

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
BUSINESS AND CONSUMER COURT
LOCATION: PORTLAND
DOCKET NO. BCD-RE-17-13

REBECCA L. BROWN,)
)
 Plaintiff,)
)
 v.)
)
 EDWARD M. GRAFFAM, III, and)
 LENI GRONROS,)
)
 Defendants.)
)
 _____)
)
 KIMBERLEE S. GRAFFAM; KLMx2,)
 LLC; and PENOBSCOT BAY ICE CO.,)
)
 Parties-in-Interest.)

ORDER ON DEFENDANT LENI
GRONROS' AND PARTIES-IN-
INTEREST MOTION TO DISMISS

This matter comes before the Court on Defendant Leni Gronros’s (“Gronros”), and the Parties-in-Interest; Kimberlee Graffam’s (“Kimberlee”), KLMx2, LLC’s (“KLM”), and Penobscot Bay Ice Co.’s (“Pen Bay”) motion to dismiss the action filed against them pursuant to M.R. Civ. P. 12(b)(6). Plaintiff Rebecca L. Brown (“Brown”) opposed the motion, and Gronros and the Parties-in-Interest replied. Pursuant to the discretion granted it by M.R. Civ. P. 7(b)(7), the Court chose to rule on the motion on the briefs without hearing oral argument.

BACKGROUND FACTS¹

This case arises out of a disputed transaction for the sale of certain business entities in Rockport, including the Tolman Pond Market. (Pl’s Compl. ¶ 6). Tolman Pond Market’s ownership structure was complex. It was the d/b/a name of T.B. Caliber, Inc., a Maine corporation

¹ As noted below, the Court must assume the facts alleged in Ms. Brown’s complaint are true for purposes of deciding this motion to dismiss. *Bonney v. Stephens Mem. Hosp.*, 2011 ME 46, ¶ 16, 17 A.3d 123. Nothing in this section should be construed as a finding of fact by the Court.

owned by EMG4, LLC, which LLC was itself owned by Plaintiff Rebecca Brown and Defendant Edward M. Graffam, III (“Edward”). (*Id.* ¶¶ 5-6.) Ms. Brown owned 19% of EMG4 and Edward owned 81%. (*Id.* ¶ 5.) Penobscot Bay Ice Co. (“PenBay”) is a Maine corporation, of which Party-in-Interest Kimberlee was President during the relevant period. (*Id.* ¶¶ 9,13.) Kimberlee is also a member of KLMx2, LLC, which was also a party to the disputed transaction and is listed as a Party-in-Interest in the complaint, although the complaint does not specify how exactly KLMx2 is involved. (*Id.* ¶¶ 10-11). Kimberlee is Edward’s sister; Ms. Brown and Edward were previously married. (*Id.* ¶¶ 3, 22.)

The disputed transaction was a “package deal” for the sale of EMG4 and PenBay to Maritime Energy, Inc. for the purchase price of \$2.3 million. (*Id.* ¶ 12.) Ms. Brown alleges that originally the allocation of the sale price was \$1.2 million for EMG4 and \$1.1 million for PenBay. (*Id.* ¶ 14.) However, at some time prior to closing and without Ms. Brown being informed, Mr. Gronros—Kimberlee’s husband—sent an email to EMG4/PenBay’s accounting firm directing it to change the allocation to \$800K for EMG4 and \$1.5 million for PenBay. (*Id.* ¶ 18.) This was allegedly done with the knowledge of all Defendants for the purpose of depriving Ms. Brown from realizing any profit on the transfer. (*Id.* ¶¶ 19-24.)

STANDARD OF REVIEW

In reviewing a motion to dismiss under Rule 12(b)(6), courts “consider the facts in the complaint as if they were admitted.” *Bonney v. Stephens Mem. Hosp.*, 2011 ME 46, ¶ 16, 17 A.3d 123. The complaint is viewed “in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory.” *Id.* (quoting *Saunders v. Tisher*, 2006 ME 94, ¶ 8, 902 A.2d 830). “Dismissal is warranted when it appears beyond a doubt that the plaintiff is not entitled to relief

under any set of facts that he might prove in support of his claim.” *Id.*

DISCUSSION

The issue on this motion to dismiss is whether Ms. Brown has stated a claim for tortious interference against Mr. Gronros and the Parties-in-Interest, taking all of the facts in Ms. Brown’s complaint as true.² M.R. Civ. P. 12(b)(6). The elements a plaintiff must prove to prevail on a claim for tortious interference are: “(1) that a valid contract or prospective economic advantage existed, (2) that the defendant interfered with that contract or advantage through fraud or intimidation, and (3) that such interference proximately caused damages.” *Rutland v. Mullen*, 2002 ME 98, ¶ 13, 798 A.2d 1104.

Ms. Brown does not claim that Mr. Gronros interfered with her prospective economic advantage through intimidation, but through fraud. Tortious interference through fraud consists of five elements:

(1) making a false representation (2) of a material fact (3) with knowledge of its falsity or in reckless disregard of whether it is true or false (4) for the purpose of inducing another to act or refrain from acting in reliance on it, and (5) the other person justifiably relies on the representation as true and acts upon it to the damage of the plaintiff.

Id., ¶ 14. Our Law Court has “since at least 1897” required proof of fraud or intimidation to support a tortious interference claim because “it distinguishes unlawful conduct from conduct inherent in a healthy competitive economic environment.” *Id.* ¶ 13, n.5. For that reason, Maine law has never recognized a cause of action for negligent interference with an economic advantage. *Id.*

Ms. Brown alleges Mr. Gronros is liable for tortious interference because at some point between October 5, 2016 and December 20, 2016, he sent an email to the accounting firm for

² Ms. Brown does not challenge Mr. Gronros’s and the Parties’-in-Interest assertion that only Count V (tortious interference) implicates these movants. (Mot. 3-4.)

EMG4 directing the CPA to change the allocations of the sale proceeds to reflect a lesser allocation to EMG4 and a greater allocation to Penobscot Bay. (Pl's Compl. ¶ 18.) Ms. Brown further alleges that she was neither aware of nor did she approve of this change, and that Mr. Gronros' action was intentional and done with the knowledge of Edward and Kimberlee for the purpose of ensuring that Ms. Brown received no profit from the sale of EMG4. (*Id.* ¶¶20, 22.) Finally, Ms. Brown alleges that Mr. Gronros' action had the effect of increasing Penobscot Bay's price allocation such that Ms. Brown's rightful share could be placed in an account hidden and concealed from her. (*Id.* ¶ 32). Ms. Brown characterizes Mr. Gronros' action as defrauding Ms. Brown of rightfully entitled funds. (*Id.*) Ms. Brown argues that these allegations sufficiently state a claim for tortious interference through fraud against Mr. Gronros and the Parties-in-Interest.³

The Court disagrees. Ms. Brown has failed to allege facts that could support a finding that Mr. Gronros interfered with Ms. Brown's alleged economic advantage through fraud because no affirmative act of fraud is alleged.⁴ Although Ms. Brown alleges that Mr. Gronros' acted in a manner contrary to her interests, with the knowledge and approval of other parties to the transaction, Ms. Brown does not allege that Mr. Gronros made a false representation of a material fact with knowledge of its falsity or in reckless disregard of whether it was true or false. *See Rutland*, 2002 ME 98, ¶ 14, 798 A.2d 1104.

If there was a change in the allocation of the proceeds of the sale, Mr. Gronros cannot be

³ The motion to dismiss was brought on behalf of Mr. Gronros, a named defendant in this case, as well as the Parties-in-Interest. However, Ms. Brown's opposition addresses the motion only as it applies to Mr. Gronros. (Pl's Opp. Mot. Dismiss 4.) Regardless, Ms. Brown's complaint fails to state a claim against the Parties-in-Interest for the same reasons it fails to state a claim against Mr. Gronros, as explained *infra*.

⁴ Although not raised by Defendants, it is likely that M.R. Civ. P. 9(b)'s heightened pleading standard applies here to the extent that Ms. Brown must allege fraud in order to state a claim as to this count. *See Rutland*, 2002 ME 98, ¶¶ 13-14, 798 A.2d 1104. The Court need not decide which rule applies because even under M.R. Civ. P. 8(b)'s more forgiving notice pleading standard, Ms. Brown failed to allege facts which could support a finding of fraud necessary to prevail on a claim of tortious interference.

liable under a fraud theory for communicating that change to the accountant. To put it simply, Ms. Brown does not allege that Mr. Gronros was making a false representation when he emailed the accountant and told him or her that there had been a change to how the sale proceeds should be allocated. With no false representation, there can be no fraud. *Id.* ¶ 14. With no fraud,⁵ there can be no tortious interference with a prospective economic advantage. *Id.* ¶ 13.

In sum, because Ms. Brown has not alleged a fact essential to the single count brought against Mr. Gronros and the Parties-in-Interest, she has failed to state a claim against them.

CONCLUSION

By reason of the foregoing it is hereby ORDERED:

That the Defendant Leni Gronros' and the Parties-in-Interest Kimberlee S. Graffam's, KLMx2, LLC's, and Penobscot Bay Ice Co.'s motion to dismiss is hereby **GRANTED**. All counts are dismissed as to these parties.

The Clerk is instructed to enter this Order on the docket for this case incorporating it by reference pursuant to Maine Rule of Civil Procedure 79(a).

Dated: February 6, 2018

/s
Richard Mulhern
Judge, Business and Consumer Court

⁵ Ms. Brown has not argued that tortious interference through intimidation applies in this case.