

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

Id. ¶ 16, 650 N.W.2d at 542. This list of factors, however, is not exhaustive or determinative. Id.

As for this element, too, a genuine dispute of material fact exists. Zieske testified that The Heart Doctors had interfered in a similar way with another doctor, prior to plaintiff's arrival on the scene. (Zieske's Dep. at 50.) Because of The Heart Doctors' conduct, RCRH altered its path concerning the recruitment of doctors, including plaintiff. Prior to changing its path, RCRH actively recruited plaintiff. Notwithstanding these ongoing negotiations, The Heart Doctors went undaunted, conveying its discontent with the hospital's recruitment of plaintiff. According to plaintiff, Schabauer stated that plaintiff would "never work for the hospital," (pl.'s dep. at 201), unless he was "an employee of The Heart Doctors," (id. at 203). As it appears from the record, The Heart Doctors went to great lengths to express to RCRH officials that the hospital would not receive referrals if plaintiff was the surgeon. Then, when contract negotiations between RCRH and plaintiff encountered problems, Zieske instructed plaintiff to discuss the problems with The Heart Doctors, in spite of the fact that RCRH and The Heart Doctors are independent entities. Moreover, both plaintiff and RCRH had hoped to conclude the negotiating process with a finalized, legally binding employment agreement. For reasons discussed, however, this did not occur. Due to the evidence referenced in this section, The Heart Doctors' interfering role impacted the outcome of plaintiff's prospective contract. With respect to RCRH, it committed no wrongdoing when it halted all negotiations. Such a decision is attributable to running a

business. But, while The Heart Doctors promoted its own business interests, its actions, as a natural consequence, adversely affected RCRH's and plaintiff's contractual stake. Therefore, because of The Heart Doctors' conduct and plaintiff's supporting evidence, a material factual dispute exists.

In establishing a genuine dispute of fact as to the fourth element, which requires "proof that the interference caused the harm sustained," plaintiff offers the testimony of Zieske. See Tibke, 479 N.W.2d at 909. Zieske testified that plaintiff did not end up at RCRH due to The Heart Doctors' threats to not refer plaintiff surgery patients. Plaintiff was also told by Zieske that "The Heart Doctors would ice any surgeon hired by the hospital." (Pl.'s Dep. at 190-91.) As a result of these threats, RCRH ceased negotiations with plaintiff and decided it was "not going to bring in a \$400,000-a-year physician and watch him sit on his hands." (Zieske's Dep. at 224.) Thus, an inference may be drawn that, but for The Heart Doctors' and Schabauer's interference, plaintiff and RCRH would have entered into a contractual relationship.

Plaintiff's valid business expectancy was unjustifiably interfered with, thereby causing RCRH to forego a prospective employee in plaintiff. As to the fifth element of damages, because plaintiff has raised genuine disputes of material fact as to the claim of intentional interference with a business expectancy, plaintiff is entitled to take the issue of damages to trial. St. Onge Livestock, 2002 SD 102, ¶ 24, 650 N.W.2d at 543. Accordingly, The Heart Doctors' and Schabauer's motion for summary judgment is denied on plaintiff's action for intentional interference with a business relationship or expectancy.

## V. CONCLUSION

No genuine issues of material fact support plaintiff's actions against RCRH. A contract, either oral, written, express, or implied, never existed between plaintiff and RCRH. Plaintiff's claims for anticipatory repudiation and promissory estoppel similarly fail. Because a contract was not formed, there was nothing to repudiate. Likewise, without verifiable proof of a promise containing definite terms, promissory estoppel cannot be established. Plaintiff's actions for deceit, fraudulent misrepresentation, negligent misrepresentation, and fraudulent concealment fail as well, because of plaintiff's presupposition of a contract, unjustifiable reliance on alleged oral terms, insufficient proof of deceitful intent, and no duty to disclose upon RCRH. In addition, plaintiff was not misled or provided with false information. Lastly, pursuant to Federal Rule of Civil Procedure 56(e), plaintiff's negligence claim cannot be maintained.

As to the actions against The Heart Doctors and Schabauer, plaintiff's claims of defamation and defamation *per se* fail due to this Court's Order denying the discovery and use of privileged evidence. However, plaintiff's suit for intentional interference with a business relation or expectancy shall proceed to trial, because a genuine dispute of material fact exists as to each essential element of the claim.

Finally, in rendering its decision on all of the matters before it, the Court concludes that oral argument on any of plaintiff's causes of action is unnecessary. Accordingly, it is hereby

ORDERED that defendant Rapid City Regional Hospital's motion for summary judgment (Docket #74) is granted as to all of plaintiff Dr. Carl Warren Adams's claims.

IT IS FURTHER ORDERED that defendants The Heart Doctors' and Schabauer's motion for summary judgment (Docket #91) is granted, in part, as to plaintiff Dr. Carl Warren Adams's

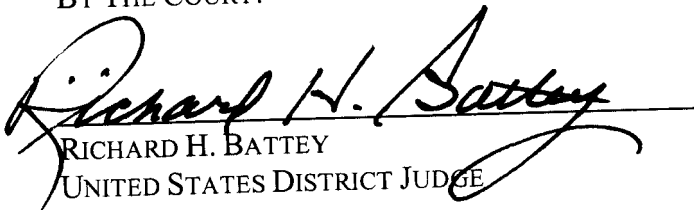
claims for defamation and defamation *per se*, and (Docket #91) is denied, in part, as to plaintiff Dr. Carl Warren Adams's claim for intentional interference with business relations or expectancy.

IT IS FURTHER ORDERED that plaintiff Dr. Carl Warren Adams's claim for intentional interference with business relations or expectancy shall proceed to trial.

IT IS FURTHER ORDERED that plaintiff Dr. Carl Warren Adams's request for oral argument (Docket #85) is denied.

Dated this 23<sup>rd</sup> day of August, 2006.

BY THE COURT:

  
RICHARD H. BATTEY  
UNITED STATES DISTRICT JUDGE