

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

ROGER SOULLIERE, SOULLIERE
DECORATIVE STONE, INC., MICHIGAN
SKID LOADER, INC., STONE CITY, INC.,
SOULLIERE'S STONE CITY, INC.,
SOULLIERE WALL STONE, INC.,
SOULLIERE LEASING, LLC, and
SOULLIERE REALTY, LLC,

Plaintiffs,

vs.

Case No. 2013-1334-CB

FRANK BERGER, DSSC HOLDINGS, LLC,
DSSC REALTY, LLC, STONESCAP
SUPPLY, LLC, MACOMB SKID LOADER, LLC,
LYRIC TECHNOLOGY, LLC, DAWN SURMA,
MATTHEW ESCH, TIM SHEA, JAMES RISNER,
NICHOLAS MAIORIANA, BRIAN ROBERTS,
DAVID ATKINSON, and CAROL ANN
SOULLIERE-KRAFT,

Defendants.

OPINION AND ORDER

Defendants have filed two motions for partial summary disposition pursuant to MCR 2.116(C)(8) and (10). Plaintiffs have filed responses to both motions and request that the motions be denied.

In addition, Plaintiffs have also moved for summary disposition of "Defendants' counterclaim". Defendants have filed a response and request that the motion be denied.

I. Factual and Procedural History

Plaintiff Roger Soulliere has been involved in the business of landscape design

and installation for approximately 30 years. Since 1985 Mr. Soulliere has founded the various Plaintiff entities ("Plaintiff Entities") to perform various portions of his business operation. In 1988, Mr. Soulliere began operating his businesses out of space located at 4454 22 Mile Rd., Utica, MI 48317 ("Utica Property"). Since that time, and up until December 2012, Mr. Soulliere has also operated the Plaintiff Entities out of other locations along 22 Mile Rd. and one location in Novi, MI.

In 2012 various business loans issued by First State Bank of East Detroit ("First State") to the Plaintiff Entities matured. The Plaintiff Entities were unable to pay the owed amounts. The Plaintiff Entities and First State thereafter entered into a forbearance agreement and surrender agreement (collectively, "Surrender Agreement") pursuant to which First State agreed to forebear from exercising its rights under the various loans in exchange for the Plaintiff Entities' agreement to grant First State the right to seize control over some of the Plaintiff Entities' assets (collectively, "Surrendered Assets"), sell the Surrendered Assets, and apply the liquidated value of the Surrendered Assets against the outstanding indebtedness.

In March 2013, Defendants entered into an asset purchase agreement with First State ("Purchase Agreement"). Under the Purchase Agreement, First State sold its right to seize the Surrendered Assets to Defendants. On April 19, 2013, Defendants demanded that Plaintiffs deliver the Surrendered Assets to them. Plaintiffs have allegedly refused to turn over the Surrendered Assets.

On February 4, 2014, Plaintiffs filed their second amended complaint in this matter ("Complaint"). In the Complaint, Plaintiffs allege that the Defendant entities (collectively, "Defendant Entities") were formed to duplicate the business operations of

Plaintiffs. Further, Plaintiffs allege that Defendants have improperly taken various intangible information/proprietary information that was on Plaintiffs' back-up server and has used the information to compete with Plaintiffs.

Counts I-IV of the Complaint seeks various forms of injunctive relief. The Complaint did not include a Count V. Count VI seeks declaratory relief. Count VII consists of a claim for destruction of Plaintiffs' websites and email accounts. Counts VIII and IX state claim for business libel and slander respectively. Counts X and XI are libel and slander claim with respect to Mr. Soulliere. Counts XII and XVI state a claims for conversion, Count XIII is a claim for fraud and misrepresentation, Count XIV is a claim for tortious interference, Count XV is a claim for unfair competition and breach of fiduciary duty. Count I has since been dismissed on February 24, 2014.

On October 26, 2015, Defendants filed their instant motion for summary disposition of Counts II-VII of the Complaint and for summary disposition of their Counter-Claim. On October 26, 2015, Defendants also filed their instant motion for summary disposition of Counts VIII-XVI. Plaintiffs have since filed responses to both motions and request that they be denied. On November 23, 2015, the Court held a hearing in connection with the motions and took the matters under advisement.

In addition, Plaintiff has filed a motion for summary disposition of "Defendants' Counterclaim". However, upon reviewing the record in this case it does not appear that Defendants have filed a counterclaim in this matter. While Plaintiffs appear to have received a counterclaim, there is no record of it having been filed with the Court. As a result, Plaintiffs' motion with respect to Defendants' counterclaim, as well as Defendants' response, will be denied.

II. Standard of Review

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party has failed to state a claim upon which relief may be granted. *Radtke v Everett*, 442 Mich 368, 373-374; 501 NW2d 155 (1993). A motion under MCR 2.116(C)(10), on the other hand, tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

III. Arguments and Analysis

A. Counts II-IV- Injunctive Relief/Unfair Competition

Counts II-IV seek injunctive relief relating to Defendants' alleged unfair use of Plaintiffs' trade names, proprietary information, websites and emails. In their motion, Defendants contend that they cannot have unfairly competed with Plaintiffs because Plaintiffs ceased operating in spring 2013. Defendants based their contention on Plaintiff Roger Soulliere's testimony that the last time Michigan Skid Loader, Inc., Soulliere Decorative Stone, Inc. and Soulliere's Stone City, Inc. ceased doing business in 2013 although they remain registered and active with the State of Michigan. (See

Defendants' Exhibit 6, at pp. 12-15.) However, Mr. Soulliere also testified that those entities ceased doing business do to Defendants' actions. (Id. at 90.)

The tort of unfair competition may encompass any conduct that is fraudulent or deceptive and tends to mislead the public. *Hayes-Albion v Kuberski*, 421 Mich 170; 364 NW2d 609 (1984). The Michigan Supreme Court has explained the tort of unfair competition as follows:

Unfair competition ordinarily consists in the simulation by one person, for the purpose of deceiving the public, of the name, symbols or devices employed by a business rival, or the substitution of the goods or wares of one person for those of another, thus falsely inducing the purchase of his wares and thereby obtaining for himself the benefits properly belonging to his competitor. The rule generally recognized, that no one shall by imitation or unfair device induce the public to believe that the goods he offers for sale are the goods of another, and thereby appropriate to himself the value of the reputation which the other has acquired for his own product or merchandise.

Clipper Belt Lacer Co v Detroit Belt Lacer Co, 223 Mich 399, 406-407; 194 NW 125 (1923); See also *Janet Travis, Inc. v Preka Holdings, LLC*, 306 Mich App 266; 856 NW2d 206 (2014).

In this case, Plaintiffs have provided evidence that Defendants inquired into copying Plaintiffs' server, that Defendants received emails from Plaintiffs' customers attempting to contact Plaintiffs regarding work. (See Plaintiffs' Exhibits 4 and 5; Defendants' Exhibit 7.) This evidence indicates that Defendants attempted to utilize Plaintiffs name and contact information to obtain business for their own benefit, which depending on who owned those materials, is the exact type of behavior that the tort of unfair competition is intended to remedy. As a result, the Court is convinced that Defendants' motion for summary disposition of Plaintiffs' unfair competition claims (Count II-IV) must be denied.

B. Count VI- Declaratory Relief

Count VI of the Complaint seeks an order declaring that one or more the Plaintiffs are the rightful owner of the trade name "Stone City", certain websites and email accounts. In their motion, Defendants state that they concede that Plaintiffs own the websites and email accounts at issue, and that Plaintiffs "owned Stone City." (See Defendants' Motion, at p.6, ¶24.) Nevertheless, Plaintiffs contend that there remains an actual case and controversy regarding the issue of whether Defendants must cancel their filing with the State of Michigan for the entity "Stone City, LLC." Neither party has addressed the merits underlying this issue. Consequently, the Court is satisfied that summary disposition of the portion of Count VI related to whether the filing for Stone City, LLC must be cancelled must be denied.

C. Count VII- Destruction of Websites and Email Accounts

In their motion, Defendants contend that Count VII fails to state a claim upon which relief can be granted. In their response, Plaintiff provides evidence that they hold the domain registrations for certain websites and email addresses and that the websites were directed to Defendants' pages beginning on February 19, 2013. (See Plaintiffs' Exhibits 3.) However, Plaintiffs have failed to explain the nature of claim they are attempted to bring in Count VII, and have failed to cite to any common law or statute that they contend that Defendants have violated. As a result, Plaintiffs have failed to establish that Count VII states a claim upon which relief can be granted. As a result, the Court is convinced that Defendants' motion for summary disposition of Count VII must be granted.

D. Counts VIII-XI- Defamation (Slander and Libel)

In their motion, Defendants first contend that Plaintiffs have failed to state viable claims of defamation. To state a claim for defamation, a plaintiff must establish: (1) a false and defamatory statement concerning them; (2) unprivileged publication of the statement to third parties; (3) fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement regardless of whether there is a special harm (defamation per se) or the existence of special harm caused by the publication (defamation per quod). *Rouch v Enquirer & News*, 440 Mich 238; 487 NW2d 205(1992) (citations omitted). A plaintiff claiming defamation must plead a defamation claim with specificity by identifying the exact language that the plaintiff alleges to be defamatory. *Thomas M Cooley Law Sch v Doe 1*, 300 Mich App 245, 262-263; 833 NW2d 331 (2013). Defamation has two forms: libel, which is where the statement(s) at issue is written, and slander, where the statement(s) are spoken. *Fisher v Detroit Free Press, Inc.*, 158 Mich App 409, 413; 404 NW2d 765 (1987); *Pursell v Wolverine-Pentronix, Inc.*, 44 Mich App 416, 422; 205 NW2d 504 (1973).

In their motion, Defendants further aver that Plaintiffs' slander claims fail because they fail to plead the very words of the slander. The Michigan Court of Appeals has held that "because a slanderous statement cannot be retained verbatim in many instances since it is spoken, ... it is sufficient if the complaint sets out the substance of the alleged slander and it is not necessary to recite the exact words used." *Pursell*, 44 Mich App at 422; 205 NW2d 504 (1973).

In their response, Plaintiffs identify five different types of statements they allege Defendants made to third-parties. However, the citations to the Complaint with respect

to where those allegations are found in the Complaint are inaccurate. The Court has reviewed the Complaint and the only specific representation that is clearly made in writing is Defendants' alleged misrepresentation that they, rather than Plaintiffs, performed work at Comerica Park and Ford Field. (Complaint, at ¶125.) The Complaint does not specify whether the statement was made verbally and/or in writing and does not identify when or to whom the statement was made. Based on Plaintiffs' failure to identify any verbal statement that were made to third parties, the Court is convinced that Counts IX and XI fail to state claims upon which relief can be granted. As a result, Defendants' motion for summary disposition of those claims must be granted.

With respect to Plaintiffs' libel claims, Defendants contend that the statements at issue cannot form the basis for the claims because the statements are either true or in the form of an opinion.

In the Complaint, Plaintiffs allege that Defendants falsely stated on Michigan Skid Loader, Inc.'s website that the company was changed to Macomb Skid Loader and that the company is under new ownership (Complaint at ¶83(c)) and that Stone City, Inc. was under new ownership (Complaint at ¶83(d)). Further, Plaintiffs allege that Defendants sent Plaintiffs' suppliers vendors, insurers and/or customers letters, email and/or text messages stating: "The previous owner has lost the company- a new owner will be taking over." (See Complaint, at ¶¶ 109-110.) In addition, Plaintiffs state that Defendants made the following statements in an email to one of Plaintiffs' vendors:

Stone City; along with Soulliere Decorative, Michigan Skid Loader, and Soulliere's Stone City, is no longer in business. The banks came in and took over the companies at the end of 2012. The owner, Roger Soulliere, is no longer involved in the business. I am certain that you will be getting information in the mail, if you have not gotten it already.

However; I am pleased to announce that Stone City has been purchased by new owners and will be up and running this spring!! We have had great success with your company in the past and would like the opportunity to work with your company in the future. Please forward me any new credit applications or paperwork that needs to be completed so that we can hit the ground running in the spring. Please contact me if you have any questions regarding Stone City.

Matthew T. Esch
General Manager
Stone City
586-731-4500.

(See Complaint, at ¶¶ 114-117.)

Additionally, Plaintiffs' slander claims are based on a December 21, 2012 letter that includes a statement that Soulliere Decorative Stone will no longer exist and will be dissolving effective 1/1/13. (Id. at ¶122.)

In their response, Plaintiffs aver that the above-referenced statements are in the form of stating facts, that the statements are false as the Plaintiff entities did not dissolve, did not go out of business, and were not taken over by new owners. Defendants have not provided the Court with any evidence that the above-referenced statements were true. While Defendants contend that the statements are at a minimum substantially true, and that substantial truth is a defense to a claim of defamation (See *Masson v New Yorker Magazine, Inc.*, 501 US 496, 516-517 (1991)), Defendants have failed to provide any evidence that the above-referenced statements were substantially true. Further, Plaintiffs have presented evidence establishing that the Plaintiff Entities remains active, retained the same ownership, and did not dissolve. Consequently, the Court is convinced that at a minimum a genuine issue of material fact exists which precludes summary disposition be granted with respect to Counts VIII and X.

E. Counts XII and XVI- Conversion

In their motion, Defendants contend that Plaintiffs' conversion claims fail because they are based, in part, on the alleged taking and retention of Plaintiffs' websites, email accounts and intangible property and Michigan law does not recognize a claim of conversion of such intangible materials.

The doctrine of conversion has not extended beyond the kind of intangible rights which are customarily merged in, or identified with, some document or other tangible property. *Sarver v Detroit Edison Co*, 225 Mich App 580, 586; 571 NW2d 759 (1997). However, ownership of domain names and websites are reduced to a written document in the form of registration documents. Indeed, Plaintiffs have supplied the registration documents for the domain names at issue. (See Plaintiffs' Exhibit 3.) Accordingly, at a minimum the portion of Plaintiffs' conversion claim based on their domain names sufficiently states a viable conversion claim. Further, it is undisputed that Plaintiffs' conversion claim is also based on the alleged taking of Plaintiffs' customer lists, server and business records, and that such items may form the basis for a conversion claim. Accordingly, the only remaining item is Plaintiffs' email accounts. Neither party has established whether email accounts are considered to be intangible or tangible property, nor have they establish whether such accounts, if intangible, are reduced to tangible property. As a result, summary disposition in favor of either party is inappropriate.

F. Count XIII- Fraud and Misrepresentation

In their motion, Defendants assert that Plaintiffs' fraud claim fails because the alleged misrepresentations were not made to Plaintiffs, but rather to third parties. While Plaintiffs does not dispute that all of the alleged misrepresentation were made to third

parties, Plaintiffs assert that a plaintiff may base common law fraud claims on statements made to third parties under the rule set forth by the *United States Supreme Court in Bridge v Phoenix Bond & Indem Co*, 553 US 639 (2008). However, the Court in *Bridge* was addressing whether the plaintiff must be the party who relies on the defendant's fraudulent conduct in the context of a RICO claim for mail fraud. Indeed, the Court specifically noted that "it may be that first-party reliance is an element of a common-law fraud claim." *Id.* at 656. While the Michigan Court of Appeals nor the Michigan Supreme Court has addressed what impact, if any, the holding in *Bridge* has on the common law of this state, the Michigan Court of Appeals has held that "an allegation of fraud based on misrepresentations made to a third party does not constitute a valid fraud claim." *International Broth. Of Elec. Works, Local Union No. 58 v McNulty*, 214 Mich App 437, 447; 543 NW2d 25 (1995). Accordingly, based on the interpretation of the common-law of this state by the Michigan Court of Appeals, this Court is convinced that Plaintiffs' fraud and misrepresentation claims fail as a matter of law since they are all based on statements made to third parties. As a result, Defendants' motion for summary disposition of Plaintiffs' fraud and misrepresentation claim must be granted.

G. Count XIV- Tortious Interference with Contractual Business Relations/Expectancies

In their motion, Defendants contend that Plaintiffs have failed to state a claim for tortious interference with a contractual relationship, and that Plaintiffs' claims for tortious interference with a business expectancy are without merit.

Plaintiffs' complaint includes claims for, *inter alia*, (1) tortious interference with a business relationship or expectancy and (2) tortious interference with a contract.

Tortious interference with a contract and tortious interference with a business relationship or expectancy are separate and distinct torts under Michigan law. *Health Call of Detroit v Atrium Home & Health Care Services, Inc.*, 268 Mich App 83, 89; 706 NW2d 843 (2005). The Court in *Health Call* summarized the elements needed to establish the torts as follows:

The elements of tortious interference with a contract are (1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant. *Id.* at 89. In the Complaint, Plaintiffs allege that Defendants' actions have interfered with contractual relationships they had with their customers and vendors, that as a result of Defendants' actions the contracts at issue have been breached, disrupted and/or terminated, and that as a result Plaintiffs have suffered damage. (See Complaint, at ¶¶ 304-318.) The Court is satisfied that such allegations sufficiently plead a claim for tortious interference with a contract. Consequently, Defendants' motion for summary disposition of Plaintiffs' tortious interference with contractual relations pursuant to MCR 2.116(C)(8) must be denied.

Defendants also contend that Plaintiffs' tortious interference with a business expectancy claim lacks merit. The elements of tortious interference with a business relationship or expectancy are (1) the existence of a valid business relationship or expectancy that is not necessarily predicated on an enforceable contract, (2) knowledge of the relationship or expectancy on the part of the defendant interferer, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resulting damage to the party whose relationship

or expectancy was disrupted. *Health Call*, 268 Mich App at 89-90 [internal citations omitted].

In their motion, Defendants first contend that they had a right to utilize Plaintiffs' customer lists because they purchased the rights to the lists from First Bank. In response, Plaintiffs claim that First Bank released any claim it had to Plaintiffs' general intangibles, and that as a result Defendant could not have purchase the right to utilize the customer lists and other intangible property at issue. Paragraph 7 of the Surrender Agreement defines the business collateral that First Bank had a right to seize from the Plaintiff Entities, except Soulliere's Stone City, Inc. (See Defendants' Exhibit 1.) Paragraph 7 then goes on to include, in addition to various categories of tangible assets, "general intangibles (including without limitation permits, licenses, franchises, accounts, telephone numbers, trade names and assumed names).....and all hard and electronic records (including without limitation customer lists)." (Id.) The Surrender Agreement then defines "Recovered Business Collateral" as the collateral being seized by First Bank. The Surrender Agreement includes the following as "Recovered Business Collateral":

- (1) Various trucks;
- (2) Various skid loaders,
- (3) All machinery, tools, vehicles, tractors, skid loaders, trailers, and all other equipment that is located on Parcel 2 or 5 and owned by any Debtor, including, but not limited to all computers, furniture and fixtures, machinery and equipment, transportation equipment, autos and trucks, office electronics and other vehicles.....
- (4) All personal property assets of said Debtor, wherever located, and used on or in the maintenance and operating of the business activity conducted on Parcel 2 and/or Parcel 5.

(Id. at ¶ 8.)

The Surrender Agreement also provides that: “After identifying and accepting the Recovered Business Collateral, the remaining Controlled Business Collateral not otherwise included as Recovered Business Collateral shall be released by [First Bank] to [Plaintiff Entities] without further liens or claims.” (Id. at ¶8.)

In their response, Defendants contend that they obtained the rights to the Plaintiff Entities' general intangibles despite the fact that they were not contained with definition of Recovered Business Collateral because paragraph 14 requires the Plaintiff Entities to assemble all of the Recovered Business Collateral for inspection and inventory prior to the release of First Bank's rights to the general intangibles. However, paragraph 14 does not require the Plaintiff Entities to do anything; rather, paragraph 14 unambiguously provides that after First Bank identifies and accepts the Recovered Business Collateral it would release its liens and/or claims on the remaining Controlled Business Collateral, which includes the general intangibles at issue in this case. (Id.) Consequently, the Court is convinced that Defendants' contention that Plaintiff failed to complete a condition precedent to First Bank releasing its claims/liens is without merit. Nevertheless, the Court is convinced that summary disposition on this issue is not warranted as neither side has provided the Court with any evidence as to whether First Bank ever identified and inventoried the Recovered Business Collateral or released its liens/claims against the general intangibles at issue. Consequently, the material issue that will determine whether First Bank's right to seize the general intangibles at issue remains open and precludes summary disposition.

In addition, Plaintiffs assert that First Bank released its right to their intangibles as a result of ¶14 of the Surrender Agreement. Specifically, Plaintiffs rely on the following portion of ¶14:

[Plaintiff Entities] hereby acknowledge and agree that [their] respective businesses are not being seized by [First Bank] in connection with this Agreement. The recovery of assets by [First Bank] shall be limited to the recovery and transfer of Cash Accounts, recovery of payments from Unpaid Accounts Receivable Accounts, conveyance of PARCELS 1 through 5, the collection of Recovered Business Collateral and the collection and sale of Controlled Inventory. [First Bank] releases all claims against the businesses and trade names of the respective [Plaintiff Entities].

(See Defendants' Exhibit 1, at ¶14.)

At issue is the last sentence of the above-referenced portion of ¶14. In that sentence First Bank released its rights to the Plaintiffs' Entities' trade names and businesses. While the parties do not dispute what was encompassed in the term "trade names", they dispute what assets are included within the term "businesses". Specifically, the parties contest whether the Plaintiff Entities' intangible property was included.

A contract is ambiguous where a term is equally susceptible to more than one meaning or two provisions irreconcilably conflict. *Coates v. Bastian Bros, Inc.*, 276 Mich App 498, 503; 741 NW2d 539 (2007). In this case, the term "businesses" is not defined, and the term could be interpreted to include, or not include, the intangible property at issue. Accordingly, the term is capable of being interpreting in more than one way, and is therefore ambiguous. If the contract is ambiguous and summary disposition depends on the meaning of the contract, summary disposition is inappropriate because factual development is necessary to determine the contracting parties' intent. *SSC Assoc. Ltd.*

Partnership v. Gen. Retirement Sys., 192 Mich App 360, 363; 480 NW2d 275 (1991). In this case, the term “businesses” is ambiguous. As a result, the Court is unable to make a determination as to who owns the intangible property at issue. Consequently, Defendants’ motion for summary disposition of Plaintiff’s tortious interference with a business expectancy claim on the basis that they own the intangible property at issue must be denied.

Defendants also assert that Plaintiffs did not have any legitimate business expectancies with their customers after the date their assets were seized. Business expectancy must be a reasonable likelihood, more than mere wishful thinking. *Trepel v Pontiac Osteopathic Hospital*, 135 Mich App 361, 377; 354 NW2d 341 (1984). In this case, Mr. Soulliere testified that his intent was to downsize operations following the seizure but continue to operate. However, Plaintiffs have failed to identify any particular expectancy that they had for future business, especially given that most of their physical assets had been seized. Consequently, the Court is satisfied that Plaintiffs tortious interference with a business expectancy must be dismissed as they have failed to establish that such expectancies were anything more than wishful thinking.

G. Count XV- Unfair Competition and Breach of Fiduciary Duty

In their motion, Defendants contend that they are entitled to summary disposition of Plaintiffs’ breach of fiduciary duty claim as former employees do not owe their former employee a duty of loyalty. In response, Plaintiffs contend that the individuals at issue were high ranking employees that were entrusted with Plaintiffs’ confidential information and other sensitive information. However, Plaintiffs have failed to cite to any authority whatsoever that imposes a fiduciary duty on a former employee to their former

employer, even where that individual held a high-ranking position. In this case, Plaintiffs could have protected the information at issue by utilizing non-solicitation, non-disclosure, non-competition or other contractual protections in an effort to protect the information that they now complain Defendants utilized. However, Plaintiffs did not protect themselves by using any of those mechanisms and have failed to cite to any authority imposed by statute or common law that provide those safeguards. As a result, the Court is convinced that Plaintiffs have failed to establish that their breach of fiduciary duty claims constitute viable claims under the laws of Michigan. As a result, Defendants' motion for summary disposition of Plaintiffs' breach of fiduciary duty claims must be granted.

IV. Conclusion

For the reasons discussed above, Plaintiffs' motion for summary disposition as to Defendants' counterclaim is DENIED as no counterclaim has been filed with the Court. In addition, Defendants' motions for summary disposition is GRANTED, IN PART, and DENIED, IN PART. Specifically:

- 1) Defendants' motion for summary disposition of Plaintiffs' claims for injunctive relief based on unfair competition (Count II-IV) is DENIED;
- 2) Defendants' motion for summary disposition of Plaintiffs' claim for declaratory relief (Count VI) is DENIED;
- 3) Defendants' motion for summary disposition of Plaintiffs' claim for destruction of email accounts and websites (Count VII) is GRANTED;
- 4) Defendants' motion for summary disposition of Plaintiffs' slander claims (Counts VIII and X) is DENIED;
- 5) Defendants' motion for summary disposition of Plaintiffs' libel claims (Counts IX and XI) is GRANTED;

- 6) Defendants' motion for summary disposition of Plaintiffs' conversion claims (Counts XII and XVI) is DENIED.
- 7) Defendants' motion for summary disposition of Plaintiff's fraud and misrepresentation claim (Count XIII) is GRANTED;
- 8) Defendants' motion for summary disposition of Plaintiff's tortious interference claims (Count XIV) is GRANTED, IN PART and DENIED, IN PART. Defendants' motion is GRANTED with respect to Plaintiffs' claim of tortious interference with a business expectancy and DENIED with respect to Plaintiffs' claim of tortious interference with a contractual relationship; and
- 9) Defendants' motion for summary disposition of the portion of Count XV based on breach of fiduciary duty is GRANTED.

Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

Date: FEB 02 2016

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge