STATE OF MICHIGAN
IN THE OAKLAND COUNTY CIRCUIT COURT

KALABAT CAPITAL GROUP, LLC,

Plaintiff,

v.

MARY DANIAL, KALE ROSCOE, RSR HOLDING, LLC, and KERALA HOLDINGS, LLC,

Defendants.

Case No. 25-214829-CB

Hon. Victoria A. Valentine

MARY DANIAL, RSR HOLDING, LLC, KERALA HOLDINGS, LLC, and MEDICAL DEVELOPMENT COMPANY, LLC,

Counter-Plaintiffs/Cross-Plaintiff,

v.

KALE ROSCOE, JAMAL KALABAT, and KALABAT CAPITAL GROUP, LLC,

Cross-Defendant/Counter-Defendants.

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OPINION AND ORDER REGARDING THE COUNTER-DEFENDANT'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(7) AND MCR 2.116(C)(8)

At a session of said Court, held in the
County of Oakland, State of Michigan
November 21, 2025

HONORABLE VICTORIA A. VALENTINE

This matter is before the Court on Counter-Defendant's Motion for Summary Disposition pursuant to MCR 2.116(C)(7) and (C)(8), which requests dismissal of all the counterclaims seeking monetary damages from Jamal Kalabat[1] on the basis that the claims brought against him fail as a matter of law and are time-barred. The Counter-Plaintiffs filed a Response to which Counter-Defendant filed a Reply. The Court has reviewed the Parties' submissions and heard oral arguments. For the reasons below, the Court DENIES Counter-Defendant's Motion.

OPINION

I. BACKGROUND

A. Factual Overview

Cross-Plaintiff Medical Development Company, LLC ("MDC") was formed in 1997 for the purposes of purchasing, developing, leasing, managing, and/or selling a 33-acre parcel of land located at 3712 South Lapeer Road, Orion Township, Michigan (the "Property").[2] At the time of LLC formation, the members of MDC were Counter-Defendant Kerala Holdings Inc. ("Kerala"), Cross-Defendant Kale Roscoe ("Roscoe"), and Rick Bellestri, each owning one third of the Company.[3] However, as a result of a prior lawsuit and settlement between MDC, RSR Holding LLC, Kerala Holdings Inc. and Mary Danial (the "Danial Parties") and Roscoe, Roscoe agreed to assign any right,

[1] See Counterclaim, Counts I, III-IV, and VII-VIII.
[2] Counterclaim, ¶ 6.
[3] *Id*. ¶ 18.

title, and interest he has in MDC to the Danial Parties.[4] That settlement was agreed to by Roscoe under oath and was entered on the record in the Business Court before the Honorable Martha Anderson on May 2, 2019 ("May 2 Settlement").[5] As a result of the May 2 Settlement, the three rightful owners of MDC were at the time of the settlement and are today: RSR Holding, LLC ("RSR"), Kerala Holdings, Inc. ("Kerala"), and Mary Danial, each of whom own one-third of MDC.[6]

Post-settlement, Roscoe wrongfully began to hold himself out as a member in MDC again, all of which was unknown to the Danial Parties.[7] Around July 2024, notwithstanding the fact Roscoe no longer owned any interest in MDC, he inexplicably and wrongfully sold 100% of the membership interests in MDC to Counter-Defendant Jamal Kalabat ("Kalabat").[8] Kalabat was aware of Roscoe's prior assignment of his interest in MDC and the Danial Parties' interest therein, but proceeded to wrongly purchased Roscoe's bogus "interest" in MDC.[9]

In September 2024, Kalabat, in MDC's name, deeded the Property to his own independent company, Kalabat Capital Group, LLC (Plaintiff or "KCG"), for one dollar in a deceptive attempt to distance himself and the Property from the source of his purported ownership, Roscoe.[10] MDC acquired the Property for approximately $1.2 million in 1997, and the Property is effectively MDC's sole asset.[11]

The Danial Parties discovered the fraudulent transfers to Kalabat when they did not receive a winter 2024 property tax bill for the Property.[12] When they contacted Orion Township to inquire as to where the tax bill was in February 2025, the Township informed them that the bill had been sent

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[4] *Id*. ¶ 2.
[5] *Id*.
[6] *Id*.
[7] *Id*. ¶ 3.
[8] *Id*.
[9] *Id*.
[10] *Id*.
[11] *Id*.
[12] *Id*. ¶ 4.

to the new owner - KCG.[13] At the same time, the Township provided the Danial Parties with a copy of the fraudulent deed from MDC to KCG.[14] This was the first time the Danial Parties learned of the fraudulent transfers.[15] Surprised and confused, the Danial Parties contacted Kalabat's lawyers who were identified on the deed, and informed counsel of their prior settlement with Roscoe and the fact that Kalabat had no right to transfer the Property on MDC's behalf.[16] The Danial Parties demanded a return of the Property to MDC, but Kalabat refused.[17] Thereafter, the Danial Parties began preparing a Complaint to be filed against Roscoe, Kalabat, and KCG regarding this dispute.[18] During their litigation preparation, the Danial Parties discovered from a docket search that KCG had already filed a Complaint and instituted the present action.[19]

Accordingly, the Danial Parties filed a ten-count Counterclaim/Cross-claim against Cross-Defendant Kale Roscoe and Counter-Defendants Kalabat and KCG for Declaratory Judgment (Count I), Breach of Contract/Settlement (Count II), Common Law Conversion (Count III), Statutory Conversion (Count IV), Silent Fraud (Count V), Fraudulent Misrepresentation (Count VI), Tortious Interference with a Contract (Count VII), Civil Conspiracy (Count VIII), Quiet Title (Count IX), and Fraudulent Concealment (Count X).

Counter-Defendant Kalabat now files this (C)(7) and (C)(8) motion, arguing that claims brought against him fail as a matter of law and are time-barred.

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[13] *Id*.
[14] *Id*.
[15] *Id*.
[16] *Id*.
[17] *Id*.
[18] *Id*.
[19] *Id*.

II. STANDARDS OF REVIEW

Summary disposition under MCR 2.116(C)(7) is appropriate where, among other things, the claim is barred because of the "statute of limitations." Although not a requirement, "[a] party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence. *Maiden v Rozwood*, 461 Mich 109, 119 (1999). The court must accept the plaintiff's well-pleaded allegations as true, except those contradicted by documentary evidence. *Oliver v Smith*, 290 Mich App 678, 683 (2010). "If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. If a factual dispute exists, however, summary disposition is not appropriate." *RDM Holdings, LTD v Continental Plastics Co*, 281 Mich App 678, 687 (2008).

A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, not whether the complaint can be factually supported. *El-Khalil v Oakwood Healthcare, Inc,* 504 Mich 152, 159-160 (2019); *Pawlak v Redox Corp*, 182 Mich App 758 (1990). A motion for summary disposition based on the failure to state a claim upon which relief may be granted is to be decided on the pleadings alone. *Bailey v Schaaf*, 494 Mich 595, 603 (2013); *Parkhurst Homes, Inc v McLaughlin,* 187 Mich App 357 (1991). Exhibits attached to pleadings may be considered under MCR 2.116(C)(8) because they are part of the pleadings pursuant to MCR 2.113(C). *El-Khalil*, 504 Mich at 163. Matters of public record may also be considered. MCR 2.113(C)(1)(a). See also *Dalley v Dykema Gossett*, 287 Mich App 296, 301 n 1 (2010) (court documents are matters of public record that may be considered on a motion under MCR 2.116(C)(8)).

"All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Maiden*, 461 Mich at 119; *Wade v Dep't of Corrections*, 439 Mich 158, 162 (1992). Summary disposition is proper when the claim is so clearly unenforceable as a matter of law that no factual development can justify a right to recovery. *Parkhurst Homes*, 187 Mich App at 360; *Spiek v Dept of Transportation*, 456 Mich 331, 337 (1998).

"[T]he mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to state a cause of action." *ETT Ambulance Serv Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395 (1994).

III. DECLARATORY RELIEF CLAIM

A. Arguments

Kalabat asserts that a request for declaratory relief is a remedy and not a cause of action.[20] Kalabat argues that to the extent that the Danial Parties seek to assert a separate claim for declaratory relief that seeks monetary damages from him, Count I should be dismissed as to Kalabat.

The Danial Parties note that the caselaw cited by Kalabat for the proposition that a declaratory judgment request cannot be asserted as a separate claim, is out of context and ignores a crucial fact – the Courts in both cases held that it was reversible error for the trial courts to have dismissed those declaratory judgment actions on such an overly technical basis.[21] Moreover, it is hypocritical for

[20] Kalabat cites *Mich Head & Spine Inst, PC v Mich Assigned Claims Plan*, 331 Mich App 262, 275 (2019), quoting *Wiggins v City of Burton*, 291 Mich App 532, 561 (2011) ("Although it has become commonplace in this state for a plaintiff to assert a request for declaratory relief as a separately labeled cause of action within his or her complaint, this is technically improper because 'declaratory relief is a remedy, not a claim.")
[21] See *id*.

Kalabat to take issue with pleading a claim for declaratory judgment, when Plaintiff KCG includes two claims for declaratory judgment in the First Amended Complaint.[22]

B. Law

MCR 2.605 provides,

> **(A) Power to Enter Declaratory Judgment.**
>
> (1) In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.
>
> (2) For the purpose of this rule, an action is considered within the jurisdiction of a court if the court would have jurisdiction of an action on the same claim or claims in which the plaintiff sought relief other than a declaratory judgment.
>
> **(B) Procedure.** The procedure for obtaining declaratory relief is in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in the constitution, statutes, and court rules of the State of Michigan.
>
> **(C) Other Adequate Remedy.** The existence of another adequate remedy does not preclude a judgment for declaratory relief in an appropriate case.
>
> **(D) Hearing.** The court may order a speedy hearing of an action for declaratory relief and may advance it on the calendar.
>
> **(E) Effect; Review.** Declaratory judgments have the force and effect of, and are reviewable as, final judgments.
>
> **(F) Other Relief.** Further necessary or proper relief based on a declaratory judgment may be granted, after reasonable notice and hearing, against a party whose rights have been determined by the declaratory judgment.

[22] First Amended Complaint, Count I and II.

"[I]t is sufficient to establish standing to seek a declaratory judgment when a litigant meets the requirements of MCR 2.605." *UAW v Cent Michigan Univ Trustees*, 295 Mich App 486, 495 (2012).

C. Analysis

First, Kalabat misconstrues the caselaw he relies on in support of his argument that the counterclaim for declaratory judgment against him should be dismissed because it cannot be asserted as a standalone claim. See *Wiggins v City of Burton*, 291 Mich App 532, 561 (2011) (holding that the circuit court erred by failing to consider the plaintiff's request for declaratory relief despite it being "technically improper" as a separately labeled cause of action, because a "complaint must be read as a whole, and it is well settled that this Court will look beyond the mere procedural labels used in the pleadings"). Furthermore, Kalabat cannot have it both ways – if the Danial Parties' claim for declaratory judgment against him should be dismissed because it was improperly pled as a standalone claim, then so too shall KCG's claims for declaratory judgment (First Amended Complaint, Counts I and II) against Defendants.

Second, Kalabat argues that to the extent that the Danial Parties assert a claim for declaratory relief that seeks monetary damages from him, it should be dismissed as to him. However, because Kalabat cursorily addresses this argument and cites no authority for his position, the issue is deemed abandoned. "Trial Courts are not the research assistants of the litigants; the parties have a duty to fully present legal arguments for its resolution of their dispute." *Walters v Nadell*, 481 Mich 377, 388 (2008). Kalabat's superficial treatment of his proffered position and failure to provide any citation of supporting authority constitutes abandonment. See e.g., *Houghton v Keller*, 256 Mich App 336, 339-340 (2003) ("failure to properly address the merits of [one's] assertion of error constitutes

abandonment of the issue"; a party "may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims . . . nor may he give issues cursory treatment with little or no citation of supporting authority."); *Mitcham v City of Detroit*, 355 Mich 182, 203 (1959) ("It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and rationalize the basis for his arguments, and then search for authority either to sustain or reject his position"); *Wilson v Taylor*, 457 Mich 232, 243 (1998) ("A mere statement without authority is insufficient to bring an issue before this Court"); MCR 2.119(A)(2) ("A motion or response to a motion that presents an issue of law must be accompanied by a brief citing the authority on which it is based"). The Court need not belabor the point. Kalabat has simply failed to meet his burden.[23]

IV. TIME BARRING AND THE CONSPIRACY & CONVERSION CLAIMS

A. Arguments

Kalabat argues that while the Danial Parties have vaguely pled that Kalabat fraudulently concealed the 2018 assignment of a 50% membership interest in him, the counterclaim lacks any allegation of affirmative acts or misrepresentations by him that are necessary to support the invocation of MCL 600.5855 for the claims asserted against him. As a result, Kalabat contends the conspiracy and conversion claims based on the 2018 assignment of membership interests in MDC to him are time barred and must be dismissed.

[23] Assuming arguendo the issue was not abandoned, the Court would still deny Kalabat's motion to dismiss the declaratory judgment claim as to him. MCR 2.605(F) gives the Court discretion to grant "further necessary or proper relief . . . against a party whose rights have been determined by the declaratory judgment." This can include monetary relief. See *Durant v State*, 456 Mich. 175, 208-09 (1997).

The Danial Parties contend that they allege, in detail, how the statute of limitations was tolled pursuant to MCL 600.5855 given both Roscoe's and Kalabat's fraudulent concealment of the conversion and conspiracy claims.[24]

B. Law

MCL 600.5855 provides,

> If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

Fraudulent concealment "means employment of artifice, planned to prevent inquiry or escape investigation, and mislead or hinder acquirement of information disclosing a right of action." *Doe v Roman Cath Archbishop of Archdiocese of Detroit*, 264 Mich App 632, 642 (2004). The plaintiff must allege that "the defendant engaged in some arrangement or contrivance of an affirmative character designed to prevent subsequent discovery." *Witherspoon v Guilford,* 203 Mich App 240, 248 (1994).

The statute of limitations for a civil conspiracy depends on the underlying claim. *Terlecki v Stewart*, 278 Mich App 644, 652 (2008). Conversion claims are subject to a three-year limitations period. *Tillman v Great Lakes Truck Ctr, Inc*, 277 Mich App 47, 49 (2007); *Brennan v Edward D Jones & Co,* 245 Mich App 156, 158 (2001). A claim of tortious interference with a contract is three years. *James v Logee*, 150 Mich App 35, 38 (1986); MCL 600.5805(1).

[24] See Counterclaim, ¶¶ 192-103, 222-231.

C. Analysis

The Court disagrees with Kalabat's conclusion that the Danial Parties did not sufficiently allege that he committed an affirmative act of fraudulent concealment and that, as a result, MCL 600.5855 does not apply to toll the limitations period of the conversion and conspiracy claims asserted against him. The Danial Parties allege, with the requisite specificity, that both Roscoe and Kalabat committed affirmative acts of fraudulent concealment. The Danial Parties' Counterclaim unmistakably sets forth the following acts of fraudulent concealment by Roscoe and Kalabat.

- Roscoe fraudulently concealed the January 1, 2018 Assignment of a 50% interest in MDC to Kalabat, to prevent it from being discovered, thereby concealing the existence of any claim by the Danial Parties based upon that wrongful assignment. Markedly, during his deposition and throughout the 2017-2019 Litigation, Roscoe testified that, under his belief, Kerala/RSR/Mary owned 50% of MDC and he owned the other 50%. The 2017-2019 Litigation between Roscoe and the Danial Parties commenced on October 11, 2017, and went well into 2019. Yet Roscoe failed to disclose or even mention that he had assigned a 50% membership interest in MDC to Kalabat during their active litigation. Even worse, Roscoe lied to the Danial Parties to keep them from discovering the existence of his purported assignment to Kalabat during the 2017-2019 Litigation. Roscoe also lied under oath at the May 2 Settlement that he had not incurred any liability or obligation for or on behalf of MDC, despite having previously assigned a 50% membership interest in MDC to Kalabat.[25]

- During the Danial Parties' investigation in the 2017-2019 Litigation, they discovered the January 1, 2018 Affidavit in which Kalabat attested to have a "certain interest" in the Property. Counsel for the Danial Parties asked Roscoe at his deposition about the origin of the Affidavit and what that Claim of Interest related to. Instead of admitting that it related to his assignment to Kalabat, Roscoe hid that fact from the Danial Parties. Roscoe lied, testifying that Kalabat had done some engineering work on the Property in the past, and had been owed approximately $20,000 for that work. Roscoe further declared that Kalabat had since been paid and had discharged the Claim of Interest.[26]

- Not long after Roscoe's deposition in the 2017-2019 Litigation, Kalabat executed and recorded the November 20, 2019 Kalabat Discharge in which he attested that he and his entity were fully discharging and releasing any and all interest in the Property. Kalabat signed that document personally and on behalf of KCG, thereby confirming that neither he nor KCG claimed to own any interest in the Property as of 2019. Kalabat did so prevent further inquiry

[25] See Counterclaim, ¶¶ 41, 92-94, 100-102, 222-231.
[26] *Id*. ¶¶ 101, 229.

into the January 1, 2018 Assignment, to align with Roscoe's sham story regarding the Affidavit.[27]

- Roscoe dishonestly alleged in his July 11, 2023 Complaint, filed in the Oliver Trust Litigation, that "currently, and at all times relevant to this civil action, the only two members of MDC are Plaintiff Kale Roscoe and Jamal Kalabat" and that prior to the January 1, 2018 Assignment to Kalabat, he was the sole member. He deceitfully failed to disclose: (i) the MDC interests held by Kerala, RSR, or Mary, (ii) the prior 2017-2019 Litigation, (iii) the May 2 Settlement, (iv) that he had previously assigned any interest he had in MDC to the Danial Parties pursuant to the Settlement Agreement, and (v) any notice to the Danial Parties of the counterclaim made against MDC. During his deposition in the Oliver Trust Litigation, when asked how the Danial Parties no longer have an interest in MDC, he lied, fraudulently claiming there was an agreement for the Danial Parties to leave, and agreed to provide said document, but never did. During the same deposition, when asked how he became an MDC member again, after assigning his membership interest to the Danial Parties in 2004 and 2006, he again lied, stating the assignments were meant to be temporary and that he had a side deal.[28]

- Roscoe and Kalabat committed affirmatively concealed and lied about the above matters with the intent to deceive and as a result, the Danial Parties had no way of discovering the January 1, 2018 Assignment more than 2 years before the filing of their counterclaim.[29]

Based on the above, the Court finds that the Danial Parties have sufficiently pled that Kalabat committed an act of fraudulent concealment, so as to preclude dismissal under MCR 2.116(C)(7).

In addition, Kalabat erroneously asserts that because the Danial Parties purportedly fail to allege that Kalabat himself committed an affirmative act of fraudulent concealment, MCL 600.5855 does not apply. The statute expressly provides that the statute of limitations are tolled as to claims against one potential defendant to the extent another defendant fraudulently conceals the identity of that potential defendant. Therefore, because the Danial Parties sufficiently plead that Roscoe fraudulently concealed (i) the existence of any claim arising out of the January 1, 2018 Assignment, and (ii) the identity of Kalabat as a potential defendant in relation to that assignment, MCL 600.5855

[27] *Id*. ¶ 230.
[28] *Id*. ¶¶ 67-71, 81-82, 91. Kalabat was also deposed in the Oliver Trust Ligation, during which a prominent issue was how he came to obtain an interest in MDC given Roscoe's prior assignments to the Danial Parties. However, the transcript is not one of the publicly filed documents in that case, so the Danial Parties did not have a copy at the time their Counterclaim was filed.
[29] *Id*. ¶ 231.

applies and the limitations period for conspiracy and conversion claims against Roscoe and Kalabat would be tolled.[30]

V. STATUTORY & COMMON LAW CONVERSION CLAIMS

A. Arguments

Kalabat argues that the Danial Parties have failed to state conversion claims on which relief can be granted because there is no allegation Kalabat is exercising control over the MDC membership interests or that he is using the MDC membership interests for his personal use, as required by the conversion statute, MCL 600.2919a ("[a]nother person's stealing or embezzling property or converting property to the other person's own use). Kalabat contends that the Danial Parties have not and cannot allege he is personally exercising dominion or control over the MDC membership interests, and as a result the conversion claims against him fail as a matter of law.

The Danial Parties argue that they have sufficiently pled claims for statutory and common law conversion against Kalabat personally, as the conversion statute and controlling caselaw confirm that one does not have to be the entity or individual who actually converts the property to their "own use" to be liable for conversion as Kalabat suggests. MCL 600.2919a(l)(b) specifically provides that anyone who conceals or aids in the concealment may be liable for conversion. The Danial Parties declare (i) that Kalabat is the member and manager of KCG, (ii) that he aided in KCG's wrongful receipt of the MDC membership interests, and (iii) as a result, he is personally liable for the conversion that he committed for the benefit of KCG.

[30] See *Hope-Jackson v Washington*, 311 Mich App 602, 617-18 (2015) (the plain language of the fraudulent-concealment statute allows for tolling if *either* the claim or the identity of the person who is liable for the claim was fraudulently concealed); Doe, 264 Mich App at 643 ("there must be concealment by the defendant of the existence of a claim or the identity of a potential defendant").

B. Law

Statutory conversion under MCL 600.2919a(1)(a), as amended in 2005, creates a remedy against a person who "steal[s] or embezzl[es] property or convert[s] property to the other person's own use." MCL 600.2919a provides as follows:

> (1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees:
>
> (a) Another person's stealing or embezzling property or converting property to the other person's own use.
>
> (b) Another person's buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property when the person buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted.
>
> (2) The remedy provided by this section is in addition to any other right or remedy the person may have at law or otherwise.

The statute does not define the term "conversion." "When a statute does not define a term, [Michigan courts] will construe the term according to its common and approved usage." *Nelson v Grays*, 209 Mich App 661, 664 (1995). "A legal term of art, however, must be construed in accordance with its peculiar and appropriate meaning." *Brackett v Focus Hope, Inc*, 482 Mich 269, 279 (2008). Because the term "conversion" has acquired a peculiar meaning under Michigan common law, the common law defines the term for both common-law and statutory purposes. See *Victory Estates LLC v NPB Mortg LLC*, unpublished opinion per curiam of the Court of Appeals, issued November 20, 2012 (Docket No. 307457); p 2, quoting *Id*. (concluding that the common-law definition defines both common-law and statutory conversion under Michigan law).

Common-law conversion is defined as "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 Distrib Servs, Inc, 497 Mich 337, 351-352 (2015) (quotation marks and citation omitted). Statutory conversion under MCL 600.2919a is similar to common law conversion but includes the added element that property was converted to the defendant's "own use." *Aroma Wines,* 497 Mich at 354-357.

C. Analysis

In their conversion claims,[31] the Danial Parties allege that (i) "Kalabat and/or KCG bought, received, possessed, and wrongfully exerted domain over the membership interests of MDC, which belonged to the Danial Parties;" (ii) "[t]hey also converted those interests to their "own use" as evidenced by the transfer of the Property on behalf of MDC;" and (iii) "Kalabat and/or KCG refused to surrender the membership interests to the Danial Parties on demand after receiving notice of the Danial Parties' ownership of the MDC membership interests."[32]

The Court rejects Kalabat's argument that he cannot be held personally liable for the conversion of MDC interests because those interests were received and retained by KCG and not him personally.[33] Michigan law establishes that company officials may be held personally liable for their individual tortious acts done in the course of business, regardless of whether they were acting for their personal benefit or the company's benefit.[34] Michigan jurisprudence further establishes that a member-manager who causes company to commit conversion is subject to personal liability even if the company received and retained the benefits. See *Dept of Agric v Appletree Mktg, LLC*, 485 Mich

[31] See Counterclaim, Count III (Common Law Conversion) and Count IV (Statutory Conversion).
[32] Counterclaim, ¶¶ 163-165, 173-175.
[33] Kalabat does not otherwise challenge the sufficiency of the conversion claims pled by the Danial Parties.
[34] See e.g., *Allen v Morris Bldg Co*, 360 Mich 214, 218 (1960) (The defendant was the majority stockholder, president, and in control of defendant corporation's activities, and personally supervised the activities on which the Complaint was based. The Court found that he participated in the tort and was liable with the corporate defendant.); *Moore v Andrews*, 203 Mich 219, 232-233 (1918) (holding that an action for conversion may lie against directors, officers, or agents of a corporation to a person injured by their torts); *Bush v Hayes*, 286 Mich 546, 548-549 (1938) (the Court held a corporate official individually liable for a conversion claim).

1, 18-19 (2010) ("There is no question that, if the facts prove either common law or statutory conversion, Kropf [the sole member of the defendant company] can be held personally liable and may not hide behind the corporate form in order to prevent liability for his active participation in the tort."); *Bush v Hayes*, 286 Mich 546, 548-549 (1938) (The Court held a corporate official individually liable for a conversion claim, explaining that the trial judge erred in instructing the jury that to hold defendants liable there must be evidence showing that they converted the property to their "own use." The Court stated if there has been a conversion in which they participated, they are liable, and it is of no consequence whether they acted for the company or for themselves.).

VI. TORTIOUS INTERFERENCE CLAIM

A. Arguments

The Danial Parties allege Kalabat intentionally interfered with that May 2, 2019 settlement contract with Roscoe, by purchasing a 50% membership interest in MDC on behalf of KCG from Roscoe in August 2024. While unclear, it appears Kalabat argues that the claim fails as a matter of law because it would be impossible for him to instigate or induce Roscoe to breach the 2019 settlement contract when it was already fully performed.

The Danial Parties argue they have sufficiently alleged that Kalabat unjustifiably instigated Roscoe's breach of the May 2, 2019 settlement agreement. The Danial Parties allege that Kalabat knew about the Settlement given his participation in the Oliver Trust Litigation, but that he still unjustifiably instigated a breach of that agreement thereafter by purportedly purchasing a 50% membership interest in MDC from Roscoe on behalf of KCG. The Danial Parties argue their allegations more than sufficiently plead an unjustified instigation of the breach by Kalabat.

B. Law

"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." *Knight Enterprises v RPF Oil Co*, 299 Mich App 275, 280 (2013) citing *Badiee v Brighton Area Schools,* 265 Mich App 343, 365-367 (2005); *Mahrle v Danke,* 216 Mich App 343, 350 (1996); *Jim–Bob, Inc v Mehling,* 178 Mich App 71, 95-96 (1989).

It is well-settled that "[o]ne who alleges tortious interference with a contractual ... relationship must allege the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another." *Derderian v Genesys Health Care Sys,* 263 Mich App 364, 382 (2004), quoting *CMI Int'l, Inc v Intermet Int'l Corp,* 251 Mich App 125, 131 (2002). Thus, it is an essential element of a claim of tortious interference with a contract that the defendant "unjustifiably instigated or induced" the party to breach its contract. *Knight Enterprises*, 299 Mich App at 281, quoting *Derosia v Austin,* 115 Mich App 647, 654, (1982). The requirement that the defendant instigated or induced the breach does not mean that the purpose to cause the breach of contract has to be the defendant's sole or paramount purpose. *Id*. It is "sufficient that he designs this result whether because he desires it as an end in itself or because he regards it as a necessary, even if regrettable, means to some other end." *Id*. quoting 4 Restatement Torts, § 766, Comment d, pp. 54-55.

C. Analysis

The Danial Parties' allegations, accepted as true and construed in a light most favorable to the Counter-Defendants, are sufficient to state a claim for tortious interference with a contract against

Kalabat. Upon review of the allegations under Count VII of the Counterclaim, the Court notes that the Danial Parties adequately plead the requisite elements of a claim for tortious interference with a contract.[35]

Element 1 - Existence of a Contract

The Danial Parties allege that the May 2, 2019 Settlement Agreement, the terms of which were placed on the record at a hearing before Hon. Martha Anderson, was a valid contract between the Danial Parties and Roscoe, wherein Roscoe expressly agreed to transfer his entire interest in MDC to the Danial Parties, thereby dispossessing Roscoe of any interest or claim of interest in MDC.[36] See *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 349, (1999) (a settlement entered on the record constitutes a valid and binding settlement agreement, regardless of whether the parties subsequently memorialize it in a written settlement agreement).

Element 2 – Breach of a Contract

The Danial Parties allege that the May 2 Settlement was breached when Roscoe executed an Assignment of Interest on August 27, 2024, in which he agreed to assign any and all of the outstanding membership interest of MDC, held by him, to KCG.[37] This was an express breach of the May 2 Settlement, in which Roscoe assigned any right, title, and interest in MDC that he possessed as of that date to the Danial Parties.[38]

Kalabat mistakenly argues that the Danial Parties cannot satisfy this element because Roscoe "fully performed" under the May 2, 2019 Settlement and thus there can be no breach of that agreement. Indeed, under the May 2, 2019 Settlement, Roscoe explicitly agreed to assign and

[35] See *Knight Enterprises*, 299 Mich App at 280 (existence of a contract, breach of a contract, and an unjustified instigation of the breach by defendant).
[36] Counterclaim, ¶ 201.
[37] *Id*. ¶ 107.
[38] *Id*. ¶ 152.

surrender any interest he may have had in MDC to the Danial Parties. The Danial Parties allege that the May 2 Settlement is a binding agreement, and Kalabat does not challenge such. Despite Roscoe agreeing to surrender his MDC interest in the May 2, 2019 agreement with the Danial Parties, he later assigned a 50% interest in MDC to KCG, thereby failing to comply with the terms and breaching the Settlement Agreement.

Element 3 – Unjustified Instigation of the Breach

The Danial Parties allege that Kalabat, at the latest, knew about the existence of the May 2 Settlement and the Danial Parties' interest in MDC by virtue of his deposition in the Oliver Trust Litigation, during which the Oliver Trust sought to determine how Kalabat had come to be a member of MDC in light of the May 2 Settlement terms.[39] The Danial Parties further allege that Kalabat intentionally interfered with the May 2 Settlement contract by ostensibly purchasing a 50% interest in MDC on behalf of KCG from Roscoe on August 27, 2024.[40] The Danial Parties claim that Kalabat's August 27, 2024, act of purportedly purchasing a 50% interest in MDC was entirely improper, unjustified, and wrongful, as it undeniably invaded the contractual rights of the Danial Parties under the May 2 Settlement, and unjustifiably instigated the breach of the May 2 Settlement by Roscoe.[41]

In sum, the Danial Parties sufficiently pled a claim of tortious interference with a contract against Kalabat, when viewed under the requirements of MCR 2.116(C)(8).

[39] *Id*. ¶¶ 83-85, 202.
[40] *Id*. ¶ 203.
[41] *Id*. ¶¶ 204-205.

VII. CIVIL CONSPIRACY CLAIM

A. Arguments

First, Kalabat argues that because the Danial Parties have no underlying claims against him, the civil conspiracy claim fails as a matter of law. Second, Kalabat argues that the claim does not allege concerted action to accomplish an unlawful purpose by Kalabat/KCG and Roscoe, a necessary element of a civil conspiracy claim. The Danial Parties have failed to allege that the dealings between KCG and Roscoe were anything other than the purchase of membership interests in arms-length transactions.

Foremost, the Danial Parties declare that the civil conspiracy claim against Kalabat is based on the viable underlying tort claims of conversion and tortious interreference. Furthermore, the Danial Parties argue that the Counterclaim provides detailed factual allegations that, if proven, would establish that Kalabat and Roscoe acted in concert with respect to the wrongful transfer of the MDC interests. Any attempt by Kalabat to show he was just an innocent purchaser of MDC interests is a factual issue for discovery. Furthermore, any claim Kalabat makes to being an innocent purchaser is dubious, even at this juncture, where he concedes he paid $600,000 for MDC assets (the Property), assets that were purchased for $1.3 million in 1997 and were estimated to be worth approximately $4 million in 2023.

B. Law

A civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means." *Swain v Morse*, 332 Mich App 510, 530 (2020) (quotation marks and citation omitted).

"Liability does not arise from a civil conspiracy alone; rather, it is necessary to prove a separate, actionable tort." *Id*. at 530 n 13 (quotation marks and citation omitted). In the absence of an underlying tort, a civil conspiracy claim must fail. *Advocacy Org for Patients & Providers v Auto Club Ins Ass'n*, 257 Mich App 365, 384 (2005) ("a claim for civil conspiracy may not exist in the air; rather, it is necessary to prove a separate, actionable tort"); *Levitt v Bloem*, unpublished per curiam opinion of the Court of Appeals, issued May 21, 2019 (Docket No. 343299) ("Plaintiff's claim for civil conspiracy is based on his claims of defamation, false light, IIED, and tortious interference with business expectancy. Because the circuit court properly dismissed all of these claims and no underlying tort exists in this case, the circuit court also properly dismissed the civil conspiracy claim").

C. <u>Analysis</u>

Kalabat's argument regarding the conspiracy claim is founded upon the premise that all underlying tort claims brought against him would be dismissed pursuant to this Motion, but the Court has not done so. Specifically, the tort claims for Common Law and Statutory Conversion (Counts III and IV) and Tortious Interference with a Contract (Count VII) are not subject to dismissal and therefore remain viable. The Danial Parties' claim for civil conspiracy is based on the two underlying tort claims for conversion and tortious interference with a contract pending before this Court and not subject to dismissal at this juncture.

The Court further rejects Kalabat's argument that the civil conspiracy claim fails to allege concerted action to accomplish an unlawful purpose by Kalabat/KCG and Roscoe. The Danial Parties specifically allege that Kalabat was fully aware of the Daniel Parties' ownership interests in MDC at the time, and "the assignment of membership interests from Roscoe to Kalabat and/or KCG was a

concerted action by the three of them to wrongfully steal and convert the Danial Parties' interest in MDC and the Property."[42] The Danial Parties further allege that "Roscoe and Kalabat acted in concert to unlawfully transfer 100% of the membership interests in MDC to Kalabat and/or KCG" and as "part of this fraudulent scheme, Kalabat then unlawfully transferred the Property on behalf of MDC to KCG."[43] The Court finds that the Danial Parties have sufficiently alleged the requisite elements of a civil conspiracy claim.

ORDER

Based upon the foregoing Opinion:

IT IS HEREBY ORDERED that Counter-Defendant's Motion for Summary Disposition under MCR 2.116(C)(7) and (C)(8) is **DENIED**.

/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
BUSINESS COURT JUDGE

Dated: 11/21/25

[42] Counterclaim, ¶¶ 208-210.
[43] *Id*. ¶¶ 211-212.