

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT**

**MAR-QUE GENERAL CONTRACTING, INC
and JEFFREY NANK,
Plaintiffs,**

v.

**Case No. 13-136479-CK
Hon. James M. Alexander**

**MAR-QUE GENERAL CONTRACTOR, INC
and WILLIAM RICHARD STEFFANUSKI, III,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendants’ Motion for Partial Summary Disposition. This suit involves the disagreement of the individual parties as to the ownership of Mar-Que General Contracting – which was purchased from non-party Mark Fogarasi in 2011. In 2013, the individual parties’ relationship soured, and Defendant William Steffanuski created Defendant Mar-Que General Contractor.

In their Complaint, Plaintiffs allege that Mr. Steffanuski diverted all funds in the bank accounts of Mar-Que Contracting into either his personal accounts or the accounts of Mar-Que Contractor. Plaintiff alleges that this caused Mar-Que Contracting to bounce checks and otherwise left it unable to meet its obligations. Plaintiffs filed their Complaint on claims of: (1) Breach of Corporate Duties as Director and Officer; (2) Conversion; (3) Tortious Interference with Business Relationships; and (4) Slander Per Se. Plaintiffs also sought temporary and permanent injunctions.

In Response to the suit, Mr. Steffanuski (in his own name and the name of both companies) counter-sued Mr. Nank. In the Counter-Complaint, Defendants allege that Mr. Nank was an employee of Mar-Que Contracting – and not a shareholder. But when filing the articles of incorporation, Defendants allege that Mr. Nank fraudulently altered the same to name himself as a shareholder. Defendants also claim that Mr. Nank embezzled business funds, which went undiscovered until May 2013. At the same time, Mr. Steffanuski also discovered the altered incorporation documents. As a result, Mr. Steffanuski created Mar-Que Contractor and named himself sole shareholder – transferring Mar-Que Contracting’s assets.

Defendants now move for partial summary disposition under MCR 2.116(C)(8), which tests the legal sufficiency of the complaint. When analyzing such a motion, all well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dept of Corrections*, 439 Mich 158 (1992). A motion under this subrule may be granted only where the claims alleged are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Id.* When deciding such a motion, the court considers only the pleadings. MCR 2.116(C)(G)(5).

In their motion, Defendants seek dismissal only of Plaintiffs’ claims of Conversion (Count II) and Tortious Interference with Business Relationships (Count III).

1. Conversion (Count II)

Defendants first claim that they are entitled to summary disposition of Plaintiffs’ conversion claim. “The tort of conversion is ‘any distinct act of domain wrongfully exerted over another’s personal property in denial of or inconsistent with the rights therein.’” *Head v Phillips Camper Sales*

& Rental, Inc, 234 Mich App. 94, 111; 593 NW2d 595 (1999), quoting *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992).

Defendants claim that Plaintiffs' claims fail for two reasons. First, Plaintiffs have failed to plead with specificity – instead claiming that there was a conversion of generalized “assets.” Second, Defendants claim that Plaintiffs' claim fails to allege that Defendants took specific money – as required in an action for the conversion of money.

In support, they cite *Head*, 234 Mich App 94 for the notion that “[t]o support an action for conversion of money, the defendant must have an obligation to return the specific money entrusted to his care.” The Court agrees and finds, to the extent that Plaintiffs allege conversion of money, they must establish that Defendants had the obligation to return that “specific” and “precise” money. *Anderson v Reeve*, 352 Mich 65, 70; 88 NW2d 549 (1958); and *Head*, 234 Mich App at 111-112.

Plaintiffs respond, however, that they have identified other specific corporate assets converted by Defendants. Those assets include checks, contracts, customer lists, insurance contracts, and all the files and records of the corporation. In support, Plaintiffs cite *Trail Clinic v Bloch*, 114 Mich App 700; 319 NW2d 638 (1982), for the proposition that “[c]hecks are considered to be the property of the designated payee and may be the subject of a suit for conversion.” *Trail Clinic*, 114 Mich App 705.

In paragraph 17 of the Complaint, Plaintiffs allege that Defendants converted “checks, . . . customer lists, insurance contracts, [and] all files and records of the corporation.” As a result, considering only the pleadings and accepting all well-pled factual allegations as true, the Court concludes that Plaintiff has sufficiently pled a cause of action for conversion to survive summary disposition under (C)(8).

2. Tortious Interference with Business Relations (Count III)

Defendants next seek dismissal of Plaintiffs' claim for tortious interference with a contractual relationship. In order to establish tortious interference with a contract or business advantage, a plaintiff must prove:

[1] the existence of a valid business relationship or the expectation of such a relationship between the plaintiff and some third party, [2] knowledge of the relationship or expectation of the relationship by the defendant, and [3] an intentional interference causing termination of the relationship or expectation which results in [4] damages to the plaintiff. *Blazer Foods, Inc v Rest Props*, 259 Mich App 241, 255; 673 NW2d 805 (2003); citing *Meyer v Hubbell*, 117 Mich App 699; 324 NW2d 139 (1982).

After careful review of Plaintiffs' Complaint, the Court finds that Plaintiffs have sufficiently pled facts to support each element. Specifically, Plaintiffs allege that Defendants made false statements to insurance companies that regularly conducted business with Plaintiffs and diverted said business to the newly formed company. Plaintiffs further allege that this interference caused it damages.

As a result, considering only the pleadings and accepting all well-pled factual allegations as true, the Court cannot conclude that Plaintiffs' claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. Plaintiff has sufficiently pled a cause of action for tortious interference to survive summary disposition under (C)(8).

For all of the foregoing reasons, Defendants' motion for partial summary is DENIED.

IT IS SO ORDERED.

March 5, 2014
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge