

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
(BUSINESS COURT)

INTERNATIONAL OUTDOOR, INC.,

Plaintiff,

Case No. 2025-217725-CB
Hon. Victoria Valentine

v.

SS MITX, LLC, a Delaware limited liability company,
LAMAR ADVERTISING OF MICHIGAN, INC., a
Michigan corporation, PATRICK DEPA, an individual,
ALTIOR LAW, PC, a Michigan professional corporation,
and STARK REAGAN, PC, a Michigan professional corporation,

Defendants.

DENHA & ASSOCIATES. PLLC
Randall A. Denha (P56454)
Attorneys for International Outdoor
550 W. Merrill St., Suite 100
Birmingham, MI 48009
(248) 265-4100
rad@denhalaw.com

DEMOREST LAW FIRM, PLLC
Mark A. Demorest (P35912)
Attorneys for International Outdoor
415 S. West St., Suite 300
Royal Oak, MI 48067
(248) 723-5500
mark@demolaw.com

ALTIOR LAW, P.C.
Kenneth F. Neuman (P39429)
Stephen T. McKenney (P65673)
Attorneys for Lamar and Altior, only
401 S. Old Woodward, Suite 460
Birmingham MI 48009
(248) 594-5252
kneuman@altiorlaw.com
smckenney@altiorlaw.com

STARK REAGAN, P.C.
Christopher E. LeVasseur (P35981)
Attorneys for SS MITX, Depa and
Stark Reagan, only
1111 W. Long Lake Road, Suite 202
Troy MI 48098
(248) 641-9955
clevasseur@starkreagan.com

EXHIBITS 1 and 2

TO

**PLAINTIFF'S MOTION FOR RECONSIDERATION
OF OPINION AND ORDER ON DEFENDANTS' MOTION
FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(7) AND (C)(8)**

EXHIBIT 1

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND**

INTERNATIONAL OUTDOOR, INC.,

Plaintiff,

Case No. 25-217725-CB

Hon. Victoria A. Valentine

v.

**SS MITX, LLC and LAMAR ADVERTISING
OF MICHIGAN, INC., PATRICK DEPA, ALITOR
LAW, PC, and STARK REAGAN, PC,**

Defendants.

**OPINION AND ORDER ON DEFENDANTS' MOTION FOR SUMMARY
DISPOSITION UNDER MCR 2.116(C)(7) AND (C)(8)**

**At a session of said Court, held in the
County of Oakland, State of Michigan
February 12, 2026**

HONORABLE VICTORIA A. VALENTINE

This case is before the Court on Defendants' Motion for Summary Disposition under MCR 2.116(C)(7) and (C)(8). The Court has reviewed the Motion, Response, and Reply. Oral argument on the motion was heard on December 17, 2025.

OPINION

I.

Overview

Facts and procedural history pertinent to this matter have been set forth in this Court's November 13, 2025 "Opinion and Order on Plaintiff International Outdoor, Inc.'s Motion to Set Aside Judgment, Reinstate Prior Judgment and for Other Relief" in Oakland County Circuit Court Case Nos. 16-155472;16-155489-CB, *International Outdoor, Inc. v SS Mitx, LLC and Lamar Advertising of Michigan, Inc.* (the "Original Case"). In the November 13, 2025, Opinion and Order this Court denied Plaintiff International Outdoor, Inc.'s motion for relief from the judgment entered on September 2, 2021 (the "Judgment") under MCR 2.612(C)(1)(b)(c) and (f).¹ This Court determined that Plaintiff's motion was untimely as to grounds stated under MCR 2.612(C)(1)(b) and (c) (newly discovered evidence and fraud) because it was filed more than a year after entry of the Judgment. Additionally, the Court determined that relief from judgment was not available under MCR 2.612(C)(1)(f) ("any other reason justifying relief from the operation of the judgment.")

While the motion under MCR 2.612(C)(1) was pending in Case No. 16-155489-CB, Plaintiff filed the instant action against SS Mitx, LLC ("SS Mitx"), Lamar Advertising of Michigan, Inc. ("Lamar"), and the law firms, Alitor Law, PC, and Stark Reagan, PC, who represented Lamar and SS Mitx in the Original Case. Plaintiff also included as a Defendant Patrick Depa ("Depa"), a witness who allegedly provided a false affidavit in the Original Case. In Count I

¹ As this Court stated in its November 2025 Opinion and Order, this Court did not have the benefit of sitting in judgment of the prior trials or proceedings. However, the rulings of this Court's predecessor, with regard to the evidentiary hearing, the setting aside of the first jury verdict, as well as the denial of the judgment notwithstanding the verdict on the second jury verdict, of which Plaintiff now complains, were already addressed by the Court of Appeals. The Court of Appeals affirmed the Judgment and Plaintiff does not cite, and this Court is not aware of any authority which permits this Court to set aside a civil judgment affirmed by the Court of Appeals.

of the Complaint Plaintiff seeks to set aside the Judgment “Due to Extrinsic Fraud on the Court.” In Count II Plaintiff alleges a Civil Conspiracy among Defendants to perpetrate a fraud on the Court by using “an affidavit Patrick Depa signed in order to bring about the setting aside the Original Judgment. . . .”² Count IV alleges a claim of Willful and Wanton Misconduct; Count V alleges Tortious Interference with Business Relationship or Expectancy; Count VI alleges “Abuse of Process;” and Count VII alleges Tortious Interference with a Contract.³

Defendants now move for summary disposition under MCR 2.116(C)(7) (statute of limitations and res judicata) and MCR 2.116(C)(8) (failure to state a claim).

II.

Standard of Review

A.

MCR 2.116(C)(7)

MCR 2.116(C)(7) provides for summary disposition where a claim is barred by prior judgment or statute of limitations:⁴

Under MCR 2.116(C)(7) . . . this Court must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties. The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. This Court must consider the documentary evidence in the light most favorable to the nonmoving party. If there is no factual dispute, whether a plaintiff’s claim is barred under a principle set forth

² Complaint, ¶¶ 260-262.

³ In its Response to Defendants’ Motion Plaintiff agrees that Count III (Intentional Infliction of Emotional Distress) should be dismissed. Response, p 5, n 2.

⁴ MCR 2.116(C)(7) states:

Entry of judgment, dismissal of the action, or other relief is appropriate because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate or to litigate in a different forum, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action.

in MCR 2.116(C)(7) is a question of law for the court to decide. If a factual dispute exists, however, summary disposition is not appropriate.

[*RDM Holdings, LTD v Continental Plastics Co*, 281 Mich App 678, 687; 762 NW2d 529 (2008) (citations omitted.)]

B.

MCR 2.116(C)(8)

A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, not whether the complaint can be factually supported. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160; 934 NW2d 665 (2019); *Pawlak v Redox Corp*, 182 Mich App 758, 763; 453 NW2d 304 (1990). A motion for summary disposition based on the failure to state a claim upon which relief may be granted is to be decided on the pleadings alone. *Bailey v Schaaf*, 494 Mich 595, 603; 835 NW2d 413 (2013); *Parkhurst Homes, Inc v McLaughlin*, 187 Mich App 357,360; 466 NW2d 404 (1991). Exhibits attached to pleadings may be considered under MCR 2.116(C)(8) because they are part of the pleadings pursuant to MCR 2.113(C). *El-Khalil*, 504 Mich at 163.

“All well-pleaded factual allegations are accepted as a true and construed in a light most favorable to the nonmovant.” *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817(1999); *Wade v Dep’t of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). Summary disposition is proper when the claim is so clearly unenforceable as a matter of law that no factual development can justify a right to recovery. *Parkhurst Homes*, 187 Mich App at 360; *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

“[T]he mere statement of a pleader’s conclusions, unsupported by allegations of fact, will not suffice to state a cause of action.” *ETT Ambulance Serv Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395; 516 NW2d 498 (1994).

III.

Analysis

A.

Setting Aside Judgment Due to Extrinsic Fraud on the Court (Count I)

Plaintiff seeks, through this independent action, to set aside the Judgment entered on September 1, 2021. Pursuant to MCR 2.612(C)(3):

This subrule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding; to grant relief to a defendant not actually personally notified as provided in subrule (B); or to set aside a judgment for fraud on the court.

In this independent action Plaintiff is seeking to set aside the Judgment based upon fraud. Plaintiff acknowledges that in order to set aside a judgment under MCR 2.612(C)(3) it must demonstrate "extrinsic fraud." In *Stallworth v Hazel*, 167 Mich App 345; 421 NW2d 685 (1988) the Court describes the difference between extrinsic and intrinsic fraud.

MCR 2.612 allows two means of obtaining relief from a judgment procured by fraud. A party may obtain relief by motion in the case in which the adverse judgment was rendered, MCR 2.612(C)(1)(c), or the party may proceed by independent action, MCR 2.612(C)(2). The standards for relief under the two sections of MCR 2.612 involve a distinction between extrinsic and intrinsic fraud. Extrinsic fraud is fraud which actually prevents the losing party from having an adversary trial on a significant issue. *Rogoski v. Muskegon*, 107 Mich App 730, 736; 309 N W 2d 718 (1981).

[*Stallworth*, 167 Mich App at 355⁵]

An example of extrinsic fraud is fraud with regard to filing a return of service. *Sprague v Buhagiar*, 213 Mich App 310, 313-314; 539 NW2d 587 (1995). On the other hand, intrinsic fraud is "a fraud within the cause of action itself." *Id.* at 314. Examples of intrinsic fraud include "perjury, discovery fraud, fraud in inducing a settlement, or fraud in the inducement or execution of the underlying contract." *Id.* In *Rogoski* the Court of Appeals explained why perjury is classified as intrinsic fraud:

In [*Fawcett v Atherton*, 298 Mich 362, 365; 299 NW 108 (1941)] the Supreme Court explained that, while perjury constitutes a fraud in obtaining a judgment, it does not prevent an adversary trial. The litigant confronted with perjury in court has the opportunity to rebut the perjured testimony through his own case. As *Atherton* states, while the rule may seem harsh in individual cases, litigation must have some finality and, if allegedly perjured testimony could serve as the basis for a new action to set aside a judgment, litigation of a dispute could go on ad infinitum.

[*Rogoski*, 107 Mich App 737 (footnotes omitted)]

In this case Plaintiff alleges, in pertinent part:

Bound by their initially-secret Joint Litigation Agreement, Defendants sought a way to circumvent the jury verdict against them. Defendants manufactured a scheme to falsely accuse IO and its President, Randy Oram, of committing fraud to obtain the Original Judgment. Defendants drafted and obtained a false affidavit from a disgruntled former contractor to IO, Patrick Depa ("Depa"). The material contents of the Depa Affidavit have subsequently been determined to be fraudulent. In fact, Depa later testified that he was not aware that he was required to be accurate in an affidavit under oath, but that admission came too late to prevent the second trial.⁶

⁵ MCR 2.612(C)(2) referenced in *Stallworth* is currently MCR 2.612(C)(3).

⁶ Complaint, ¶ 252.

Plaintiff fails to allege grounds for an independent action to set aside the Judgment under MCR 2.612(C)(3). The fraud alleged, the drafting and obtaining a false affidavit to support its motion to set aside the first verdict is intrinsic fraud, is fraud occurring within the case.⁷

Additionally, courts have treated allegations of false statements in affidavits on par with false statements made during trial. *See Brock v Winding Creek Homeowners Ass'n*, unpublished per curiam opinion of the Court of Appeals, issued December 4, 2014 (Docket No. 317666), p 3 ("Plaintiff's claim relates to false statements made to the court by defendant in a sworn affidavit and during a bench trial. Defendant's alleged misrepresentation or perjury is intrinsic fraud"). *See also Network Designs, LLC v Music Hall Center for Performing Arts*, unpublished per curiam opinion of the Court of Appeals, issued April 29, 2021 (Docket No. 351434), p 5 (Allegations that witnesses lied in affidavits submitted to the trial court alleged purported perjury and therefore, intrinsic fraud).

To the extent that the Complaint alleges that the actions of Defendant attorneys in filing the Depa Affidavit and/or making false statements to the court were fraudulent, these are actions which allegedly occurred within the case and are also properly classified as intrinsic fraud. *See Zattlin v Alden State Bank*, unpublished per curiam opinion of the Court of Appeals, issued January 24, 2012 (Docket No. 299919) (The Plaintiff sued under MCR 2.612(C)(3) alleging the defendant law firm prepared and presented affidavits containing false statements in support of a summary disposition motion. The Court of Appeals, citing *Matley v Matley (On Remand)*, 242 Mich App 100, 101; 617 NW2d 718 (2000), stated "[w]hen a party conceals a material fact from the court or

⁷ The Affidavit of Patrick Depa (the "Depa Affidavit") avers that Randy Oram ("Oram") fabricated a letter renewing Plaintiff's Lease with SS MITX. Complaint, ¶ 42.

makes a material misrepresentation to the court within a case, the concealment or misrepresentation constitutes an intrinsic fraud.")

Based on the foregoing, Plaintiff has not alleged extrinsic fraud and therefore has failed to state a claim under MCR 2.612(C)(3). Summary disposition under MCR 2.116 (C)(8) is granted as to Count I.⁸

B.

Intentional Infliction of Emotional Distress (Count III)⁹

Defendants argue that Count III fails to state a claim. Plaintiff agrees that Count III for intentional infliction of emotional distress should be dismissed. Response, p 5, n 2. Accordingly, summary disposition is granted under MCR 2.116(C)(8) as to Count III.

C.

Willful and Wanton Misconduct (Count IV)

In Count IV it is alleged:

270. Defendants willfully ventured forth to set aside the first jury verdict which emerged with an adverse outcome to the Defendants.

⁸ When a trial court grants summary disposition pursuant to MCR 2.116(C)(8), (9) or (10), the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified." MCR 2.116(I)(5). An amendment would not be justified if it would be futile. *Ormsby v Capital Welding, Inc.*, 471 Mich 45, 53; 684 NW2d 320 (2004) (citation omitted). In this case, there is no indication that Plaintiff is in a position to expand on its 289 paragraph Complaint to allege facts amounting to extrinsic fraud. *See Yudashkin v Linzmeyer*, 247 Mich App 642, 651; 637 NW2d 257 (2001) (quotation marks and citation omitted) ("An amendment is futile if it merely states the allegations already made or adds allegations that still fail to state a claim.") Accordingly, amendment is not justified under MCR 2.116(I)(5).

⁹ Because a claim for civil conspiracy must be based on a separate, actionable tort, Count II will be addressed after discussion of the tort claims. *See Mercurio v Huntington Nat'l Bank*, 347 Mich App 662, 689; 16 NW3d 748 (2023).

271. To this end, the Defendants facilitated, crafted or helped to draft an affidavit signed by Patrick Depa, the contents of which they knew, or had reason to know was [sic] untrue for the purposes of setting aside the jury verdict.

272. Defendants did in fact represent to this court that the contents of the affidavit were true and accurate and thereby successfully set aside the jury verdict, despite having lost the first time around.

273. Defendants should have known by exercising ordinary care and diligence that the contents of Partrick Depa's affidavit, which was the sole reason for setting aside the jury verdict, were substantially untrue.¹⁰

"Willful and wanton misconduct is made out only if the conduct alleged shows an intent to harm or, if not that, such indifference to whether harm will result as to be the equivalent of a willingness that it does." *Odom v Wayne Cnty*, 482 Mich 459, 475; 760 NW2d 217 (2008).

1.

Judicial Proceedings Privilege (MCR 2.116(C)(8))

Defendants first argue that Plaintiff's tort claim for willful and wanton misconduct fails under the judicial proceedings privilege.

Under the doctrine of judicial proceedings privilege, "[s]tatements made by judges, attorneys, and witnesses during the course of judicial proceedings are absolutely privileged if they are relevant, material, or pertinent to the issue being tried." *Oesterle v. Wallace*, 272 Mich.App. 260, 264, 725 N.W.2d 470 (2006). This privilege "extends to every step in the proceeding and covers anything that may be said in relation to the matter at issue, including pleadings and affidavits." *Couch v. Schultz*, 193 Mich.App. 292, 295, 483 N.W.2d 684 (1992). The privilege should be liberally construed in order to protect the participants in judicial proceedings from retaliation. *Id.* "If a statement is absolutely privileged, it is not actionable even if it was false and maliciously published." *Oesterle*, 272 Mich.App. at 264, 725 N.W.2d 470. Michigan Courts have previously applied judicial proceedings privilege to actions for defamation, *Couch*, 193 Mich.App. at 294, 483 N.W.2d 684, negligence, *Maiden v. Rozwood*, 461 Mich. 109, 117, 133–134, 597 N.W.2d 817 (1999), intentional torts, *Dabkowski v. Davis*, 364 Mich. 429, 432–433, 111 N.W.2d 68 (1961), and tortious interference with a contractual or economic relationship, *Meyer v. Hubbell*, 117 Mich.App. 699, 710–711, 324 N.W.2d 139 (1982).

¹⁰ Complaint, ¶¶ 270-273.

[*Ghannam v Hamameh*, unpublished per curiam opinion of the Court of Appeals, issued May 22, 2014 (Docket No. 313568), p 1]

Plaintiff asserts that the judicial proceedings privilege is limited and does not apply to statements that are irrelevant, immaterial, or not pertinent. However, Plaintiff does not explain how Depa's Affidavit or statements regarding Depa's Affidavit are irrelevant, immaterial, or not pertinent. Moreover, the allegations in the Complaint contradict this argument. As was noted above, Plaintiff alleged that "the contents of Partrick Depa's affidavit, *which was the sole reason for setting aside the jury verdict*, were substantially untrue."¹¹

Plaintiff also argues that cases cited by Defendants are distinguishable because they involve claims of defamation. However, as was explained above, the privilege has also been applied to claims of negligence, intentional torts, and tortious interference claims. *See Ghannam v Hamameh* and cases cited therein.

Additionally, Plaintiff asserts that it was "unable to find any cases that protect perjury or fraud" and that this Court should rule that there is a fraud exception to the judicial proceedings privilege. This Court is bound to follow the Michigan Supreme Court in *Maiden v Rozwood*, 461 Mich 109, 134; 597 NW2d 817 (1999) which stated that the judicial proceedings privilege is not abrogated by "falsity or malice." *See also Oesterle*, 272 Mich App at 264.

Lastly, Plaintiff argues that while the privilege might apply to "those lies made in court" it does not apply to the out of court conduct to overturn the first jury verdict alleged by Plaintiff. As was noted above, the willful and wanton misconduct claim is based upon the allegations that Defendants "facilitated, crafted or helped to draft an affidavit signed by Patrick Depa, the contents

¹¹ Complaint, ¶ 273 (emphasis added). *See also* ¶¶ 29, 31-32 213, 262

of which they knew, or had reason to know was [sic] untrue for the purposes of setting aside the jury verdict" and that "Defendants did in fact represent to this court that the contents of the affidavit were true and accurate and thereby successfully set aside the jury verdict"

Contrary to Plaintiff's argument, the privilege is not limited to in court testimony. Rather, the immunity afforded under the privilege "extends to every step in the proceeding and covers anything that might be said in relation to the matter at issue, including pleadings and affidavits." *Ghannon* quoting *Couch*, 193 Mich App at 295. The conduct alleged in Count IV is within these parameters.

Based on the foregoing, the Court agrees that Defendants are immune from the allegation in Count IV under the judicial proceedings privilege. Summary disposition is granted under MCR 2.116(C)(8).¹²

2.

Statute of Limitations (MCR 2.116(C)(7))

Plaintiff does not dispute Defendants' assertion that the statute of limitations for Counts IV-VII is three years under MCL 600.5805(2).

Plaintiff asserts that the question regarding the tort claims, including Count IV, is when the claims accrued.

Under MCL 600.5827 (Footnote omitted; Emphasis added):

Except as otherwise expressly provided, the period of limitations runs from the time the claim accrues. The claim accrues at the time provided in sections 5829 to 5838,

¹² Any amendment would not be justified. *See footnote 7, supra*. As was stated, the privilege is absolute. Moreover, as will be discussed, summary disposition of Count IV is also proper under the separate ground of expiration of the statute of limitations. MCR 2.116(C)(7).

and in cases not covered by these sections *the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results.*

"Accrual occurs when 'the wrong is done,' meaning the moment 'when the plaintiff is harmed rather than when the defendant acted.'" *Sunrise Resort Ass'n, Inc v Cheboygan Cnty Rd Comm*, 511 Mich 325, 336; 999 NW2d 423 (2023).

As to Count IV, the claim accrued when the false affidavit was created and submitted in support of the motion to set aside the first jury verdict.¹³ According to the Complaint, the Depa Affidavit was dated May 30, 2019 and was submitted with Defendants' motion to set aside the Original Judgment, filed on June 6, 2019.¹⁴ On December 18, 2019 this Court's predecessor determined that relief from judgment was warranted.¹⁵ As was stated, Plaintiff has alleged that the Depa Affidavit was the sole reason the jury verdict was set aside.¹⁶ Thus, the claim accrued in June 2019 or at the latest in December 2019. In either case, the Complaint in this case was filed in September 2025, more than three years after the claim for willful and wanton misconduct accrued.

Plaintiff argues that the statute of limitations is tolled because its cause of action against Defendants was fraudulently concealed. Under the fraudulent concealment statute:

If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of

¹³ Plaintiff, without citation to authority, states that "each separate act by Defendants" of making false statements to the Court "restarts" the statute of limitations period. However, it is clear from the allegations in the Complaint that the "act" at issue is the filing of the Depa Affidavit. Moreover, to the extent that Plaintiff is relying on a "continuing wrong theory" "this doctrine has been given only limited application to trespass, nuisance, and civil rights cases." *Blazer Foods, Inc v Restaurant Prop, Inc*, 259 Mich App 241, 254; 673 NW2d 805 (2003). The doctrine has not been extended to claims such as tortious interference. *Id.* at 256.

¹⁴ Complaint, ¶ 32.

¹⁵ *Id.* at ¶ 239.

¹⁶ Complaint, ¶ 273.

the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

[MCL 600.5855.]

“If there is a known cause of action there can be no fraudulent concealment which will interfere with the operation of the statute, and in this behalf a party will be held to know what he ought to know....” *Doe v Roman Catholic Archbishop of Archdiocese of Detroit*, 264 Mich App 632, 643; 692 NW2d 398 (2004) (quotation marks and citation omitted). “For a plaintiff to be sufficiently apprised of a cause of action, a plaintiff need only be aware of a possible cause of action.” *Id.* Plaintiff argues that Defendants engaged in acts to conceal their willful and wanton misconduct. However, Plaintiff alleges in the Complaint that “[Plaintiff] knew as soon as Depa's affidavit was produced that it was fictitious” and that “[Plaintiff] knew that Depa's Affidavit was false.”¹⁷ Thus, the statute of limitations period was not tolled by the fraudulent concealment statute.

Based on the foregoing, summary disposition is granted under MCR 2.116(C)(7) as to Count IV.

D.

Tortious Interference with Business Relationship or Expectancy (Count V)

Count V alleges tortious interference with regard to Defendant Lamar only. In support of Count V, it is alleged that:

275. Plaintiff International Outdoor and Defendant SS MITX had a tenancy agreement which was to permit the Plaintiff to build billboard signs on a parcel of land located in the City of Auburn Hills, with two other locations to follow.

276. Defendant Lamar was aware of Plaintiff's ongoing business relationship with Defendant SS MITX which granted Plaintiff an unfettered right to renew the lease.

¹⁷ *Id.* at ¶¶ 216, 242. It makes sense that Plaintiff would have knowledge of the alleged falsity of the statements in the Depa Affidavit because the statements concern the actions of Oram, Plaintiff's President.

277. Defendant Lamar nevertheless wanted the same parcel of land for the same purpose and therefore intentionally interfered with Plaintiff's business relationship with Defendant SS MITX in order to seize the same land.

278. When IO lost the Auburn Hills Lease, it also lost the opportunity to construct billboards at the other two locations.

279. Plaintiff has suffered actual damages in lost revenue and litigation costs as a result of Defendant Lamar's tortious intervention.¹⁸

In Health Call of Detroit v Atrium Home & Health Care Serv, Inc, 286 Mich App 83; 706

NW2d 843 (2005) the Court of Appeals explained:

The elements of tortious interference with a business relationship or expectancy are (1) the existence of a valid business relationship or expectancy that is not necessarily predicated on an enforceable contract, (2) knowledge of the relationship or expectancy on the part of the defendant interferer, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resulting damage to the party whose relationship or expectancy was disrupted.

[*Health Call of Detroit*, 286 Mich App at 90.]

1.

Res Judicata

Defendants argue that summary disposition is proper under MCR 2.116(C)(7) because the tortious interference claim is barred by the doctrine of res judicata. Res judicata bars a second, subsequent action when:

(1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first. This Court has taken a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not.

¹⁸ Complaint, ¶¶ 275-279.

[*Foster v Foster*, 509 Mich 109, 120-121; 983 NW2d 373 (2022) quoting *Adair v Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004).]

Defendants assert that the facts underlying Plaintiffs' current claim for tortious interference with business expectancy were known by Plaintiff at the time it filed the Complaint in the Original Action. Accordingly, the tortious interference with business expectancy claim could have been raised in the Original Action and is therefore barred.

Plaintiff argues that res judicata does not bar its tortious interference claim because there is an exception where the prior judgment was obtained by fraud. There is a fraud exception to the doctrine of res judicata, however, "the fraud exception to res judicata pertains only if the fraud is characterized as extrinsic fraud."¹⁹ *Sprague*, 213 Mich App at 313. As was discussed above, the fraud alleged by Plaintiff is intrinsic not extrinsic fraud and therefore, the fraud exception to res judicata does not apply.

Plaintiff argues that another exception to the doctrine of res judicata also applies. Plaintiff cites *Hackley v Hackley*, 426 Mich 582, 591-592; 395 NW2d 906 (1986) where the court addressed the question of collateral estoppel or issue preclusion. *Id.* at 591. Plaintiff asserts that the Court in *Hackley* adopted the Restatement of Judgments, 2d § 28(5)(c). However, the majority in *Hackley* did not adopt the Restatement section. Rather, it addressed the dissent's argument that the general rule of issue preclusion should not be applied based on § 28(5)(c). The Michigan Supreme Court found that the rule was inapplicable. *Id.*

¹⁹ To the extent that Plaintiff relies on *Courtney v Feldstein*, 147 Mich App 70; 383 NW2d 734 (1985) to support an argument that any fraud is sufficient to invoke the exception, its reliance is misplaced. See *Janson v Janson*, unpublished per curiam opinion of the Court of Appeals, issued August 7, 2003 (Docket No. 236676), n 5 ("To the extent the trial court relied on *Courtney v Feldstein*, 147 Mich App 70; 382 NW2d 734 (1986) to deny Defendant's motion for summary disposition, we note that it is not binding precedent because it was issued before November 1, 1990 MCR 7.215(J)(1). Moreover, our reading of *Triplett*, *Nederlander*, *Sprague*, and *Daoud*, leads us to conclude that *Courtney* is no longer good law.")

This Court determines that Restatement of Judgments, 2d § 28(5)(c)²⁰ is not applicable in this case because it addresses exceptions to issue preclusion (collateral estoppel) and this case involves claim preclusion (res judicata). *Allen Park Retirees Assoc, Inc v City of Allen Park*, 329 Mich App 430, 444-445; 942 NW2d 618 (2019) ("Unlike res judicata, which precludes relitigation of claims . . . collateral estoppel prevents relitigation of issues.") Collateral estoppel requires that the parties "must have had a full and fair opportunity to litigate an issue" in the first proceeding. *Allen Park Retirees Assoc, Inc*, 329 Mich App at 445. Accordingly, an argument that a litigant did not have an opportunity to obtain a full and fair opportunity to litigate an issue would be relevant to the question of issue preclusion.

However, as was discussed above, Defendants are arguing that the doctrine of res judicata precludes Plaintiff from bringing its tortious interference claim. The relevant issue under the doctrine of res judicata is whether a claim arising from the same transaction could have been, with reasonable diligence, raised in the first action. *Foster*, 509 Mich at 121. The alleged tortious interference with business expectancy claim arose from the same transaction as was litigated in the Original Case. Plaintiff has provided no explanation, and the Court cannot discern, why the current tortious interference claim could not have been raised in the initial action.

²⁰ The Restatement section entitled "Exceptions to the General Rule of Issue Preclusion" provides, in pertinent part:

Although an issue is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, relitigation of the issue in a subsequent action between the same parties is not precluded in the following circumstances:

(5) There is a clear and convincing need for a new determination of the issue . . . (c) because the party sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.

[Restatement (Second) of Judgments § 28(5)(c).]

Based on the foregoing, Defendants' motion for summary disposition under MCR 2.116(C)(7) (res judicata) is granted as to Count V.

2.

Statute of Limitations (MCR 2.116(C)(7))

Count V is barred by the expiration of the applicable statute of limitations period. Claims for tortious interference with a business expectancy have a limitations period of three years. MCL 600.5805(2). The Court agrees with Defendants that the claim accrued in December 2015 when Lamar signed the lease with SS MITX.²¹ Plaintiff alleges that when it "lost the Auburn Hills Lease due to Lamar's interference, IO also lost the opportunity to construct billboards at the other two locations."²² Accordingly, the claim for tortious interference with business expectancy had to be brought by December 2018. It was not brought until September 2025 and therefore is outside the limitations period.

Additionally, Plaintiff cannot argue that the limitations period was tolled because of fraudulent concealment where Plaintiff's tortious interference with contractual relations claim in the initial case was based upon the same actions complained of here.

Based on the foregoing, summary disposition is granted under MCR 2.116(C)(7) (statute of limitations) as to Count V.

²¹ Complaint, ¶ 94.

²² *Id.* at ¶ 89.

D.

Abuse of Process (Count VI)

1.

Failure to State a Claim (MCR 2.116(C)(8))

In Count VI it is alleged:

281. Under the guise and pretext of discovering new evidence the Defendants introduced Patrick Depa's affidavit to this Court.

282. The Defendants knew or should have known of the falsity of the Patrick Depa affidavit, but nevertheless provided it to this Court expressly in order to set aside a jury verdict which found in favor of the Plaintiff.

283. Defendants did, in fact, succeed in setting aside the first jury verdict which found against them.²³

In *Lawrence v Burdi*, 314 Mich App 203, 211-212; 886 NW2d 748 (2016) the Court explained the nature of a claim for abuse of process.

“Abuse of process is the wrongful use of the process of a court.” *Spear v. Pendill*, 164 Mich. 620, 623, 130 NW 343 (1911). “This action for the abuse of process lies for the improper use of process after it has been issued, not for maliciously causing it to issue.” *Id.* at 623, 130 N.W. 343 (quotation marks and citation omitted). “To recover upon a theory of abuse of process, a plaintiff must plead and prove (1) an ulterior purpose and (2) an act in the use of process which is improper in the regular prosecution of the proceeding.” *Friedman v. Dozor*, 412 Mich 1, 30, 312 NW2d 585 (1981). Expanding on each of the elements, the *Friedman* Court went on to explain that the act must be something more than just the initiation of a lawsuit, and the ulterior purpose has to be something other than settling a suit. *Id.* at 31, 312 N.W.2d 585. Justice Cooley, in his treatise on torts, stated, “One way in which process is sometimes abused, is by making use of it to accomplish not the ostensible purpose for which it is taken out, but some other purpose for which it is an illegitimate and unlawful means.” Cooley, *The Law of Torts or the Wrongs Which Arise Independently of Contract* (3d ed), p 356.

²³ Complaint, ¶¶ 281-283.

The Court agrees with Defendants that Plaintiff has failed to state a claim for abuse of process. As Defendants explain, there are no allegations that the Depa Affidavit was filed for "an ulterior purpose." Rather, as was alleged in the Complaint the Depa Affidavit was filed in support of a motion to set aside the first judgment.²⁴

Based on the foregoing, summary disposition is granted under MCR 2.116(C)(8).²⁵

2.

Statute of Limitations (MCR 2.116(C)(7))

There is no dispute that the abuse of process claim is subject to the three-year limitation period of MCL 600.5805(2). *Howard v Trott & Trott, PC*, unpublished per curiam opinion of the Court of Appeals, issued September 11, 2012 (Docket No. 304457). This Court agrees with Defendants that the abuse of process claim is barred by the expiration of the statute of limitations. *See* Analysis in Section III(C)(2), *supra*.

Based on the foregoing, summary disposition under MCR 2.116(C)(7) is granted as to Count VI.

E.

Tortious Interference with a Contract (Count VII)

In Count VII it is alleged, as to Defendant Lamar, that:

²⁴ *Id.*

²⁵ Additionally, the Court agrees with Defendants that the judicial proceedings privilege is applicable. *See* Section III(C)(1), *supra*. Although the Court is granting Defendants' motion under MCR 2.116(C)(8), amendment under (1)(5) is not justified where, as will be discussed, Count VI is also properly dismissed under MCR 2.116(C)(7) because of the expiration of the statute of limitations period.

285. Plaintiff International Outdoor and Defendant SS MITX had a contractual agreement which was to permit the Plaintiff to build billboard signs on a parcel of land located in the City of Auburn Hills, with other locations to follow.

286. Defendant Lamar was aware of Plaintiff's ongoing contractual agreement with Defendant SS MITX which granted Plaintiff an unfettered right to renew the lease.

287. Defendant Lamar nevertheless wanted the same parcel of land for the same purpose and therefore intentionally interfered with Plaintiff's contractual relationship with Defendant SS MITX in order to seize the same land.

288. Defendant Lamar unjustifiably instigated the breach of contract by Defendant S MITX.

289. Plaintiff has suffered actual damages in lost revenue and litigation costs as a result of Lamar's tortious interference in Plaintiff's contract with Defendant SS MITX.²⁶

1.

Res judicata (MCR 2.116(C)(7))

As was previously explained, res judicata bars a second, subsequent action when:

(1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first.

[*Foster*, 509 Mich at 120-121; 983 NW2d 373 (2022).]

The tortious interference with a contract allegations in Count VII of the Complaint arise out of the same transaction and are essentially the same allegations made in support of the tortious interference with contract claim in the Original Action.²⁷ The elements of res judicata are satisfied where the Original Action was decided on the merits, Plaintiff and Defendant Lamar are involved in both actions and the matter was resolved in the Original Action. As was discussed in Section

²⁶ Complaint, ¶¶ 285-289.

²⁷ Compare ¶¶ 285-288 in the Complaint with ¶¶ 20-25 in the Initial Action Complaint.

III(D)(1), *supra*, the exceptions to the general rule of res judicata asserted by Plaintiff are not applicable.

Based upon the foregoing, summary disposition under MCR 2.116(C)(7) (res judicata) is granted as to Count VII.

2.

Statute of Limitations (MCR 2.116(C)(7))

For the same reasons explained in Section III(C)(2) of this Opinion, summary disposition under MCR 2.116(C)(7) (statute of limitations) as to Count VII.

F.

Civil Conspiracy (Count II)

It is alleged in Count II that:

260. Defendants and their agents conspired to perpetrate a fraud upon this Court and Michigan's appellate courts with the shared goal of wresting away a sound jury verdict which the Defendants lost.

261. Defendants knew that they had in fact lost the first jury trial, and acted in concert with Patrick Depa to nullify the jury trial by claiming that Patrick Depa had seen the Plaintiff's President print, sign and scan in a forged lease renewal agreement.

262. Defendants and Patrick Depa used an affidavit Patrick Depa signed in order to bring about the setting aside the Original Judgment, despite the fact that Depa could not attest to numerous paragraphs and conclusions contained within his Affidavit.

263. As a direct and proximate result of the Defendants' aforementioned tortious and illegal acts in conjunction with Patrick Depa as heretofore described, Plaintiff suffered and continues to suffer severe financial damages.²⁸

1.

²⁸ Complaint, ¶¶ 260-263.

Failure to State a Claim (MCR 2.116(C)(8))

"A civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose or to accomplish a lawful purpose by criminal or unlawful means." *Mercurio v Huntington Nat'l Bank*, 347 Mich App 662, 689-690; 16 NW3d 748 (2023). "[A] claim for civil conspiracy may not exist in the air; rather, it is necessary to prove a separate, actionable tort." *Advocacy Org for Patients & Providers v Auto Club Ins Ass'n*, 257 Mich App 365, 384; 670 NW2d 569 (2003).

Plaintiff cannot state a claim for civil conspiracy because such claim is not supported by a separate, actionable tort. As has been discussed, the torts alleged in Counts IV-VII are properly dismissed for various reasons including the expiration of the statute of limitations. Accordingly, Plaintiff cannot establish an underlying tort, and its civil conspiracy claim must fail. *Id.* See also *Balsamo v Dalcom Prop, LLC*, unpublished per curiam opinion of the Court of Appeals, issued May 18, 2023 (Docket No. 361114), p 5 (The civil conspiracy claim was properly dismissed where the tort claims which purportedly supported the conspiracy claim were dismissed as time barred.)

2.

Judicial Proceeding Privilege (MCR 2.116(C)(8))

The Court also agrees that the conspiracy claim is barred by the judicial proceedings privilege. See Section III(C)(1) of this Opinion, *supra*.²⁹

²⁹ Based upon this Court's conclusion as to Count II, it is unnecessary to consider Defendant Depa's argument that the claim against him is barred by the doctrine of res judicata because Plaintiff could have brought it in its 2023 case breach of contract case against Depa. See Motion, Exhibit A, Complaint Case No. 23-199496-CB. Moreover, it is not clear whether "the prior action was decided on the merits" where the 2023 case went to arbitration and was closed in October 2025 for non-payment of the Arbitrator's fees. See Motion, Exhibit A; Exhibit B. 10/8/25 Correspondence.

Based on the foregoing, summary disposition is granted under MCR 2.116(C)(8) as to Count II.³⁰

ORDER

Based upon the foregoing opinion, the Court hereby orders that:

Defendants' Motion for Summary Disposition under MCR 2.116(C)(7) is hereby **GRANTED** as to Count IV (Willful and Wanton Misconduct); Count V (Tortious Interference with Business Relationship or Expectancy); Count VI (Abuse of Process); and Count VII (Tortious Interference with a Contract).

Defendants' Motion for Summary Disposition under MCR 2.116(C)(8) is hereby **GRANTED** as to Count I (Setting Aside Judgment Due to Extrinsic Fraud on the Court); Count II (Civil Conspiracy); Count III (Intentional Infliction of Emotional Distress); Count IV (Willful and Wanton Misconduct); and Count VI (Abuse of Process).

IT IS SO ORDERED.

This Order DOES NOT resolve the last pending matter and DOES NOT close the case.

/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
BUSINESS COURT JUDGE

Dated: 2/12/26

³⁰ Again, amendment under MCR 2.116(I)(5) is not justified as futile. The torts underlying the conspiracy claim are barred by the expiration of the statute of limitations.

EXHIBIT 2



Zattlin v. Alden State Bank

Court of Appeals of Michigan

January 24, 2012, Decided

No. 299919

Reporter

2012 Mich. App. LEXIS 141 *; 2012 WL 206390

MICHAEL J. ZATTLIN, Plaintiff-Appellant, v ALDEN STATE BANK, THOMAS R. LANE, CHARLES E. BARTZ, JR., and BRANDT FISHER ALWARD & ROY P.C., Defendants-Appellees.

Notice: THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

Subsequent History: Leave to appeal denied by [Zattlin v. Alden State Bank](#), 2012 Mich. LEXIS 674 (Mich., May 21, 2012)

Prior History: [*1] Kalkaska Circuit Court. LC No. 10-010387-NZ.

Core Terms

perjury, summary disposition, intrinsic fraud, trial court, prior case, independent action, extrinsic fraud, misrepresentation, presentation, preparation, concealing, personal knowledge, obtain a judgment, material fact, constitutes, rebutting, contends, contents, parties, costs

Judges: Before: SAWYER, P.J., and WHITBECK and M. J. KELLY, JJ.

Opinion

PER CURIAM.

Plaintiff Michael J. Zattlin appeals as of right the trial court's order granting summary disposition in favor of defendants Alden State Bank, Thomas R. Lane, Charles E. Bartz, Jr, and Brandt Fisher Alward & Roy, P.C. (Brandt Fisher). Because the trial court did not err when it granted the motion, we affirm.

In this case, Zattlin sued defendants under [MCR 2.612\(C\)\(3\)](#) for damages and to set aside a 2009 order granting summary disposition in favor of the Bank in a prior case.¹ Lawyers from Brandt Fisher represented the bank in the prior case. Both parties to the prior case filed motions for summary disposition; and the Bank supported its motion with affidavits signed by Lane and Bartz. The trial court in that case ultimately granted summary disposition in favor of the Bank.

After the dismissal of his prior case, Zattlin filed this suit. In his complaint he alleged that Lane and Bartz did not have the personal knowledge and capacity to testify under oath regarding statements in their affidavits. Zattlin [*2] claimed that all defendants were aware of these deficiencies, yet Brandt Fisher still prepared and presented the affidavits to the court in the prior action. Here, the trial court determined that Zattlin's new suit was—in effect—premised on perjury and, for that reason, did not state a claim on which relief could be granted in an independent action. Accordingly, it dismissed this suit.

We review de novo a trial court's decision on a motion for summary disposition. [Feyz v Mercy Mem Hosp.](#) 475 Mich 663, 672; 719 NW2d 1 (2006). A motion brought under [MCR 2.116\(C\)\(8\)](#) looks at the pleadings alone and tests the legal sufficiency of the claim. *Id.* In reviewing a motion under [MCR 2.116\(C\)\(8\)](#), courts accept as true all factual allegations supporting the claim as well as reasonable inferences or conclusions drawn therefrom. [Kuhn v Secretary of State](#), 228 Mich App 319, 324; 579 NW2d 101 (1998).

A court may entertain an independent action to set aside a judgment for fraud on the court. See [MCR 2.612\(C\)\(3\)](#). However, the relief provided under [MCR](#)

¹ See [Zattlin v Alden State Bank](#), Kalkaska Circuit Court (Docket No. 08-9841-CZ).

2.612(C) only applies to a judgment procured by extrinsic fraud. See Stallworth v Hazel, 167 Mich App 345, 355; 421 NW2d 685 (1988), citing Rogoski v Muskegon, 107 Mich App 730, 736; 309 NW2d 718 (1981) [*3] (interpreting a prior version of the court rule).² Extrinsic fraud is fraud outside the facts of the case which actually prevents the losing party from having an adversarial trial. Sprague v Buhagiar, 213 Mich App 310, 313; 539 NW2d 587 (1995). Extrinsic fraud is distinguishable from intrinsic fraud, which is a fraud within the case. *Id.* at 314. When a party conceals a material fact from the court or makes a material misrepresentation to the court within a case, the concealment or misrepresentation constitutes an intrinsic fraud. Matley v Matley (On Remand), 242 Mich App 100, 101; 617 NW2d 718 (2000). Although perjury constitutes fraud in obtaining a judgment, it does not prevent a party from having an adversarial trial and rebutting the perjured testimony through his own case. Rogoski, 107 Mich App at 737. For that reason, perjury is a form of intrinsic fraud. *Id.* "This does not mean that a litigant is never entitled to relief from a judgment obtained by intrinsic fraud. However, this relief cannot be by independent action but, rather, must be by motion in the case in which the adverse judgment was rendered." *Id.*

Zattlin contends that his complaint made no mention of perjury and does not rely on perjury for recovery. Rather, he argues that defendants acted together to gain summary disposition thereby preventing him from fully exhibiting his case and from having a real contest before the trial court. Zattlin also contends that Brandt Fisher's preparation and presentation of affidavits that it knew were deficient was actionable and egregious conduct constituting the concealing of or the misrepresentation of a material fact.

Zattlin focuses on the acts of preparation and presentation of the affidavits, but the essence of his argument is that Lane and Bratz lacked personal knowledge and the ability to testify regarding the contents of the affidavit. The affidavits, however, indicated that Lane and Bratz could testify to the contents. Therefore, if the facts stated in the complaint are taken as true, then Zattlin has alleged that Lane and Bratz committed perjury and that Brandt Fisher aided

and abetted that perjury by preparing the affidavits and presenting them to the court with full knowledge that the [*5] averments were false.³ And perjury is intrinsic fraud, which cannot support an independent cause of action under MCR 2.612(C)(3).

Zattlin's suggestion that a decision on a motion for summary disposition rather than advancement to a full trial is tantamount to a denial of an adversarial trial fails to acknowledge that he was part of the hearing on that motion and had an opportunity to present his own evidence rebutting the affidavits.

Finally, although we agree that Zattlin's appeal is without merit, we do not agree with defendants' argument that it amounted to a vexatious proceeding under MCR 7.216(C)(1). For that reason, we decline to award defendants their actual expenses. Nevertheless, as the prevailing parties, defendants may tax their costs. MCR 7.219(A).

Affirmed. Defendants may tax their costs. MCR 7.219(A).

/s/ David H. Sawyer

/s/ William C. Whitbeck

/s/ Michael J. Kelly

End of Document

² In Rogoski the Court held that relief from intrinsic fraud must be sought [*4] via a motion in the case in which the adverse judgment was entered. Rogoski, 107 Mich App at 736.

³ "Any person who knowingly makes any false statement in an affidavit is guilty of perjury." MCL 565.451b. This statutory section relates to affidavits and facts affecting realty. In the present case, the affidavits related to money owed based on mortgages, foreclosures, and the sale of real estate.