

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 13767

CAROLINA MEDICAL PARTNERS,
PLLC; NIMISH PATEL; and
SHEPHALI PATEL,

Plaintiffs,

v.

AMIT G. SHAH and PALMETTO
MEDICAL GROUP, PLLC,

Defendants.

**ORDER AND OPINION
ON PARTIAL MOTION TO DISMISS
AMENDED COUNTERCLAIMS**

1. Plaintiffs Nimish Patel, Shephali Patel, and Carolina Medical Partners, PLLC have moved to dismiss a host of counterclaims asserted by Defendants Amit Shah and Palmetto Medical Group, PLLC. (See ECF No. 75.) For the following reasons, the Court **GRANTS** the motion in part and **DENIES** it in part.

Moore & Van Allen, PLLC, by Christopher D. Tomlinson, Caroline F. Savini, and Sarah H. Negus, for Plaintiffs Carolina Medical Partners, PLLC, Nimish Patel, and Shephali Patel.

K&L Gates LLP, by Marla T. Reschly and Daniel D. McClurg, for Defendants Amit G. Shah and Palmetto Medical Group, PLLC.

Conrad, Judge.

I.
BACKGROUND

2. The Court does not make findings of fact on a motion to dismiss. The following background assumes that the allegations of the amended counterclaims are true.

3. Shah and the Patels are physicians who used to practice together. Shah founded Palmetto Medical Group, an adult and senior primary care practice, in 2008.

He hired the Patels to join the practice two years later and gave them minority ownership interests a year after that. As time went on, though, their relationship soured, leading to a split in mid-2021. (*See* Am. Countercl. ¶¶ 9–11, ECF No. 74.)

4. It wasn't an amicable split. Shah and the Patels needed a mediator to help them work through their many disputes. Although the mediation did not settle every dispute they had, it did yield a framework for dividing their business interests, as spelled out in a written Practice Separation Agreement. In a nutshell, the parties agreed that Shah would buy the Patels' interests in Palmetto Medical Group and that the Patels would then be free to open their own medical practice. The first step was to have the Patels' interests appraised. Once the appraisal was complete, Shah would have thirty days to tender payment, after which the parties would execute any documents needed to transfer the Patels' interests to him. While awaiting the appraisal and payment, the Patels were to continue working for Palmetto Medical Group and receiving regular, biweekly distributions. In addition to negotiating the buyout, the parties agreed to indemnification and nondisparagement clauses, measures to protect the rights of patients and ensure continuity of care, and terms concerning Palmetto Medical Group's existing contracts to provide medical services to third parties. (*See* Am. Countercl. ¶¶ 47, 48; V. Compl. Ex. A ["PSA"], ECF No. 3.)

5. But this fragile peace didn't last. By November 2021, the Patels had transferred their interests in Palmetto Medical Group to Shah and opened their new practice under the name Carolina Medical Partners. Throughout this period, the parties squabbled about things that hadn't been resolved in their mediation as well

as things that supposedly had been. A second mediation in June 2022 ended in an impasse. Soon after, the Patels and Carolina Medical Partners filed suit, alleging not only that Shah and Palmetto Medical Group had breached the Practice Separation Agreement but also that they had never intended to abide by the agreement in the first place. (*See* Am. Countercl. ¶¶ 53, 108, 110; V. Compl., ECF No. 3.)

6. Shah and Palmetto Medical Group have denied any wrongdoing and asserted counterclaims, saying that the Patels are the ones who shirked their contractual obligations in both the Practice Separation Agreement and their employment agreements. Shah and Palmetto Medical Group also claim unfair competition, alleging that the Patels secretly formed Carolina Medical Partners long before the Practice Separation Agreement and later wrongfully induced one of Palmetto Medical Group's key clients to breach its contract with the practice. The counterclaims, as amended, include claims for breach of contract, fraud, punitive damages, tortious interference with contract, unjust enrichment, and civil conspiracy. (*See* Am. Countercl. ¶¶ 115, 116, 126–31, 134–46, 149–51, 159–74, 178–82, 186–91, 195, 196.)

7. The Patels and Carolina Medical Partners have moved to dismiss most of the amended counterclaims. Their motion is fully briefed. On 25 June 2024, the Court held a hearing at which all parties were represented by counsel. The motion is ripe for determination.

II. ANALYSIS

8. A motion to dismiss under Rule 12(b)(6) “tests the legal sufficiency of the [counterclaim] complaint.” *Isenhour v. Hutto*, 350 N.C. 601, 604 (1999) (citation and quotation marks omitted). Dismissal is proper when “(1) the complaint on its face reveals that no law supports the . . . claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the . . . claim.” *Corwin v. Brit. Am. Tobacco PLC*, 371 N.C. 605, 615 (2018) (citation and quotation marks omitted). In deciding the motion, the Court must treat the well-pleaded allegations as true and view the facts and permissible inferences in the light most favorable to the nonmoving party. *See, e.g., Sykes v. Health Network Sols., Inc.*, 372 N.C. 326, 332 (2019). The Court may also consider documents, such as contracts, that are the subject of the complaint. *See, e.g., Oberlin Cap., L.P. v. Slavin*, 147 N.C. App. 52, 60 (2001).

A. Breach of Contract

9. The elements of a claim for breach of contract are the existence of a valid contract and a breach of that contract’s terms. *See Poor v. Hill*, 138 N.C. App. 19, 26 (2000). When these elements are alleged, “it is error to dismiss a breach of contract claim under Rule 12(b)(6).” *Woolard v. Davenport*, 166 N.C. App. 129, 134 (2004); *see also Vanguard Pai Lung, LLC v. Moody*, 2019 NCBC LEXIS 39, at *11 (N.C. Super. Ct. June 19, 2019) (“[S]tating a claim for breach of contract is a relatively low bar.”).

10. Shah and Palmetto Medical Group allege that the Patels breached fourteen different contract provisions—six in the Practice Separation Agreement and eight

more in their employment agreements. The Patels seek to dismiss the counterclaims for all but two of these fourteen alleged breaches.

11. Most of the parties' disputes are straightforward. The Patels argue, for example, that the allegations of breach are too vague for those sections of their employment agreements that concern their professional and administrative duties and restrictions on their use of confidential information. But notice pleading requires only "a statement of a claim" that "gives sufficient notice of the events or transactions which produced the claim to enable the adverse party to understand its nature and basis." *Pyco Supply Co. v. Am. Centennial Ins. Co.*, 321 N.C. 435, 442 (1988). The allegations here do just that even if they are not exhaustive. (*See* Am. Countercl. ¶¶ 159 ("refusing to cooperate with PMG's efforts to implement and enforce quality control procedures"), 160 ("failing to abide by the terms of PMG's contracts with" health care facilities, including "Wellmore"), 161 ("refusing to cooperate with PMG's attempts to investigate wrongdoing"), 163 ("failing to keep full, complete, and accurate accounts and records of their professional work"), 164 ("failing to timely complete patient notes and submit bills"), 165 ("failing to indemnify PMG for costs and expenses incurred in connection with the Centene audit in 2021"), and 174 (alleging use of "PMG's electronic medical records . . . to compete with PMG").¹

¹ Although the Patels suggest that there may be "a potential timing issue" for some of these allegations under the statute of limitations, (Br. in Supp. 22, ECF No.76), they haven't argued or shown that any counterclaim is untimely on its face. *See Hargett v. Holland*, 337 N.C. 651, 653 (1994) (observing that a court may dismiss a claim as untimely under the statute of limitations only "if it appears on the face of the complaint that such a statute bars the claim").

12. The dispute about section 2(b) of the Practice Separation Agreement is similar. During the short period between the signing of the agreement and Shah's purchase of the Patels' ownership interests, Palmetto Medical Group was to pay biweekly distributions to the Patels in return for their "due performance of their obligations as employees." (PSA § 2(b).) The Patels say that they cannot discern how they are supposed to have breached this section, in part because the allegations of breach are "boilerplate." (Br. in Supp. 8.) Again, though, the standard is notice pleading, and Palmetto Medical Group has adequately alleged that it paid the distributions in full but that the Patels did not perform their obligations. (See Am. Countercl. ¶¶ 68, 71 (citing tardy submission of patient notes and bills, among other deficiencies).)

13. Likewise, the amended counterclaims state a claim for breach of section 10 of the Practice Separation Agreement. In that section, the parties broadly agreed to indemnify one another for damages "caused by the wrongful, negligent or unlawful acts or omissions of the indemnifying Party." (PSA § 10.) The Patels object that the "allegations are sparse and shallow," lacking reference to "how, when, or why" any demand for indemnification occurred. (Br. in Supp. 10.) This is unpersuasive. "[A] claim for breach of contract is not subject to heightened pleading standards." *AYM Techs., LLC v. Rodgers*, 2018 NCBC LEXIS 14, at *52 (N.C. Super. Ct. Feb. 9, 2018). In any event, the amended counterclaims allege the conduct giving rise to the obligation to indemnify, when the obligation arose, and the fact that Palmetto

Medical Group's demand for indemnification was refused. (*See* Am. Countercl. ¶¶ 39–42.)

14. By contrast, the allegations that the Patels breached section 6(a) of the Practice Separation Agreement are inadequate. In that section, the parties agreed to “observe all rules and regulations of governing regulatory authority [sic] in ensuring continuity of care.” (PSA § 6(a).) As the Patels correctly observe, however, all the alleged misconduct giving rise to this breach occurred before the effective date of the Practice Separation Agreement. (*See* Am. Countercl. ¶¶ 36–38, 115(c).) Although Palmetto Medical Group disputes this, it does not point to any allegations concerning conduct that occurred after the agreement was formed. Thus, even if true, the allegations fail to state a claim for breach of section 6(a).

15. The claim for breach of section 7.2 of the employment agreements also fails, though for a different reason. This section contains restrictive covenants that purport to bar the Patels from competing against Palmetto Medical Group during their employment and for two years after. As part of the Practice Separation Agreement, Palmetto Medical Group “release[d] *any right or claim* that it may have against the Patels (or any entity in which they may have an interest) arising from any restrictive covenant or similar provision that may prevent them from competing with PMG in the practice of medicine.” (PSA § 5(a) (emphasis added).) Having agreed to this comprehensive release, it cannot now maintain a claim for breach of section 7.2. *See Adder v. Holman & Moody, Inc.*, 288 N.C. 484, 492 (1975) (“A release is the giving up

or abandoning of a claim or right to the person against whom the claim exists or the right is to be exercised.”).²

16. That leaves section 1(b) of the Practice Separation Agreement. In that section, Shah promised to pay the Patels for their interests in Palmetto Medical Group, after which the parties would “execute whatever documents may be required to effect such purchase and transfer of the Patels’ ownership interest[s]” to Shah. (PSA § 1(b).) As alleged, the Patels breached this section by unreasonably delaying execution of the transfer documents for six weeks after receiving payment from Shah. In their opposition brief, the Patels contend that there was no breach because section 1(b) imposes no time limit and because a six-week delay was not unreasonable in any event. At the hearing, the Patels’ counsel correctly conceded that “[i]f no time for the performance of an obligation is agreed upon by the parties, then the law prescribes that the act must be performed within a reasonable time.” *Int’l Minerals & Metals Corp. v. Weinstein*, 236 N.C. 558, 561 (1952) (citation and quotation marks omitted). A six-week delay may or may not be reasonable depending on the context. At this stage, the Court must take all inferences in favor of Shah and Palmetto Medical Group and concludes that their allegations are sufficient to state a claim. (See Am. Countercl. ¶¶ 106–08.)

17. Accordingly, the Court grants the motion to dismiss the counterclaims for breach of section 7.2 of the employment agreements and section 6(a) of the Practice

² At no point in their pleading or their opposition brief do Shah and Palmetto Medical Group contend that the release is unenforceable due to the Patels’ alleged fraud.

Separation Agreement. The Court denies the motion to dismiss the counterclaims for breach of contract in all other respects.

B. Fraud & Punitive Damages

18. Unlike contract claims, fraud claims must be pleaded with particularity. *See* N.C. R. Civ. P. 9(b). Fraud has five “essential elements”: (a) a false representation or concealment of a material fact, (b) calculated to deceive, (c) made with intent to deceive, (d) that did in fact deceive, and (e) that resulted in damage to the injured party. *Rowan Cnty. Bd. of Educ. v. U.S. Gypsum Co.*, 332 N.C. 1, 17 (1992). The plaintiff’s reliance on the fraudulent misrepresentation “must be reasonable.” *Forbis v. Neal*, 361 N.C. 519, 527 (2007).

19. Although the Patels chiefly target the first element, they argue that the amended counterclaims fail to allege all five elements adequately. The Court disagrees. In the mediation that produced the Practice Separation Agreement, the Patels allegedly represented that they intended to form a competing medical practice but had not yet done so. According to the amended counterclaims, this was false: the Patels had formed Carolina Medical Partners nearly a year earlier, obtained necessary certifications, and begun communicating with vendors and business partners of Palmetto Medical Group. Shah and Palmetto Medical Group say that they were unaware of these facts and that they would not have agreed to the Practice Separation Agreement if they had known the truth. These allegations, taken as true, are sufficiently particular to state a claim for fraud. (*See* Am. Countercl. ¶¶ 54, 57, 63, 136–38, 142, 143, 145.)

20. The Court therefore denies the motion to dismiss the claim for fraud. Having done so, the Court also denies the motion to dismiss the demand for punitive damages because the Patels' only argument for dismissing that demand is that it rises and falls with the claim for fraud.

C. Tortious Interference with Contract

21. To state a claim for tortious interference with contract,³ the plaintiff must allege that a valid contract exists between it and a third person, and that the defendant knows of the contract, intentionally induced the third person not to perform the contract, did so without justification, and caused actual damage. *See United Labs., Inc. v. Kuykendall*, 322 N.C. 643, 661 (1988). A person "acts without justification in inducing the breach of contract . . . if he has no sufficient lawful reason for his conduct." *Childress v. Abeles*, 240 N.C. 667, 675 (1954).

22. This claim concerns Palmetto Medical Group's contract to provide services to a nursing home owned by Wellmore. That contract allowed Wellmore to terminate it with 90-days' notice. As alleged, the Patels interfered by contacting Wellmore before the execution of the Practice Separation Agreement and inducing it to terminate the contract without observing the 90-day notice period. This paved the way for Carolina Medical Partners to become Wellmore's new service provider, as permitted by the Practice Separation Agreement, after Shah purchased the Patels' interests in Palmetto Medical Group. (*See* Am. Countercl. ¶¶ 79–81.)

³ It is unclear from the briefing whether the parties believe that North Carolina law or South Carolina law applies to this claim. They appear to agree, though, that the choice of law makes no difference. The Court therefore cites North Carolina law.

23. The Patels maintain that any interference was justified because they became competitors of Palmetto Medical Group following the Practice Separation Agreement.⁴ “[C]ompetition in business constitutes justifiable interference in another’s business relations and is not actionable so long as it is carried on in furtherance of one’s own interests and by means that are lawful.” *Peoples Sec. Life Ins. Co. v. Hooks*, 322 N.C. 216, 221 (1988). Here, the amended counterclaims adequately allege that the Patels competed by means that were not lawful, including by fraudulently misrepresenting the status of their competing business during negotiations for the Practice Separation Agreement. If true, then the competitive privilege doesn’t shield their interference. *See Avadim Health, Inc. v. Harkey*, 2021 NCBC LEXIS 104, at *22 (N.C. Super. Ct. Nov. 30, 2021) (“Even if the parties are competitors, arguably unfair competition furthered by fraud is not justified.”).

24. For these reasons, the Court denies the motion to dismiss the counterclaim for tortious interference with contract.

D. Unjust Enrichment

25. Palmetto Medical Group asserts two claims for unjust enrichment. The first claim is based on the allegation that Nimish Patel made an unauthorized charge on the company’s credit card. (*See Am. Countercl.* ¶ 178.) If true, the unauthorized

⁴ In their opening brief, the Patels argued that they were non-outsiders to the Wellmore contract and therefore enjoyed qualified immunity for any interference with it. Nimish Patel also argued that he was a party to the Wellmore contract and that a party to a contract cannot be liable for wrongful interference with it. At the hearing, however, the Patels abandoned these arguments, relying exclusively on their status as competitors. Moreover, the amended counterclaims do not allege that Nimish Patel was a contractual party, only that he was the appointed physician (that is, the agent) assigned to carry out Palmetto Medical Group’s duties under the Wellmore contract. (*See Am. Countercl.* ¶ 82.)

charge may be wrongful, but it is not unjust enrichment. To plead unjust enrichment, Palmetto Medical Group must allege that it conferred a benefit with the “expectation of compensation or other benefit in return.” *Butler v. Butler*, 239 N.C. App. 1, 12 (2015); *see also JPMorgan Chase Bank, N.A. v. Browning*, 230 N.C. App. 537, 541–42 (2013). Here, though, Palmetto Medical Group alleges that Nimish Patel “took assets belonging to” it, not that it “conferred benefits upon” him. *Albritton v. Albritton*, 2021 NCBC LEXIS 53, at *33–36 (N.C. Super. Ct. June 7, 2021) (emphasis in original); *see also Am. Cirs., Inc. v. Bayatronics, LLC*, 2023 NCBC LEXIS 165, at *39 (N.C. Super. Ct. Dec. 8, 2023) (observing that unjust enrichment contemplates “a willing transfer,” not an unwilling taking). Accordingly, the Court grants the motion to dismiss this claim.

26. A second claim for unjust enrichment concerns the distributions that Palmetto Medical Group paid to the Patels during the period following the execution of the Practice Separation Agreement but before they transferred their ownership interests to Shah. The Patels contend that any dispute about these distributions is governed by section 2(b) of the Practice Separation Agreement and therefore cannot be the subject of a claim for unjust enrichment. *See Vetco Concrete Co. v. Troy Lumber Co.*, 256 N.C. 709, 713 (1962) (holding that, when the parties have made an express contract, the law will not imply one “with reference to the same matter”). At this early stage, however, the Court is persuaded that Palmetto Medical Group may plead unjust enrichment in the alternative to its claim for breach of section 2(b) of the Practice Separation Agreement. *See* N.C. R. Civ. P. 8(e)(2); *Cosma v. Fit Kitchen*,

LLC, 2022 NCBC LEXIS 77, at *3 (N.C. Super. Ct. July 18, 2022) (citing cases). The Court sees no other basis to dismiss this claim.

E. Civil Conspiracy

27. To state a claim for civil conspiracy, a plaintiff must allege “(1) a conspiracy, (2) wrongful acts done by certain of the alleged conspirators in furtherance of that conspiracy, and (3) injury as a result of that conspiracy.” *Krawiec v. Manly*, 370 N.C. 602, 614 (2018). A conspiracy requires an agreement between at least two persons to take an unlawful action or to take a lawful action in an unlawful manner. *See id.* at 613; *Evans v. Star GMC Sales & Serv., Inc.*, 268 N.C. 544, 549 (1966). According to the amended counterclaims, the Patels and Carolina Medical Partners conspired to defraud Shah and Palmetto Medical Group, to interfere with Palmetto Medical Group’s contract with Wellmore, and to breach various contractual obligations. The allegations are not conclusory, as the Patels and Carolina Medical Partners contend. The amended counterclaims allege the identity of the conspirators, the timeframe and purpose of the conspiracy, the steps taken to carry out the conspiracy, and the resulting injury. (*See, e.g.*, Am. Countercl. ¶¶ 53, 54, 80, 124, 138, 195.) Nothing more is required. The Court therefore denies the motion to dismiss the conspiracy claim. *See, e.g., Lunsford v. ViaOne Servs., LLC*, 2020 NCBC LEXIS 111, at *17–18 (N.C. Super. Ct. Sept. 28, 2020) (collecting cases).

III. CONCLUSION

28. For all these reasons, the Court **GRANTS** the motion to dismiss the counterclaim for breach of section 7.2 of the Patels’ employment agreements, the

counterclaim for breach of section 6(a) of the Practice Separation Agreement, and the counterclaim for unjust enrichment concerning the allegedly unauthorized credit card charge. These counterclaims are **DISMISSED** with prejudice. In all other respects, the Court **DENIES** the motion to dismiss.

29. In addition, the Court **ORDERS** that the parties shall have until 12 July 2024 to file a proposed, revised Case Management Order setting new deadlines for completing discovery and filing post-discovery dispositive motions.

SO ORDERED, this the 27th day of June, 2024.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases