SUPREME COURT OF FLORIDA

CASE NO. 91,389

RICHARD B. GOSSARD, et al.,

Appellants,

vs.

ADIA SERVICES, INC.,

Appellee.

ON CERTIFICATION FROM THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
Case No. 95-3305

REPLY BRIEF OF APPELLANTS

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INTRODUCTION

Contrary to Adia's arguments, there is ample evidence supporting the jury's factual findings on all of the elements of tortious interference with contract under Florida law and the Restatement.[1] The record unequivocally establishes not only that parent-Adia knowingly "caused" a breach of subsidiary-Nursefinders' agreements with Plaintiffs and the destruction of their franchise relationship and exclusive territory rights thereunder, but that Adia's purchase and augmentation of competing affiliate Starmed was "improper," "unjustified" and "non-privileged."

Adia, a 700 million dollar California company, knew nothing about health care staffing and made its entry into the field by purchasing all of the stock of franchisor-Nursefinders which had a highly profitable and dynamic relationship with its franchisees. Nursefinders repeatedly advised Adia that the cornerstone to this successful relationship was Nursefinders' preexisting contractual covenants prohibiting any affiliate or parent competition within the franchisees' exclusive territories. (R21/232/88-92; 23/233/40,72-77,235; 30/237/195-196; 31/238/27-30).

Adia, however, ignored its subsidiary's contractual obligations and secretly devised a plan to wrest the business away from the franchisees for itself so it could receive all of the profits. The instrument for completing this scheme was affiliate Starmed. Macauley, Adia's President and CEO, secretly purchased Starmed and put himself on Starmed's board. In furtherance of its

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[1] For the convenience of the Court, Restatement (Second) of Torts Sections 766-769, which are discussed in the Initial Brief and herein, are set forth in the attached Appendix.

plan, Adia infused a great deal of capital into Starmed, modernized Starmed's office and accounting, and expanded advertising using Adia's size and reputation to support Starmed. Adia had access to Nursefinders' training manuals, brochures, films, advertising, marketing, finance, accounting and sales information. Adia established intercompany accounts between itself, Nursefinders and Starmed. Adia had named its own employees as key officers and directors of Nursefinders. Adia misused its power to extract and transfer Nursefinders' know-how and market position to Starmed. (R21/232/100,123-124,134-136; 23/233/165,184-186,202-204,214-215,230-232; 24/234/27,46-47; 26/235/154-157,206; 30/237/62-63,209,219-221; 31/238/52; C.Ex.1 pp.32,60-61,87-89).

Adia directly competed with Nursefinders' franchisees through Starmed and took away their business and nurses causing a violation of the franchise agreements. When the franchisees discovered that Adia was cannibalizing their business through Starmed and vociferously protested, Adia directed that all complaints and negotiations be diverted away from Nursefinders to Adia itself as the entity responsible for the contract breach. Adia's and Starmed's Macauley admitted damage had occurred and offered the franchisees $500 per nurse referral and 1% of Starmed's revenue in their exclusive territories. When this was rejected, Adia devised a phony sale of Starmed to hide its continuing involvement. Adia's officers admitted the transaction was orchestrated to deceive Nursefinders and the franchisees. Adia's breach of fiduciary duty and deception was successful in reaping great profits for itself by forcing franchisees to sell their devalued franchises to Adia and

by wrongfully diverting to Starmed and depriving Nursefinders and the Plaintiffs of their business and profits. (R21/232/147-148,161,167; 23/233/119-120,126-130,156-157,184,193,212,215; 24/234/52,71-82,87,92-98; 26/235/91,95-107; 30/237/59,79-81,206,226-227; 31/238/7-8,18-20,56-58).

Under these circumstances, parent-Adia must be held liable for interfering with subsidiary-Nursefinders' contracts.

ARGUMENT

I. ADIA CONCEDES THAT IT "CAUSED" NURSEFINDERS TO VIOLATE THE FRANCHISE AGREEMENTS AND ATTEMPTS TO SHIFT THIS COURT'S FOCUS TO THE JURY'S SEPARATE FINDING THAT ADIA ENGAGED IN "IMPROPER," "UNJUSTIFIED" AND "NON-PRIVILEGED" CONDUCT.

Remarkably, the sole issue before this Court is not even disputed. Adia freely admits in its Answer Brief ("A.B.") that it "caused" the breach and destruction of Plaintiffs' and Nursefinders' rights under the franchise agreements:

> [A]ll [the evidence] shows is what is conceded for purposes of this brief -- that Adia's purchase of a competitor caused a violation of the Nursefinder franchise agreements.

(A.B. 32).

> [A]ll the evidence shows ... is that ... the purchase [of Starmed] "caused significant damage to the franchise relationship."

(A.B. 32).

> [T]he most the defendant did was to make it impossible for another person to perform a contract.

(A.B. 17).

> ... Adia failed to conduct its affairs in a manner which made it possible for Nursefinders to fulfill its franchise contracts.

(A.B. 7).

Under Restatement §766, the jury was surely permitted to find - and it must now be deemed conceded - that Adia "otherwise caused" Nursefinders to breach or be unable to perform its franchise

contracts. (R36/240/12). "Inducement" is not required.[2]

Significantly, Adia's argument and case law focuses on the entirely separate issue as to whether Adia's conduct was "improper," "wrongful," "unjustified" or "non-privileged." This has absolutely nothing to do with "causation," however. To be sure, Adia's own cited authorities make this point crystal clear. In Kand Medical v. Freund Medical Products, 963 F.2d 125 (6th Cir. 1992), for example, the Sixth Circuit applying Restatement §766 to the facts before it expressly found sufficient evidence of "*causation*" to take a tortious interference with contract claim to the jury, id. at 127, but found insufficient evidence of "*improper*" interference as that separate element is determined by the seven-factor balancing test under Restatement §767. Id. at 128-129.[3]

Respectfully, Adia's characterization of Plaintiffs' causation argument is completely erroneous and mixes apples and oranges. At

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[2] See Rest. §766, comment h [*Inducing or otherwise causing*] ("The rule stated in this Section applies to any intentional causation whether by inducement or otherwise."); Rest. §766, comment k [*Means of interference*] ("[I]t is not necessary to show that the third person was induced to break the contract. Interference with the third party's performance may be by prevention of the performance...."); Franklin v. Brown, 159 So. 2d 893, 896 (Fla. 1st DCA 1964)(defendant who "rendered ... performance under the contract impossible" is liable to same extent as if person had been induced to breach contract); Tippet v. Hart, 497 S.W.2d 606, 610 (Tex. App.), w.r.n.r.e., 501 S.W.2d 874 (Tex. 1973)(defendant proximately causes contract breach or interferes with contractual relationship "'by doing other acts which make performance more burdensome, difficult or impossible, or of less value to the one entitled to performance'").

[3] See also Berger v. Cas' Feed Store, Inc., 543 N.W.2d 597, 599 (Iowa 1996)(whether the defendant "improperly interfered with the contract" is separate and distinct from the element as to whether "the interference caused the third person not to perform the contract"); Lindsey v. Dempsey, 735 P.2d 840, 842 (Ariz. App. 1987)("inducing or causing a breach" is separate and distinct from element as to whether "defendant acted improperly").

every corner, Adia in its Answer Brief injects the "justification/ privilege" issue into its discussion of "causation." Adia fails to cite a single case finding lack of causation.

Moreover, no where in the District Court's or Eleventh Circuit's opinions is there any discussion of the issue as to whether parent-Adia was "justified" or "privileged" due to any alleged economic, financial or lawful competition interests or whether Adia's conduct was not "improper" as defined under Restatement §767. Indeed, Magistrate Wilson himself (like Judge Kovachevich) rejected any absolute parent privilege and required the jury as trier of fact to determine whether, under §767's seven-factor analysis, Adia's interference was justified or proper. Applying Florida law, Magistrate Wilson correctly ruled:

> ... [T]he parent can't interfere except to advance the interest of the particular subsidiary who's the party of the contract.
>
> * * *
>
> ... We're going to do it this way to let the members of the community decide whether under all the circumstances this is the kind of conduct [by Adia] that is justified or not justified, or proper or improper to use the Restatement's term.

(R34/204/27-28).

The "causation" question alone was certified to this Court and must be answered in the affirmative. Gossard v. Adia Services, Inc., 120 F.3d 1229, 1231 (11th Cir. 1997)("the question is whether Adia 'otherwise caused' Nursefinders to violate the franchise agreements"). "Justification" is not before this Court but rather was a fact issue for the jury. Parent-Adia's purchase and aggrandizement of competing affiliate Starmed plainly "caused" subsidiary-Nursefinders to breach and be unable to perform its exclusive territory contracts as well as its implied covenant of

good faith and fair dealing which precludes a franchisor from destroying a franchisee's business through competition. (I.B. 30).

II. THE EVIDENCE FULLY SUPPORTS JURY FINDING OF ADIA'S "IMPROPER," "UNJUSTIFIED" AND "NON-PRIVILEGED" CONDUCT.

To the extent this Court finds it necessary to address the "improper"-conduct/"justification"/"privilege" issue, Adia's discussion of the evidence and relevant legal principles is fatally flawed. As detailed in the Initial Brief ("I.B.") and again below, the jury was entitled to find that parent-Adia brazenly ignored and breached its fiduciary duties by knowingly acting to the detriment of subsidiary-Nursefinders and cannibalizing Plaintiffs' and Nursefinders' business and profits through competing affiliate Starmed. Adia was keenly aware of the exclusive territory covenants not only prior to purchasing Starmed but prior to purchasing Nursefinders itself. Adia abused its fiduciary and confidential position and manipulated its power over Nursefinders and Starmed to destroy the franchise business and divert the profits to Starmed and Adia itself. The record establishes improper, wrongful, unjustified and non-privileged conduct which directly impacted Nursefinders' ability to fulfill its franchise agreements with Plaintiffs. (I.B. 35-40,45-50).[4]

A case closely on point is Phil Crowley Steel Corp. v. Sharon Steel Corp., 782 F.2d 781 (8th Cir. 1986). There, a parent

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[4] Plaintiffs reject Adia's contention that it can relitigate its "stranger to the contract" defense to the Eleventh Circuit after this Court answers the certified question. (A.B. 3). Plaintiffs have addressed the matter in the Initial Brief and believe it is part and parcel of the liability analysis. (I.B. 42-44). It should be noted that Adia's directed verdict points on liability were (1) party to the contract; (2) lack of inducement; and (3) shareholder privilege. (R30/237/183-184; 33/239/71-74).

corporation, through Victor Posner its president and chairman of the board, advised a subsidiary, Macomber, on which Posner also served as chairperson of the board, to sell steel at 25% above existing prices. The parent also wanted to reroute the steel to another subsidiary, Ohio Metal, so it could resell it at an inflated price and receive higher profits. Plaintiff Crowley had contracts with Macomber to purchase at the lower price which Macomber did not honor. Id. at 782. The Eighth Circuit found that Crowley had a claim for tortious interference against the parent and rejected the parent's "party to the contract" and "justification" defenses. Id. at 782-783. The court reasoned that a parent with a financial interest in a subsidiary cannot interfere if the parent employs wrongful means or acts with an improper purpose, and that Posner acted with full knowledge that the breach would harm subsidiary Macomber's financial situation and reputation. Id. Critically, the court ruled that the parent's interference was unjustified and improper because subsidiary Macomber's profits were reduced by the action for the benefit of the other subsidiary, Ohio Metal:

> More importantly, Posner did not act to protect an interest of [the parent] that the Macomber-Crowley contracts potentially threatened. Rather, Posner acted to the detriment of [the parent's] interests in Macomber in order to enhance their interests in a separate [] subsidiary, Ohio Metal.
>
> * * *
>
> Macomber's contracts did not threaten any interests of [the parent] to justify their interference. Although Macomber was not making as much profit on its steel sales as Ohio Metal, Macomber's steel operations reflected some profit. Existing contracts, such as those between Macomber and Crowley, are entitled to great protection from interference. (citations omitted). We conclude that ... [the parent] interfered with Macomber-Crowley contracts for an improper purpose when they knowingly acted to the detriment of Macomber and their interests therein.

782 F.2d at 784.

Similarly, the Pennsylvania Supreme Court in Shared Communication Services of 1800-80 JFK Blvd., Inc. v. Bell Atlantic Properties, Inc., 692 A.2d 570 (Pa. 1997) recently found a parent corporation (BAC) liable for causing a breach of its subsidiary's (BAP) joint venture contracts where the parent's purpose was to enhance the financial interests of another subsidiary (Bell of PA). In rejecting the parent's justification argument, the court noted:

> Clearly, the jury's findings in accordance with the evidence was that [parent] BAC's purpose in intervening in the Joint Venture's affairs was not to prevent asset dissipation but, rather, to help its subsidiary, Bell of PA, to aggrandize.

Id. at 575.

Numerous other cases have squarely rejected any absolute parent privilege and correctly held -- as did Magistrate Wilson in the instant case -- that the jury must consider all of the evidence and determine whether the parent improperly and unjustifiably caused a breach of the subsidiary's preexisting contract by knowingly acting to the subsidiary's detriment. (I.B. 35-36).

Indeed, the very case law cited in Adia's Answer Brief outlines the seven-factor analysis for the jury under Restatement §767 to determine whether a defendant's conduct is "improper" or "unjustified."[5] Here, pursuant to Florida law, Magistrate Wilson likewise instructed the jury to consider all these factors:

(a) the nature of the actor's conduct,

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[5] See, e.g., Wagensteller v. Scottsdale Memorial Hosp., 710 P.2d 1025, 1042-1043 (Ariz. 1985); see also Rest. §767, comment l ("the determination of whether the interference was improper or not is ordinarily left to the jury, to obtain its common feel for the state of community mores and for the manner in which they would operate upon the facts in question.").

(b) the actor's motive,
(c) the interests of the other with which the actor's conduct interferes,
(d) the interests sought to be advanced by the actor,
(e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other,
(f) the proximity or remoteness of the actor's conduct to the interference and
(g) the relations between the parties.

(R36/240/15); McCurdy v. Collis, 508 So. 2d 380, 383 n.1 (Fla. 1st DCA), rev. den., 518 So. 2d 1274 (Fla. 1987)(§767 factors are to be considered in evaluating propriety of interference with contract).

Significantly, Adia not only ignores that it was the jury's express role to determine the "improper"-conduct/"justification"/"privilege" issue, but that in doing so the jury had to consider all of the actual facts and circumstances of this case. Id.; Monco Enterprises, Inc. v. Ziebart Corp., 673 So. 2d 491, 492 (Fla. 1st DCA 1996)(whether privilege exists is fact question for jury); see also Sunamerica Financial, Inc. v. 260 Peachtree Street, Inc., 415 S.E.2d 677, 684 (Ga. App. 1992)("[g]enerally the issues of whether the parent employed wrongful means or acted with improper purpose would present questions of fact for the jury to decide").[6]

In *Point I* of Adia's Answer Brief (A.B. 6-18), Adia sets up an imaginary and irrelevant set of facts -- which were not before the jury -- and asks this Court to theorize whether a "lawful competition" privilege might apply thereto. Adia asks this Court to disregard the existence of the parent-subsidiary relationships

[6] As detailed in the Initial Brief (I.B. 50), and accurately noted by the Arizona Supreme Court in Wagensteller, the current Restatement has rejected the formalistic "privilege" concept in favor of a factual determination of "improper" conduct utilizing the seven-factor test under §767. 710 P.2d at 1043.

between Adia, Nursefinders and Starmed; to disregard the fact that Adia personnel controlled key officer and director positions within Nursefinders as well as Starmed; to disregard Adia's blatant breach of fiduciary duties to Nursefinders and the franchisees as Nursefinders' creditors; to disregard that Adia lied to, deceived, and manipulated Nursefinders and the Plaintiff-franchisees in secretly purchasing and devising a phony sale of Starmed; and to disregard that, when the franchisees vociferously protested Starmed's stealing their business, Adia prohibited Nursefinders from handling the matter and directed that all complaints be shifted to Adia as the responsible party. Adia's fictitious hypothetical serves no purpose except to highlight the reasons why Adia's "GM-Ford" example is so glaringly distinguishable and inapposite. (See I.B. 34-40).[7]

In *Point II* of the Answer Brief (A.B. 18-26), although Adia admits that its parent-subsidiary relationship created fiduciary

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[7] Adia's assertion that "plaintiffs are attempting to use an 'interference' theory to remedy the failure of Nursefinders' former owner to require Adia to assume the franchise contracts when he sold his stock to Adia" is also legally and factually erroneous. (A.B. 15). In none of the parent/subsidiary tortious interference cases was there ever a finding or any discussion of the parent's assumption of the subsidiary's contracts. Moreover, Adia disregards the fundamental difference between a stock and asset purchase. As Adia's own case authority makes clear, with a *stock* purchase the subsidiary automatically retains its contract and tort obligations and the parent's exposure comes through its status as the shareholder-owner. With an *asset* purchase, on the other hand, the purchaser has no liability exposure unless the parties negotiate for the purchaser's assumption of liability or a legal or de facto merger results. Winkler v. V.G. Reed & Sons, Inc., 638 N.E.2d 1228, 1233 (Ind. 1994). Accord Polius v. Clark Equipment Co., 802 F.2d 75, 77-78 (3d Cir. 1986). Further, Adia did not adduce any testimony or evidence whatsoever regarding the actual or possible provisions of its stock purchase agreement with Nursefinders. Adia's repeated assertions about what it might have done when purchasing the stock are insupportable. (A.B. 1,4,5).

duties to Nursefinders and to the franchisees as Nursefinders' creditors, Adia asks this Court to ignore the most salient fact in the case -- that Adia disregarded Nursefinders' preexisting contractual covenants prohibiting affiliate or parent competition within the franchisees' exclusive territories. Adia's claim that imposing liability in this case would "force a dramatic change on the manner many corporations operating through multiple subsidiaries do business" is baseless hyperbole. (A.B. 18-19). Again, the courts have repeatedly imposed liability on parent corporations for detrimentally interfering in one subsidiary's preexisting contracts for purposes of aggrandizing another subsidiary or the parent. Adia's "lawful competition" arguments regarding multiple subsidiaries blindly overlook that Adia had knowledge of Nursefinders' preexisting non-compete obligations.

Judicial policy and continuity strongly militate in favor of holding Adia liable for tortious interference: To absolve a parent corporation under the present facts is to destroy the effect of its subsidiary's preexisting non-compete agreements. It is Adia's theory -- not Plaintiffs' -- which would have "radical results" on the business and franchise world if adopted. (A.B. 18). Preexisting subsidiary contracts could be destroyed at will by the parent without recourse against the true wrongdoer. Adia seeks to obliterate parent fiduciary duties. Adia should have never purchased and augmented competing affiliate Starmed.[8]

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[8] Adia wildly mischaracterizes Plaintiffs' expert's testimony regarding parent/subsidiary franchise relationships. (A.B. 25-26). Mr. Yerman stated you have to look at the individual contract to determine whether the franchisor granted an exclusive territory. Here, Yerman agreed that Adia was obligated not to compete in

Adia's contention that it never "'misused its power' over Nursefinders" is equally preposterous. (A.B. 20). The record is teeming with evidence demonstrating that Adia grossly abused its controlling authority over Nursefinders - whom Adia used as its entry in the medical staffing field - in an effort to improperly augment Starmed competition in violation of the franchise agreements and increase Adia's profits to Nursefinders' and Plaintiffs' detriment. (R21/232/85; 33/239/14). Adia had placed its own key controlling personnel in officer and board of director positions within Nursefinders during the time Adia purchased and augmented competing affiliate Starmed: Walter Macauley served as a Nursefinders' director and, for a time, president; Ray Marcy also served as president; Yvef Paternot was a director; and Jon Rowberry served as the treasurer. (R21/232/100; 23/233/165,184, 230,232; 23/234/46; 30/237/209). Adia had direct access to Nursefinders' materials, training films and sales information. (R26/235/206). Adia established intercompany accounts between itself, Nursefinders and Starmed allowing subsidiary Starmed to grow quickly. (R30/237/219-220; 31/238/52). Adia swept from Nursefinders' general account over $1 million per month. (R21/232/100). Adia's and Starmed's Richard Benson even went to Nursefinders to discuss computerization of the offices. (R30/237/62-63).

Further, Adia knew it could have started its own travel-nurse business under Nursefinders without causing a violation of the franchise agreements but, as part of its scheme to achieve market dominance to Nursefinders' detriment, Adia wanted an existing

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Plaintiffs' territories through Starmed. (R30/237/173-176).

competing company. (Ct.Ex.1 p.45; R31/238/41). Adia knowingly and purposefully diverted business opportunities away from Nursefinders and its franchisees to competing affiliate Starmed causing a violation of the franchise contracts. (R28/236/48-49,146; 30/237/14-21,47).[9] The record is replete with evidence of Adia's misuse of power over Nursefinders.

To be sure, the folly of Adia's argument is exemplified by the fact that Adia affirmatively directed that the franchisees deal with Adia and not Nursefinders when the franchisees discovered that affiliate Starmed was stealing their business and devouring their profits. (R23/233/207; 24/234/52; 26/235/91; 33/239/44-45). At the same time Adia insists that Plaintiffs are relegated to a mere breach of contract claim against Nursefinders, Adia conveniently disregards that the franchisees could not even deal with Nursefinders because Adia -- who is not a party to the franchise contracts -- claimed responsibility for the contract breach and directed Nursefinders to divert the matter to Adia.

Finally, in *Point III* of the Answer Brief (A.B. 26-33), Adia misinterprets Plaintiffs' arguments and the evidence detailing Adia's wrongful acts which the jury was duty-bound to consider in determining the "improper"-conduct/"justification"/ "privilege" issue. As an initial matter, Adia's contention that Plaintiffs

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[9] Adia also directed Nursefinders to change the disclosure statement regarding the franchisees' exclusive territorial rights. (R24/234/59). The written disclosure statement given to Plaintiffs expressly provided that "[t]he franchisor or its parent or affiliate has not established and may not establish within any such exclusive territory or area other franchisees or company-owned outlets selling or leasing similar products or services under a different trade name or trademark." (P.Ex.24; 56 p.15).

failed to prove "independently tortious conduct" and submit separate claims to the jury for "misrepresentation," "Sherman Act" violations or "monopolization" (A.B. 26-28) totally misses the mark. To be sure, this precise argument was recently rejected by the Virginia Supreme Court in Maximus, Inc. v. Lockheed Information Management Systems Co., Inc., 493 S.E.2d 375 (Va. 1997) where the Court held that a plaintiff is not required to prove the defendant's actions were independently tortious or illegal to state a tortious interference claim. Id. at 379. To adopt Adia's approach would render a tortious interference action completely superfluous, nullify the controlling Restatement provisions, and take tort law back to the "nineteenth century." Id. at 379 n.7.

Further, Adia's preliminary contention that it is outside the scope of certification for this Court to even consider Adia's "acts of deception" or wrongful motive to "devalu[e] Plaintiffs' franchises so that Adia could advantageously repurchase them" (A.B. 6,26,28) is most ironic given that Adia concedes "causation" -- the specific question certified -- and solely argues the improper-motive/justification/privilege issue. In any event, as Adia's own case law makes clear, all of Adia's actions and motives must be considered to determine whether Adia acted improperly under Restatement §767's seven-factor analysis. Adia's and Nursefinders' parent/subsidiary relationship is just the starting point. See Rest. §767(g).[10]

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[10] Adia's argument likewise overlooks that this Court's jurisdiction on certification is limited to reviewing a question "which is determinative of the cause." The Court cannot address abstract and hypothetical issues of state law. Fla.Constn. Art.V, §3(b)(6); Insigna v. La Bella, 543 So. 2d 209, 211 (Fla. 1989)

Adia's characterization of the evidence regarding its "conduct," "motive" and "interests sought to be advanced" is also faulty. See Rest. §767. To the extreme detriment of Nursefinders and Plaintiffs, Adia concocted a scheme to achieve market dominance and greater profits by diverting the franchisees' business to Starmed, reducing the value of the franchises, and buying them out to run as company-owned offices which Adia stated was two to three times more profitable. (R23/233/225; 24/234/5). Adia achieved its goal of devaluing Plaintiffs' business and attempted to buy them out as Adia successfully did with other franchisees. (R26/235/116). Adia admits its plot to force the franchisees out of business. (A.B. 29-30). Adia lied to Nursefinders from the very start when Macauley told Nursefinders' President, Larry Carr, that any new acquisitions in the medical staffing field would fall under Nursefinders' control. (R21/232/96-97,123-124). The jury considered all of Adia's motives and actions and appropriately determined that Adia engaged in improper, unjustified and non-privileged conduct. (R36/240/39).

CONCLUSION

Based on the foregoing arguments and authorities, it is respectfully submitted that Appellants/Plaintiffs made out a claim for tortious interference with contract and established that "Adia 'otherwise caused' Nursefinders to violate the franchise agreements" under Restatement (Second) of Torts §766.

Respectfully submitted,

(rephrasing certified question to adhere to constitutional mandate). Thus, all of Adia's wrongful conduct must be considered.

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