdale had no communication with BAIRD. (Kilgore Depo p. 168, In. 5-17). Hillsdale independently decided to sever ties with MCA, and BAIRD did not have any say or input into that decision. (Kilgore Depo pp. 168-169, In. 18-1).

27. In an undated memorandum prepared by Mr. Harner (Harner Depo p. 80, In. 1-17), he noted that MCA had only made progress on one of Hillsdale’s seven recommendations from December 6, 2018. (Harner Depo Ex. 15). Mr. Kilgore testified that as of March of 2019, he’d had “a couple of conversations” with Kelly Lichter and was “not convinced that the remedial actions were effective or gaining traction.” (Kilgore Depo p. 134, In. 13-22). Kelly Lichter “protested about the recommendations.” (Harner Depo p. 63, In. 10-16).

28. Mr. Harner was asked: “In your discussions with anyone at Hillsdale prior to June of 2019 did anyone else raise the possibility that Hillsdale might be severing its relationship with MCA based on the issues raised by Mr. Baird?” He answered: “Not based on any issues raised by Mr. Baird.” (Harner Depo pp. 50-51, In. 24-3).

29. In June of 2019, Jon Fishbane, Esq., the General Counsel for the District School Board of Collier County, released a report detailing the findings of his investigation into MCA and his

² MCA refers to this document as the “manifesto.”

recommendations for reform (the “Fishbane report”). Hillsdale compared the Fishbane report to Hillsdale’s own observations of MCA and found them to be consistent. (Kilgore Depo p. 74, In. 16-24; pp. 179-180, In. 24-7). In fact, the only thing that Mr. Kilgore found surprising about the Fishbane report was that its recommendations with respect to MCA’s assistant principal were *more lenient* than he expected. (Kilgore Depo pp. 184-185, In. 20-14). As Mr. Harner put it, “We had a report and we had previous visits where we had concerns and made those concerns known to the board, and it wasn’t surprising to us that these things then became a problem.” (Harner Depo p. 25, In. 3-6). In Hillsdale’s estimation, the issues identified in the Fishbane report “required immediate attention on the part of the [MCA] board because charter schools are something which are held in the public trust.” (Coykendall Depo pp. 18-19, In. 15-3). Discussions about Hillsdale severing its relationship with MCA did not occur until after the Fishbane report was completed, and even then, “always with the direction to try to figure out how to save the relationship with the school.” (Harner Depo p. 52, In. 2-11).

30. Ultimately, Hillsdale decided that a relationship with MCA could no longer go forward due to “[l]eadership at the governance and management level of the school that was not responsive to us or the authorizer or the parent community, and that fundamentally sets forth a fracture in the confidence that’s necessary for the care of a public trust.” (Kilgore Depo p. 179, In. 4-11). There was “no observed progress on the guidance and parameters” Hillsdale gave to MCA in December of 2018, and “that kind of guidance can’t go on ignored without ultimately leading to a rift.” (Kilgore Depo p. 133, In. 7-18).

31. “[T]he existence of Joe Baird’s report was immaterial to [Hillsdale’s] decision to sever the relationship with Mason Classical Academy.” (Coykendall p. 133, In. 11-13). Counsel for MCA asked Mr. Harner and Mr. Coykendall a series of questions about the truth or falsity of various allegations in BAIRD’s complaint to the FDOE. Both testified that they were without knowledge, demonstrating that BAIRD’s allegations were indeed immaterial to Hillsdale’s decision to terminate its relationship with MCA. (Harner Depo pp. 89-93; Coykendall Depo pp. 114-118).

32. Counsel for BAIRD asked Mr. Coykendall:

Q: So supposing that my clients' parents had never met and my client had never existed, would you have a positive opinion of MCA's governance?

A: No.

Q: Would it change anything about Hillsdale's relationship with MCA?

A: No.

(Coykendall Depo p. 133, ln. 14-22). Likewise, counsel for BAIRD asked Mr. Kilgore:

Q: If Joe Baird's parents had never met and he never had anything to do with any of this, do you believe that Hillsdale would still have a fruitful relationship with MCA?

A: No.

(Kilgore Depo p. 193, ln. 12-17).

33. The unrebutted testimony of the Hillsdale Witnesses is clear: BAIRD did not interfere in any way with Hillsdale's relationship with MCA. (Kilgore p. 169, ln. 3-5).

Argument

34. The standard jury instruction for tortious interference includes Section 408.4a, "Legal Cause," which provides:

Interference with [a contract] [a business relationship] is a cause of [loss] [injury] [or] [damage] if it directly and in natural and continuous sequence produces or contributes substantially to producing such [loss] [injury] [or] [damage], so that it can reasonably be said that, but for the interference with [a contract] [a business relationship], the [loss] [injury] [or] [damage] would not have occurred.

In re Standard Jury Instructions in Civil Cases-Report No. 09-01 (Reorganization of Civil Jury Instructions, 35 So.2d 666, 745-746 (Fla. 2010).

35. The testimony of the Hillsdale Witnesses conclusively disproves the but-for causation element of Counts II and III. Hillsdale had minimal communication with BAIRD, and Hillsdale's reasons for terminating its relationship with MCA were independent of anything BAIRD did or said.

36. "A movant for summary judgment has the initial burden of demonstrating the nonexistence of any genuine issue of material fact. But once he tenders competent evidence to support his

motion, the opposing party must come forward with counterevidence sufficient to reveal a genuine issue. It is not enough for the opposing party merely to assert that an issue does exist.” *Landers v. Milton*, 370 So.2d 368, 370 (Fla. 1979).

37. BAIRD is entitled to summary judgment in his favor on Counts II and III as a matter of law.

WHEREFORE, BAIRD respectfully requests that the Court enter summary judgment in his favor and against MCA as to Counts II and III and grant such other and further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served in accordance with Florida Rule of Judicial Administration 2.516 this 8th day of December, 2020, to:

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