IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

N.K.S. DISTRIBUTORS, INC., Plaintiff, v. CHRISTOPHER J. TIGANI, *et al*., Defendants.	
MY PAL, LLC, Counterclaimant, v. N.K.S. DISTRIBUTORS, INC., Counterclaim Defendant, and WILMINGTON TRUST COMPANY, Third-Party Counterclaim Defendant.	CONSOLIDATED C.A. NO. 4640-VCP
CHRISTOPHER J. TIGANI, *et al*., Plaintiffs, v. ROBERT F. TIGANI, *et al*., Defendants, and N.K.S. DISTRIBUTORS, INC., Nominal Defendant, and STEVEN R. DIRECTOR, *et al*., Third-Party Defendants.	

MEMORANDUM OPINION

Submitted: March 18, 2010
Decided: May 28, 2010

Christopher J. Tigani, Wilmington, Delaware; *Pro Se Plaintiff*

Leo John Ramunno, Esquire, LAW OFFICE OF LEO JOHN RAMUNNO, Wilmington, Delaware; *Attorney for Defendant and Counterclaim Plaintiff MY PAL, LLC*

Timothy Jay Houseal, Esquire, William E. Gamgort, Esquire, YOUNG CONAWAY STARGATT & TAYLOR, LLP, Wilmington, Delaware; *Attorneys for Third-Party Counterclaim Defendant Wilmington Trust Company*

PARSONS, Vice Chancellor.

This is a consolidated action involving numerous claims and counterclaims asserted by a father and son against each other and certain related entities as part of a battle for control of a family-owned alcoholic beverage distributorship, the largest in the State of Delaware.[1] The matter is currently before me on a motion by Defendant Wilmington Trust Company ("WTC") to dismiss two claims made against it by Counterclaim Plaintiff My Pal, LLC ("My Pal"), namely, tortious interference with prospective contractual relations and breach of the implied covenant of good faith and fair dealing, as well as a claim for civil conspiracy asserted against it by both My Pal and Plaintiff Christopher J. Tigani ("Chris"), the owner of My Pal.[2]

After carefully reviewing the factual allegations contained in both the Complaint and Counterclaims under the plaintiff-friendly Rule 12(b)(6) standard,[3] I find no basis to conclude that WTC acted unlawfully in pursuing foreclosure and other contractual remedies against Chris and My Pal following their failure to pay certain amounts owed under the controlling loan agreements. Nevertheless, Chris and My Pal have alleged facts that conceivably could support a finding that WTC participated in a civil conspiracy with Bob and NKS to unlawfully remove Chris from his position at NKS and that Bob or

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1 *See infra* Part I.B.

2 The operative pleading filed by Chris is the Verified Amended Complaint (the "Complaint"). Docket Item ("D.I.") 203. Additionally, the operative pleading filed by My Pal is the Amended Counterclaims (the "Counterclaims"). D.I. 202.

3 *See Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 318 (Del. 2004); *In re Am. Int'l Gp., Inc.*, 965 A.2d 763, 776 (Del. Ch. 2009).

NKS took wrongful acts in furtherance of that conspiracy. Therefore, I deny WTC's motion to dismiss Chris's and My Pal's claims of civil conspiracy. I grant the motion to dismiss, however, as to My Pal's claims of breach of the implied covenant of good faith and fair dealing and tortious interference with prospective business relations.

I. BACKGROUND

A. Facts

This consolidated action largely centers on a conflict between Chris and his father, Robert Tigani ("Bob"). While a complete recitation of the rather involved history between those parties is unnecessary here, a brief review of certain facts regarding the underlying dispute will help put WTC's pending motion to dismiss in context.[4]

At its essence, this litigation is a fight for control of N.K.S. Distributors, Inc. ("NKS") and the property where it is headquartered. NKS is a closely held, family owned business formed in 1949.[5] In January 2006, Bob allegedly agreed to transfer management and control of NKS to Chris and at least semi-retire from the business.[6] When Bob returned from Florida in May 2008, however, he sought to regain control from Chris, denying that he had ever agreed to transfer voting control of NKS to Chris. In the words of My Pal's Counterclaims, "Bob, and other self-interested Officers and Directors

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4 Unless otherwise noted, these facts are drawn from the Complaint and Counterclaims.

5 NKS was founded by James V. Tigani, Sr., Bob's father and Chris's grandfather. The name of the company is an acronym consisting of the first letter of each of Delaware's three counties: New Castle, Kent, and Sussex.

6 For example, Bob would spend several months in Florida each year. Compl. ¶ 20.

embarked on [a] merciless scheme to usurp the control he had previously transferred to [Chris] and bludgeon his son out of the family business forever" because Bob was "[u]nhappy with retirement and jealous of the success his son achieved at the helm" of NKS.[7]

1. The NKS Property dispute

This litigation also involves a dispute between NKS and Bob on one side and Chris and My Pal on the other regarding ownership of the property serving as NKS headquarters, located at 399 Churchman's Road, New Castle, Delaware (the "NKS Property").[8] On October 16, 2001, NKS sold the NKS Property to Claremont Village Commons ("Claremont") in a sale and lease back arrangement. Sometime after assuming operating control of NKS, however, Chris formed My Pal, of which he is the sole owner, and caused it to repurchase the NKS Property from Claremont on April 4, 2007 with the help of a $10.2 million loan from WTC (the "My Pal Loan"). My Pal then leased the Property to NKS for $75,000 per month in rent, which My Pal used to cover its monthly mortgage payment of $74,896 to WTC. As sales at NKS grew, My Pal also began construction on an addition to the NKS Property consisting of a 28,000 square foot warehouse and cooler (the "Addition"). Although NKS began using the Addition in

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[7] Countercl. ¶ 262. The Counterclaims include two paragraphs numbered "262." This quotation comes from the second of these.

[8] I refer to this property as the NKS Property for convenience only and make no findings or conclusions regarding the validity of any party's claim to ownership of it.

November 2008, it allegedly did not pay for the costs of construction for the Addition, nor did it pay any increased rent to My Pal until February 2009.

In addition to, but entirely independent of, the My Pal Loan, WTC loaned Chris $4.1 million in April 2007 to purchase his personal residence at 1111 Berkeley Road, Wilmington, Delaware (the "Berkeley Road Property Loan") and $1 million to purchase furniture for that residence (the "Furniture Loan"). As Chris's and My Pal's claims against WTC depend on a number of documents signed by Chris in connection with the My Pal, Berkeley Road Property, and Furniture Loans, I digress briefly to address the nature and relevant terms of these loan documents.[9]

2. The WTC Loans

The My Pal Loan is a term loan evidenced by several documents signed by Chris on April 4, 2007 in his capacities as sole member of My Pal and president and secretary of NKS, as well as his individual capacity as a guarantor of the loan. The documents include a promissory note, two mortgage and security agreements in the amount of $10.2

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[9] Although the documents evidencing these loans are not included as exhibits to the Complaint or Counterclaims, they are incorporated by reference into both pleadings. *See* Compl. ¶¶ 24, 62-63; Countercl. ¶¶ 262, 267, 270, 275, 280, 282, 288, and 289. Because the terms of these agreements are integral to My Pal's and Chris's claims, I consider it proper to review these loans in the context of WTC's motion to dismiss. *See Encite LLC v. Soni*, 2008 WL 2973015, at *7 n.22 (Del. Ch. Aug. 1, 2008) ("[T]he Court is also permitted to consider the unambiguous terms of documents incorporated by reference in the complaint when the documents are integral to the plaintiff's claims."). Copies of the loan agreements were submitted to the Court with a letter from counsel for WTC, dated April 26, 2010. D.I. 303.

million on the NKS Property and an NKS facility in Milford, Delaware (the "Milford Property"), and guaranty agreements from NKS and Chris.

The My Pal Loan required My Pal to make monthly mortgage payments to WTC in the amount of $74,896 with the entire unpaid balance due on April 4, 2012. The loan provides that failure to "promptly pay any payment of the Loan or of any interest thereon" when due constitutes an event of default triggering certain remedies of WTC. Such remedies include the right to "declare the entire unpaid balance of the [My Pal] Loan . . . immediately due and payable," bring foreclosure proceedings against the NKS or Milford Properties, and take action against NKS and Chris jointly or severally for repayment of the My Pal Loan.[10]

The Berkeley Road Property Loan is evidenced by a promissory note Chris signed in his individual capacity on June 20, 2008 and is securitized by a mortgage on the Berkeley Road Property and Chris's mother's home, located at 607 Entwisle Court, Wilmington, Delaware (the "Entwisle Property"). The Furniture Loan is also evidenced by a promissory note signed by Chris, but is only securitized by a mortgage on the Berkeley Road Property. Both the Berkeley Road Property Loan and the Furniture Loan required monthly payments with all unpaid principal and accrued interest due on June 20, 2009. Under the terms of these loans, which are substantially similar, failure to make any scheduled payment, including payment on the maturity date, constitutes an event of

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[10] *Id.* The My Pal Loan explicitly provides that the rights and remedies available to WTC "may be pursued singly, successively, or together" against My Pal, any guarantor, or any mortgaged property "at [WTC's] sole discretion."

default authorizing WTC to declare the entire unpaid balance and accrued interest due immediately and to foreclose on both the Berkeley Road and Entwisle Properties.

In the summer of 2009, My Pal failed to make the scheduled payments on the My Pal Loan and Chris failed to pay the full unpaid balance of the Berkeley Road Property Loan and the Furniture Loan on the maturity date. Following My Pal and Chris's failure to cure these defaults, WTC initiated foreclosure actions on the Berkeley Road Property and the Entwisle Property on July 21, 2009 and the NKS Property on August 13, 2009.

According to My Pal and Chris, WTC's determination to foreclose on the NKS Property at the first available instance began in the fall of 2008, when WTC began meeting with Bob to discuss how to "oust" Chris from NKS.[11] WTC allegedly cemented this decision after meeting with Bob and other NKS representatives on July 27, 2009. At that meeting, the participants allegedly agreed to "handle the [Chris] and My Pal situation" by, among other things, foreclosing on the NKS Property, thus using WTC's "serious leverage" to put significant financial pressure on Chris and My Pal.[12] The next day, WTC sent My Pal and Chris a notice of default on the My Pal Loan. On July 29, NKS offered to take record title to the NKS Property from My Pal, assume payment of the My Pal Loan, and take care of various legal claims asserted against My Pal and Chris by EDiS, the company that built the Addition. My Pal and Chris promptly rejected this

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11 Compl. ¶ 62.

12 Countercl. ¶ 282; Compl. ¶ 63.

offer, and, in mid-August 2009, WTC began foreclosure proceedings on the NKS Property.[13]

Chris alleges that, in connection with WTC's foreclosure on the NKS Property and in furtherance of a plan to inoculate WTC and NKS from the threat posed by Chris's decision to establish World Class Wholesale, Inc. ("WCW"), a competing beverage distributor, WTC "surprisingly" rejected all of Chris's and My Pal's "reasonable" requests to refinance the mortgage on the NKS Property.[14] Additionally, in the fall of 2009, WTC commissioned and paid for an appraisal of the NKS Property. WTC initially withheld this appraisal from Chris and My Pal.[15] According to the Counterclaims, that action interfered with My Pal's ability to refinance the My Pal Loan.

B. Procedural History

On June 1, 2009, NKS filed a complaint against Chris, My Pal, My Pal #2, LLC ("My Pal 2"), and WCW (the "NKS Action") seeking, among other things, to establish control of NKS and ownership of the NKS Property and the Addition. On June 17, 2009, My Pal filed counterclaims in the NKS Action. On the same day, Chris brought a separate action asserting broad-ranging claims against Bob and NKS (the "CJT Action" or "Plenary Action"). The NKS and Plenary Actions were consolidated on August 18, 2009.

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13 WTC did not seek to foreclose on the Milford Property.

14 Compl. ¶ 63.

15 After Chris paid for the cost of the appraisal ($4,500), WTC provided him with a copy.

On February 5, 2010, after obtaining leave of the Court, Chris filed an amended Complaint, adding several new claims and defendants, including WTC. At that same time, My Pal filed amended Counterclaims, which also named WTC as a third-party counterclaim defendant. On February 26, WTC moved to dismiss all claims raised against it in both pleadings.

Though Chris's Complaint names several other individuals and entities as defendants, the parties agreed to bifurcate the claims raised in the NKS and CJT Actions and defer the trial of the claims against most of the new Defendants until a later time.[16] The first trial commenced on April 26, 2010 and originally was meant to address all claims involving My Pal, Chris, NKS, Bob, and WTC. Based on the potential merit of WTC's motion to dismiss and the large number of witnesses and issues that needed to be addressed among My Pal, Chris, NKS, and Bob, however, I postponed the trial of the claims against WTC until early June 2010.

C. Parties' Contentions

The Complaint and Counterclaims leave much to be desired in terms of clarity and precision. Nevertheless, a liberal reading of the factual allegations in the Complaint suggests that Chris meant to accuse WTC of involvement in a civil conspiracy with Bob and NKS to exert financial pressure on Chris by foreclosing on the Berkeley Road, Entwisle, and NKS Properties, and thereby allow Bob to gain leverage in his ongoing

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[16] Specifically, litigation of the claims by My Pal and Chris against Steven Director, A. Paul Ruggiero, Anthony Horvat, Bayard, PA, Wheeler, Wolfenden & Dwares, CPA, and WSFS Bank has been stayed pending resolution of the first trial.

disputes with Chris, including this litigation.[17] Additionally, in Count V of the Counterclaims, My Pal alleges that WTC breached its covenant of good faith and fair dealing by filing an unlawful *lis pendens*, refusing to negotiate in good faith to refinance the mortgage on the NKS Property, and using foreclosure proceedings on the NKS and Berkeley Road Properties to give NKS an unjust advantage in its case against Chris. Finally, My Pal seems to accuse WTC of tortiously interfering with Chris's prospective contractual relations by withholding an internally-commissioned appraisal of the NKS Property.

In response, WTC moved to dismiss each of these claims under Court of Chancery Rules 8(a) and 12(b)(6). WTC contends that it cannot be liable for conspiring to enforce its legal, contractual rights under the loans at issue in this case, that My Pal failed to state an actionable claim for breach of the implied covenant of good faith and fair dealing because WTC acted at all times within the express rights created under these loans, and that My Pal has not alleged any facts that would support a reasonable inference that WTC intentionally interfered with a known, prospective contract.[18]

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[17] Compl. ¶ 63.

[18] WTC also seeks dismissal of Chris's derivative claims against it for failing adequately to allege demand futility. In his responsive brief, however, Chris clarified that "[t]he derivative claims are only against the Officers and Directors of NKS." Chris's Opp'n to Defs.' Mots. to Dismiss ("CJT Br.") 19. Thus, this aspect of WTC's motion is moot.

II. ANALYSIS

A. Standard for a Motion to Dismiss

Rule 8(a) requires that "[a] pleading which sets forth a claim for relief . . . shall contain a short and plain statement of the claim showing that the pleader is entitled to relief." Under this Rule's liberal pleading standard, "[a] complaint need only give general notice of the claim asserted and will not be dismissed unless it is clearly without merit, either as a matter of law or fact."[19]

A motion to dismiss under Rule 12(b)(6) for failure to state a claim should be denied "'unless it can be determined with reasonable certainty that the plaintiff could not prevail on any set of facts reasonably inferable' from the pleadings."[20] In deciding such a motion, "[t]he court must assume the truthfulness of the well pleaded allegations in the complaint and must afford the party opposing the motion 'the benefit of all reasonable inferences.'"[21] Yet, even in this context, "mere conclusions are not accepted as true absent specific allegations of fact which support them."[22]

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19 *Brinckerhoff v. Tex. E. Prods. Pipeline Co., LLC*, 2008 WL 4991281, at *4 n.12 (Del. Ch. Nov. 25, 2008) (citing *Rabkin v. Philip A. Hunt Chem. Corp.,* 498 A.2d 1099, 1104 (Del. 1985)).

20 *In re Primedia Inc. Deriv. Litig.*, 910 A.2d 248, 256 (Del. Ch. 2006) (citing *Superwire.com, Inc. v. Hampton,* 805 A.2d 904, 908 (Del. Ch. 2002)).

21 *Superwire.com,* 805 A.2d at 908 (citing *Solomon v. Pathe Commc'ns Corp.,* 672 A.2d 35, 38 (Del. 1996)).

22 *Primedia*, 910 A.2d at 256 (citing *Solomon,* 672 A.2d at 38); *see also Doe v. Cahill,* 884 A.2d 451, 458 (Del. 2005) (citing *Ramunno v. Cawley,* 705 A.2d 1029, 1034 (Del. 1998)); *In re New Valley Corp. Deriv. Litig.,* 2001 WL 50212, at *4 (Del. Ch. Jan. 11, 2001) ("[T]he court must consider the various factual

With this standard in mind, I turn to whether Chris's and My Pal's claims of civil conspiracy and My Pal's claims of breach of the implied covenant of good faith and fair dealing and tortious interference with prospective contractual relations adequately state claims on which relief can be granted.

B. Civil Conspiracy

Viewing Chris's Complaint through the less stringent lens applied to the pleadings of pro se litigants, I understand that he seeks to assert a claim of civil conspiracy against WTC.[23] Specifically, Chris alleges that "[i]n the fall of 2008 . . . WTC . . . met with Bob, without Chris present[,] to discuss Bob's intentions to oust Chris" and decided to foreclose on the Berkeley Road and Entwisle Properties as soon as legally allowed under

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permutations reasonably possible within the framework of the plaintiff's allegations and conclude whether any one conceivable set of facts could possibly merit granting [the] plaintiff relief.").

[23] Though the precise claim levied against WTC by Chris, who is self-represented, is somewhat unclear, it appears to sound in conspiracy. The Court examines such pro se pleadings under "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *see also Johnson v. State,* 442 A.2d 1362, 1364 (Del. 1982) (citing *Bounds v. Smith,* 430 U.S. 817, 826 (1977)); *Thornton v. Bernard Techs., Inc.*, 2009 WL 426179, at *1 (Del. Ch. Feb. 20, 2009). The duty to apply these "less stringent" standards, however, does not require this Court to "conjure up unpled allegations" or "create a claim" that does not appear from a fair reading of a pro se complaint. *See Ensey v. Highlands Nursing & Rehab*, 2010 WL 1688773, at *2 (W.D. Ky. Apr. 26, 2010) (citing *McDonald v. Hall,* 610 F.2d 16, 19 (1st Cir. 1979); *Clark v. Nat'l Travelers Life Ins. Co.,* 518 F.2d 1167, 1169 (6th Cir. 1975)).

A fair reading of the Complaint indicates that Chris intended to assert a claim of civil conspiracy against WTC. To the extent Chris intended to assert other claims against WTC, however, they are dismissed for failure to meet the pleading requirements of Court of Chancery Rule 8(a).

the controlling loan agreements "for no other reason than to allow Bob to gain leverage in this civil action."[24] WTC allegedly agreed to help NKS because it feared that Chris "could potentially devastate" NKS's business if he were allowed to get a competing beverage wholesale business "off the ground."[25]

To make a case for civil conspiracy, a plaintiff must show "(1) a confederation or combination of two or more persons; (2) an unlawful act done in furtherance of the conspiracy; and (3) actual damage."[26] To prove the first element, a plaintiff "must establish facts suggesting 'knowing participation' among the conspiring partners."[27] Even if this first element is established, however, because "[c]ivil conspiracy is not an

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24 Compl. ¶¶ 62-63.

25 Compl. ¶ 63.

26 *AeroGlobal Capital Mgmt., LLC v. Cirrus Indus., Inc.*, 871 A.2d 428, 437 n.8 (Del. 2005); *see also Nicolet, Inc. v. Nutt,* 525 A.2d 146, 149-50 (Del. 1987); *Parfi Hldg. AB v. Mirror Image Internet, Inc.,* 794 A.2d 1211, 1238 (Del. Ch. 2001) ("[Civil conspiracy] requires the combination of two or more persons for an unlawful purpose or for the accomplishment of a lawful purpose by unlawful means, and resulting damages."), *rev'd on other grounds,* 817 A.2d 149 (Del. 2002); *Atlantis Plastics Corp. v. Sammons,* 558 A.2d 1062, 1066 (Del. Ch. 1989) ("A complaint alleging conspiracy must allege facts which, if true, show the formation and operation of a conspiracy, the wrongful act or acts done pursuant thereto, and the damages resulting from such acts. Facts, not legal conclusions, must be pled."); *Anderson v. Airco, Inc.*, 2004 WL 2827887, at *3 (Del. Super. Nov. 30, 2004).

27 *Binks v. DSL.net, Inc.*, 2010 WL 1713629, at *11 (Del. Ch. Apr. 29, 2010) ("Scienter can be established by showing: (1) the participation of two or more persons; (2) some object to be accomplished; (3) a meeting of the minds on the object or course of action; [4] one or more overt acts; and [5] damages as a proximate result thereof.") (citing *Carlton Inv. v. TLC Beatrice Int'l Hldgs., Inc.,* 1995 WL 694397, at *15 n.11 (Del. Ch. Nov. 21, 1995)).

independent cause of action,"[28] "it is essential that there be an underlying wrongful act, such as a tort or a statutory violation."[29] Civil conspiracy provides a means to hold liable those not a direct party to the underlying wrong. Where a conspiracy is found, each conspirator "is jointly and severally liable for the acts of co-conspirators committed in furtherance of the conspiracy."[30]

Chris avers that, in the fall of 2008, Bob, NKS, and WTC met together and agreed to remove Chris from his position at NKS. To that end, WTC purportedly agreed that it would seek its contractual remedies under the relevant loan documents, including foreclosure, solely against Chris and properties owned by him.[31] Chris does not claim that WTC acted unlawfully when it sought to vindicate its contract rights by pursuing foreclosure as a remedy for Chris's defaults. Indeed, it is readily apparent that WTC was legally entitled under the terms of the Berkeley Road Property and Furniture Loans to foreclose on the Berkeley Road and Entwisle Properties following an event of default, which included Chris's failure to make required payments.

Nevertheless, even though Chris has not asserted facts that would support a reasonable inference that WTC acted unlawfully in pursuing foreclosure against the

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28 *Parfi Hldg.*, 794 A.2d at 1237-38.

29 *NACCO Indus., Inc. v. Applica Inc.*, 2009 WL 4981577, at *31 (Del. Ch. Dec. 22, 2009) (noting that "[a] breach of contract is not an underlying wrong that can give rise to a civil conspiracy claim") (citing *Empire Fin. Servs. v. Bank of N.Y. (Del.),* 900 A.2d 92, 97 (Del. 2006)).

30 *Nicolet,* 525 A.2d at 150.

31 *See supra* Part I.A.2.

Berkeley Road and Entwistle Properties, he does accuse Bob and NKS—WTC's supposed co-conspirators—of acting wrongfully. For instance, Chris accuses Bob of, among other things, (1) breaking his promise to retire from NKS and pass control to Chris, (2) breaching his fiduciary duties to NKS and other entities, (3) fraudulently manipulating NKS's financial statements, (4) withholding financial statements from Chris and WTC, (5) misrepresenting facts to various parties, (6) libel, and (7) slander. Chris also seems to allege that several of these acts were taken in furtherance of the conspiracy to unlawfully remove Chris from his position at NKS.

On the limited record available on WTC's motion to dismiss, it is at least conceivable that Chris may show that WTC knowingly entered into a confederation with Bob and NKS in the fall of 2008 to unlawfully remove Chris from NKS. It is also conceivable that Chris may show that Bob and NKS acted either unlawfully or for an unlawful purpose in furtherance of that conspiracy. In such a case, WTC would be liable to the same degree as its co-conspirators, even though WTC itself had not committed an unlawful act in furtherance of the conspiracy. Therefore, assuming the allegations in the Complaint are true and drawing all reasonable inferences in favor of Chris, I must deny WTC's motion to dismiss the claim for civil conspiracy.

Additionally, even though My Pal is represented by counsel and I do not review the Counterclaims under the same lenient pro se lens applicable to Chris's Complaint, portions of the Counterclaims intimate that My Pal also intended to assert a civil conspiracy claim against WTC. Indeed, My Pal alleges that Bob and certain officers of NKS met with a representative from WTC on July 27, 2009 and conspired to "handle the

Chris Tigani and My Pal situation."[32] My Pal avers that Bob, NKS, and WTC agreed that WTC would foreclose on the NKS Property and NKS would then offer to take title to the building and release Chris and My Pal from any associated debt, thus eliminating Chris's and My Pal's interest in the NKS Property. Furthermore, My Pal suggests that Bob and NKS acted unlawfully by, among other things, seizing control of the NKS Property from My Pal and Chris. In so doing, My Pal has sufficiently, if haphazardly, alleged that WTC joined in a civil conspiracy with Bob and NKS and that Bob or NKS acted unlawfully in furtherance of that conspiracy. Thus, I also must deny WTC's motion to dismiss My Pal's conspiracy claim.

C. Breach of the Implied Covenant of Good Faith and Fair Dealing

As to WTC's motion to dismiss My Pal's claim for breach of the implied covenant of good faith and fair dealing, I note that My Pal has neither referenced any specific implied covenant nor alleged how WTC may have breached such an obligation. Even drawing all reasonable inferences in favor of My Pal, there is nothing in its Counterclaims that indicates WTC has done anything other than act in compliance with the express terms of the My Pal Loan.

In the Counterclaims, My Pal seems to assert that WTC breached the implied covenant and acted unfairly or not in good faith when it refused My Pal's request for refinancing and foreclosed on the NKS Property. My Pal further suggests that WTC acted arbitrarily by granting NKS the financing it previously refused My Pal and by

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[32] Countercl. ¶ 282.

failing to pursue legal claims against NKS as a guarantor on the My Pal Loan or foreclose on the Milford Property.[33] Underlying each of these accusations is My Pal's claim that WTC met with Bob and certain NKS officers and directors on July 27, 2009 and discussed how to "handle the Chris Tigani and My Pal situation."[34] Following this meeting, WTC aggressively pursued foreclosure proceedings on the NKS Property over what My Pal considered a minor default and refused My Pal's requests for refinancing of the mortgage on the NKS Property. Importantly, My Pal does not dispute that WTC had the legal right to foreclose on the NKS Property under the My Pal Loan.

In response, WTC argues that it acted at all times within its explicit legal rights under the terms of the My Pal Loan. According to WTC, My Pal has neither alleged the existence of any specific implied covenant nor how such a covenant was breached. Moreover, the My Pal Loan explicitly allows WTC to pursue the remedies it did following My Pal's failure to make its scheduled payments. Thus, WTC avers that it cannot be liable for breach of the implied covenant of good faith and fair dealing.

Generally, "[t]o state a claim of breach of the implied covenant of good faith and fair dealing, a party 'must allege [1] a specific implied contractual obligation, [2] a

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[33] My Pal alleges that, after denying My Pal's requests for refinancing based on "'underwriting and credit standards' because of the supposed financial problems of [NKS]," WTC extended that very loan to NKS, allowing NKS to pay for the Addition to the NKS Property. Countercl. ¶ 289.

[34] Countercl. ¶ 282.

breach of that obligation by the defendant, and [3] resulting damage to the plaintiff.'"[35] In *Nemec v. Shrader*, a recent decision detailing the nuances of the implied covenant of good faith and fair dealing, the Supreme Court recognized that invocation of an implied covenant is a "limited and extraordinary legal remedy" and a "cautious enterprise" that should only occur in situations "when the party asserting the implied covenant proves that the other party has acted arbitrarily or unreasonably, thereby frustrating the fruits of the bargain that the asserting party reasonably expected."[36]

Yet, even though the implied covenant may serve to check arbitrary or unreasonable actions taken in bad faith, it should only be invoked in those situations "where a contract is silent as to the issue in dispute."[37] In all situations where the terms of a contract explicitly address the parties' dispute, "[t]he express terms of a contract and not [the] implied covenant of good faith and fair dealing . . . will govern the parties' relations."[38] Indeed, the principles underlying freedom to contract suggest that "[a] party

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35 *See Kelly v. Blum*, 2010 WL 629850, at *13 (Del. Ch. Feb. 24, 2010) (quoting *Fitzgerald v. Cantor,* 1998 WL 842316, at *1 (Del. Ch. Nov. 10, 1998)).

36 2010 WL 1320918, at *3 (Del. Apr. 6, 2010); *see also Kelly*, 2010 WL 629850, at *13 (quoting *Kuroda v. SPJS Hldgs., L.L.C.,* 971 A.2d 872, 887 (Del. Ch. 2009)).

37 *See AQSR India Private, Ltd. v. Bureau Veritas Hldgs., Inc*., 2009 WL 1707910, at *11 (Del. Ch. June 16, 2009); *In re IAC/Inter-Active Corp.,* 948 A.2d 471, 506 (Del. Ch. 2008) ("[I]mplied covenant analysis will only be applied when the contract is truly silent with respect to the matter at hand, and only when the court finds that the expectations of the parties were so fundamental that it is clear that they did not feel a need to negotiate about them.").

38 *Fitzgerald*, 1998 WL 842316, at *1 (citing *Cincinnati SMSA Ltd. P'ship v. Cincinnati Bell Cellular Sys. Co.,* 708 A.2d 989, 992 (Del. 1998)).

does not act in bad faith [simply] by relying on contract provisions for which the party bargained," even though a particular result under a contract may seem unduly harsh.[39] As a result, because "[p]arties have a right to enter into [both] good and bad contracts," a court will not invoke the implied covenant of good faith and fair dealing to rewrite a contract or appease a party who later wants to escape from what it now considers to be a bad deal.[40]

My Pal does not allege the existence of any specific, implied contractual obligations, nor does it state how WTC may have breached such an obligation when it chose to commence foreclosure proceedings against the NKS Property. To the contrary, the terms of the My Pal Loan authorized WTC contractually to act exactly as My Pal alleged. Specifically, the My Pal Loan requires monthly payments of principal and interest over a five year period with the entire unpaid balance falling due on the maturity date. Failure "to make any payment of interest or principal" within 10 days following written notice from WTC that such payment is due is an event of default. After such a default, WTC could accelerate the My Pal Loan, foreclose on the NKS Property, the Milford Property, or both, and enforce payment and collection on one or both guarantors.[41] Additionally, the My Pal Loan provides that any of the rights and remedies

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39 *Nemec*, 2010 WL 1320918, at *5.

40 *Id.* at *3.

41 To the extent My Pal alleges that WTC breached the implied covenant by pursuing legal remedies solely against Chris and not against NKS, I note that, under the terms of the My Pal Loan, Chris and NKS were "jointly and severally" liable for

available to WTC "may be pursued singly, successively, or together against" My Pal, any guarantor, or any mortgaged property "at the sole discretion of" WTC. Thus, when My Pal failed to make its monthly payments under the My Pal Loan, WTC had explicit contractual rights, which it exercised, to (1) accelerate the loan, (2) foreclose on the NKS Property, and (3) take action against Chris individually.

Further, while My Pal appears to contend that the My Pal Loan implicitly requires WTC to grant My Pal's requests for refinancing so long as they are "reasonable," it cites no authority for that proposition, and the nature of business and principles of freedom of contract clearly contradict that contention. A prospective borrower, such as My Pal, has no inherent right to receive financing from a potential lender. Even if My Pal's requests for refinancing were reasonable, WTC had the right to examine its relationship with My Pal upon the occurrence of a default and, if it did not like My Pal's business plan or financial prospects, seek the full extent of its contractual rights under the My Pal Loan without affording My Pal any leeway. Though it may not have been necessary for WTC to pursue the full extent of its rights over an apparently minor default, WTC had the express right to do so.

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payment. Thus, by the express terms of the My Pal Loan, WTC could, at its discretion, seek full repayment from either Chris or NKS or both. *See* BLACK'S LAW DICTIONARY 854, 933 (8th ed. 2004); RESTATEMENT (SECOND) OF CONTRACTS § 289 (1981).

Thus, I find that WTC did not act arbitrarily or in bad faith by electing to pursue its contractual rights and grant WTC's motion to dismiss My Pal's claim for breach of the implied covenant of good faith and fair dealing.[42]

D. Tortious Interference with Prospective Contractual Relations

Finally, I turn to My Pal's claim for tortious interference with prospective contractual relations. Initially, I note that, as with other claims in both the Complaint and Counterclaims, it is not entirely clear what My Pal has accused WTC of doing. This alone may be enough to justify dismissing this claim.[43] Nevertheless, a more-than-liberal reading of the Counterclaims indicates that My Pal seeks to accuse WTC of tortiously interfering with My Pal's prospective business relations by "refusing to turn over" the NKS Property appraisal to My Pal or Chris.[44] But, even if My Pal did purport to state a claim for tortious interference with prospective contractual relations, WTC is entitled to dismissal of that claim because the Counterclaims fail to allege that any prospective contractual relation between My Pal and any other identified lender existed or that WTC knew of or intentionally interfered with such a relationship.

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[42] To the extent My Pal also claims WTC breached the implied covenant by refusing to give My Pal or Chris an appraisal of the NKS Property WTC independently had obtained, I also dismiss that claim because My Pal had no legal or contractual right to receive, and WTC had no obligation to provide, such an appraisal. *See infra* Part II.D.

[43] My Pal is represented by counsel; consequently, as noted *supra* Part II.B, its barebones accusations do not merit the deference afforded to pro se pleadings.

[44] Countercl. ¶ 312. This accusation appears in Count V of the Counterclaims, which asserts breach of the implied covenant of good faith and fair dealing. There is no separate count for tortious interference with prospective contractual relations.

To succeed on a claim for tortious interference with prospective contractual relations, a plaintiff must prove five elements: "(1) the existence of a valid business relation or expectancy, (2) the interferer's knowledge of the relationship or expectancy, (3) intentional interference that (4) induces or causes a breach or termination of the relationship or expectancy and that (5) causes resulting damages to the party whose relationship or expectancy is disrupted."[45] Furthermore, "all of these requirements must be considered in light of a defendant's privilege to compete or protect his business interests in a lawful manner."[46]

My Pal apparently bases its claim against WTC for tortious interference with prospective contractual relations on the fact that, following a request for refinancing made by Chris and My Pal, WTC commissioned an appraisal of the NKS Property that it purposefully withheld from Chris until sometime in late October 2009.[47] According to My Pal, on or about September 18, 2009, Chris asked WTC for a copy of that appraisal and was told it was not yet complete. On October 15, Chris again asked for a copy of the appraisal, but was informed by Eugene DiPrinzio[48] that he understood WTC "stopped the

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45 *CPM Indus., Inc. v. Fayda Chems. & Minerals, Inc.*, 1997 WL 770683, at *7 (Del. Ch. Nov. 26, 1997).

46 *Great Am. Opportunities, Inc. v. Cherrydale Fundraising, LLC*, 2010 WL 338219, at *9 (Del. Ch. Jan. 29, 2010) (citing *DeBonaventura v. Nationwide Mut. Ins. Co.,* 428 A.2d 1151, 1153 (Del. 1981)).

47 Countercl. ¶ 286, Ex. O.

48 DiPrinzio is an attorney at Young Conaway Stargatt & Taylor, LLP, counsel for WTC in this matter.

appraisal process when it declined the loan application" and would not advance the cost to complete it.[49] On October 22, however, after making a further request, Chris was informed that WTC did have a completed copy of the appraisal, which it was willing to deliver to Chris if he paid $4,500 to reimburse WTC for the out-of-pocket expenses incurred in obtaining it. After stating only these facts, My Pal asserts that WTC "tortuously [sic] interfer[ed] with My Pal's ability to get re-financing from another lender by consciously withholding the appraisal."[50]

This claim is fatally flawed because My Pal nowhere alleges the existence of any actual business relationship or expectancy with which WTC is alleged to have interfered, intentionally or otherwise. Additionally, even if there was such a business relationship, My Pal has not alleged any facts suggesting that WTC was legally obligated to give Chris the appraisal it had obtained at its own expense and for its sole benefit.[51]

Drawing all reasonable inferences in favor of My Pal, the Counterclaims still do nothing more than imply the existence of a potential loan facility through an unnamed lender that WTC interfered with by not providing Chris a copy of a WTC-commissioned appraisal it legally was not required to divulge to anyone. Such allegations are

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49 Countercl. Ex. O.

50 *Id.* ¶ 287.

51 Even if WTC had chosen to withhold the appraisal despite Chris's willingness to reimburse WTC for costs associated with generating it, nothing prevented Chris and My Pal from commissioning their own appraisal of the NKS Property.

insufficient to support a tortious interference with prospective contractual relations claim; therefore, I grant WTC's motion to dismiss this claim.

III. CONCLUSION

For the foregoing reasons, I deny WTC's motion to dismiss Chris's and My Pal's claims of civil conspiracy, but grant that motion as to My Pal's claims of breach of the implied covenant of good faith and fair dealing and tortious interference with prospective contractual relations.[52] The latter claims are hereby dismissed with prejudice.

Chris's and My Pal's claims for civil conspiracy against WTC will proceed to trial on June 3 and 4, 2010, as previously scheduled. Additionally, I will hear argument at that time on any remaining issues regarding Chris's application to extend the existing TRO against WTC[53] and entertain any necessary further proceedings regarding Bob and NKS's application to introduce certain highly confidential evidence to which Chris has objected.

IT IS SO ORDERED.

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[52] As mentioned *supra* note 16, absent further order of the Court, all aspects of the other third-party defendants' motions to dismiss are stayed pending resolution of the issues raised in the first trial involving NKS, Bob, Chris, and the CJT entities, including My Pal, and the related trial on the claims against WTC.

[53] *See* D.I. 317.