

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL

STAFFMORE LLC, : July Term 2012
 :
 Plaintiff, :
 :
 v. : No. 2694
 :
 ASSESSMENT AND TREATMENT :
 ALTERNATIVES, INC., : COMMERCE PROGRAM
 :
 Defendants. :
 :
 v. : Control Nos. 14120754
 : 14031749
 JORDON WEISMAN, KIM THOMAS and :
 PHILADELPHIA MENTAL HEALTH CENTER, :
 Third Party Defendants. :

DOCKETED
MAR 27 2015
R. POSTELL
DAY FORWARD

ORDER

AND NOW, this 27th day of March 2015, upon consideration of Counterclaim

Defendant Staffmore LLC's Motion for Summary Judgment and Third Party Defendants Jordon Weisman, Kim Thomas and Philadelphia Mental Health Center's Motion for Summary Judgment, all responses in opposition and after oral argument, it hereby is **ORDERED** as follows:

1. Counterclaim Defendant Staffmore LLC's Motion for Summary Judgment is **Granted** and ATA's counterclaims are dismissed in their entirety.
2. Additional Defendants Jordon Weisman, Kim Thomas and Philadelphia Mental Health Center's Motion for Summary Judgment is **Granted** and ATA's joinder complaint is dismissed in its entirety.

BY THE COURT,

Staffmore Lic Vs Assessment And Treatment At-ORDOP



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PATRICIA A. McINERNEY, J.

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| PHILADELPHIA MENTAL HEALTH CENTER, | : | |
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OPINION

Presently before the court is Counterclaim Defendant Staffmore LLC's Motion for Summary Judgment and Third Party Defendants Jordon Weisman, Kim Thomas and Philadelphia Mental Health Center's Motion for Summary Judgment against Assessment and Treatment Alternatives, Inc. ("ATA"). For the reasons set forth below, the respective motions for summary judgment are granted.

Staffmore is a behavioral health agency which supplies independent contractor behavioral health clinicians to ATA, a behavioral health service provider. ATA employed clinicians directly to provide behavioral health services to its clients. In 2011, ATA transitioned to using independent contractors from staffing agencies, such as Staffmore, to provide the necessary services for its clients. In addition to Staffmore, ATA used other staffing agencies such as Staffing Plus and Clearpoint.

In November 2011, Jordon Weisman ("Weisman"), Executive Director and Vice President of ATA'S Board of Directors and the Chair of the Compliance Program Committee, began discussing with Staffmore the movement of all ATA's behavioral health staff to

Staffmore.¹ In November, 2011, ATA entered into a contract, the Staffing Contract, with Staffmore whereby Staffmore would supply ATA with independent contractors to provide behavioral health services to its clients and ATA would pay Staffmore for independent contractor services provided. Weisman negotiated the contract on ATA's behalf. Negotiations included the hiring and recruitment of clinicians by ATA after leaving Staffmore and the payment of fees regarding same; clarifying the principal representative was to be "William Russell";² discussing Staffmore's possible assumption of clean claim submissions; and discussing the transition of staff from ATA to Staffmore.³ The Staffing Contract was circulated to the ATA Board for review and was executed by ATA's president, William Russell on November 28, 2011.⁴

Philadelphia Mental Health Center

In addition to ATA, Staffmore provides staffing services to a number of other agencies, including Philadelphia Mental Health Center ("PMHC"). PMHC is a full service not-for-profit mental and behavioral health agency that serves children, families and adults in the Philadelphia area. Clients of providers such as ATA and PMHC have freedom of choice to select their behavioral health care providers. Requests for providers are directed through insurers such as Community Behavioral Health or Magellan.⁵

¹ ATA's Partial Motion for Summary Judgment Exhibit "22" memo dated October 18, 2011 from Donna Moran at Staffmore to Jordon Weisman- Transition Project.

² Third Party Defendants Motion for Summary Judgment Exhibit "H"- emails between Weisman and Ruggiero dated November 18, 2011.

³ ATA's Motion for Partial Summary Judgment Exhibits "12" and "22".

⁴ Staffmore's Motion for Partial Summary Judgment Exhibit "B"- Staffing Contract.

⁵ Motion for Partial Summary Judgment of Staffmore Exhibit "C"- Client and Family Freedom of Choice.

Jordon Weisman

Weisman did not sign an employment agreement with ATA nor did he sign a non solicitation agreement or confidentiality agreement with ATA at the time of his employment or during the term of his employment. On November 18, 2011, at or about the same time the Staffing Contract was being negotiated and prior to its execution, Weisman and Kerey Ruggiero, the owner of Staffmore and the Chief Executive Officer of PMHC, met to discuss the possibility of working together. On November 30, 2011, PMHC extended an offer to Weisman which he accepted.⁶ On December 12, 2011, Weisman resigned his position at ATA. Prior to his departure from ATA, Weisman provided Russell with a transition memo which detailed, explained and summarized the status of projects, duties and location of paper files.⁷ Weisman also deleted personal emails and ATA business materials from his ATA issued laptop.

Kim Thomas

Kim Thomas was an independent contractor for ATA. Thomas did not sign an employment agreement with ATA nor did she sign a non solicitation agreement or confidentiality agreement with ATA at the time of her employment or during the term of her employment. Ms. Thomas was never issued a laptop and did all of her work on her personal laptop. In early November 2011, Thomas approached Staffmore to join the staffing agency. Staffmore did not hire Thomas. On January 20, 2012, she was offered a job at PMHC. Thomas resigned from ATA in late January 2012. Her last day at ATA was February 7, 2012. During the last few weeks of her employment with ATA, Thomas forwarded an email to Weisman

⁶ Third Party Defendants' Motion for Summary Judgment Exhibit "L"- Potential Working Agreement Letter.

⁷ Third Party Defendants Motion for Summary Judgment Exhibit "J"- Transition Memo.

asking “Can PMHC handle 80 more kids is [sic] I can get them all to switch???”⁸ Additionally, after leaving PMHC, Thomas received emails from former ATA clinicians seeking placement at PMHC, requested resumes of former ATA clinicians from Staffmore to evaluate as possible clinicians for PMHC and solicited former ATA clinicians to work for PMHC.⁹

Termination of Relationship between ATA and Staffmore.

In early spring 2012, ATA stopped paying Staffmore as required under the Staffing Contract. On May 20, 2012, Staffmore made a decision to stop providing services to ATA under the Staffing Contract as a result of ATA’s failure to make payments and wrote to the clinicians to inform them to stop working with their assigned ATA clients. The email informed the clinicians that as of Monday, May 21, 2012, Staffmore was not authorizing them to provide services to any clients that they were working with through ATA. Staffmore further informed clinicians that in accordance with its contract with ATA, ATA may not contact them directly for services until twelve months from May 21, 2012.¹⁰ At the time of these email exchanges, Weisman and Thomas were no longer employees of ATA.

On the same day, May 21, 2012, ATA emailed the same clinicians and informed them that the email sent by Staffmore only applied to those who never worked for ATA before going to Staffmore. ATA informed the contractors that if they worked for ATA before going to Staffmore the staff could continue working the cases and ATA will pay them directly.¹¹

⁸ ATA’s Supplemental Exhibit “2”- emails between Thomas and Wellington regarding part time work at ATA, problems at PMHC and discussion between Weisman and Thomas about the problem at PMHC.

⁹ Id. Exhibits “2”, “4”, “5” “6”.

¹⁰ Staffmore’s Motion for Partial Summary Judgment Exhibit “N”.

¹¹ Staffmore’s Motion for Partial Summary Judgment Exhibit “O”.

Procedural History

On July 7, 2012, Staffmore sued ATA for breach of contract. In response, ATA filed an answer and counterclaim against Staffmore alleging breach of contract, conversion, tortious interference with contract, civil conspiracy and unjust enrichment. Additionally, ATA sought an accounting. ATA also filed a third party joinder complaint against Weisman, Thomas and PMHC alleging claims for breach of the duty of loyalty, conversion, tortious interference with contract, civil conspiracy and unjust enrichment. In response, Weisman filed a counterclaim against ATA under the Stored Communications Act, 18 Pa. C. S. § 5747 for unlawful access to stored electronic communications.¹²

At the conclusion of discovery the parties filed motions for summary judgment. On August 14, 2014, the court denied ATA's Motion for Summary Judgment to Weisman's counterclaim under the Stored Communications Act, 18 Pa. C. S. § 5747 for unlawful access to stored electronic communications. On September 8, 2014, the court entered an order granting summary judgment in favor of Staffmore and against ATA on the breach of contract claim. An assessment of damages hearing shall be scheduled. Additionally, on September 8, 2014, the court heard oral argument on the outstanding motion for sanctions against Staffmore and Third Party Defendants for their failure to answer discovery responses. After oral argument and receipt of additional information by the parties, the court entered an order on September 29, 2014, granting the motion for sanctions and directed the production of various documents. Additionally, the court held under advisement the remaining motions for summary judgment pending the exchange of discovery. The court established a time table in which the documents were to be exchanged and supplemental briefs were to be filed by the various parties. The deadlines for submissions of the supplemental briefs were extended by the parties on numerous

¹² The parties agreed to dismiss various claims prior to the submission of motions for summary judgment.

occasions by agreement of counsel. After the submission of supplemental briefs in January and February 2015, the court heard oral argument on March 3, 2015 on the outstanding motions for summary judgment.

Discussion

Former clients, client insurers and former clinicians are the center of this dispute between ATA and Staffmore, Weisman, Thomas and PMHC. ATA argues Weisman converted transcriptions of minutes of meetings and the remaining defendants converted and conspired to convert the former clients, insurers and clinicians and tortiously interfered with and conspired to interfere with ATA's contracts with the former clients, insurers and clinicians. ATA argues that Weisman and Thomas breached their fiduciary duty of loyalty to ATA and conspired with Staffmore and PMHC to breach said duty. As a result, ATA argues that defendants were unjustly enriched and demands an accounting as a result of said enrichment. As will be demonstrated below, ATA fails to satisfy its burden to show any issues of fact arising from the evidence in the record and fails to establish the facts essential to the causes of actions it asserts.

I. ATA has not been deprived of any rights to chattel nor has there been interference with any rights to chattel and ATA has not suffered any harm.

Conversion is the deprivation of another's right of property in, or use or possession of, a chattel, or other interference therewith, without the owner's consent and without lawful justification.¹³ Conversion can result only from an act intended to affect chattel.¹⁴ Specific intent is not required; however, intent to exercise dominion or control over the goods which is in fact inconsistent with the plaintiff's rights establishes the tort. Money may be the subject of

¹³ *Shonberger v. Oswell*, 365 Pa. Super. 481, 484-85, 530 A.2d 112, 114 (1987)(citing *Stevenson v. Economy Bank of Ambridge*, 413 Pa. 442, 451, 197 A.2d 721, 726 (1964)).

¹⁴ *Id.* (citing Prosser & Keeton, *Torts*, § 15 (5th ed. 1984)).

conversion.¹⁵ A person may incur liability for conversion by “unreasonably withholding possession from one who has the right to it.”¹⁶

ATA argues Weisman, while an officer and director of ATA, converted ATA’s data. Specifically, the data allegedly converted consisted of transcriptions of minutes from compliance meetings and Board of Directors meetings by deleting same from his laptop. ATA further argues it suffered harm by said deletion because PMHC now has ATA’s data, clients, contacts and business. Weisman admits he deleted files from his ATA issued laptop. However, there is no evidence ATA suffered any harm. The record evidences Weisman uninstalled all programs he installed onto his ATA issued laptop and deleted music files, pictures, documents and programs.¹⁷ Weisman prepared a transition memo listing his weekly and monthly duties and identified those projects which required monitoring. Although Russell testified he could not find the transcriptions and the transition memo does not appear to mention the location of said documents, there is no evidence that the transcriptions were converted by Weisman to gain a profit, advantage or benefit. Nor is there any evidence that ATA suffered any harm as a result. Based on the foregoing, ATA failed to produce any evidence that Weisman unreasonably withheld said minutes from ATA or so seriously interfered with ATA’s right to control same to establish a claim for conversion. As such, the claim for conversion fails against Weisman.

Similarly, there is no record evidence to show that Thomas, Staffmore or PHMC converted any property belonging to ATA for their own use. As it pertains to Staffmore, ATA relies upon the May 20, 2012 stoppage of work email to support its claim that Staffmore

¹⁵ *Id.*

¹⁶ *PTSI, Inc. v. Haley*, 71 A.3d 304, 314 (Pa. Super. 2013), citing *Martin v. National Sur. Corp.*, 437 Pa. 159, 165, 262 A.2d 672, 675 (1970).

¹⁷ ATA Motion for Summary Judgment Exhibit “39” p. 41-42 (Deposition of Weisman).

converted the email addresses of ATA's clinicians. Staffmore, however, was privileged to possess the email addresses of ATA's clinicians since many of the clinicians became independent contractors of Staffmore pursuant to the Staffing Contract. Since Staffmore was privileged to possess the email addresses based on the Staffing Contract, any issue of conversion is moot.

As for Thomas and PMHC, ATA attempts to argue that these defendants converted ATA's clients, clinicians and insurers. Clients, clinicians and insurers may not be the subject of conversion. Conversion is specifically for chattel. Since clients and insurers are not chattel, they may not be the subject of conversion and therefore the claim against these defendants fails. Based on the foregoing, the motions for summary judgment of Staffmore and Weisman, Thomas and PHMC to ATA's claim for conversion are granted and ATA's claim for conversion is dismissed.¹⁸

II. Weisman and Thomas did not breach their fiduciary duty of loyalty to ATA.

The crux of ATA's breach of the duty of loyalty claim against Weisman and Thomas centers upon their subsequent employment with PMHC. To prevail on a claim for breach of fiduciary duty of loyalty, ATA must demonstrate that Weisman and Thomas acted for a person or entity whose interests conflicted with those of ATA.¹⁹ The duty of loyalty requires that an agent "act with the utmost good faith in the furtherance and advancement of the interests of his principal."²⁰

¹⁸The claim for conspiracy to convert also fails. Absent a civil cause of action for a particular act, there can be no cause of action for civil conspiracy to commit that act. *McKeeman v. Corestates Bank, N.A.*, 751 A.2d 655 (Pa.Super. 2000).

¹⁹ See, *Reading Radio, Inc. v. Fink*, 833 A.2d 199, 211 (Pa. Super. 2003).

²⁰ *Sylvester v. Beck*, 406 Pa. 607, 178 A.2d 755, 757 (1962); see also Restatement (Third) of Agency § 8.01 (2006) ("An agent has a fiduciary duty to act loyally for the principal's benefit in all matters connected with the agency relationship.").

The duty of loyalty does not, however, preclude an employee from seeking other employment. Pennsylvania law permits an agent or employee to “make arrangements to compete” [prior to the termination of his employment], but prohibits him from using “confidential information peculiar to his employer's business and acquired therein.”²¹

As it pertains to Thomas, ATA alleges that she breached the duty of loyalty by improperly soliciting ATA’s clients while still employed by ATA.²² ATA bases this claim on an email Thomas forwarded to Weisman on January 30, 2012 which stated “Can PMHC handle 80 more kids is [sic] I can get them all to switch???” Solicitation of customers and use of customers’ lists is permissible unless there is a breach of an express contract or violation of some confidence. There must be some element of fraud or trade secrecy involved.²³ Thomas did not sign a restrictive covenant, non solicitation agreement or a non confidentiality agreement with ATA. Thomas was an independent contractor who had no restrictions placed on her ability to compete. There is nothing in Pennsylvania law that suggests an individual preparing to depart one’s employment is barred, absent any contractual obligations from informing clients of that departure and of the place where that individual intends to continue doing business. There are certain client-oriented employments which tend to breed individual loyalty.²⁴ This is so natural,

²¹ *Spring Steels, Inc. v. Molloy*, 400 Pa. 354, 162 A.2d 370, 375 (1960).

²² ATA also alleges Thomas breached the duty of loyalty when she transferred ATA clinicians to PMHC. Clinicians may not be transferred. They are not chattel. The clinicians were at will employees and free to leave ATA.

²³ *PTSI, Inc. v. Haley*, 71 A.3d 304, 319 (Pa. Super. 2013) quoting *Wiegand Co. v. Harold E. Trent Co.*, 122 F.2d 920, 924 (3rd Cir. 1941).

²⁴ *PTSI, Inc. v. Haley*, 71 A.3d 304, 319 (Pa. Super. 2013)(concurring opinion by Wecht, J.) citing *Spring Steels, Inc. Molloy*, 400 Pa. 354, 162 A.2d 370, 375 (1960)(“it is inevitable ...where[a] former employee has dealt with customers on a personal basis that some of those customers will want to continue to deal with him in his new association.”).

logical and part of human fellowship, that an employer who fears this kind of future competition must protect himself by a preventive contract with his employee.²⁵

Here there is no evidence that Thomas unlawfully solicited clients while still employed by ATA. The clients were “at will” and had the freedom to choose their point of service provider. If they chose to go with Thomas, it was because of the nature of services provided and the loyalty and relationship established. As for any alleged solicitation after Thomas’ departure from ATA, there is no impediment to her soliciting clients or clinicians. Based on the foregoing, the court finds that ATA’s claim for breach of the duty of loyalty fails.

As it pertains to Weisman, ATA argues that by virtue of his position with ATA, Executive Director and ATA’s Vice President of the Board of Directors and the Chair of the Compliance Program Committee, a greater fiduciary duty of loyalty exists. ATA further argues Weisman breached his fiduciary duty of loyalty when he transferred all of ATA’s staff before review and execution of the agreement, negotiated a contract with Staffmore while communicating with Ruggiero to secure employment at PMHC, a competitor of ATA, crafted a contract that would benefit Staffmore at ATA’s expense to win favor in his quest for employment with ATA’s competitor and his transfer to ATA’s business to PMHC; and failed to include the clean claims language in the agreement with Staffmore. Applying the law to the acts set forth above as well as the record evidence, it is clear that Weisman did not breach his fiduciary duty of loyalty.

Directors owe a duty of care and of loyalty.²⁶ The duty of care requires that a director act in good faith, in a manner he reasonably believes to be in the best interests of the corporation. The

²⁵ *Id.* at 308.

²⁶ *Anchel v. Shea*, 762 A.2d 346, 357 (Pa.Super.2000).

duty of loyalty requires that there be no self-dealing.²⁷ While there is record evidence suggesting that Weisman was offered a position with PMHC during the Staffing Contract negotiations, there is no record evidence that Weisman, while employed for ATA, engaged in any self dealing, performed his duties in bad faith or placed the interests of PMHC before those of ATA. Moreover, there is no record evidence that Weisman's pursuit or acceptance of employment with PMHC caused him to be derelict in his duties to ATA. On the contrary, the record evidence demonstrates that Weisman negotiated with Staffmore to secure a beneficial contract for ATA. Weisman suggested and successfully negotiated changes to the contract regarding ATA's hiring and recruiting clinicians and the fees associated with said acts.²⁸ The clinicians of ATA were given a choice as to whether they desired to remain in the employ of ATA or to become associated with Staffmore.²⁹ The Staffing Contract was submitted to the Board for review and was signed by the President of ATA.³⁰ As for the clean claim provision, it is clear from the record that a meeting of the minds never existed. Although, Staffmore agreed to the responsibility for clean claim submission, an agreement regarding the rate, a material term of the contract, to be charged for said service was never reached.³¹ Weisman did not breach an express contract nor did he violate any covenant not to compete or solicit nor did he violate any contract

²⁷ *Warehime v. Warehime*, 777 A.2d 469, 482 (2001) rev'd, on other grounds 580 Pa. 201, 860 A.2d 41 (2004).

²⁸ Third Party Defendants Motion for Summary Judgment Exhibit "H" emails regarding contract changes.

²⁹ ATA's Motion for Partial Summary Judgment Exhibit "22".

³⁰ Third Party Defendants Motion for Summary Judgment Exhibit "G"- email to Board with attachment.

³¹ ATA's Motion for Partial Summary Judgment Exhibit "12"- email, 'Staffmore has accepted our requirement for invoices for clean claims only....but may want an increased rate. I told them that (a) we are transferring an enormous quantity of cases and \$ to them, so any increase, if any, must be nominal, and (b) this is spelled out and signed in the CBH Joinder Agreement. They will let us know....' See also, ATA's Motion for Partial Summary Judgment Exhibit "22" - "ATA management and Staffmore will meet after 1/1/2012 to proceed with Step 2 of the transition of paperwork submission and review to Staffmore if ATA still want to [sic] that to happen [sic] The contracted rates need to be negotiated."

protecting confidential information. There is no evidence that Weisman enriched himself or that he usurped any corporate opportunity of ATA's. In fact, the evidence demonstrates that while employed by PMHC, Weisman did not directly contract or solicit any client for PMHC.³²

ATA's reliance on *Reading Radio, Inc. v. Fink*³³ is not persuasive. In *Reading Radio*, a radio station sued a former managerial employee for breach of fiduciary duty of loyalty. In affirming the trial court's finding that a breach occurred, the Superior Court found that the facts demonstrated that while the employee was still employed by the former employer, he actively engaged in diverting other employees to his new employer and refused to enforce covenants-not-to-competes to which the diverted employees were bound. The Superior Court found that "Kline's failure to protect the integrity of the covenants-not-to-competes and the sales staff at WAGO were clear violations of his duty of loyalty..."³⁴ Here, the facts are distinguishable. Weisman and Thomas were not subject to any contractual restrictions. Moreover, the record fails to present any evidence on the part of Weisman or Thomas of diverting clients while employed at ATA. The instant matter is more akin to *PTSI, Inc. v. Haley*³⁵ where the defendant employees were not subject to any express contracts restricting competition or disclosure of information. In *PTSI*, the employees were found not to have violated their duty of loyalty even though solicitation of clients occurred while employed with their former employer.

³² ATA's Supplemental Exhibits Exhibit "3"- "We have not directly contacted any client to solicit them coming to PMHC/DVCC. However, they may desire to switch the authorization from another agency to our agency in order to continue to work with specific staff that are now affiliated with us..."

³³ 833 A.2d 199 (Pa. Super. 2003).

³⁴ *Id.* at 211.

³⁵ 71 A.3d 304 (Pa. Super. 2013).

Based on the forgoing, Weisman and Thomas' motion for summary judgment to ATA's claim for breach of the fiduciary duty of loyalty is granted.³⁶

III. The Tortious Interference with Contract Claim fails.

The necessary elements of a cause of action for interference with existing contractual relations are as follows: (1) the existence of a contractual relationship between the complainant and a third party; (2) an intent on the part of the defendant to harm the plaintiff by interfering with that contractual relationship; (3) the absence of privilege or justification on the part of the defendant; and (4) the occasioning of actual damage as a result of defendant's conduct.³⁷

Plaintiff claims ATA had contractual and business relationships with its clients and staffs through which the clients asked Medicaid's MCO's, CBH and Magellan, to use ATA to provide mental health services in exchange for financial compensation. In order to establish a claim for tortious interference of contract, the existence of a contract is necessary. Here, it is clear from the record that the necessary requirement of a contract does not exist. ATA did not have any contracts with its clients. In fact, ATA had a policy that clients and families receiving Intensive Family Based Services from ATA will be informed of their right to receive Family Based Services from other enrolled and approved providers. During the intake process, clients and their families are informed of their right to choose a qualified family based service provider, including but not limited to ATA. All clients were provided with the phone number of Magellan Behavioral Health (MBH) Member Services and Community Behavioral Health (CBH) Member

³⁶ The claim for conspiracy to breach fiduciary duty of loyalty also fails. Absent a civil cause of action for a particular act, there can be no cause of action for civil conspiracy to commit that act. *McKeeman v. Corestates Bank, N.A.*, 751 A.2d 655 (Pa.Super. 2000).

³⁷ *Phillips v. Selig*, 959 A.2d 420, 429 (2008) Restatement (Second) of Torts § 766 (1979); *Small v. Juniata College*, 452 Pa.Super. 410, 682 A.2d 350, 354 (1996), *appeal denied*, 689 A.2d 235 (Pa.1997); *Triffin v. Janssen*, 426 Pa.Super. 57, 626 A.2d 571, 574 (1993), *appeal denied*, 536 Pa. 646, 639 A.2d 32 (1994).

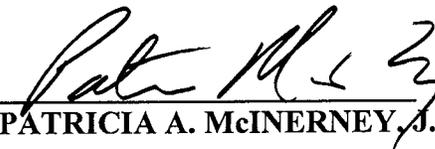
Services to assist them with this choice. Clients and families sign the Freedom of Choice form. Hence, based on the forgoing, no contract exists between ATA and the client.

Similarly, there is no evidence of a contract between ATA and its clinicians. ATA and Staffmore entered into a staffing contract wherein the clinicians if they so chose could accept employment with Staffmore. Prior to entering into the Staffing Contract, the clinicians were not contracted employees but employees at will. Since no contract existed, the claim for tortious interference of contract fails.³⁸

CONCLUSION

For the forgoing reason, Third Party Defendants Jordon Weisman, Kim Thomas and PMHC's Motion for Summary Judgment against third party plaintiff ATA is granted and ATA's claims are dismissed in their entirety and Defendant Staffmore's Motion for Summary Judgment against ATA's counterclaims is granted and the counterclaims are dismissed in their entirety.

BY THE COURT,


PATRICIA A. McINERNEY, J.

³⁸ Additionally, the claim for unjust enrichment also fails. There is no evidence of ATA conferring a benefit upon defendants. Clinicians and clients are not chattel. The clinicians and clients exercised their freedom of choice to transfer their services and employment to another agency. Since ATA did not confer a benefit, a claim for unjust enrichment does not exist. Since all the claims have been dismissed, the remedy for accounting is also dismissed.