**STATE OF MICHIGAN**
**IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

Holcomb Contracting, LLC

Plaintiff /Counter-Defendant

v.

Case No. 25-014687-CB
Hon. David J Allen

Thomas James Mertz

Defendant / Counter-Plaintiff

and

Thomas James Mertz Jr.

Cross-Plaintiff

v

Andrew Casazza, Eugene Casazza IV, Jared Cantin, and John Walton

Cross-Defendants

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**OPINION AND ORDER GRANTING IN PART AND DENYING IN PART CROSS- DEFENDANT'S MOTION FOR SUMMARY DISPOSITION**

This case arises from a dispute between Cross-Plaintiff Mertz and Holcomb along with the Cross-Defendant members over Mertz' expulsion from Holcomb. Pending before this Court is Cross-Defendants' motion for summary disposition seeking to dismiss the Cross-Complaint. After having reviewed the motions, responses, and replies, and otherwise being fully advised in the premises, the Court is GRANTING in part and DENYING in part Cross-Defendant's motion for summary disposition for the reasons stated herein. This decision shall apply to the Counter-Complaint and Cross-Complaint.

## BACKGROUND

For many years, Cross-Plaintiff Thomas Mertz was a design architect practicing as "Mertz Design, LLC" working on custom residential and commercial design projects. Cross-Defendants Andrew Casazza ("A Casazza") and Eugene Casazza IV ("E Casazza") (collectively "Casazza Brothers") and Mertz began discussing opening and operating a new construction firm. Mertz alleges the Casazza Brothers indicated that if Mertz were to join them, he would be "solely responsible for all architectural design services and client relations." Therefore, Mertz and the Casazza Brothers formed Holcomb Contracting, LLC ("Holcomb") in November 2018 with each member holding 1/3 membership interest.

A Casazza served as the Company's manager. Mertz was responsible for the designs and client relations and the Casazza Brothers performed constructions. In 2019, Cross-Defendant John Cantin joined as a fourth member by unanimous consent.

In 2020, Mertz alleges the Casazza Brothers began misusing Holcomb's personnel, assets and resources to their benefit including using personal credit cards for business purchases and diverting resources to purchase and make renovations to homes. The Casazza Brothers denied Mertz's request for business records. In 2022, the Company hired John Walton as "controller" to assist with finances. Walton was eventually admitted as a member through the Amended and Restated Operating Agreement ("Amended OA"). Mertz alleges he was not consulted when Walton was hired nor did he vote on his membership.

Mertz alleges the members' continued misusing funds and resources to make updates to their personal residences or other personal endeavors. In February 2024, A Casazza directed Walton to migrate Holcomb's domains to a Microsoft-based server, including the domain name "mertzdesign.com" which Mertz alleges he owns.

In October 2024, Holcomb expelled Mertz by Consent Resolution executed by A Casazza, E Casazza, Cantin, and Walton. Mertz alleges he was not notified of the vote. Following the expulsion, Holcomb proposed a separation agreement in which Mertz rejected the closing statement and instead demanded a payout. Mertz alleges after expelling him from Holcomb, the Cross-Defendants made several statements to third parties that he embezzled and stole from Holcomb.

Holcomb brought a lawsuit requesting declaratory judgment seeking confirmation of the expulsion, enforcement of the valuation, and the binding effect of the buyout mechanism under the Operating Agreement. In response, Mertz filed a Counter-Complaint against Holcomb and Cross-Complaint against the remaining members. Cross-Defendants brought forth a motion for summary disposition seeking this Court dismiss Mertz' Cross-Complaint.

## STANDARD OF REVIEW

A motion brought under MCR 2.116(C)(8) "tests the legal sufficiency of the complaint on the basis of the pleadings alone." *Beaudrie v Henderson*, 465 Mich 124, 129 (2001). "All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the non-movant." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999); *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). "A motion under MCR 2.116(C)(8) 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.'" *Wade* at 163. When deciding a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5).

## ANALYSIS

### A. Count I – Breach of Operating Agreement

Mertz alleges Cross-Defendants breached the Operating Agreement "by admitting Walton as a member without the unanimous vote required; refusing to grant Mertz' access to Holcomb's books, records and financials; failing to provide annual reports and ax information; failing to distribute profits pro rata; and diluting Plaintiff's member interest." Cross-Defendants allege they are entitled to summary disposition due to Mertz' failure to attach the Operating Agreement to the Cross-Complaint in violation of MCR 2.113(C). The failure to attach the Operating Agreement, however is not a violation of MCR 2.113(C) as the Operating Agreement was attached to the original Complaint Holcomb filed in this action.

Further, Cross-Defendants allege Mertz does not have standing to sue as to the Operating Agreement as he is no longer a member of Holcomb. Michigan Courts have not directly ruled as to whether or not former members have standing to sue for breach of operating agreement, however, this Court is persuaded by Mertz's argument that even if this Court finds he was effectively expelled prior to this lawsuit, he is entitled to enforce his rights under the Operating Agreement as his claims relate to conduct that occurred during his membership period. Ruling otherwise would be contradictory to the general policy against using expulsion to avoid liability. Mertz' has standing to sue for breaches of the operating agreement which occurred while he was a member. Therefore, this Court is **DENYING** summary disposition as to **breach of operating agreement**.

**B. <u>Counts II, IV, and V rest on Membership</u>**

Cross Defendants seek to dismiss Counts II, IV, and V alleging Mertz was not a member at the time of filing the lawsuit. As discussed *supra*, it is contested whether Holcomb and its members effectively ousted Mertz thereafter. At this stage, the Court is not prepared to make such a factual determination and therefore, this Court is **DENYING** summary disposition as to Counts

**II, IV, and V**. Mertz has leave to file an amended counter/cross-complaint for the limited purpose of amending Count II to state the proper statute within 7 days.

### C. <u>Count III – Breach of Fiduciary Duty and Self-Dealing</u>

To establish a claim for a breach of fiduciary duty, a plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty, and (3) damages caused by the breach of duty. *Highfield Beach at Lake Michigan v Sanderson*, 331 Mich App 636, 666; 954 NW2d 231 (2020). The Michigan Limited Liability Company Act (MLLCA) provides an LLC manager owes fiduciary duties to the company. MCL 450.4404(1). It is well-established that such duties are owed to the entity itself and not its individual members. *Frank v Linkner*, 310 Mich App 169, 180-81; 871 NW2d 363 (2015) (citations omitted). Neither the manager of Holcomb nor the other members owed any fiduciary duty to Mertz as a member. Therefore, this Court is **GRANTING** summary disposition as to Mertz' **breach of fiduciary duty and self-dealing claim**.

### D. <u>Count VI – Unjust Enrichment</u>

"Unjust enrichment is a cause of action to correct a defendant's unjust retention of a benefit owed to another." *Wright v Genesee Cnty*, 504 Mich. 410, 417-18, 934 N.W.2d 805, 809 (2019) (citation omitted). A claim of unjust enrichment can arise when a party retains money or benefits which in justice and equity belong to another." *Id.* (citation and quotations omitted). "The remedy for unjust enrichment is restitution." *Id.* (citation omitted).

Michigan courts have held that an unjust enrichment claim cannot proceed where an express contract governs the same subject matter, *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003); *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 N.W.2d 791 (1993). Mertz's claims for unjust enrichment fails as the Operating Agreement governs the wrongful acts alleged. Therefore, this Court is **GRANTING** Cross-Defendants' motion for summary disposition as to Mertz' **unjust enrichment claim.**

**E. <u>Count VII and VIII– Conversion Claims</u>**

Mertz brings a common law and statutory conversion claim for taking possession of mertsdesigns.com, which he claims to own in his pleadings. Under common law, conversion is any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein. *Aroma wines & Equip Inc v Columbian Dist Servs*, 497 Mich 337, 346; 871 NW2d 136 (2015). A claim for statutory conversion requires the claiming party meet all the elements of common law conversion and show the conversion was for the defendant's own use as required by MCL 600.2919a(1)(a). *Magley v M & W Inc*, 325 Mich App 307, 324 n 3; 926 NW2d 1 (2018).

Cross-Defendants allege Mertz' claims for conversion fail because a domain name is an intangible property and can only be eligible for conversion if "tangible proof of ownership" is provided. Michigan Courts recognize conversion of intangible property only in cases where such property is "represented by or connected with something tangible" or "expressed in a legally protected manner." *Sarver v Detroit Edison Co*, 225 Mich App 580, 586, 588; 571 NW2d 759 (1997).

At this stage, Mertz' claim that he owns the domain name is enough to survive summary disposition under MCR 2.116(C)(8) as to both common law and statutory conversion. Further, Mertz claim that Cross-Defendants benefited from the use of the domain name is also enough to survive summary disposition under MCR 2.116(C)(8). Therefore, this Court is **DENYING** Cross-Defendants' motion for summary disposition as to **common law and statutory conversion** as any decision at this stage is premature.

### F. **<u>Count IX – Defamation</u>**

Cross-Defendants allege Mertz's claim for defamation should fail as it does not meet the specificity requirements under Michigan law.

> In Michigan, a defamation claim requires proof of four elements:
>
> "(1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged communication to a third party, (3) fault amounting at least to negligence on the part of the publisher, and (4) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by publication."

*Sarkar v Doe*, 318 Mich App 156, 178; 897 NW2d 207 (2016) (citations omitted).

Whether a statement is capable of defamatory meaning is a preliminary question of law for the court to decide. *Id.* A claim of defamation must be specifically pled as to the "particular defamatory words complained of, the connection of the defamatory words with the plaintiff where such words are not clear or are ambiguous, and the publication of the alleged defamatory words." *Ledl v Quik Pik Food Stores, Inc*, 133 Mich App 583, 589; 349 NW2d 529 (1984). The dates and places of the alleged defamation must be specifically pleaded. *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 77; 480 NW2d 297 (1991). Such particularity in pleading is required to give defendants reasonable notice of a claim in accordance with the notions of fair play and substantial justice. *Royal Palace Homes, Inc v Channel 7 of Detroit, Inc*, 197 Mich App 48, 54; 495 NW2d 392 (1992).

Here, Mertz alleges four instances of defamation.

1. "On or before June 6, 2025, A Casazza told Emily Stieber, that "Jamie stole from every client around town, embezzled from the company, can't be trusted and deserves everything he has coming to him."

2. On October 31, 2024, Cantin stated to a third party by a text communication that "Jamie embezzled $50,000 from the company . . . We fired him and then found the evidence."
3. In November 2024, E Casazza told Jessica Vore that Jamie stole from the company
4. Sometime in February to April 2025, A Casazza told the attorney for Detroit Gas Burner . . . that "Jamie was just a designer and not a partner in the company."

Statements 1, 3, and 4 are deficient as they do not provide where (or by what means) the statement was delivered. Statement 2 is sufficient. Although it references "a third party," it provides sufficient notice to the Cross-Defendants as it references a text message, the context, and the particular date. Therefore, this Court is **GRANTING in part** Cross-Defendants' motion for summary disposition as to **statements 1, 3, and 4;** and **DENYING in part** Cross-Defendants' motion as to **statement 2**.

**G. Count X - Civil Conspiracy / Concerted Action**

A civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose by criminal or unlawful means. *Feaheny v Caldwell*, 175 Mich App 291, 307; 437 NW2d 358 (1989): *Advocacy Org v Auto Club Ins Assoc*, 257 Mich App 365, 384; 670 NW2d 569 (2003). A claim for civil conspiracy requires plaintiff maintain a separate, actionable tort. *Early Detection Center PC v New York Life Ins Co*, 157 Mich App 618, 632; 403 NW2d 830 (1986); A*dvocacy Org*, 257 Mich App at 384. The pleadings must include specific factual allegations showing concerted action and not be "purely conclusory in nature". *Mercurio v Huntington Nat'l Bank*, 347 Mich App 662; 16 NW3d 748 (2023)

Here, Mertz' claims for conversion and defamation survive (in part) summary disposition. However, Mertz fails to sufficiently and specifically plead civil conspiracy. The Complaint speaks in very general terms and only alleges violations of "duties" Cross-Defendants may have owed to Plaintiff which do not rise to the level of criminality or illegality required under a civil conspiracy claim. Therefore, this Court is **GRANTING** Cross-Defendants' motion for summary disposition as to **civil conspiracy.**

## CONCLUSION

IT IS HEREBY ORDERED that this Court is GRANTING Cross-Defendants' motion for summary disposition as to Counts III, VI, and X; DENYING Cross-Defendants' motion for summary disposition as to Counts I, II, IV, V, VII, VIII; and GRANTING in part and DENYING in party Count IX.

IT IS FURTHER ORDERED Plaintiff has 7 days to file an Amended Counter/Cross-Complaint for the limited purpose of amending Count II to state the proper statute.

IT IS SO ORDERED.

This is not a final order and this case remains open.

/s/ David J. Allen
March 9, 2026

Hon. David J. Allen
Circuit Court Judge