IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UBIQUITOUS ENTERTAINMENT STUDIOS, LLC,	:	
Plaintiff,	:	
vs.	:	CIVIL ACTION FILE
MCPHERSON IMPLEMENTING LOCAL REDEVELOPMENT AUTHORITY; UNITED STATES ARMY; BASE REALIGNMENT AND CLOSURE COMMISSION; UNITED STATES GENERAL SERVICES ADMINISTRATION; UNITED STATES DEPARTMENT OF DEFENSE; TYLER PERRY; AND TYLER PERRY STUDIOS, LLC,	:	NO. 1:14-CV-02261-RWS
Defendants.	:	

DEFENDANTS TYLER PERRY AND TYLER PERRY STUDIOS, LLC'S MOTION TO DISMISS THE PLAINTIFF'S COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AND FOR LACK OF SUBJECT MATTER JURISDICTION

Now come Defendants Tyler Perry and Tyler Perry Studios, LLC (hereinafter collectively referred to as the "Perry Defendants"), and, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12 (b)(6), hereby Move this Court for entry of an Order dismissing the Plaintiff's Complaint against the Perry Defendants for failure to state a claim upon which relief can be granted and for

lack of subject matter jurisdiction. In support thereof, the Perry Defendants rely upon their Brief In Support of Motion to Dismiss, being filed contemporaneously herewith, together with all matters and pleadings of record.

WHEREFORE, the Perry Defendants respectfully request this Court for entry of Order in the above-styled action dismissing Plaintiff's Complaint against the Perry Defendants for failure to state a claim upon which relief can be granted and for lack of subject matter jurisdiction.

This 28th day of July, 2014.

Respectfully submitted,

WILSON BROCK & IRBY, L.L.C.

By /s/ Kyler L. Wise
Larry M. Dingle
Georgia Bar No. 001050
Kyler L. Wise
Georgia State Bar No. 771285
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CERTIFICATION OF COUNSEL

The undersigned hereby certifies that the foregoing document has been prepared in accordance with the font type and margin requirements of Local Rule 5.1 of the Northern District of Georgia using a font type of Times New Roman and font size of 14.

This 28th day of July, 2014.

Respectfully submitted,

WILSON BROCK & IRBY, L.L.C.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Dismiss has been electronically filed and a court-issued notice has been electronically mailed to the following counsel of record:

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This 28th day of July, 2014.

/s/ Kyler L. Wise
Kyler L. Wise

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UBIQUITOUS ENTERTAINMENT STUDIOS, LLC,	:	
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Defendants.	:	

BRIEF IN SUPPORT OF DEFENDANTS TYLER PERRY AND TYLER PERRY STUDIOS, LLC'S MOTION TO DISMISS THE PLAINTIFF'S COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AND FOR LACK OF SUBJECT MATTER JURISDICTION

Now come Tyler Perry ("Perry") and Tyler Perry Studios, LLC ("TPS") (collectively referred to as the "Perry Defendants"), and pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12 (b)(6), submit this Brief In Support of their Motion to Dismiss the Plaintiff's Complaint. In support thereof, the Perry Defendants show this Court as follows:

I. INTRODUCTION

The Complaint against the Perry Defendants is frivolous and the Perry Defendants deny all material allegations of the Complaint. The Perry Defendants did not take Plaintiff's site plans or any related document. The Perry Defendants did not receive Plaintiff's site plans, or any other related document, from any third party. The Perry Defendants have not used Plaintiff's site plan documents in any way. The Perry Defendants did not usurp any business opportunity from Plaintiff. The allegations in the Complaint against the Perry Defendants are false. However, putting aside that they are false for purposes of the Perry Defendants' Motion to Dismiss, the Complaint allegations still fail to state any claim against the Perry Defendants upon which relief can be granted. Accordingly, the Complaint against the Perry Defendants should be dismissed.

Plaintiff Ubiquitous Entertainment Studious, LLC ("Plaintiff") has filed this suit against the Perry Defendants, and others, arising out of **talks** it claims to have had with representatives of McPherson Implementing Local Redevelopment Authority ("MILRA") about its alleged desire to purchase and develop property at Ft. McPherson. Such alleged talks are wholly irrelevant and cannot serve as a basis for any cause of action due to the State of Frauds, O.C.G.A. § 13-5-30. There is no allegation that Plaintiff ever had a written contract or even a memorandum of understanding with anyone to purchase any property at Ft.

McPherson. Instead, the only written offer Plaintiff claims to have submitted to purchase any property at Ft. McPherson was **rejected** by MILRA. [Plaintiff's Complaint, ¶'s 20-22]. In fact, Plaintiff's allegations concede that MILRA would not even begin to negotiate with Plaintiff until MILRA obtained title to the Ft. McPherson property. [Plaintiff's Complaint, ¶ 24]. There is no allegation that MILRA ever took title to the Ft. McPherson property so as to satisfy this condition precedent to even negotiate with Plaintiff. Accordingly, Plaintiff's suit concerning its alleged inability to purchase land at Ft. McPherson is premised entirely upon oral discussions and communications it claims to have had with MILRA representatives which did not even reach the negotiation level. Such allegations cannot serve as a basis to sue anyone.

Somehow out of these alleged oral discussions and communications between Plaintiff and MILRA concerning the purchase of real property, Plaintiff has attempted to manufacture claims against the Perry Defendants. Out of the Sixty-Seven (67) paragraphs of Plaintiff's Complaint, there is not a single allegation that the Plaintiff ever had any contact or communication whatsoever with the Perry Defendants. There are certainly no allegations that Plaintiff and the Perry Defendants ever exchanged any written communications concerning Ft. McPherson. Instead, the Plaintiff's allegations against the Perry Defendants are essentially that the Perry Defendants obtained Plaintiff's business/site plans for its

proposed development at Ft. McPherson from MILRA (a state agency) and that somehow the Perry Defendants wrongfully interfered with Plaintiff's alleged business opportunity. [Plaintiff's Complaint, ¶'s 61-67].

Out of these threadbare allegations, Plaintiff appears to assert the following state law claims against the Perry Defendants: (1) Intentional or Negligent Misrepresentation and Fraud; (2) Conversion; and (3) Tortious Interference with Business Relation. None of these claims have any merit.

Plaintiff's intentional or negligent misrepresentation and fraud claim against the Perry Defendants fails to state a claim upon which any relief can be granted. Simply put, there is no allegation that the Perry Defendants had any interaction or communication with the Plaintiff. Therefore, there is no (and the Complaint does not otherwise allege) any misrepresentation of any material fact whatsoever that can be attributed to the Perry Defendants. Moreover, there is no allegation whatsoever that the Perry Defendants ever supplied any information to the Plaintiff. Accordingly, the Perry Defendants are entitled to an Order dismissing Plaintiff's intentional or negligent misrepresentation and fraud claim since there is no allegation whatsoever of any communication or interaction between the Perry Defendants and the Plaintiff.

The Perry Defendants are also entitled to an Order dismissing the Plaintiff's conversion claim. Plaintiff claims that the Perry Defendants converted Plaintiff's

site plans, construction plans, drawings and business plan for Ft. McPherson (the "Site Plan Documents"). [Complaint, ¶'s 61-63]. As stated above, the Perry Defendants vehemently deny these allegations, but putting aside that they are false for purposes of this Motion to Dismiss, Plaintiff's conversion claim still fails to state any claim upon which relief can be granted. First, Plaintiff cannot make the requisite showing of title or right to possess the Site Plan Documents. Plaintiff states in its Complaint that it provided the Site Plan Documents to various third parties, including MILRA, and by doing so those documents became a matter of public record. Plaintiff holds no title to, or right to possess, the Site Plan Documents as required to state a valid claim for conversion.

In addition, there is no allegation that Plaintiff has demanded return of the Site Plan Documents from the Perry Defendants and there is no allegation that the Perry Defendants have refused to return the Site Plan Documents. Accordingly, Plaintiff's conversion claim should be dismissed.

Moreover, Plaintiff's tortious interference with business relation claim fails because the Complaint fails to allege any wrongful conduct on the part of the Perry Defendants. In addition, the Complaint does not sufficiently allege that the Perry Defendants wrongfully induced MILRA not to enter into a business relationship with the Plaintiff. Accordingly, Plaintiff's claim for tortious interference with business relation should be dismissed.

II. STATEMENT OF RELEVANT FACTS

Defendant MILRA is an autonomous agency of the State of Georgia established by the McPherson Implementing Local Redevelopment Authority Act of 2008. [See Plaintiff's Complaint for Declaratory Judgment and Damages ("Complaint"), ¶ 2]. Plaintiff contends that on December 9, 2011, its CEO met with Felker W. Ward, Jr., gubernatorial appointee and Chairman of MILRA, to inform Mr. Ward of Plaintiff's formation and its plan to provide employment, education and training and entertainment complex and destination for family entertainment. [Complaint, ¶ 11]. Plaintiff contends that on June 8, 2012, Plaintiff and its developer, Integral Group, met with representatives of Invest Atlanta and introduced Invest Atlanta to Plaintiff's plans and development as proposed for Ft. McPherson. [Complaint, ¶ 14]. In fact, according to Plaintiff, Invest Atlanta assisted Plaintiff with finalizing its development plans for Ft. McPherson. [Complaint, ¶ 15].

Plaintiff contends that on April 17, 2013, a meeting took place at Ft. McPherson attended by the following:

1. Plaintiff;
2. A representative of Paramount Pictures;
3. A representative from the Governor's Office of Economic Development;

4. Representatives of MILRA; and

5. Representatives of Integral Group. (the "April 17, 2013 Meeting")

[Complaint, ¶ 16].

At this April 17, 2013 Meeting, Plaintiff contends it provided these parties with a presentation of its site plan and business plan for Ft. McPherson, and provided MILRA with a detailed account of its business plan for site development. [Complaint, ¶ 16]. According to Plaintiff, MILRA did not return Plaintiff's business plans or site development plans provided to MILRA at the April 17, 2013 Meeting. [Complaint, ¶ 18].

Plaintiff contends that on December 10, 2013, Plaintiff delivered a formal offer to MILRA for the purchase of eighty (80) acres of land at Ft. McPherson. [Complaint, ¶ 20]. According to Plaintiff, on January 26, 2014, MILRA responded to Plaintiff's December 10, 2013 offer by stating that MILRA was not able to respond to or negotiate the offer because MILRA was not yet the title owner of the Ft. McPherson property. [Complaint, ¶ 22].

Plaintiff contends that in April, 2014, a representative of MILRA informed Plaintiff that MILRA expected to obtain title to the Ft. McPherson property in July of 2014 and at that point MILRA would start to negotiate a purchase price and closing date with the Plaintiff. [Complaint, ¶ 24] (emphasis added).

According to Plaintiff, in or around June 18, 2014, the City of Atlanta and

MILRA issued a public statement that MILRA had entered into "robust" talks to conclude the purchase of Ft. McPherson with Mr. Perry. [Complaint, ¶ 26].

According to the Plaintiff's information and belief, MILRA provided the Perry Defendants with the site plans, construction plans, drawings and business plan owned by Plaintiff for the Ft. McPherson project (the "Site Plan Documents"). [Complaint, ¶ 61]. According to Plaintiff, MILRA knew that the Site Plan Documents were proprietary information of Plaintiff because MILRA had received a request to execute a non-disclosure and non-circumvent agreement before keeping the Site Plan Documents. [Complaint, ¶ 62]. Upon Plaintiff's information and belief, Plaintiff alleges that the Perry Defendants subsequently submitted their proposed development plan for Ft. McPherson which contained the same site location and plans as contained within Plaintiff's Site Plan Documents. [Complaint, ¶ 63].

Plaintiff further contends that the Perry Defendants knew that Plaintiff had been in talks and negotiations with MILRA for the purchase of eighty (80) acres of Ft. McPherson property to be cleared as a site for a studio, entertainment and education complex. [Complaint, ¶ 65]. Plaintiff further contends that upon its information and belief, Perry attempted to "thwart" the business opportunity of Plaintiff by inducing MILRA to negotiate a sole source purchase of the entire Ft. McPherson base. [Complaint, ¶ 66]. Plaintiff contends that the actions of Perry in

concert with those of MILRA have caused Plaintiff financial hardship and damage. [Complaint, ¶ 67].

II. ARGUMENT CITATION OF AUTHORITY

A. Standards for Motion to Dismiss.

As concerns a Motion to Dismiss for failure to state a claim upon which relief can be granted, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formal recitation of the elements of the cause of action will not do. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). Factual allegations must be enough to raise a right to relief above the speculative level. Id. To avoid dismissal, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. Id. at 570. A complaint must include more than a few stray statements connected to the elements of a claim and mere legal conclusions resting on prior allegations will not suffice to state a claim. Id.

Moreover, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. Id. In considering a Motion to Dismiss, the court should eliminate any allegations in the complaint that are merely legal conclusions and where there are well pleaded factual allegations,

assume their veracity and then determine whether they plausibly give rise to entitlement to relief. Id. at 679.

A Motion to Dismiss for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1) is properly considered as either a facial or a factual attack. Stalley v. Orlando Regional Healthcare System, Inc., 524 F.3d 1229, 1232 (11th Cir. 2008). A facial attack on the complaint requires the court merely to look and see if the plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in the complaint are taken as true for the purposes of the motion. Id.

As set forth more fully below, the Plaintiff's Complaint fails to state any claim against the Perry Defendants upon which relief can be granted and should be dismissed. Moreover, as alternative relief, the Perry Defendants contend that the Plaintiff's federal claims against the other Defendants should be dismissed and therefore the Plaintiff's state law claims against the Perry Defendants should be dismissed for lack of subject matter jurisdiction pursuant to the abstention doctrine.

B. Plaintiff's Intentional or Negligent Misrepresentation and Fraud Claim Against the Perry Defendants fails to state any claim upon which relief can be granted and must be dismissed.

The tort of fraud has five elements: (1) a false representation or omission of a material fact; (2) scienter; (3) intention to induce the party claiming fraud to act

or refrain from acting; (4) justifiable reliance; and (5) damages. Lehman v. Keller, 297 Ga. App. 371, 372-73 (2009). Moreover, to state a valid claim for negligent misrepresentation, a plaintiff must allege that: (1) the defendant negligently supplied false information; (2) the plaintiff reasonably relied upon that false information; and (3) economic injury proximately resulting from such reliance. Smiley v. S&J Investments, Inc., 260 Ga. App. 493, 498 (2003).

When a pleading seeks to allege fraud, which is a category that includes negligent misrepresentation, the pleading standard is more rigorous and requires that a party alleging fraud must state with particularity the circumstances constituting fraud or mistake. See Smith v. Ocwen Financial, 488 F. App'x 426, 428 (11th Cir. 2012); Fed. R. Civ. P. 9(b).

Here, the Plaintiff's Complaint does not allege any interaction or communication by and between the Plaintiff and the Perry Defendants in any way, shape or form. Therefore, there is no (and the Complaint does not otherwise allege) any misrepresentation of any material fact whatsoever that can be attributed to the Perry Defendants. Moreover, there is no allegation whatsoever that the Perry Defendants supplied any information to the Plaintiff. Accordingly, the Perry Defendants are entitled to an Order dismissing Plaintiff's intentional or negligent misrepresentation and fraud claim against them because there is no allegation whatsoever of any communication or interaction between the Perry Defendants and

the Plaintiff.

C. Plaintiff's Conversion claim against the Perry Defendants fails to state a claim upon which relief can be granted and must be dismissed.

O.C.G.A. § 51-10-1 provides that the owner of personalty is entitled to its possession. To establish a claim for conversion, the complaining party must show: (1) title to the property or the right of possession; (2) actual possession in the other party; (3) demand for return of the property; and (4) refusal by the other party to return the property. Washington v. Harrison, 299 Ga. App. 335, 338 (2009); Prince Heaton Enterprises v. Buffalo's Franchise, 117 F. Supp. 2d 1357, 1365 (N.D. Ga. 2000).

Here, Plaintiff contends that the Perry Defendants converted the Site Plan Documents; not by taking them from the Plaintiff, but by receiving them from MILRA, a state agency. [Complaint, ¶ 61]. There is absolutely no allegation that the Perry Defendants knew, or had any reason to know, that the Site Plan Documents were confidential or proprietary in nature. Instead, the Complaint only alleges that **MILRA** knew that the Site Plan Documents were proprietary information because **MILRA** allegedly received a request from Plaintiff to execute a non-disclosure agreement before keeping the documents. [Complaint, ¶ 62].

1. Plaintiff's conversion claim against the Perry Defendants fails because no wrongful conduct has been alleged against the Perry Defendants.

Conversion involves an unauthorized assumption and exercise of the right of ownership over personal property belonging to another, in hostility to those rights Kilburn v. Patrick, 241 Ga. App. 214, 216 (1999). The very essence of conversion is that the act of dominion is wrongfully asserted. Id. Thus, if a party has a right to assert ownership, the act of dominion is not wrongful and does not constitute conversion. Id.

Here, there is no allegation that the Perry Defendants wrongfully took the Site Plan Documents from the Plaintiff and then converted the Site Plan Documents to their own use. Instead, the Complaint merely alleges that the Perry Defendants were provided the Site Plan Documents from MILRA, an agency of the State of Georgia. [Complaint, ¶ 61]. The Complaint states that Plaintiff provided the Site Plan Documents to MILRA without requiring MILRA to execute a confidentiality agreement and there is no allegation that Plaintiff took any steps to maintain the confidentiality of the Site Plan Documents before giving them to MILRA (and other third parties). Other than allegedly receiving documents from a state agency, there is no allegation of wrongful conduct against the Perry

Defendants and there is no allegation that the Perry Defendants knew (or had any reason to know) that the Site Plan Documents somehow remained proprietary information despite being in MILRA's possession. Simply put, there is no allegation of wrongful conduct against the Perry Defendants and the conversion claim must be dismissed.

2. Plaintiff's conversion claim fails because Plaintiff cannot show title, or the right to possess, the Site Plan Documents.

To establish a claim for conversion, the first element a complaining party must show is title to the property or the right of possession. Washington v. Harrison, 299 Ga. App. at 338. According to the Complaint, Plaintiff provided the Site Plan Documents to various third parties, including Paramount Pictures, the Governor's Office of Economic Development, Integral Group and Invest Atlanta. [Complaint, ¶'s 14-16]. There is no allegation that Plaintiff required any of these third parties to execute a confidentiality agreement for the Site Plan Documents and there is no allegation that the Plaintiff otherwise took any action to protect the Site Plan Documents from disclosure before providing them to these third parties. According to the Complaint, Plaintiff freely handed out the Site Plan Documents to third parties and in so doing cannot still claim title, or the right to possess, the Site Plan Documents.

Moreover, the Plaintiff contends it provided the Site Plan Documents to

MILRA, a state agency, that MILRA never signed a non-disclosure before keeping the Site Plan Documents, and that MILRA did not return the Site Plan Documents to Plaintiff after the April 17, 2013 Meeting. [Complaint, ¶'s 2, 16, 18 and 62].

Plaintiff holds no title to, or right to possess, the Site Plan Documents because they became public records when provided to MILRA. Georgia's Open Records Act, as Revised in 2012, broadly defines "public record" as follows:

> "all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency . . ." (emphasis added). O.C.G.A. § 50-18-70(b)(2).

It is clear that MILRA is an "agency" under Georgia's Open Records Act and, according to Plaintiff's Complaint, MILRA received the Site Plan Documents from the Plaintiff. See O.C.G.A. § 50-18-70(b)(1); O.C.G.A. § 50-14-1 (defining "Agency" to which the Open Records Act is applicable).

The Georgia General Assembly has found that public records should be made available for public inspection "without delay" and that all public records shall be open for personal inspection and copying. O.C.G.A. § 50-18-70(a); 50-18-71(a). The only exceptions to public disclosure of public records are those enumerated within O.C.G.A. § 50-18-72. Before 2012, there existed some confusion with the Open Records Act concerning the circumstances under which documents provided to a state agency could potentially remain confidential. In

2012, the Georgia General Assembly revised O.C.G.A. § 50-18-72 to clarify this issue by affirmatively requiring the party submitting information to a state agency to take certain measures in order to maintain the confidentiality of documents submitted to an agency. O.C.G.A. § 50-18-72(a)(34) states as follows:

> "Public disclosure shall not be required for records that are: any trade secrets obtained from a person or business entity that are required by law, regulation, bid, or request for proposal to be submitted to an agency. **An entity submitting records containing trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets**. . . ." (emphasis added).

According to the Complaint, Plaintiff provided the Site Plan Documents to MILRA, and various other third parties, without providing the requisite affidavit declaring that the Site Plan Documents are trade secrets and should be kept confidential. There is no allegation that Plaintiff required MILRA (or anyone else) to ever sign any confidentiality agreement before Plaintiff provided the Site Plan Documents. There are no allegations in the Complaint that Plaintiff took any affirmative action to maintain the confidentiality of the Site Plan Documents before giving them to MILRA. Accordingly, once provided to MILRA, the Site Plan Documents became public records to which Plaintiff holds no title or right to possess. Plaintiff's conversion claim against the Perry Defendants should be dismissed.

3. Plaintiff's conversion claim fails because Plaintiff has not alleged any demand for possession of the Site Plan Documents from the Perry Defendants.

As noted above, two essential elements of a claim for conversion are a demand for possession and refusal to surrender. Washington, 299 Ga. App. at 338. Plaintiff has failed to allege a demand for possession of the Site Plan Documents and has failed to allege the Perry Defendants' refusal to surrender the Site Plan Documents. Accordingly, Plaintiff's conversion claim must be dismissed. Prince Heaton Enterprises v. Buffalo's Franchise, 117 F. Supp. 2d 1357, 1365 (N.D. Ga. 2000) ("Plaintiffs have failed to allege a demand for the possession of the allegedly misappropriated funds, a refusal to surrender, or the value of the funds taken. Accordingly, Defendants are entitled to a dismissal of Plaintiff's conversion claim").

D. Plaintiff's Tortious Interference with Business Relation Claim fails to state a claim against the Perry Defendants upon which relief can be granted and should be dismissed.

To recover on a claim for tortious interference with business relations, a plaintiff must show the defendant: (1) acted improperly and without privilege; (2) acted purposely and with malice with the intent to injure; (3) induced a third party

not to enter into or continue a business relationship with the plaintiff; and (4) caused plaintiff financial injury. Renden, Inc. v. Liberty Real Estate Ltd. Partnership III, 213 Ga. App. 333, 334 (1994); Meadow Springs, LLC v. IH Riverdale, LLC, 323 Ga. App. 478, 480 (2013).

1. Plaintiff has not alleged that the Perry Defendants acted improperly and without privilege.

An essential element of a claim for tortious interference with business relation is that the alleged tortfeasor used wrongful means to induce a third-party not to enter into or continue a business relationship with the plaintiff. Monge v. Madison County Record, Inc., 802 F. Supp. 2d 1327, 1338 (N.D. Ga. 2011). Wrongful conduct typically involves predatory tactics such as physical violence, fraud, misrepresentation or defamation. Id.

Here, there is no factual allegation in the Complaint that the Perry Defendants engaged in any wrongful conduct, much less any predatory tactics, so as to support Plaintiff's claim for tortious interference with business relationship. Plaintiff's tortious interference with business relation claim should therefore be dismissed. See Monge, Supra. (dismissing claim for tortious interference with business relations where plaintiff could not meet the first required "wrongful conduct" element).

2. Plaintiff has not alleged that the Perry Defendants acted

purposely and with malice with the intent to injure.

Like the first "wrongful conduct" element, Plaintiff's Complaint does not allege that the Perry Defendants acted with malice with the intent to injure. The only allegation made by Plaintiff is that "Tyler Perry knew that [Plaintiff] had been in talks and negotiations with MILRA for the purchase of 80 acres. . . ." [Complaint, ¶ 65]. Thus, the Complaint merely concludes that the Perry Defendants knew that Plaintiff had been in talks with MILRA. It offers no facts to support this conclusion and the Court must speculate as to how or why the Perry Defendants allegedly acquired such knowledge. Moreover, even if the Perry Defendants did acquire such information (which they did not), that does not give rise to a viable claim since there are no allegations that the Perry Defendants used the information "improperly and without privilege" and with malice with the intent to injure. Under Twombly, Supra. and Iqbal, Supra., such threadbare, conclusory pleading is insufficient and fails to state a claim that is plausible on its face.

3. Plaintiff has not sufficiently alleged that the Perry Defendants induced MILRA not to enter into a business relationship with the Plaintiff.

In the Complaint, Plaintiff alleges that upon its information and belief, Perry attempted to thwart the business opportunity of Plaintiff by inducing MILRA to negotiate a sole source purchase of the entire Ft. McPherson base. [Complaint, ¶

66]. The Complaint does not allege what actions the Perry Defendants engaged in to "thwart the business opportunity" or any facts alleging how the Perry Defendants allegedly induced MILRA to negotiate a sole source purchase. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. Iqbal, 556 U.S. at 678. In considering a Motion to Dismiss, the court should eliminate any allegations in the Complaint which are merely legal conclusions. Id. At best, paragraph sixty-six (66) of the Complaint recites a mere legal conclusion and should be eliminated for purposes of this Motion. Accordingly, the Complaint fails to sufficiently plead that the Perry Defendants induced MILRA not to enter into a business relationship with the Plaintiff.

Moreover, the allegations of the Complaint show that the Perry Defendants had nothing to do with MILRA not doing business with Plaintiff. Plaintiff claims it submitted a written offer to MILRA to purchase eighty (80) acres of Ft. McPherson which was rejected. [Complaint, ¶'s 20-22]. According to Plaintiff, MILRA could not respond to the offer, or even begin to negotiate with Plaintiff, until MILRA obtained title to the land. [Complaint, ¶'s 22, 24]. Therefore, according to the Complaint, it was MILRA's decision not to respond to Plaintiff's offer or to negotiate with Plaintiff. There is no allegation in the Complaint that the Perry Defendants had anything whatsoever to do with this alleged decision of

MILRA. Also, there is no allegation that MILRA ever obtained title to the land in order to fulfill the condition precedent for MILRA to even negotiate with the Plaintiff. There can be no claim for tortious interference with business relationship when the Plaintiff's Complaint alleges MILRA and Plaintiff did not even begin negotiations.

Accordingly, Plaintiff's Complaint does not allege any wrongful inducement and Plaintiff's tortious interference with business relation claim must be dismissed.

E. Because all of Plaintiff's federal claims should be dismissed, Plaintiff's state law claims against the Perry Defendants should be dismissed for lack of subject matter jurisdiction.

Alternatively to the relief sought above, upon the dismissal of Plaintiff's federal claims, this Court should dismiss Plaintiff's state law claims against the Perry Defendants under the abstention doctrine. James Emory, Inc. v. Twiggs Co., 883 F. Supp. 1546, 1565 (N. D. Ga. 1995) (citing Crosby v. Hosp. Auth., 873 F. Supp. 1568, 1584 (N.D. Ga. 1995)); see also 28 U.S.C. § 1367(c)(3).

CONCLUSION

For the reasons set forth above, the Perry Defendants respectfully request this Court for entry of Order dismissing the Plaintiff's Complaint as against them. The Perry Defendants respectfully request such other, further and different relief to which they may be entitled.

This 28th day of July, 2014.

Respectfully submitted,

WILSON BROCK & IRBY, L.L.C.

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CERTIFICATION OF COUNSEL

The undersigned hereby certifies that the foregoing document has been prepared in accordance with font type and margin requirements of Local Rule 5.1 of the Northern District of Georgia using a font type of Times New Roman and point size of 14.

This 28th day of July, 2014.

Respectfully submitted,

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I hereby certify that a true and correct copy of the foregoing Brief In Support of Motion to Dismiss has been electronically filed and a court-issued notice has been electronically mailed to the following counsel of record:

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This 28th day of July, 2014.

/s/ Kyler L. Wise
Kyler L. Wise