STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

BARCUME FAMILY TAX SERVICE, LLC,
a Michigan Corporation,

Plaintiff, Case No. 2025-001787-CB

vs.

GORDON GASCHE, an individual,
and GEG TAX & ACCOUNTING,
a Michigan limited liability company,

Defendants.
_____/

OPINION AND ORDER

Plaintiff Barcume Family Tax Service, LLC ("Plaintiff") has filed a motion for summary disposition of counterclaim for defamation and slander pursuant to MCR 2.116(C)(7), (8), and (10). Defendants Gordon Gasche ("Defendant Gasche") and GEG Tax & Accounting ("Defendant GEG") (collectively, "Defendants") have filed a response in opposition to the motion.

I. Factual and Procedural History

Plaintiff is a family owned tax business. Plaintiff's principals are Troy Barcume ("Troy") and Marty Barcume ("Marty"). Plaintiff employed Defendant Gasche from approximately 2013 to 2023 as an independent contractor who provided tax preparation services for Plaintiff's clients. Defendant Gasche quit on December 21, 2023. Plaintiff alleges that Defendant Gasche wrongfully solicited thousands of Plaintiff's clients. Defendant Gasche alleges that Plaintiff has defamed him.

On April 28, 2025, Plaintiff filed its five count complaint in this matter alleging the following: count I – breach of 2022 agreement against Defendant Gordon Gasche, count II – breach of 2023 agreement against Defendant Gordon Gasche, count III – tortious interference against all

Defendants, count IV – defamation against all Defendants, and count V – unfair competition against all Defendants. On May 19, 2025, Defendants filed their counterclaim for defamation and slander.

On June 9, 2025, Plaintiff filed the instant motion for summary disposition of counterclaim for defamation and slander pursuant to MCR 2.116(C)(7), (8), and (10). On July 14, 2025, Defendants filed a response in opposition to the motion. On July 21, 2025, this Court heard the motion and took the matter under advisement.

II. Standards of Review

MCR 2.116(C)(7) permits summary disposition where the claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action. In reviewing a motion under MCR 2.116(C)(7), the Court accepts as true the plaintiff's well-pleaded allegations, construing them in the plaintiff's favor. *Hanley v Mazda Motor Corp*, 239 Mich App 596, 600; 609 NW2d 203 (2000). The Court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed or submitted by the parties when determining whether a genuine issue of material fact exists. *Id.* Where a material factual dispute exists such that factual development could provide a basis for recovery, summary disposition is inappropriate. *Kent v Alpine Valley Ski Area, Inc*, 240 Mich App 731, 736; 613 NW2d 383 (2000). Where no material facts are in dispute, whether the claim is barred is a question of law. *Id*

"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 on which relief can be granted." *Carter v Ann Arbor City Attorney*, 271 Mich App 425, 426-427; 722 NW2d 243 (2006). "A motion for summary

disposition 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; 631 NW2d 308 (2001). "In assessing a motion brought under MCR 2.116(C)(8), all factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts." *Carter*, 271 Mich App at 427. "Conclusory statements, unsupported by factual allegations, are insufficient to state a cause of action." *Churella v Pioneer State Mut Ins Co*, 258 Mich App 260, 272; 671 NW2d 125 (2003). "The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery." *Cork v Applebee's of Michigan, Inc*, 239 Mich App 311, 315; 608 NW2d 62 (2000).

A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). The Court reviews a "motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). "A litigant's mere pledge to establish an issue of fact at trial cannot survive summary disposition under MCR 2.116(C)(10)." *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). "The court rule plainly requires the adverse party to set forth specific facts at the time of the motion showing a genuine issue for trial." *Id.* "Summary disposition under MCR 2.116(C)(10) is appropriately granted if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Greene v AP Products, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006). "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds could differ. *Debano-Griffin v Lake Co*, 493 Mich 167, 175; 828 NW2d 634 (2013).

III. Arguments and Analysis

Plaintiff argues that it is entitled to summary disposition on Defendants' counterclaim for defamation and slander. "The elements of a defamation claim are: (1) 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 statements irrespective of special harm (defamation per se) or the existence of special harm caused by publication." *Mitan v Campbell*, 474 Mich 21, 24; 706 NW2d 410 (2005).

"These elements must be specifically pleaded, including the allegations with respect to the defamatory words, the connection between the plaintiff and the defamatory words, and the publication of the alleged defamatory words." *Gonyea v Motor Parts Federal Credit Union,* 192 Mich App 74, 77; 480 NW2d 297 (1991). "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 School v Doe 1,* 300 Mich App 245, 262; 833 NW2d 331 (2013). In Michigan, "[t]he period of limitations is 1 year for an action charging libel or slander." MCL 600.5805(11).

In this case, Defendants' counterclaim simply alleges that "[u]pon information and belief, Counter-Defendant and its principals are telling third-parties that Gordon Gasche is going to jail." See Defendants' Counterclaim, p. 1. In support of its motion for summary disposition, Plaintiff points to the affidavits of its principals, which both state, in relevant part:

> 2. I am a member of Barcume Family Tax Service, LLC (BFTS).
>
> ***
>
> 5. I have reviewed the counterclaim, including the contention in ¶ 2 that 'Upon information and belief, [BFTS] and its principals are telling third-parties that Gordon Gasche is going to jail.'

6. I have made no written or verbal statements to any third-parties that Gordon Gasche is going to jail.

7. Further, I have made no written or verbal statements to any third-parties that Gordon Gasche committed a crime or engaged in criminal activity.

8. I have also made no written or verbal statements to any third-parties that Gordon Gasche has been charged with any crimes.

See Plaintiff's Exhibit A - Marty's Affidavit, p. 1 and Plaintiff's Exhibit B - Troy's Affidavit, p. 1.

Further, as is noted by Plaintiff, Defendants' counterclaim provides no dates or timeframes for when the alleged defamation occurred and no information as to who the statements were allegedly made to. Defendants have failed to specifically plead the publication of the alleged defamatory words and have also failed to establish that the alleged defamation occurred within the applicable one year statute of limitations. See *Gonyea*, 192 Mich App at 77 and MCL 600.5805(11). For these reasons, this Court finds that Defendants have failed to properly plead their counterclaim for defamation and slander. Accordingly, Plaintiff's motion for summary disposition of counterclaim for defamation and slander is granted.

IV. Conclusion

For the reasons set forth above, Plaintiff's motion for summary disposition of counterclaim for defamation and slander is GRANTED. Pursuant to MCR 2.602(A)(3), this Opinion and Order neither resolves the last pending claim nor closes the case.

IT IS SO ORDERED.

Richard L. Caretti

Circuit Court Judge

Dated: September 9, 2025

cc: Jason M. Shinn, Esq.
James J. Sarconi, Esq.

COUNTY OF MACOMB · STATE OF MICHIGAN