CIRCUIT COURT OF ST. LOUIS CITY, MISSOURI
TWENTY-SECOND JUDICIAL CIRCUIT

ST. LOUIS REGIONAL CONVENTION AND SPORTS COMPLEX AUTHORITY, *et al.*, Plaintiffs, v. NATIONAL FOOTBALL LEAGUE, *et al.*, Defendants.	Cause No.: 1722 CC00976 Div. No. 19

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Missouri Supreme Court Rule 74.04(a), Defendants respectfully move for summary judgment on all counts. In support of this motion, Defendants file the accompanying memorandum of law in support, statement of uncontroverted material facts, and exhibits, and state as follows:

1. Plaintiffs City of St. Louis, County of St. Louis, and St. Louis Regional Convention and Sports Complex Authority ("RSA") allege breach of contract, unjust enrichment, and tort claims arising from the Rams' relocation from St. Louis to Los Angeles. Plaintiffs' core allegation is that the National Football League voted to allow the Rams to relocate in violation of the League's internal "Relocation Policy," a set of guidelines the NFL Commissioner developed and issued to establish a process for clubs applying to relocate. The Policy lists "factors that *may* be considered" when member clubs "evaluat[e]" the proposed transfer and apply their individual "business judgment" as to whether a proposed relocation will advance "the League's collective interests." SUMF ¶¶ 5, 7–8 (emphasis added).

2. Plaintiffs' claims survived a motion to dismiss because, among other things, the Court

found Defendants' arguments about the Relocation Policy "rel[ied] on facts outside the pleadings which are beyond what the Court may consider on a motion to dismiss." MTD Order at 3. But now the record is developed, and it confirms that each of Plaintiffs' claims fails on the law and the undisputed facts, and Defendants are entitled to summary judgment.

3. *First*, Plaintiffs' breach of contract claim (Count I) fails. Count I alleges that the Relocation Policy is a binding contract, that Plaintiffs are third-party beneficiaries of the purported contract, and that all Defendants—the National Football League, its 32 member teams, and 57 of those teams' managers and owners—breached the alleged contract when the Rams relocated. Pet. ¶¶46–57. The undisputed facts show, however, that the Relocation Policy is not a contract and that Plaintiffs are not third-party beneficiaries of it. The Policy was unilaterally issued by the NFL Commissioner, was not the product of bargaining among member clubs, was not the subject of an offer or acceptance, and did not involve "bargained for consideration." SUMF ¶¶ 1–2 (Pet. Ex. A; (Defs. SJ Ex. 1) (Commissioner: "I am now issuing the attached policy and procedures….")). As another court recently concluded when rejecting *identical claims* brought in connection with the Oakland Raiders' relocation to Las Vegas, "the Relocation Policy does not contain a promise that Defendants will consider anything, and thus, a breach-of-contract action cannot be maintained." Defs. SJ Ex. 57 (*City of Oakland v. The Oakland Raiders*, No. 20STCV20676, slip op. at 6 (Cal. Super. Ct. Apr. 20, 2021)). Missouri law is settled that "self-imposed policies" like the NFL's Relocation Policy, which are "open to broad discretion and interpretation" and "subject to change at any time," cannot constitute a binding contract. *Johnson v. McDonnell Douglas Corp.*, 745 S.W.2d 661, 662 (Mo. banc 1988). Moreover, even if the Relocation Policy were a contract, there is no evidence that the Relocation Policy was made for the primary benefit of host cities, and "there is simply no basis to conclude [St. Louis] was a contemplated third party beneficiary of the

Relocation Policy." *Id.* at 7. Indeed, the undisputed evidence shows that the NFL's primary purpose in promulgating the Policy was to benefit the League and its member clubs. *See* Pet. ¶12; SUMF ¶ 7.

4. *Second*, Plaintiffs' unjust enrichment claim (Count II) fails on two separate grounds. Plaintiffs cannot maintain their unjust enrichment claim because nothing they seek in "restitution" came from or "at the expense of" Plaintiffs, as Missouri law requires. *Petrie v. LeVan*, 799 S.W.2d 632, 635 (Mo. App. W.D. 1990); *see Kubley v. Brooks*, 141 S.W.3d 21, 32 (Mo. banc 2004). Specifically, Plaintiffs seek to recover (1) a "relocation fee" that the Rams paid to the other NFL clubs after relocating, (2) the increased value of every NFL franchise from the League's expansion to the Los Angeles market, and (3) the increase in value to Rams owner Stan Kroenke's Hollywood Park property after the Rams' relocation. None of these amounts came *from* Plaintiffs or *at their expense*. Nor would they ever go *to* Plaintiffs under any circumstance. There is no evidence that Plaintiffs would have received the $550 million relocation fee paid to the NFL clubs or the alleged gain in NFL franchise values or Hollywood Park property value absent the Rams' relocation. *See* SUMF ¶¶ 66–68 (Defs. SJ Ex. 54; Defs. SJ Ex. 55 (Hilton Dep. at 119–20)); Pet ¶61. No Missouri court has ever allowed an unjust enrichment claim to proceed unless the purported benefit to the defendant would have gone to the plaintiff absent the defendant's alleged wrongful conduct, and it is undisputed after discovery that would *not* have happened here.

5. Separately, §432.070 RSMo bars Plaintiffs' unjust enrichment claim. That statute provides that all enforceable promises involving a city, county, or other municipal corporation must be put in writing. *See* §432.070 RSMo ("such contract, including the consideration, shall be in writing and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing"); *see*, *e.g.*, *Woolfolk v. Randolph*

County, 83 Mo. 501, 506 (Mo. banc 1884); *Epice Corp. v. Land Reutilization Auth. of City of St. Louis*, 608 S.W.3d 725, 728 (Mo. App. E.D. 2020). This rule applies equally to equitable and implied contract claims, and thus a municipality cannot evade §432.070 by bringing an unjust enrichment claim. *See*, *e.g.*, *Septagon v. Constr. Co. Inc.-Columbia v. Indus. Dev. Auth.*, 521 S.W.3d 616, 627 (Mo. App. W.D. 2017) (rejecting "claim for unjust enrichment"); *The Lamar Co., LLC v. City of Columbia*, 512 S.W.3d 774, 792 (Mo. App. W.D. 2016) (permitting estoppel or implied contract theory to overcome language of §432.070 would allow officials to follow law only when they "saw fit") (quoting *Donovan v. Kansas City*, 352 Mo. 430, 444 (1944)).

6. *Third*, Defendants are entitled to summary judgment on Plaintiffs' fraud claims (Counts III and IV). Count III alleges fraud against the Rams and Mr. Kroenke, claiming that they made a series of "knowingly false" statements from 2010 through 2014 that failed to "disclose their secret intention to move the team to Los Angeles," and they had a duty to, but did not, correct those alleged false statements. Pet. ¶¶73–85. Count IV alleges fraud against the NFL stemming from allegedly false statements about the relocation. Pet. ¶¶86–97.

7. The undisputed facts establish that Plaintiffs cannot establish reliance, including for any of the Rams' and Mr. Kroenke's allegedly false statements and Commissioner Goodell's January 2014 statement. That is because Plaintiffs admitted that (1) they "knew" of the Rams' "intent" to relocate by at least January 5, 2015, and (2) all of the supposedly fraudulently induced expenditures occurred *after* they knew that the Rams intended to relocate. In fact, Plaintiffs now concede that the reliance allegation they made in the Petition, which the Court accepted as true at the pleading stage, was "a misstatement" and "turns out not to be accurate." SUMF ¶ 42 (Defs. SJ Exs. 34); *see* Pet ¶79 ("At no point prior to the Rams' submission of its relocation petition did the Rams disclose their secret intention to move the team to Los Angeles.").

8. "When a party is aware … of the inaccuracy of a statement made by the other party, he cannot claim that he has relied on the misrepresentation" as a matter of law. *Blackstock v. Kohn*, 994 S.W.2d 947, 953 (Mo. banc 1999) (citing *State ex rel. Missouri-Nebraska Exp., Inc. v. Jackson*, 876 S.W.2d 730, 735 (Mo. App. W.D. 1994)); *McClain v. Papka*, 108 S.W.3d 48, 52 (Mo. App. E.D. 2003) (holding plaintiffs could not establish reliance based on form stating property lacked termites where "buyers were aware of the presence of termites"). Because Plaintiffs were "aware of the [alleged] inaccuracy of the statement[s]" they claim to have relied on by January 2015 at the latest, "[they] cannot claim that [they] relied on the[se] misrepresentation[s]" as the basis for a fraud claim. *Missouri-Nebraska Exp.*, 876 S.W.2d at 735 ("There can be no fraud without [that] reliance."). The remaining allegedly fraudulent statements were truthful, non-actionable statements of opinion about the NFL's own internal policies and procedures, which likewise cannot support a fraud claim as a matter of law.

9. *Fourth*, the record provides no support for Plaintiffs' tortious interference claim (Count V), and therefore, Defendants are entitled to summary judgment on this Count too. Plaintiffs allege that all Defendants except the Rams—including Mr. Kroenke—tortiously interfered with a purported "business expectancy in an ongoing relationship with the Rams." Pet. ¶¶99-110. The record indisputably establishes Plaintiffs' knowledge that: (1) on January 5, 2015, a joint venture between Mr. Kroenke and Stockbridge Capital publicly announced plans to build an 80,000-seat football stadium in Los Angeles (SUMF ¶¶ 35–36); (2) on January 26, 2015, the Rams converted their lease in St. Louis to an annual tenancy (SUMF ¶¶ 37–39); and (3) the NFL stated repeatedly that the Rams may be permitted to relocate (SUMF ¶¶ 50–51). Because Plaintiffs were aware that the Rams' relocation was a distinct possibility at the time the League considered and approved the Rams' application, Plaintiffs cannot establish they had a reasonable "business expectancy in an

ongoing relationship with the Rams." Pet. ¶99.

10. Nor can Plaintiffs establish that the Rams' decision to seek relocation was "induced" or otherwise "caused" by the *subsequent* vote to approve their relocation application. It is undisputed that the conduct that Plaintiffs claim constitutes intentional interference—the January 12, 2016 relocation vote, *see* Pet. ¶101—occurred *after* the Rams applied to relocate, and therefore cannot have "induced" or otherwise "caused" the Rams to relocate as a matter of law. *See Tri-Continental Leasing Co. v. Neidhardt*, 540 S.W.2d 210, 215 (Mo. App. St. Louis Dist. 1976).

11. Moreover, where, as here, Defendants have "a legitimate economic interest in the [purported] business expectancy," *Central Tr. & Inv. Co. v. Signalpoint Asset Mgmt., LLC*, 422 S.W.3d 312, 324 (Mo. banc 2014), there can be no tortious interference liability without proof that Defendants used "improper means" to advance their interest. *Stehno v. Sprint Spectrum, L.P.*, 186 S.W.3d 247, 252 (Mo. banc 2006). The benign voting activity on which Plaintiffs' tortious interference claim is predicated cannot constitute "improper means" as a matter of law. *See SSM Health Care, Inc. v. Deen*, 890 S.W.2d 343, 346 (Mo. App. E.D. 1994) ("Tortious interference cannot be predicated upon circumstances considered to be part of the competitive aspects of our free enterprise system.").

12. Mr. Kroenke is also entitled to summary judgment because, as the Rams' owner, he cannot be liable for interfering with his own business relationship. Under Missouri law, "there can be no liability for tortious interference with a business expectancy against … an agent of" the party with whom the business expectancy allegedly exists. *Jurisprudence Wireless Commc'ns, Inc. v. CyberTel Corp.*, 26 S.W.3d 300, 303 (Mo. App. E.D. 2000); *see also Kelly v. State Farm Mut. Auto Ins. Co.*, 218 S.W.3d 517, 525 (Mo. App. W.D. 2007); *White v. Land Clearance for Redevelopment Auth.*, 841 S.W.2d 691, 695 (Mo. App. W.D. 1992). The evidence is undisputed

that Mr. Kroenke acted at all times within the scope of his authority as the Rams' owner and chairman and for the economic benefit of the Rams when seeking to relocate. *See*, *e.g.*, SUMF ¶ 31 (Defs. SJ Ex. 18); Pet. ¶¶26, 41–43, 102. These undisputed facts foreclose a tortious interference claim against Mr. Kroenke.

13. *Fifth*, summary judgment is required for 22 Defendants on the independent ground that they did not even attend or participate in the January 2016 League meeting at which the Rams' relocation application was approved. SUMF ¶ 70. Because there is no evidence in the record of any conduct by these 22 Defendants, summary judgment is warranted as to all claims against them. *Milner v. Corizon Med. Corp.*, 2016 WL 6208445, at *1 (E.D. Mo. Oct. 24, 2016) ("Plaintiff[s] must set forth specific facts showing how each and every defendant is directly responsible for the alleged harm."); *Kersey v. Harbin*, 531 S.W.2d 76, 80 (Mo. App. 1975) (petition properly dismissed because it merely "charg[ed] the defendants collectively with negligence," but contained "no averment of any failure to perform a specific duty on the part of any defendant").

14. *Finally*, St. Louis County's claims fail for additional reasons. Undisputed testimony shows that the County did not participate in the planning or funding of the new stadium project. In fact, the County's charter prohibited it from participating in stadium development or funding "without a vote of the people," which the County declined to hold. SUMF ¶ 48 (Defs. SJ Ex. 34). The County has admitted that it did not "incur any other costs or expenses due to its reliance on the relocation policy"—nor did the Task Force's Riverfront stadium proposal call for it to do so. SUMF ¶ 61 (Defs. SJ Ex. 29 (County Dep. at 33–34)). Those admissions foreclose the County's claims as a matter of law.

15. For all of these reasons, and as further detailed in Defendants' memorandum in support, Defendants respectfully request that this Court enter summary judgment for Defendants.

Respectfully submitted,

/s/ Jozef J. Kopchick

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th day of June, 2021, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Jozef J. Kopchick