[Cite as *Innovative Architectural Planners, Inc. v. Ohio Dept. of Adm. Serv.*, 2023-Ohio-801.]

IN THE COURT OF CLAIMS OF OHIO

INNOVATIVE ARCHITECTURAL PLANNERS, INC d/b/a IAP GOVERNMENT SERVICES GROUP Plaintiff v. OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES, et al. Defendants	Case No. 2021-00354JD Judge Dale A. Crawford DECISION

{¶1} Defendants Ohio Department of Administrative Services (DAS) and Ohio Facilities Construction Commission (OFCC) (collectively Defendants) move for a summary judgment in their favor on all claims asserted against them in an Amended Complaint filed by Plaintiff Innovative Architectural Planners, Inc. d/b/a IAP Government Services Group (IAP). IAP opposes Defendants' summary-judgment motion. The matter has been fully briefed. The Court grants Defendants' motion for reasons set forth below.

I. Introduction

{¶2} This case arises from a business dispute among IAP (a certified Ohio Minority Business Enterprise), DAS, and OFCC. In this case IAP essentially maintains that during IAP's performance of a third-party administrator contract, DAS and OFCC unlawfully began removing and diverting projects after state agencies had engaged IAP's services, and that DAS and OFCC diverted state projects that qualified for the third-party administrator contract before agencies could engage IAP's services.

II. Background

{¶3} In May 2015 DAS awarded a Third-Party Administrator Contract (TPA Contract) to IAP, based on IAP's bid in response to a Request for Competitive Sealed Proposals. IAP describes the TPA Contract at issue as a "service contract." (Amended Complaint, ¶ 21). IAP alleges that the TPA Contract was effective from May 20, 2015, to December 2017 (Amended Complaint, ¶ 12), and (3) subsequently renewed and extended by DAS to December 31, 2019, with certain aspects of the TPA Contract extended to March 31, 2020. (Id.)

{¶4} Pursuant to the TPA Contract's express terms, "[t]his Optional Use Contract is available to the State of Ohio, all of its agencies, State institutions of higher education and all properly registered Cooperative Purchasing Program members of the Department of Administrative Services as applicable. The agency is eligible to make purchases of the contracted services in any amount and at any time as determined by the agency. The State makes no representation or guarantee that department will purchase the volume of services as advertised in the Request for Proposal." (Exhibit D, Plaintiff's Response in Opposition.)

{¶5} According to IAP, under the TPA contract "IAP did not perform the trade work itself. IAP instead procured the needed trade work through Chapter 153 competitive bidding, using the guidelines and requirements set forth by DAS in the TPA Contract." (Amended Complaint, ¶ 21.) IAP asserts that "the TPA Contract hired IAP to provide services in connection with any project any state agency wanted to complete, regardless of cost, that involved maintenance, repair, minor construction, or design, as chosen solely by that state agency. The scope of the TPA Contract explicitly included minor construction, interior and exterior finishes, mechanicals, plumbing, electrical, fire safety, elevators, HVAC, roofing, and design." (Amended Complaint, ¶ 20.)

III. Defendants previously granted partial relief under Civ.R. 12(B)(6).

{¶6} On June 28, 2021, IAP asserted five causes of action in a Complaint against Defendants: (1) breach of contract against DAS, (2) quantum meruit (in the alternative) against DAS, (3) promissory estoppel against DAS, (4) misrepresentation against DAS, and (5) tortious interference with a contract against OFCC.

{¶7} Defendants subsequently moved to dismiss IAP's claims pursuant to Civ.R. 12(B)(6). The Court granted, in part, and denied, in part, Defendants' Civ.R. 12(B)(6) motion. The Court held that Defendants were entitled to relief under Civ.R. 12(B)(6) as to IAP's claims of breach of contract against DAS, promissory estoppel against DAS, and misrepresentation against DAS. However, the Court held that Defendants were not entitled to relief under Civ.R. 12(B)(6) as to IAP's alternative claim of quantum meruit against DAS and as to IAP's claim of tortious interference with a contract against OFCC. The Court found that IAP's breach-of-contract claim against DAS was insufficient for purposes of Civ.R. 12(B)(6) because, under the parties' contract, "a state agency was permitted—but was not required—to purchase a contracted service and IAP was not guaranteed the volume of services as advertised in the Request for Proposal." (Decision dated September 22, 2021, at 9.) The Court also found that IAP's claims of promissory estoppel and misrepresentation, as against DAS, were insufficient for purposes of Civ.R. 12(B)(6).

IV. Plaintiff files an Amended Complaint, Defendants answer, and Defendants move for a summary judgment on all claims.

{¶8} After the Court partially granted Defendants' Civ.R. 12(B)(6) motion, with leave of court, IAP filed an Amended Complaint against Defendants on November 1, 2021. IAP asserts eight causes of action in the Amended Complaint: (1) Tortious Interference With Contract As Against DAS, (2) Tortious Interference With Contract As Against OFCC, (3) Tortious Interference With Contract As Against OFCC, (4) Tortious Interference With Prospective Business Relations As Against DAS, (5) Tortious Interference With Prospective Business Relations As Against OFCC, (6) Civil Conspiracy As Against DAS and OFCC, (7) Quantum Meruit as Against DAS, and (8) In the Alternative, Breach of Contract as Against DAS. Defendants have separately answered IAP's Amended Complaint, generally denying liability in the Answers.

{¶9} On November 14, 2022, Defendants moved for a summary judgment in their favor on all claims contained in the Amended Complaint. Defendants accompanied their summary-judgment motion with supporting evidence. Defendants essentially contend that IAP cannot prevail on its contract claim against ODAS for the following reasons:

(1) The "applicable contract term provides that state agencies are 'eligible to make purchases of the contracted services in any amount and at any time as determined by the agency,' and it disclaims any 'representation or guarantee that department will purchase the volume of services as advertised in the Request for Proposal.' (Amended Complaint, Ex. 1," (Motion at 3-4),

(2) IAP can present no evidence to create an issue of fact as to whether ODAS breached a promise under the Contract,

(3) IAP has no plausible method of proving damages, and damages are an element of breach of contract claims, and

(4) IAP's contract claim against ODAS is time-barred as IAP claims to have sustained damage from what it deems to be contractual breaches throughout the 2015-2017 contract term.

{¶10} Additionally, regarding IAP's claims of tortious interference against Defendants, Defendants contend that IAP cannot prevail because

> (1) any communications that OFCC and DAS had with state agencies concerning their maintenance, repair and minor construction projects were justified, as OFCC was statutorily authorized under R.C. Chapters 153 and 125 to perform the same administrative work that IAP performed through its contract with DAS; and OFCC was statutorily authorized to assist those agencies—not IAP,
>
> (2) IAP consented to extend its contract with DAS without any amendment guaranteeing that it would receive a minimum project volume and IAP therefore cannot argue that state agencies were barred from administering their maintenance, repair, and minor construction projects on their own or with OFCC's assistance,
>
> (3) IAP's tortious interference claims seek "benefit of the bargain" damages, which the economic loss rule precludes, and
>
> (4) any contract or prospective relationship with state agencies that Defendants allegedly interfered with is a contract or prospective relationship with the state, and neither the state nor any private entity can tortiously interfere with its own contract.

{¶11} As to IAP's claim of civil conspiracy, Defendants contend that IAP cannot prevail because civil conspiracy must be based on an underlying unlawful act and, in this

instance neither OFCC nor DAS engaged in any unlawful act. According to Defendants, even if DAS and OFCC had engaged in an unlawful act, a civil conspiracy must involve "two or more" conspirators but the state is just one entity, notwithstanding that IAP asserts claims against two named parties.

{¶12} Finally, as to IAP's claim of quantum meruit, Defendants contend that IAP cannot prevail because IAP's quantum meruit claim against DAS is not to recoup money for services IAP performed for DAS. Rather, the quantum meruit claim is another claim for DAS to pay IAP the fees it would have earned if it had continued to provide services for state agencies at a particular dollar volume.

{¶13} IAP has filed a response in opposition with supporting evidence. IAP contends that Defendants' positions on the applicable law are incorrect and that Defendants dispute nearly all of the material facts in this case, thereby rendering summary judgment inappropriate. In IAP's view, despite Defendants' claim that DAS did not violate the TPA Contract because the TPA Contract did not have a guarantee of minimum "project volume," IAP asserts that DAS breached its contract with IAP by actively preventing agencies from engaging with IAP, and choosing IAP, to manage their projects.

{¶14} IAP also asserts that the assessment of damages is an issue of fact inappropriate for summary judgment, and that IAP's claims are not barred by statute of limitations because the Contract was a multi-year continuing contact that DAS continued to breach anew. IAP represents that it seeks damages from all of the work it lost because of DAS's alleged breach, including (1) work that never materialized, (2) work for which IAP had a task order but that was ultimately diverted because of DAS's alleged breach, and (3) work for which IAP had a purchase order in place that was subsequently cancelled because of DAS's alleged breach. IAP further contends that its Contract is with DAS—not OFCC—and the existence of the Contract is immaterial to IAP's tortious interference claims against OFCC.

{¶15} In reply, Defendants essentially reassert their arguments and reasoning as set forth in Defendants' summary-judgment motion.

V. Law and Analysis

A. Legal Standard

{¶16} A summary judgment terminates litigation to avoid a formal trial in a case where there is nothing to try. *Norris v. Ohio Std. Oil Co.*, 70 Ohio St.2d 1, 2, 433 N.E.2d 615 (1982); *Schroeder v. Nationwide Mut. Ins. Co.*, 10th Dist. Franklin No. 92AP-1728, 1993 Ohio App. LEXIS 2319, *3 (Apr. 27, 1993). The Ohio Supreme Court has instructed: "Trial courts should award summary judgment with caution, being careful to resolve doubts and construe evidence in favor of the nonmoving party." *Welco Industries, Inc. v. Applied Cos.*, 67 Ohio St.3d 344, 346, 617 N.E.2d 1129 (1993), citing *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 604 N.E.2d 138 (1992). A summary judgment, however, "is appropriate where a plaintiff fails to produce evidence supporting the essentials of its claim." *Welco Industries, Inc.* at 346, citing *Wing v. Anchor Media, Ltd. of Texas*, 59 Ohio St.3d 108, 570 N.E.2d 1095 (1991), paragraph three of the syllabus.

{¶17} Civ.R. 56(C) "provides that before summary judgment may be granted, it must be determined that (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made." *State ex rel. Grady v. State Emp. Rels. Bd.*, 78 Ohio St.3d 181, 183, 677 N.E.2d 343 (1997).

{¶18} Under Civ.R. 56 a party who moves for summary judgment "bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 662 N.E.2d 264 (1996). A party who moves for summary judgment "must be able to point to evidentiary materials of the type listed in Civ.R. 56(C) that a court is to consider in rendering summary judgment." *Dresher* at 292-293. *See* Civ.R. 56(C).[1]

[1] Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule." Any evidence that is not specifically listed in Civ.R. 56(C) "is only proper if it is incorporated into an appropriate affidavit under Civ.R. 56(E)." *Pollard v. Elber*, 2018-Ohio-4538, 123 N.E.3d 359, ¶ 22 (6th Dist.) However, courts "may consider other evidence if there is no objection

A non-moving party has no burden of proof unless the movant has satisfied its initial burden on its summary-judgment motion. *See Omega Riggers & Erectors, Inc. v. Koverman*, 2016-Ohio-2961, 65 N.E.3d 210, ¶ 69 (2d Dist.) ("unless the movant satisfies its initial burden on a motion for summary judgment, the non-movant has no burden of proof"). If a moving party "fails to satisfy its initial burden, the motion for summary judgment must be denied." *Vahila v. Hall*, 77 Ohio St.3d 421, 429, 674 N.E.2d 1164 (1997). But if a party who moves for summary judgment has satisfied its initial burden, then a nonmoving party "has a reciprocal burden outlined in the last sentence of Civ.R. 56(E)." *Dresher* at 293. *See* Civ.R. 56(E) ("[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party").

B. R.C. 2743.16(A)'s two-year statute of limitation bars Plaintiff's claims.

{¶19} The Tenth District Court of Appeals has described the interplay of R.C. 2743.02(A)(1) (waiver of immunity) and 2743.16(A) (statute of limitations) as follows:

> R.C. 2743.02(A)(1) provides that the state "waives its immunity from liability * * * and consents to be sued, and have its liability determined, in the court of claims created in this chapter in accordance with the same rules of law applicable to suits between private parties, except that the determination of liability is subject to the limitations set forth in this chapter." As set forth above, R.C. 2743.16(A) provides that suit must be brought against the state no later than two years after the date of accrual of the cause of action. The limitation is less than two years if there is a shorter period that is applicable to similar suits between private parties. R.C. 2743.16(A).

on this basis." *State ex rel. Gilmour Realty, Inc. v. City of Mayfield Hts.*, 122 Ohio St.3d 260, 2009-Ohio-2871, 910 N.E.2d 455, ¶ 17; *Pollard* at ¶ 22.

Coleman v. Columbus State Community College, 2015-Ohio-4685, 49 N.E.3d 832, ¶ 12 (10th Dist.). *See* R.C. 2743.16(A). The Ohio Supreme Court has remarked that "R.C. 2743.16 is a true statute of limitations restricting the time within which a remedy may be pursued." *Reese v. Ohio State Univ. Hosps.*, 6 Ohio St.3d 162, 163, 451 N.E.2d 1196 (1983).

{¶20} A determination as to when a cause of action accrued presents a question of law. *Columbus Green Bldg. Forum v. State*, 2012-Ohio-4244, 980 N.E.2d 1, ¶ 25 (10th Dist.). In *Columbus Green Building Forum*, the Tenth District Court explained when a cause of action accrues, stating:

> A cause of action does not ordinarily accrue until actual damage occurs; "when one's conduct becomes presently injurious, the statute of limitations begins to run." *Children's Hosp. v. Ohio Dept. of Pub. Welfare*, 69 Ohio St. 2d 523, 526, 433 N.E.2d 187 (1982), citing *State ex rel. Teamsters Loc. Union 377 v. Youngstown*, 50 Ohio St.2d 200, 364 N.E.2d 18 (1977). *See also C.E. Greathouse & Son, Inc. v. Middletown*, 12th Dist. No. CA 85-05-047, 1986 Ohio App. LEXIS 7393 (June 30, 1986) (a cause of action accrues and the statute of limitations begins to run when all the elements of the cause of action have occurred). * * *.

Columbus Green Bldg. Forum at ¶ 27 (10th Dist.).

{¶21} Notably, Jennifer Schneider, Administrator and Senior Vice President of IAP, Schneider testified in a deposition that Defendants "pulled" $20 million in projects in 2016. (Schneider Deposition, 46.) Schneider further testified that "I don't think there were any after 2016. There were a few the summer of 2016. The biggest bulk of them were taken in I guess it would be April or May of 2016. And we had numerous conversations with DAS to get those contracts back." (Schneider Deposition, 47.)

{¶22} Email correspondence between Schneider and DAS demonstrates that, as of June 3, 2016, IAP was aware of projects being placed on hold or transferred to OFCC. (Exhibit G to Schneider's Deposition.) Additionally, in July 2016, through email correspondence, Plaintiff asked for a phone call with DAS to discuss Plaintiff's concerns. See Exhibit H to Schneider's Deposition (email dated July 26, 2016, from Schneider to Stephanie L. Warner at DAS, asking to schedule a phone call). Construing the pleadings,

Schneider's deposition testimony, as well as the other evidence, in favor of IAP, as required by Civ.R. 56(C), the precipitating events for IAP's lawsuit occurred in 2016.[2] When the evidence is construed in favor of IAP, a reasonable person can find no evidence to support a notion that IAP's causes of action did not accrue in 2016. *See Weidman v. Hildebrant*, 12th Dist. Warren No. CA2021-09-084, 2022-Ohio-1708, ¶ 20 (discovery rule is an exception to the general rule that a cause of action accrues at the time a wrongful act was committed).[3] IAP was aware of Defendants' allegedly injurious conduct in 2016 and the statute of limitations under R.C. 2743.16(A) began to run in 2016, thereby barring IAP's claims against Defendants, which were brought against Defendants in 2021 as set forth in IAP's Complaint and Amended Complaint.

{¶23} IAP contends that its contract with DAS was a multi-year continuing contract that DAS continued to breach anew. IAP thus essentially contends that DAS engaged in ongoing breaches of the TPA Contract. The United States Court of Appeals for the Sixth Circuit has remarked: "The test for determining whether a continuing violation exists is summarized as follows:

> First, the defendant's wrongful conduct must continue after the precipitating event that began the pattern. . . . Second, injury to the plaintiff must continue to accrue after that event. Finally, further injury to the plaintiff[] must have

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[2] See Amended Complaint at ¶ 24 ("Beginning in 2016, as IAP was fully performing its TPA Contract, DAS and OFCC began removing and diverting projects from IAP for which state agencies had engaged IAP"); Amended Complaint at ¶ 33-34 ("In an effort to stop the improper conduct of DAS and OFCC, and to mitigate its damages, IAP met multiple times with DAS and with OFCC to try to gain their compliance with the TPA contract. For example, IAP met three times with the Deputy Director of DAS, Rand Howard, in May 2016").

[3] In *Weidman v. Hildebrant*, 12th Dist. Warren No. CA2021-09-084, 2022-Ohio-1708, ¶ 20, the Twelfth District Court of Appeals explained:

> The discovery rule is an exception to the general rule that a cause of action accrues at the time the wrongful act was committed. Under the discovery rule, "a cause of action does not arise until the plaintiff discovers, or by the exercise of reasonable diligence should have discovered, that he or she was injured by the wrongful conduct of the defendant." *Norgard* at ¶ 8, citing *O'Stricker v. Jim Walter Corp.*, 4 Ohio St.3d 84, 4 Ohio B. 335, 447 N.E.2d 727 (1983). The discovery rule, therefore, "entails a two-prong test - *i.e.*, discovery not just that one has been injured but also that the injury was 'caused by the conduct of the defendant' - and * * * a statute of limitations does not begin to run until both prongs have been satisfied." *Id.* at ¶ 9, quoting *O'Stricker* at 86.

> been avoidable if the defendants had at any time ceased their wrongful conduct.

Eidson v. Tennessee Dept. of Children's Servs., 510 F.3d 631, 635 (6th Cir.2007) (a case concerning alleged deprivation of constitutional rights), citing *Tolbert v. State of Ohio Dept. of Transp.,* 172 F.3d 934, 940 (6th Cir. 1999). The Sixth Circuit has further remarked: "'[A] continuing violation is occasioned by continual unlawful acts, not continual ill effects from an original violation.'" *Eidson* at 635, quoting *Tolbert,* 172 F.3d at 940 (internal quotation marks and citations omitted) (quoting *National Advertising Co. v. City of Raleigh,* 947 F.2d 1158, 1166 (4th Cir. 1991)).

{¶24} At deposition Jennifer Schneider of IAP testified: "So all the issues with OFCC started in 2016, but you can see that residual effects, these are only ones that made it through the system to us that were actually submitted before OFCC came in and said, no, you can't do that project or you can't give that to IAP and they would pull it." (Schneider Deposition, 83.) But, when Schneider was questioned about a list of projects referenced in paragraph 31 of the Amended Complaint,[4] which purportedly were diverted, Schneider testified: "We don't have any -- we don't have any of the projects that would have come to us because they never came to us. We can only tell you that based on -- there were projects that we know that were done by some of our contractors that would have come through us to be procured." (Schneider Deposition at

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[4] In paragraph 31 of the Amended Complaint, IAP asserts: "Even when OFCC decided not to administer a TPA-eligible project that it had diverted, DAS allowed OFCC to send the project directly back to IAP's engaged state agency and cause the agency not to use IAP, even though the project was eligible for the TPA and the agency had initially selected IAP under the TPA."

66.) Since IAP does not have a list of diverted projects that would have come to it, IAP is unable to provide evidence of damages due to Defendants' alleged unlawful conduct that allegedly existed in 2016 or 2017. Even when the evidence is construed in favor of IAP, a reasonable person would conclude that IAP has not satisfied its reciprocal burden under Civ.R. 56(E) to show specific facts showing that there is a genuine issue for trial. *See Sharp v. Clark*, 2d Dist. Darke No. 1285, 1992 Ohio App. LEXIS 2624, at *9 (May 20, 1992) ("[a]s a general rule, evidence of damages is part of the plaintiff's case, and he must prove damages in order to recover them. Thus, the plaintiff may not recover damages upon the weakness of the defendant's case, but only upon the strength of his own proof. * * * Moreover, in cases involving a breach of contract claim, the plaintiff cannot recover damages beyond the amount that is established with reasonable certainty, and generally courts have required greater certainty in the proof of damages for breach of contract than for a tort").

{¶25} Accordingly, even when the evidence is construed in favor of IAP, as required by Civ.R. 56(C), IAP's eight causes of action in the Amended Complaint—(1) Tortious Interference With Contract As Against DAS, (2) Tortious Interference With Contract As Against OFCC, (3) Tortious Interference With Contract As Against OFCC, (4) Tortious Interference With Prospective Business Relations As Against DAS, (5) Tortious Interference With Prospective Business Relations As Against OFCC, (6) Civil Conspiracy As Against DAS and OFCC, (7) Quantum Meruit as Against DAS, and (8) In the Alternative, Breach of Contract as Against DAS—are, as a matter of law, barred by the statute of limitations contained in R.C. 2743.16(A).

C. Even if Plaintiff's claims were not barred under R.C. 2743.16(A), Plaintiff fails to produce evidence supporting the essentials of its claims.

1. Plaintiff's claims of tortious interference against Defendants.

{¶26} In the Amended Complaint, IAP brings a claim of Tortious Interference With Contract As Against DAS, two claims of Tortious Interference With Contract As Against OFCC, a claim of Tortious Interference With Prospective Business Relations As Against DAS, and a claim of Tortious Interference With Prospective Business Relations As Against OFCC. Defendants urge that a summary judgment should be issued in their favor

on IAP's tortious interference claims because the state cannot tortiously interfere with itself and because both DAS's and OFCC's actions were justified.

{¶27} In *Gentile v. Turkoly*, 2017-Ohio-1018, 86 N.E.3d 991 (7th Dist.), the Seventh District Court of Appeals discussed elements of tortious interference with a contract and tortious interference with business relationships. With respect to tortious interference with a contract, in *Gentile* the Seventh District Court of Appeals stated:

> Tortious interference with a contract occurs "when a person, *without a privilege to do so*, induces or otherwise purposely causes a third person * * * not to perform a contract with another." *A & B—Abell Elevator Co. v. Columbus/Cent. Ohio Bldg. & Constr. Trades Council*, 73 Ohio St.3d 1, 14, 1995 Ohio 66, 651 N.E.2d 1283 (1995). The elements of the tort are: 1) the existence of a contract, 2) the defendant's knowledge of a contract, 3) the defendant's intentional procurement of the contract's breach, 4) the lack of justification, and 5) the resulting damages from that breach. *Fred Siegel Co., L.P.A. v. Arter & Hadden*, 85 Ohio St.3d 171, 1999 Ohio 260, 707 N.E.2d 853 (1999), paragraph 1 of the syllabus. In order to prevail, a party must demonstrate that the wrongdoer intentionally and improperly interfered with its contractual relations with another. *Dryden v. Cincinnati Bell Tel. Co.*, 135 Ohio App.3d 394, 400, 734 N.E.2d 409 (1st Dist.1999).

(Emphasis added.) *Gentile* at ¶ 23. And, with respect to tortious interference with a business relationship, in *Gentile* the Seventh District Court of Appeals remarked:

> Tortious interference with a business relationship is similar to tortious interference with a contract. "The tort of interference with a business relationship occurs when a person, *without privilege to do so*, induces or otherwise purposefully causes a third person not to enter into or continue a business relationship with another." *DK Prods., Inc. v. Miller*, 12th Dist. No. CA2008-05-060, 2009-Ohio-436, ¶ 9, citing *Diamond Wine & Spirits, Inc. v. Dayton Heidelberg Dist. Co.*, 148 Ohio App.3d 596, 774 N.E.2d 775, 2002-Ohio-3932, ¶ 23 (3rd Dist.). The elements of tortious interference with a business relationship are: (1) the existence of a prospective business relationship; (2) the wrongdoer's knowledge thereof; (3) an intentional

> interference causing a breach or termination of the relationship; and (4) damages resulting therefrom. *First-Knox Natl. Bank v. MSD Properties, Ltd.*, 2015-Ohio-4574, 47 N.E.3d 490, ¶ 19 (5th Dist.). Tortious interference with a business relationship does not require the breach of contract, rather it is sufficient to prove that a third party does not enter into or continue a business relationship with the plaintiff. *See Magnum Steel & Trading, LLC v. Mink*, 9th Dist. Nos. 26127 and 26231, 2013-Ohio-2431, ¶ 10.

(Emphasis added.) *Gentile* at ¶ 24.

{¶28} In general usage, the term "privilege" means a "special legal right, exemption, or immunity granted to a person or class of persons * * *." *Black's Law Dictionary* 1449 (11th Ed.2019). Importantly, a privilege "grants someone the legal freedom to do or not do a given act. It immunizes conduct that, under ordinary circumstances, would subject the actor to liability." *Id.* Here, as the arbiter of public policy, the General Assembly created the Ohio Facilities Construction Commission to "administer the design and construction of improvements to public facilities of the state in accordance with this chapter, * * * and any other applicable provisions of the Revised Code." R.C. 123.20(A). And, as the arbiter of public policy, the General Assembly determined that DAS shall establish certain contracts for supplies and services. R.C. 125.02(A). *See also* R.C. Chapter 153 (public improvements).

{¶29} In this instance, OFCC was statutorily authorized under R.C. Chapters 125 and 153 to perform administrative work that IAP performed through its contract with DAS, notwithstanding IAP's claims of tortious interference. And, consistent with IAP's TPA contract with DAS, an agency was permitted—but was not required—to purchase a contracted service and IAP was not guaranteed the volume of services as advertised in the Request for Proposal.

{¶30} After the evidence is construed in favor of IAP, as required by Civ.R. 56(C), a reasonable person would conclude that, in this instance, OFCC or DAS, or both, acted with a privilege to do so, thereby not tortiously interfering with IAP's contracts or IAP's business relationships. *See Fred Siegel Co., L.P.A. v. Arter & Hadden*, 85 Ohio St.3d 171, 176, 707 N.E.2d 853 (1999) ("even if an actor's interference with another's contract causes damages to be suffered, that interference does not constitute a tort if the

interference is justified"); *id.* quoting 4 Restatement of the Law 2d, Torts, at 28, Section 767, Comment *b* ("'[t]he issue in each case is whether the interference is improper or not under the circumstances; whether, upon a consideration of the relative significance of the factors involved, the conduct should be permitted without liability, despite its effect of harm to another'").

2. Plaintiff's claim of civil conspiracy against Defendants.

{¶31} In the Amended Complaint, IAP brings a Civil Conspiracy As Against DAS and OFCC. IAP alleges that "DAS and OFCC maliciously conspired together to improperly remove and divert state agency projects from IAP, thereby interfering with IAP's contractual relationships and IAP's prospective business relations" and that "DAS and OFCC acted together with the common purpose of depriving IAP its rights and benefits under the TPA Contract." (Amended Complaint at ¶ 77-78.)

{¶32} A civil conspiracy "is a 'malicious combination of two or more persons to injure another person or property, in a way not competent for one alone, resulting in actual damages.'" *Georgin v. Georgin*, 12th Dist. Warren No. CA2022-05-034, 2022-Ohio-4328, ¶ 47, quoting *Betzko v. Mick*, 2022-Ohio-999, 187 N.E.3d 18, ¶ 32 (12th Dist.). Under Ohio law, civil conspiracy is not an independent cause of action. *Bender v. Logan*, 2016-Ohio-5317, 76 N.E.3d 336, ¶ 78 (4th Dist.). Therefore, under Ohio law, "[a]n underlying unlawful act is required before a civil conspiracy claim can succeed." *Williams v. Aetna Fin. Co.*, 83 Ohio St.3d 464, 475, 700 N.E.2d 859 (1998). To maintain a claim of civil conspiracy in Ohio, a litigant "must establish the following: (1) a malicious combination of two or more persons; (2) causing injury to another person or property; and (3) the existence of an unlawful act independent from the conspiracy itself." *Woods v. Sharkin*, 2022-Ohio-1949, 192 N.E.3d 1174, ¶ 103 (8th Dist.), citing *Syed v. Poulos*, 8th Dist. Cuyahoga No. 99884, 2013-Ohio-5739, at ¶ 14, citing *Kenty v. Transamerica Premium Ins. Co.*, 72 Ohio St.3d 415, 419, 650 N.E.2d 863 (1995).

{¶33} At least two federal district courts have recognized that a state cannot conspire with itself. *Hajdin v. Ohio*, N.D.Ohio No. 5:22 CV 1428, 2022 U.S. Dist. LEXIS 200844, at *9 (Nov. 2, 2022); *Vidal v. State of Wisconsin*, E.D.Wis. No. 21-cv-0069-bhl, 2022 U.S. Dist. LEXIS 159956, at *6 (Sep. 6, 2022). Another federal district court has

noted that "it is well-established that a government entity cannot conspire with its agents if those agents are acting in their official capacity." *Fred's Modern Contracting, Inc. v. Horsham Twp.*, E.D.Pa. No. 02-cv-0918, 2004 U.S. Dist. LEXIS 5490, at *23 (Mar. 29, 2004). *Accord Doherty v. Am. Motors Corp.*, 728 F.2d 334, 339 (6th Cir.1984), quoting *Nelson Radio & Supply Co. v. Motorola, Inc.*, 200 F.2d 911, 914 (5th Cir. 1952) ("'[i]t is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation'").

{¶34} Because the state, through its instrumentalities, constitutes a single entity, *see* R.C. 2743.01 (as used in R.C. Chapter 2743, "'[s]tate" means the state of Ohio, including, but not limited to, the general assembly, the supreme court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state"), the state cannot accomplish an agreement between two or more persons. *See Custard v. Armijo*, D.Colo. Civil Action No. 15-cv-00448-REB-CBS, 2016 U.S. Dist. LEXIS 35339, at *45-46 (Feb. 10, 2016). It therefore follows that, even after the evidence is construed in favor of IAP, as required by Civ.R.56(C), Defendants are entitled to a judgment in their favor on IAP's claim of civil conspiracy.

3. Plaintiff's alternative claim of breach of contract against DAS.

{¶35} In the alternative, in the Amended Complaint IAP has asserted a breach-of-contract claim against DAS. IAP alleges: "While the TPA Contract did not guarantee IAP a specific volume of projects, the Contract did entitle IAP to administer contracts for state agencies at the election of state agencies for the contracted fee. DAS removed and diverted projects state agencies sought IAP to administer and prevented IAP from the benefit of its bargain." (Amended Complaint at ¶ 88-89.)

{¶36} The Court already has held that Defendants are entitled to relief under Civ.R. 12(B)(6) as to IAP's claims of breach of contract against DAS. The Court's dismissal of IAP's claims of breach of contract against DAS operates as an adjudication on the merits. *See Grippi v. Cantagallo*, 11th Dist. Ashtabula No. 2011-A-0054, 2012-Ohio-5589, ¶ 14 (dismissal of a complaint under Civ.R. 12(B)(6) is an adjudication upon

the merits). As a matter of law, DAS is entitled to a judgment in its favor on IAP's alternative claim of breach of contract against DAS in its Amended Complaint—a claim that is substantially similar to IAP's breach-of-contract claim in its original Complaint.

4. Plaintiff's claim of quantum meruit (unjust enrichment) against DAS.

{¶37} In the Amended Complaint, IAP brings a claim of Quantum Meruit as Against DAS, claiming that IAP "provided millions of dollars in services to DAS for which it has not been compensated." (Amended Complaint, ¶ 82.) Through this claim, IAP essentially asserts that DAS has been unjustly enriched.

{¶38} Defendants urge that IAP's claim of quantum meruit is not to recoup money for services IAP performed for DAS. Rather, the quantum meruit claim is another claim for DAS to pay IAP the fees that IAP would have earned if it had continued to provide services for agencies at a particular dollar volume.

{¶39} Quantum meruit is defined as the "reasonable value of services; damages awarded in an amount considered reasonable to compensate a person who has rendered services in a quasi-contractual relationship." *Black's Law Dictionary* 1498 (11th Ed.2019). *Compare Black's Dictionary* at 1849 (unjust enrichment) (defining "unjust enrichment" as the "retention of a benefit conferred by another not as a gift, but instead in a circumstance where compensation is reasonably expected").

{¶40} The Ohio Supreme Court has explained that "unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another." *Hummel v. Hummel*, 133 Ohio St. 520, 528, 14 N.E.2d 923 (1938). The Tenth District Court of Appeals has stated, "Generally, where damages are available for breach of contract or in tort, the party cannot also invoke the equitable remedy for unjust enrichment." *Banks v. Nationwide Mut. Fire Ins. Co.*, 10th Dist. Franklin No. 99AP-1413, 2000 Ohio App. LEXIS 5504, at *14 (Nov. 28, 2000). But, as stated by the Tenth District Court of Appeals, "if no remedy is available in contract or tort, then the equitable remedy in unjust enrichment may be afforded to prevent injustice." *Banks*, *supra*, at *14. The Tenth District Court of Appeals has further stated, "The doctrine of unjust enrichment provides an equitable remedy, under which the court implies a promise to pay a reasonable amount for services rendered where a party has conferred a benefit on

another without receiving just compensation for his or her services. Thus, under the theory of *quantum meruit,* a party may recover compensation in the absence of a contract where an unjust enrichment would result if the recipient were permitted to retain the benefit without paying for it." *Banks v. Nationwide Mut. Fire Ins. Co.*, 10th Dist. Franklin No. 99AP-1413, 2000 Ohio App. LEXIS 5504, at *13-14 (Nov. 28, 2000), citing *Paugh & Farmer, Inc. v. Menorah Home for Jewish Aged*, 15 Ohio St. 3d 44, 472 N.E.2d 704 (1984); *Fox & Associates Co. v. Purdon*, 44 Ohio St. 3d 69, 541 N.E.2d 448 (1989).

{¶41} In Jennifer Schneider's deposition, Schneider testified about a benefit that DAS purportedly received in this case:

> Q. What did DAS get out of you doing all that work if the project didn't go forward?
>
> A. Happy agencies.
>
> * * *
>
> Q. Did DAS receive a benefit from you doing the services when projects didn't go forward?
>
> A. I believe as a result of us complying with the contract and not having any problems with our contractual relationship prior to that that, yeah, they received a benefit because they're the—that's their role, they're administrative services.· And their role is to make life easier for the -- for the agencies, and that's why they put this contract out to begin with.· So they were—I'm making -- their receiving benefit because the work that they wanted to have done on behalf of the agencies was being done.
>
> * * *
>
> Q. Well, no, the -- if the projects didn't go forward, what did -- how did DAS benefit?
>
> A. DAS benefitted because it – the projects were then taken and put out again by another entity.
>
> Q. Did they use any of the scope of work you performed?
>
> A. I have no idea. I have no idea.
>
> Q. So the only instance where DAS received a benefit in your mind is when the projects were taken away from you after you'd done some prep work

and then completed by somebody else? That was a benefit that you conferred upon DAS?

A. Yes. I suppose. I guess I'm not – I apologize. I can't prove to you or tell you exactly what benefit DAS received as a result of the work that was done. But I can tell you that contractually, they were obligated to pay us for the work that was done. As soon as we received a purchase order, we were entitled to our fees. I guess that's the best way to answer it.

(Schneider Deposition, 113-115.)

{¶42} Even construing Schneider's testimony in favor of IAP, a reasonable person cannot find that IAP conferred a compensable benefit on DAS, as IAP, through Schneider, fails to articulate a reasonable value of services provided to DAS in quasi-contract. *See Saraf v. Maronda Homes, Inc.*, 10th Dist. Franklin No. 02AP-461, 2002-Ohio-6741, ¶ 10, citing *Hambleton v. R.G. Barry Corp.*, 12 Ohio St.3d 179, 183, 465 N.E.2d 1298 (1984) ("[t]he elements of unjust enrichment or quasi-contract are: (1) a benefit conferred by a plaintiff upon a defendant; (2) knowledge by the defendant of the benefit; and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment"). After the evidence is construed in favor of IAP, as required by Civ.R. 56(C), and insofar as the doctrine of unjust enrichment provides an equitable remedy, a reasonable person can conclude that DAS is entitled to a summary judgment in its favor on IAP's claim of quantum meruit against DAS.

VI. Conclusion

{¶43} For reasons set forth above, Defendants are entitled to a summary judgment on all claims contained in Plaintiff's Amended Complaint.

DALE A. CRAWFORD

____
Judge

[Cite as *Innovative Architectural Planners, Inc. v. Ohio Dept. of Adm. Serv.*, 2023-Ohio-801.]

INNOVATIVE ARCHITECTURAL PLANNERS, INC d/b/a IAP GOVERNMENT SERVICES GROUP Plaintiff v. OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES, et al. Defendants	Case No. 2021-00354JD Judge Dale A. Crawford JUDGMENT ENTRY

IN THE COURT OF CLAIMS OF OHIO

{¶44} For reasons set forth in the Decision filed concurrently herewith, the Court GRANTS Defendants' motion for summary judgment filed on November 14, 2022. All events are hereby VACATED, including the trial scheduled for March 27-31, 2023. Court costs are assessed against Plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DALE A. CRAWFORD
Judge

Filed February 3, 2023
Sent to S.C. Reporter 3/16/23