

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

SIDNEY LYLES,

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY,

Defendant.

Case No. 3:20-03473-MGL

DEFENDANT’S LOCAL RULE 26.03 REPORT

Defendant Allstate Insurance Company (“Allstate”), by and through its undersigned counsel and pursuant to Local Rule 26.03, hereby reports as follows:

1. Short statement of the facts of the case.

On or about March 1, 2013, Plaintiff Sidney Lyles (“Lyles”) entered into an Allstate R3001S Exclusive Agency Agreement (the “EA Agreement”) with Allstate, pursuant to which Lyles operated an Allstate Exclusive Agency. On February 19, 2020, Allstate exercised its right to terminate the EA Agreement, for, among other reasons, Lyles’s failure to meet business objectives. Allstate provided notice of the termination in a letter dated February 19, 2020 (attached as Exhibit B to Lyles’s Complaint), and also confirmed the termination via contemporaneous and subsequent telephone conversations and email exchanges.

In accordance with the terms of the EA Agreement, and as set forth in the termination letter, Lyles had the option to sell his economic interest in the Allstate Book of Business (“Book”) he formerly serviced and was given until June 1, 2020 to do so. Also pursuant to the EA Agreement and expressed in the termination letter, Allstate retained the absolute right of approval or disapproval of any purchaser of Lyles’s Book. If Lyles did not elect to sell the Book,

or was unable to secure an approved buyer, a termination payment would be processed. Lyles did not present to Allstate any candidates for the purchase of his Book, and no sale was consummated by the June 1, 2020 deadline. Consequently, Allstate began processing Lyles's termination payments, as provided for in the EA Agreement. Lyles has accepted all installments of the termination payments paid by Allstate.

Lyles asserts causes of action against Allstate for breach of contract, tortious interference with contract, tortious interference with prospective business opportunities, conversion, and violation of the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5-10, *et seq.*, arising from Allstate's termination of the EA Agreement. Essentially, Lyles alleges that Allstate terminated the EA Agreement for "racially motivated reasons," failed to provide proper notice of the termination of the EA Agreement, tortiously interfered with his contractual relations by terminating the EA Agreement, and "converted" his Book when he did not sell to an approved buyer within the deadline. Allstate denies all material allegations in the Complaint.

2. The names of fact witnesses likely to be called by Allstate and a brief summary of their expected testimony.

Based on the current results of Allstate's ongoing investigation, the individuals listed below may be called as fact witnesses by Allstate:

1. **Plaintiff Sidney Lyles**
To be contacted through Lyles's counsel

Mr. Lyles is expected to testify regarding (1) the allegations in his Complaint against Allstate; (2) his execution of the Allstate R3001S Exclusive Agency Agreement (the "EA Agreement") and his obligations to Allstate thereunder; (3) his operation of an Allstate Exclusive Agency; (4) the termination of the EA Agreement and reasons therefor; (5) notices provided by Allstate advising him of the termination of the EA Agreement; (6) his rights and obligations

regarding the transfer of his economic interest in the Book he formerly serviced following the termination of the EA Agreement; (7) and his receipt of termination payments (“TPP”) following the termination of the EA Agreement.

2. **Wes Porter**
Agency Engagement Leader
Allstate Insurance Company
May be contacted through Allstate’s counsel

Mr. Porter is expected to testify regarding: (1) Lyles’s execution of the EA Agreement and Lyles’s obligations and Allstate’s rights thereunder; (2) Lyles’s operation of an Allstate Exclusive Agency; (3) the termination of Lyles’s EA Agreement and the grounds therefor; (4) notices provided by Allstate to Lyles advising him of the termination of the EA Agreement; (5) communications with Lyles regarding the termination of the EA Agreement; (6) Allstate’s and Lyles’s respective rights and obligations regarding the transfer of Lyles’s Book following the termination of the EA Agreement; (7) and Allstate’s provision of, and Lyles’s receipt of, termination payments (TPP) following the termination of the EA Agreement.

3. **The names and subject matter of expert witnesses (if no witnesses have been identified, the subject matter and field of expertise should be given as to experts likely to be offered).**

At this time, Allstate has not identified any expert witnesses; however, Allstate reserves the right to identify expert(s) within the time limitations ordered by the Court.

4. **A summary of the claims or defenses with statutory and/or case citations supporting the same.**

Defenses to Lyles’s Breach of Contract Claim

Lyles cannot establish breach of contract because Allstate complied with the EA Agreement by duly providing Lyles notice of the termination of the EA Agreement and affording him the contractually required time to secure an approved buyer for the Book he formerly

serviced. Because Lyles cannot establish the element of breach, his contract claim fails. *See Gen. Info. Servs., Inc. v. LP Software, Inc.*, No. 08-324, 2009 WL 1743900, at *6-8 (D.S.C. June 18, 2009) (outlining breach of contract elements and granting summary judgment, finding no breach).

Lyles's allegation that Allstate breached the EA Agreement by "requiring [Lyles] to discriminate against minorities" is without merit because, notwithstanding the fact that Allstate did not engage in such conduct, Lyles cannot establish that Allstate breached a specific term in the EA Agreement to support his claim. *See Kraft Real Estate Invs., LLC v. HomeAway.com, Inc.*, No. 08-3788, 2012 WL 220271, at *12 (D.S.C. Jan. 24, 2012) (granting summary judgment where plaintiffs failed to demonstrate that alleged contractual obligation was "even a term of the agreement").

Defenses to Lyles's Tortious Interference with Contract and Tortious Interference with Prospective Economic Opportunity Claims

In addition to an absence of evidence showing that Allstate tortiously interfered with Lyles's existing or prospective contractual relations, Lyles's tortious interference with contract claim fails as a matter of law because Allstate had the express right under the parties' contract to approve or disapprove any transfer in Lyles's Book. (*See* EA Agreement (Compl. Ex. A) § XVI(B)). Therefore, Lyles's tortious interference with contract claim is unavailing. *See Broach v. Carter*, 732 S.E.2d 185, 189-90 (S.C. Ct. App. 2012) (reversing judgment on tortious interference claim, finding that defendant was justified to engage in alleged interfering conduct).

Lyles's tortious interference with prospective contractual relations also fails because Lyles cannot establish that Allstate acted "for an improper purpose or by improper methods" sufficient for liability to attach. *S. Contracting, Inc. v. H.C. Brown Constr. Co.*, 540 S.E.2d 602, 606 (S.C. Ct. App. 1994) (granting summary judgment on tortious interference claim where there

was “no evidence to suggest any purpose or motive” by defendant “other than the proper pursuit of its contract rights”); *see also Eldco, Inc. v. Charleston County Sch. Dist.*, 642 S.E.2d 726, 732 (S.C. 2007) (noting that an “essential element” of tortious interference with prospective contractual relations is that the defendant act with “an improper purpose” or “by improper methods”).

Defenses to Lyles’s Conversion Claim

Lyles’s conversion cause of action—predicated on the allegation that Allstate converted his Book—is fatally flawed because Lyles did not have a right of ownership to the Book. Allstate, at all times relevant to this dispute, owned the Book as set forth in the parties’ contract. (*See* EA Agreement (Compl. Ex. A) § I(A)); *see also Gillins v. Celadon Trucking Servs., Inc.*, No. 16-795, 2016 WL 4455018, at *6 (D.S.C. Aug. 24, 2016) (noting that, to sustain conversion claim, plaintiff “must establish either title or right to [] possession” and dismissing complaint where plaintiff did not own allegedly converted property).

Relatedly, the complained-of conduct did not amount to conversion, in that Allstate had the absolute right to approve or disapprove of a transfer of Lyles’s Book. *See Castell v. Stephenson Fin. Co.*, 135 S.E.2d 311, 313 (S.C. 1964) (holding that conversion “cannot arise from the exercise of a legal right”); *accord Metalmeccanica Del Tiberina v. Kelleher*, No. 04-2567, 2005 WL 2901894, at *2 (4th Cir. 2005).

Defenses to Lyles’s Unfair Trade Practices Act (S.C. Code § 39-5-10, *et seq.*) Claim

As an initial matter, Lyles’s allegations under South Carolina’s Unfair Trade Practices Act (“UTPA”) fail because Lyles can present no evidence that Allstate engaged in wrongful conduct sufficient to invoke the UTPA. *Bowman v. Bank of Am. N.A.*, No. 13-3436, 2016 WL 8943266, at *12 (D.S.C. June 16, 2016) (granting summary judgment where there was no

evidence that alleged complained-of acts were done with a “tendency to deceive” or were “immoral, unethical, or oppressive”).

Further, Lyles’s assertion that Allstate terminated the EA Agreement “for racially motivated reasons” is not actionable under UTPA, as it is well-settled that UTPA does not apply to acts that take place in the principal-agent relationship. *See Johnson v. Greenville Safety Consultants, Inc.*, No. 15-2334, 2018 WL 2462001, at *3 (D.S.C. June 1, 2018) (dismissing with prejudice independent contractor’s UTPA claim against its principal); *see also Davenport v. Island Ford, Lincoln, Mercury, Inc.*, 465 S.E.2d 737, 740 (S.C. Ct. App. 1995).

Finally, to the extent Lyles alleges that Allstate engaged in deceptive or unfair trade practices more generally, such claims are also unviable because (a) Lyles cannot prove “actual ascertainable damages” as a result of this conduct, *SIB Dev. & Consul., Inc. v. Save Mart Supermarkets*, 271 F. Supp. 3d 832, 822 (D.S.C. 2017), and (b) the UTPA expressly “exempts from coverage all unfair trade practices regarding the business of insurance.” *Trs. of Grace Reformed Episcopal Church v. Charleston Ins. Co.*, 868 F. Supp. 128, 132 (D.S.C. 1994) (citing S.C. Code § 39-5-40(c)).

Investigation continues, and Allstate expressly reserves the right to supplement and/or amend the defenses stated herein.

5. Absent special instructions from the assigned judge, the parties shall propose dates for the following deadlines listed in Local Civil Rule 16.02: Exchange of Fed. R. Civ.P. 26(a)(2) expert disclosures and completion of discovery:

Pursuant to the Court’s Conference and Scheduling Order (Dkt. No. 14), Lyles’s expert disclosures are due on August 31, 2021. Allstate’s expert disclosures are due on September 30, 2021. Discovery is to be completed no later than November 29, 2021

Lyles has requested that the deadlines to disclose pursuant to Fed. R. Civ. P. 26(a)(2) be

amended so that Lyles's disclosures will be due on October 1, 2021, and Allstate's disclosures will be due on November 1, 2021. (*See* Dkt. No. 16-1.) Lyles has also requested that the deadline for discovery completion be continued to December 31, 2021. (*See* Dkt. No. 16-1.)

Allstate disagrees and is prepared to comply with the deadlines set forth in the Court's original Conference and Scheduling Order. (Dkt. No. 14.)

- 6. The parties shall inform the Court whether there are any special circumstances, which would affect the time frames applied in preparing the scheduling order. *See generally* Local Rule 16.02(C) (Content of Scheduling Order).**

Allstate is not aware of any special circumstances which would affect the time frames applied in preparing the scheduling order.

- 7. The parties shall provide any additional information requested in the Pre-Scheduling Order (Local Civil Rule 16.01) or otherwise requested by the assigned judge.**

Allstate does not consent to trial before a United States Magistrate Judge.

[Signature of Counsel Appears on the Following Page]

DATED: July 6, 2021

Respectfully submitted,

By: /s/ *Honore N. Hishamunda*

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CERTIFICATE OF SERVICE

I certify that on July 6, 2021, I filed the foregoing **Defendant's Local Rule 26.03 Report** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following attorneys of record:

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