SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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CANTOR FITZGERALD & COMPANY

Plaintiff,

- v -

PROSPECT MEDICAL HOLDINGS, INC.,

Defendant.

INDEX NO. 656338/2022

MOTION DATE 06/06/2023

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

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HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32

were read on this motion to/for LEAVE TO FILE.

Cantor Fitzgerald & Co. (Cantor or plaintiff) commenced this action seeking a $500,000 payment for services rendered as exclusive financial advisor to defendant Prospect Medical Holdings, Inc. (Prospect or defendant). Prospect now seeks leave to amend its answer to add counterclaims pursuant to CPLR 3025 (b). Cantor opposes the motion.

FACTS

Cantor is a New York based investment bank (NYSCEF # 1 – Complaint, ¶¶ 1-2). Prospect is a healthcare services company (NYSCEF # 1, ¶ 2). By agreement dated April 25, 2019, Cantor agreed to act as exclusive financial advisor to Prospect in relation to the sale of the hospital East Orange General Hospital (EOGH) (NYSCEF # 20 – Agreement, ¶¶ 1, 3). While the Agreement also included advisory services on the sale of two of Cantor's other hospitals, the only sale at issue in this case is EOGH. Cantor's responsibilities under the agreement included "[r]eview and analysis of the business, financial condition and prospects of the Company [defendant] and any [a]cquiror," "[p]articipation in the negotiation of any [t]ransaction," and "availabil[ity] to meet with the Company's [defendant's] Board of Directors to discuss any [t]ransaction and its financial implications" (NYSCEF # 20, ¶ 2). In exchange, Prospect agreed to pay Cantor $500,000 if Prospect sold EOGH (NYSCEF # 20, ¶ 4).

Cantor alleges in its complaint that "[p]ursuant to the Letter Agreement, [Cantor] advised [Prospect] with respect to, among other things, (a) exploring [t]ransaction opportunities . . . ; (b) preparing and implementing a marketing plan; (c) solicitation of prospective acquirors; and (d) reviewing and advising on proposed [t]ransaction structures and terms" (NYSCEF # 1, ¶ 19). After Prospect closed on the sale of EOGH in December 2021, Prospect did not pay the $500,000 fee as per the Agreement. Cantor ultimately brought this suit in May 2022 for breach of contract to recover the fee (NYSCEF # 1, ¶¶ 20-25).

Prospect alleges in its proposed amended answer that shortly after signing the agreement, it gave its priorities to Cantor, which included concern over buyers with a history of regulatory issues, desire for a quick transaction, and willingness to sell EOGH for a walkaway proposal if this deal could be conducted quickly and with minimal issues (NYSCEF # 19 – Proposed Amended Answer, ¶ 56). Prospect alleges that this information encouraged Cantor to "sell EOGH on any terms no matter how inadvisable to [Prospect], and then collect the fee" (NYSCEF # 19, ¶ 57).

To this end, Prospect alleges that Cantor's representative, Anthony Munoz, "sought out and solicited a potential buyer that even he described as the 'buyer of last resort' " (NYSCEF # 19, ¶ 59). While Prospect negotiated with this potential buyer, Prospect alleges that neither Munoz nor any Cantor representative attended Prospect's Board of Directors despite Prospect's request so to discuss the transaction, negotiation, and financial implications (NYSCEF # 19, ¶ 61). Prospect adds that neither Munoz nor Cantor located any suitable potential buyer by October 2019, in contrast to Prospect's identification of two potential buyers – Ben Klein and Richard Lipsky – in August 2020 (NYSCEF # 19, ¶¶ 62, 64). These potential buyers contemplated buying EOGH for about $6 and $9 million, respectively.

Prospect "believed that Lipsky had had contentious disputes with government regulators, . . . [but] that Lipsky had never been credibly accused of fraud by any government regulator." Prospect also believed "that Lipsky had the willingness and the ability to fund and close on the transaction according to the terms of his proposal" (NYSCEF # 19, ¶¶ 67-68). As Prospect had little information about Klein, Prospect's executive, Frank Saidara, asked Munoz to review Klein's proposal (NYSCEF # 19, ¶ 71). Saidara asked Munoz several concerns he had about Klein such as his reputation in the industry, his ability to close the transaction on the proposed terms, and whether he had been accused of fraud by private parties or from government regulators (*id.*).

Prospect alleges that "Munoz assured Saidara that Klein was both his client and a personal friend" and that "Klein had (1) a 'great' and untarnished reputation in the industry; (2) the wealth to follow through on the transaction on the terms that he proposed; (3) never had issues such as being involved in a post-closing dispute with a seller or being accused of fraud by the government regulators" and

that "he believed Klein would close the transaction on EOGH without issues that would necessitate any changes to the terms of the proposal" (NYSCEF # 19, ¶ 74). Prospect asserts that Munoz knew these representations about Klein were false (NYSCEF # 19, ¶ 76).

Prospect accepted Klein's proposal and executed an asset purchase agreement on October 28, 2020, but asserts now that it would have rejected Klein's offer in favor of Lipsky's or other possible buyers had Prospect known the falsity of Munoz's statements (NYSCEF # 19, ¶¶ 77-79). Prospect indicates that the purchase agreement stated that "the transaction would close no later than August 1, 2021, for a purchase price of $6.2 million, with $1 million deposit due January 2021" (NYSCEF # 19, ¶ 80). Due to various delays and claimed liquidity issues from Klein, the closing date for the transaction was delayed past August 2021 (NYSCEF # 19, ¶ 88). Prospect alleges that Munoz worked with Klein to create these delays and leverage "confidential information that Munoz had disclosed" to Klein, including "that [Prospect] wanted to sell EOGH even at 'walkaway' prices, and that as long as [Prospect] continued to believe that Klein had the ability and the resources to close, and any problems were temporary, [Prospect] would likely not terminate the transaction" (NYSCEF # 19, ¶ 90).

In the final quarter of 2021, Prospect alleges it "confided in Munoz that Klein was jeopardizing the deal"; Munoz responded that "he did not know why Klein was acting that way, that he had the ability to close" (NYSCEF # 19, ¶¶ 91-92). The sale of EOGH to Klein closed on January 1, 2022, and Cantor sent Prospect an invoice requesting payment of the $500,000 fee (NYSCEF # 19, ¶ 98; NYSCEF # 1, ¶ 22). Prospect admittedly did not pay this fee. On May 9, 2022, Cantor's counsel sent Prospect a letter demanding the payment of $500,000 in three days (NYSCEF # 7 – Answer, ¶¶ 24-25). Cantor thereafter filed its complaint for breach of the agreement and indemnification for legal fees and related costs (NYSCEF # 1). Prospect filed its original answer on July 12, 2022, asserting eleven affirmative defenses and no counterclaims (NYSCEF # 7).

Prospect now seeks leave to amend its answer and assert five counterclaims against Cantor for: (1) breach of contract; (2) in the alternative, breach of the implied covenant of good faith and fair dealing; (3) fraud; (4) negligent misrepresentation; (5) breach of fiduciary duty; and (6) interference with prospective business relations (NYSCEF # 19). Prospect additionally argues that the agreement is not a valid contract and fails for lack of mutuality. Prospect points to a provision that states that Cantor " 'shall not have any liability . . . in contract . . . in connection with the engagement of [Cantor] pursuant to this Agreement and the matters contemplated hereby. . . .' " (NYSCEF # 21 – MOL at 20 (italicization omitted) and argues that because this provision leaves "no legal recourse for [Prospect] for [Cantor's] non-performance" (*id.* at Annex A, ¶ K). Prospect posits that the agreement is a "legal nullity" and since Cantor "promised

nothing, [Cantor] cannot claim to be owed anything—unless it actually performed under the purported 'contract' " (NYSCEF # 21 at 22).

In opposition, Cantor argues that each of these counterclaims as well as any allegations in support and requested relief should be disallowed as a matter of law (NYSCEF # 22 – Opp). In a footnote, Cantor states that it will not address Prospect's argument that the agreement is invalid because "none of the allegations or proposed causes of action that [Prospect] seeks to plead in the [p]roposed [c]ounterclaims relate whatsoever to this theory" (NYSCEF # 22 at 5, n 3). Prospect counters that given that the allegations in the proposed amended answer must be accepted as true, none of the proposed counterclaims fail (NYSCEF # 32 – Reply).

DISCUSSION

Leave to amend "shall be freely given upon such terms as may be just." (CPLR 3025 (b)). However, leave may be denied "only if there is prejudice or surprise resulting directly from the delay, . . . or if the proposed amendment is palpably improper or insufficient as a matter of law." (*McGhee v Odell*, 96 AD3d 449, 450 [1st Dept 2012] [internal citation]). "A party opposing leave to amend must overcome a heavy presumption of validity in favor of [permitting amendment] (*id.*).

As Cantor does not claim prejudice or surprise from Prospect's proposed amended answer, the court considers the sufficiency of the proposed counterclaims.

First Counterclaim: Breach of Contract

While Prospect claims that the contract fails for lack of mutuality, it nonetheless argues that if the agreement is deemed to be a valid contract, Cantor breached it by (i) incorrectly reviewing Klein's current and future financial standing, (ii) revealing Prospect's confidential information to outside parties, and (iii) failing to participate in Prospect's negotiations by working against Prospect's guidance (NYSCEF # 21 at 11-13).

In opposition, Cantor argues that Prospect's decision to overlook and ignore Cantor's alleged breaches once Prospect became aware of them through the skipped meetings constitutes continued performance under the contract, and therefore Prospect lost the right to contest paying Cantor (NYSCEF # 22 at 8-10). Cantor also argues that Prospect makes conclusory and insufficient claims for damages. To wit, Prospect claims that it would have been able to sell EOGH to Lipsky for more money (NYSCEF # 22 at 6-8).

In reply, Prospect disputes Cantor's continued performance theory, indicating that it did not have to perform—by paying the $500,000 fee—until Cantor's performance was complete, and Cantor demanded payment (NYSCEF # 32 at 4-5). Prospect goes on to argue that since its breach was anticipatory, it only needs to show that it was prepared and able to perform if Cantor had not breached the contract, which Prospect argues is a question of fact reserved for trial (NYSCEF #

32 at 5). As for damages, Prospect argues that Lipsky's alternative offer had a definite number for more money than Klein's offer which Prospect would have chosen if not for Cantor's breach (NYSCEF # 32 at 3). Prospect further argues that regardless of whether Lipsky would have closed on the transaction, Cantor deprived Prospect of the benefit of the Lipsky contract (NYSCEF # 32 at 4).

To state a cause of action for breach of contract under New York Law, a party must show (1) the existence of a contract; (2) the party performed in accordance with the contract; (3) the counter party breached its contractual obligations; and (4) the breach resulted in damages (*34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022]). "A party to a bilateral contract, when faced with a breach by the other party, must make an election between declaring a breach and terminating the contract or, alternatively, ignoring the breach and continuing to perform" (*Rebecca Broadway L.P. v Hotton*, 143 AD3d 71, 80-81 [1st Dept 2016] [internal citation omitted]). "In order to be deemed to have made such an election, however, the nonrepudiating party must have had knowledge of the repudiation, since election presupposes knowledge, or at least the omission to fulfill some duty of inquiry from which knowledge would have followed" (*Computer Possibilities Unlimited, Inc. v Mobil Oil Corp.*, 301 AD2d 70, 80 [1st Dept 2002] [quotation marks omitted])

Assuming for the sake of argument, as Prospect does for this counterclaim, that the agreement is a valid contract, Prospect's breach of contract claim is not palpably improper or insufficient as a matter of law. Prospect's allegations that Cantor, *inter alia*, missed meetings, revealed private information to a buyer, misrepresented information to Prospect about a prospective buyer, and actively worked against Prospect's interests in negotiations, all sufficiently support Prospect's proposed counterclaim for breach of the agreement (NYSCEF # 21 at 11-13). Indeed, Cantor itself states that these purported breaches are Cantor's "explicit contractual obligations" (NYSCEF # 22 at 12 [emphasis omitted]).

Prospect also sufficiently pleads performance for the purposes of this motion to amend. While Cantor argues that Prospect elected to continue to perform under the contract while ignoring Cantor's alleged breaches of failing to attend Prospect's board meetings, the present record does not determine when Prospect knew about Cantor's breaches, particularly in regard to Cantor's alleged behind the scenes dealings with Klein. As an election to perform requires knowledge, the present record does not support Cantor's argument (*Computer Possibilities*, 301 AD2d at 80). Prospect's pleading as to performance under the contract are not palpably insufficient as a matter of law.

Additionally, this claim may not be dismissed at the pleading stage for insufficiently pled damages as Cantor argues because "nominal damages are always available in breach of contract action[s]" (*Schleifer v Yellen*, 158 AD3d 512, 513 [1st Dept 2018]).

Second Counterclaim: Breach of Implied Covenant of Good Faith and Fair Dealing

Prospect argues that if Cantor's actions do not constitute a breach of the Engagement Letter's express terms, Cantor, nonetheless, breached the implied covenant of good faith and fair dealing (NYSCEF # 21 at 13). Cantor argues that the claims for breach of covenant of good faith and fair dealing should be dismissed as duplicative of Prospect's breach of contract claims.

Relying on *Kerzhner v G4S Gov't Sols., Inc.* (138 AD3d 564 [1st Dept 2016]), Prospect counters that these claims are not duplicative because the breach of implied covenant of good faith claim is pleaded in the alternative (NYSCEF # 32 at 5). In *Kerzhner*, where defendant's employee assaulted the plaintiff, the allegations differed depending on the theory of liability. Thus, for a claim under negligent hiring, the allegations were inconsistent with those for a theory of the employee working within the scope of employment. As such, a different theory of liability may be pled in the alternative (138 AD3d at 564).

Prospect's reliance on *Kerzhner* is misplaced as support for its proposed second counterclaim to be pleaded in the alternative. Here, Prospect's claim is premised on Cantor allegedly revealing Prospect's confidential information to Klein and the alleged misrepresentations Cantor made about Klein (NYSCEF # 21 at 13-14) — both of which are part of Prospect's basis for the breach of contract claim and the breach of implied covenant of good faith and fair dealing claim. Thus, the proposed second counterclaim is dismissed as duplicative of first proposed counterclaim (*320 West 115 Realty LLC v All Building Constr. Corp.*, 194 AD3d 511, 511 [1st Dept 2021] [affirming dismissal of claim for breach of implied covenant of good faith and fair dealing as duplicative of breach of contract claim as the same facts were used for both claims]; *MBIA Ins. Corp. v Merrill Lynch*, 81 AD3d 419, 419-420 [1st Dept 2011] [same]).

Third Counterclaim: Fraud

Prospect argues that the proposed amended answer pleads with particularity each element of a fraud claim (NYSCEF # 21 at 16-17). Among other alleged misrepresentations, Prospect posits that Munoz "falsely represented to [Prospect] that he did not know why Klein was making bolder and more unreasonable demands" when in reality "the two were in close cooperation with each other, and on at least one occasion, worked together to deceptively orchestrate communications with [Prospect]" (NYSCEF # 21 at 10 citing NYSCEF # 19, ¶¶ 91-95). Prospect argues that it "understandably and reasonably . . . relied on the advice" given by Munoz and would have taken Lipsky's higher offer if not for Cantor's alleged misrepresentations (NYSCEF # 21 at 16).

In opposition, Cantor argues that Munoz did not materially misrepresent facts about Klein and that Prospect did not plead either Cantor's knowledge of the falsity of these statements or Cantor's scienter with sufficient particularity under

CPLR 3016 (b). Cantor points out that Prospect relies on "information and belief" in its pleading despite months of disclosure and alleges only "conclusory allegations of falsity" about these alleged misrepresentations (NYSCEF # 22 at 13-14, 16). Cantor states that rather than materially misrepresenting facts about Klein, Munoz expressed his "subjective opinion" of Klein and made "nonactionable statements of predictions" about Prospect's transaction with Klein (NYSCEF # 22 at 14-15). Cantor adds that since Prospect's only argument for intent is Cantor's aim at earning a fee, a fraud claim cannot be sustained (NYSCEF # 22 at 13-14).

Prospect counters that its argument for scienter is pled with sufficient particularity because the proposed amended answer contains a rational basis for this finding (NYSCEF # 32 at 6). Prospect argues that a rational basis can be inferred from its allegations that, *inter alia*, Munoz misrepresented that he was "not communicating or colluding with Klein" when, per Prospect's allegations, he knew that he was (NYSCEF # 32 at 6-8).

"The elements of a cause of action for fraud include a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the Cantor, and damages" (*Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009]). Under CPLR 3016 (b), a cause of action for fraud must be "stated in detail." "CPLR 3016 (b) is satisfied when the facts suffice to permit a 'reasonable inference' of the alleged misconduct . . . . And, 'in certain cases, less than plainly observable facts may be supplemented by the circumstances surrounding the alleged fraud' " (*Eurycleia Partners*, 12 NY3d at 559 [quoting *Pludeman v Northern Leasing Sys., Inc.*, 10 NY3d 486, 491-492 [2008]).

Prospect's claim for fraud is not palpably improper. While Prospect's allegations for fraud are based on information and belief, these allegations – from Prospect's informing Munoz of Klein's claimed liquidity issues in contrast to Munoz representation to the contrary, to Munoz not knowing that Klein was jeopardizing the deal; and Munoz supplying Klein (Munoz's friend and client) with Prospect's confidential information about it selling EOGH even at "walkaway prices" – sufficiently inform Cantor of the core of Prospect's fraud claim, Munoz' double dealing (NYSCEF # 19) (*see Allenby, LLC v Credit Suisse, AG* 134 AD3d 577, 580 [1st Dept 2015] [allegations of fraud based on information and belief are sufficient if they apprise opponent of the claim]; *Houbigant, Inc. v Deloitte & Touche LLP*, 303 AD2d 92, 98 [1st Dept 2003] ["[t]he language of CPLR 3016 (b) merely requires that a claim of fraud be pleaded in sufficient detail to give adequate notice."]).

Additionally, contrary to Cantor' point that Prospect's fraud claim cannot be maintained because it only argues Cantor intent was to earn a fee, Prospect's argument creates a reasonable inference that Cantor intended for Prospect to rely on these misrepresentations for the betterment of Klein's negotiating position. (NYSCEF # 19, ¶ 73).

Fourth Counterclaim: Negligent Misrepresentation and Fifth Counterclaim: Breach of Fiduciary Duty

In support its fourth counterclaim for negligent misrepresentation and fifth counterclaim for breach of fiduciary duty, Prospect argues that Cantor, as the "exclusive financial advisor" of Prospect, "assume[d] a duty to review and analyze potential buyers" and "held themselves out as having particular expertise and knowledge in the market conditions of health care transactions" (NYSCEF # 21 at 18-19). Prospect further argues that "[t]o the extent the Engagement Letter is a valid contract imposing obligations" on Cantor, "these obligations included advising" Prospect (NYSCEF # 21 at 18). Prospect argues that Cantor knew that Prospect relied on Cantor's representations due to Cantor's "special position of confidence and trust" with Prospect and its "unique and specialized expertise . . . in the healthcare market" (NYSCEF # 21 at 19). Cantor allegedly breached its duty when it "made misrepresentations of material fact" to Prospect and when it "wrongfully disclosed the confidential information that [Prospect] shared with its trusted advisor" (NYSCEF # 21 at 18). Prospect argues that its damages relate to its rejection of the "higher, better offer" and the weakening of its negotiating position with Klein (NYSCEF # 21 at 18-19).

In opposition to both counterclaims, Cantor argues that there must be a "separate relationship" between the parties "distinct from and independent of the contract" to bring a claim for negligent misrepresentation and breach of fiduciary duty (NYSCEF # 22 at 16). Cantor posits that Prospect does not "assert any facts or circumstances indicating" this separate relationship or a relationship between the parties outside the contract and that the agreement specifically disclaims the creation of a "fiduciary or agency relationship" (NYSCEF # 22 at 17; *see* NYSCEF # 20 at Annex A, ¶ K). Specifically, the agreement states: "Nothing in this Agreement or the nature of our services shall be deemed to create a fiduciary or agency relationship between [plaintiff] and [defendant]. . . in connection with the Transactions or otherwise" (*id.*).

Prospect counters that the agreement is not a valid contract and that even if it is valid, Prospect held a special relationship with Cantor that arose from the contract but was independent of it because of the special trust and expertise of Cantor, as described in its original memorandum of law (NYSCEF # 32 at 8-9).

Negligent misrepresentation requires: "(1) the existence of a special or privity-like relationship imposing a duty on the Prospect to impart correct information to the plaintiff; (2) that the information was incorrect; and (3) reasonable reliance on the information" (*J.A.O. Acquisition Corp. v Stavisky*, 8 NY3d 144, 148 [2007]). Liability in commercial cases "has been imposed only on those persons who possess unique or specialized expertise, or who are in a special position of confidence and trust with the injured party such that reliance on

the negligent misrepresentation is justified" (*J.P. Morgan Sec. Inc. v Ader*, 127 AD3d 506, 506-507 [1st Dept 2015]).

"To state a claim for breach of fiduciary duty, plaintiffs must allege that (1) defendant owed them a fiduciary duty, (2) defendant committed misconduct, and (3) they suffered damages caused by that misconduct" (*Burry v Madison Park Owner LLC*, 84 AD3d 699, 699-700 [1st Dept 2011]). "A fiduciary relationship exists between two persons when one of them is under a duty to . . . give advice for the benefit of another upon matters within the scope of the relation. Such a relationship, necessarily fact-specific, is grounded in a higher level of trust than normally present in the marketplace between those involved in arm's length business transactions" (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005] [citations and quotation marks omitted]).

Cantor chose not to address Prospect's argument that the agreement is facially invalid for lack of mutuality (NYSCEF # 22 at 5, n 3). Thus, assuming, for the purpose of this argument on this proposed counterclaim, that the agreement is invalid, Prospect sufficiently pleads that Cantor's role as Prospect's "exclusive financial advisor" and knowledge of Prospect's confidential information, including its selling priorities, put Cantor in the special position of trust with Prospect. This trust, coupled with Munoz's alleged misrepresentations that he did not know why Klein was making more demands are sufficient at this stage of pleading for a breach of fiduciary duty claim (*see EBC I, Inc.*, 5 NY3d at 19).

Sixth Counterclaim: Interference with Prospective Business Relations

In its original memorandum of law, Prospect does not address its sixth cause of action for interference with prospective business relations except to say in passing that its tort claims have merit and are supported by the facts alleged (NYSCEF # 21 at 16). In opposition, Cantor argues that Prospect "fails to allege that [Cantor's] conduct purportedly constituting interference with prospective business relations was directed at third party Richard Lipsky, or at any other third parties" (NYSCEF # 22 at 18). In reply, Prospect asks the court to decide without prejudice "so that [Prospect] may further amend the pleading" if its "counterclaim fails for a lack of allegations about [Cantor's] conduct directed at a third party" (NYSCEF # 32 at 9). Prospect also argues that "the PFAA [proposed amended answer] does adequately allege . . . that [Munoz's] conduct was independently wrongful" (NYSCEF # 32 at 9).

To state a cause of action for interference with prospective business relations, "a party must prove (1) that it had a business relationship with a third party; (2) that the defendant knew of that relationship and intentionally interfered with it; (3) that the defendant acted solely out of malice or used improper or illegal means that amounted to a crime or independent tort; and (4) that the defendant's interference caused injury to the relationship with the third party" (*Amaranth LLC v J.P.*

Morgan Chase & Co., 71 AD3d 40, 47 [1st Dept 2009]). "Any conduct constituting 'wrongful means' must be directed at the third parties with whom plaintiff sought to have the relationship" (*Bradbury v Israel*, 204 AD3d 563, 565 [1st Dept 2022]). Wrongful means "include physical violence, fraud or misrepresentation, civil suits and criminal prosecutions, and some degrees of economic pressure" (*Carvel Corp. v Noonan*, 3 NY3d 182, 191 [2004]).

Prospect's interference with prospective business relations claim is insufficient as a matter of law. Prospect does not allege that Cantor interacted with Lipsky whatsoever, much less wrongfully. Nor does Prospect otherwise explain how its allegations demonstrate Cantor directed wrongful means at Lipsky (*see Bradbury*, 204 AD3d at 565). For this reason, Prospect's claim for interference with prospective business relations is dismissed.

CONCLUSION

In view of the above, it is

ORDERED that defendant Prospect Medical Holdings, Inc.'s motion for leave to amend its answer is granted as to the proposed first, third, fourth, and fifth counterclaims in the form set forth in the proposed amended verified answer and denied as to the proposed second and sixth proposed counterclaims; and it is further

ORDERED that within 10 days of entry of this order, counsel for defendant Prospect Medical Holdings, Inc. shall serve a copy of this Decision and Order with notice of entry on plaintiff; and it is further

07/31/2023
DATE

MARGARET CHAN, J.S.C.

CHECK ONE:		CASE DISPOSED				NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE