AT STAMFORD
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DOCKET NO: FSTCV-22-6058046-S SUPERIOR COURT

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JOSEPH DELGUIDICE AND JAIME DUQUE	:	JUDICIAL DISTRICT OF STAMFORD-NORWALK
V.	:	AT STAMFORD
MATTHEW PETRINI ET AL	:	MAY 13, 2024

MEMORANDUM OF DECISION ON DEFENDANTS MOTION TO STRIKE # 113

PROCEDURAL HISTORY

The plaintiffs Joseph DelGiudice and Jaime Duque commenced this action against defendants Matthew Petrini (M. Petrini), Jerry G. Petrini (J. G. Petrini), Jerry Petrini Sr. (Petrini, Sr.), Georgette Petrini (G. Petrini), and Singer & Falk CPA's P.C (Singer & Falk) seeking damages on a variety of legal theories which are set forth in their twenty-three-count revised complaint dated January 3, 2023. Count one is directed against Petrini, Sr. and alleges fraudulent inducement. Count two is also directed against Petrini, Sr. and alleges breach of express warranty. Count three is directed against J. G. Petrini and alleges breach of fiduciary duty. Count four is also directed against J. G. Petrini and alleges breach of fiduciary duty. Count five is directed against M. Petrini and alleges breach of fiduciary duty. Count six is directed against M. Petrini and alleges conversion. Count seven is directed against J. G. Petrini and alleges conversion. Count eight is directed against M. Petrini and alleges unjust enrichment. Count nine is directed against J. G. Petrini and alleges unjust enrichment. Count ten is directed against Petrini, Sr. and alleges fraud. Count eleven is directed against G. Petrini and alleges fraud. Count twelve is directed against Petrini, Sr. and alleges conversion. Count thirteen is directed against G. Petrini and alleges conversion. Count fourteen is directed against Petrini, Sr. and alleges unjust enrichment. Count fifteen is directed against G. Petrini and alleges unjust

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enrichment. Count sixteen is directed against Petrini, Sr. and alleges civil theft. Count seventeen is directed against M. Petrini and alleges civil theft. Count eighteen is directed against J. G. Petrini and alleges civil theft. Count nineteen is directed against M. Petrini, J. G. Petrini, and Petrini, Sr. and alleges civil conspiracy. Count twenty is directed against Petrini, Sr. and alleges tortious interference with reasonable business expectations. Count twenty-one is directed against Petrini, Sr. and alleges tortious interference with contractual relations. Count twenty-two is directed against Petrini, Sr. and alleges common law aiding and abetting. Count twenty-three is directed against Singer & Falk and alleges professional malpractice.

The defendants have filed a motion to strike counts one, two, six, seven, ten, elven, twelve, thirteen, sixteen, seventeen, and eighteen. The court heard oral argument on February 26, 2024.

FACTS

Defendants Petrini, Sr. and G. Petrini are alleged to have formed Petrini Six Enterprises, Inc. (Petrini Six) on October 16, 1991. On February 12, 2019, the plaintiffs began conversations with Petrini, Sr. and defendant, M. Petrini, about purchasing shares of Petrini Six at Petrini, Sr.'s residence. During this meeting, Petrini, Sr. and M. Petrini allegedly made various representations regarding Petrini Six and its business operations. M. Petrini made the representation that Petrini Six maintained up to eleven schools as clients that would bring between 50 and 100 students at a time to Petrini Six, grossing a profit of up to $6000 each. Additionally, Petrini, Sr. allegedly made the following representations: that Petrini Family Investments, LLC (PFI), then owned and operated by Petrini, Sr. and acting as the landlord for Petrini Six, would provide rent forbearance during initial renovations as well as a discount to rent once it was to be paid; that Petrini Six had been making rent payments up to that date; and

that the gross revenue for Petrini Six had been as high as $1,000,000 in recent years, though it had dropped to about $700,000.

On February 24, 2019, a second meeting was held at Petrini, Sr.'s residence in which defendant, J. G. Petrini, M. Petrini, Petrini, Sr., and the plaintiff Duque were in attendance. During this meeting Duque was presented with a Share Purchase agreement and was asked to execute the agreement, however, the agreement was not executed at that time. During these negotiations and discussions, Petrini, Sr. never offered to the plaintiffs' permission to review the corporate books and records.

Nevertheless, the plaintiffs and Petrini became parties to a share purchase agreement (SPA) in March of 2019. The SPA referred to DelGiudice, Duque, M. Petrini, and J. G. Petrini as "Buyer," and referred to Petrini, Sr. and G. Petrini as "Seller." According to the terms of the SPA, the "Buyer" was to pay a purchase price of $75,000, however, the plaintiffs were the only ones responsible for paying any amount of the purchase price.

The plaintiffs allege that contrary to the terms in the SPA Duque initially contributed $150,000 while DelGiudice contributed $125,000 paired with a $25,000 credit that was previously provided to him from a failed prior business venture with M. Petrini. The plaintiffs further allege that these contributions were made to acquire shares of Petrini Six, and based on representations made to the plaintiffs the over payment of the contributions would be deposited into capital accounts for Petrini Six. Pursuant to the SPA, the plaintiffs each acquired a 24.5% ownership in Petrini Six. Under this ownership interest, the plaintiffs allege that they are entitled to benefit from all the rights and obligations attending corporate ownership.

Additionally, the plaintiffs allege that Petrini, Sr. represented to them that $100,000 of their $300,000 initial investment, which comprised of $50,000 from Duque, $25,000 from

DelGiudice, and the $25,000 credit to DelGiudice, was to pay for the business, while the remaining $200,000 would be placed in an operating account for renovations of Petrini Six.

On March 28, 2019, Petrini, Sr. ceased to hold office as president and vice president of Petrini Six and G. Petrini ceased to hold office as secretary. Subsequently, M. Petrini, J. G. Petrini, DelGiudice, and Duque became the new officers of Petrini Six, respectively holding the offices of president, treasurer, secretary, and vice president. The plaintiffs also allege that Petrini Six had no written bylaws or other shareholder agreements executed by the shareholders at the closing of the SPA and presently still do not. The plaintiffs further allege that with no bylaws or other shareholder agreements the relevant provisions of Connecticut's corporation statutes apply.

During the plaintiffs' early months as officers and shareholders they began to perceive irregularities in the conduct of their fellow officers and the business itself. Upon investigating their concerns, the plaintiffs uncovered several unauthorized schemes operated by M. Petrini that were designed to siphon money from the corporation and into M. Petrini's personal account.

The plaintiffs allege that M. Petrini employed various methods to misappropriate corporate funds for his own use by: routinely withdrawing cash from corporate accounts for purposes unrelated to the operations of Petrini Six; paying employees for additional inflated hours and instructing said employees to return the over payment to M. Petrini in cash; paying others with corporate funds who were not performing services for Petrini Six; selling Groupon coupons for Petrini Six where the proceeds were sent directly to M. Petrini's personal account, and then using said Groupon credits for personal purchases; bartering Petrini Six corporate services in exchange for tens of thousands of dollars of personal service on BarterNetwork.com; and forging the signature of Duque, while acting as corporate president, on purported corporate

bylaws to fraudulently submit them concurrently with an application for a Paycheck Protection Program loan (PPP Loan). Furthermore, the PPP loan was ultimately approved in the amount of $30,000 in which M. Petrini claimed was used to pay rent arrearages for Petrini Six.

The plaintiffs allege they requested access to Petrini Six's records pursuant to their rights as officers and shareholders of the corporation, however, M. Petrini and J. G. Petrini thwarted the plaintiffs' initial attempts to review the corporate records. On November of 2019, the plaintiffs took control of the corporation's cash accounts from M. Petrini in an attempt to protect Petrini Six and the plaintiffs from further breaches of M. Petrini's fiduciary duties. The plaintiffs also had a meeting with Petrini, Sr. on December 31, 2019, at his residence regarding M. Petrini's schemes and siphoning of money.

Several weeks into early January of 2020, Petrini, Sr. called the plaintiffs demanding that they restore M. Petrini's access to the corporate cash accounts. The plaintiffs allege that due to intimidation by Petrini, Sr.'s tone and demands, they restored M. Petrini's access to the corporate cash accounts. Additionally, due to M. Petrini and J. G. Petrini's refusal to provide access to corporate books and record, the plaintiffs were required to hire legal counsel to exercise their rights as an officer and shareholder to inspect said records.

On August 26, 2020, M. Petrini and J. G. Petrini executed a termination of lease agreement resolving on behalf of Petrini Six to return leased equipment, terminate Petrini Six's ground lease, and assign the right to sell the remaining equipment to the landlord, all without providing notice or opportunity to be heard by the plaintiffs. At that time, Petrini Six's landlord was PFI. The plaintiffs allege PFI's principle and sole member was Petrini, Sr.

The plaintiffs allege further that PFI dissolved on August 12, 2021, and distributed all of its corporate assets. When PFI dissolved it did not provide the plaintiffs with a notice of dissolution pursuant to General Statutes § 34-212.

On October 27, 2021, counsel for the plaintiffs served a shareholder demand for action on Petrini Six pursuant to General Statutes § 33-722. The shareholder demand for action demanded that Petrini Six take action within ninety days of notice regarding the allegations made within it. The plaintiffs allege that through a series of communications, a stipulation agreement was reached, which extended the time Petrini Six had to respond to March 15, 2022. The plaintiffs allege that at time of the filing of the revised complaint, the plaintiffs have not received a response from Petrini Six regarding the shareholder agreement.

DISCUSSION

"[A] motion to strike challenges the legal sufficiency of a pleading and, consequently, requires no factual findings by the trial court . . . . [The court] construe[s] the complaint in the manner most favorable to sustaining its legal sufficiency. . . . Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied. . . . Moreover, [the court notes] that [w]hat is necessarily implied [in an allegation] need not be expressly alleged. . . . It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted. . . . Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically." (Internal quotation marks omitted.) *Geysen* v. *Securitas Security Services USA, Inc.*, 322 Conn. 385, 398, 142 A.3d 227 (2016).

"If any facts provable under the express and implied allegations in the plaintiff's complaint support a cause of action . . . the complaint is not vulnerable to a motion to strike." *Bouchard* v. *People's Bank*, 219 Conn. 465, 471, 594 A.2d 1 (1991).

A. Fraudulent Inducement Against Petrini, Sr.

The defendants argue that the plaintiffs have not sufficiently pled their fraudulent inducement claim against Petrini, Sr. The defendants argue that to plead a fraudulent inducement claim, the plaintiff must plead specific acts relied upon. The defendants aver that at most the plaintiffs only allege general allegations about fraudulent statements regarding liens, encumbrances, obligations and paying rent, but they have not provided any specific acts. The defendants also argue that the statements are sufficient as the plaintiffs have not alleged that Petrini, Sr. knew whether any of the statements/representations were false and have not sufficiently alleged reliance on these statements/representations.

The plaintiffs argue that they have sufficiently pled their fraudulent inducement claim as "each allegation of a specific act or statement to underlie a fraudulent inducement claim is impliedly false." (Docket Entry #120.) The plaintiffs further argue that in reading the revised complaint liberally and in the light most favorable to the plaintiffs, there is an implied allegation that the plaintiffs upon acquiring an ownership interest in Petrini Six and inspecting the corporate records discovered the alleged statements to be materially false. The plaintiffs also argue that impliedly, Petrini, Sr. must have known that his statements were false and that his statements would induce prospective purchasers to rely on his representations of the corporation based on his experience of being the owner of Petrini Six and his history of operating the business.

"[The Appellate Court] has . . . used the terms fraudulent misrepresentation and fraudulent inducement interchangeably." *Biro* v. *Matz*, 132 Conn. App. 272, 288, 33 A.3d 742 (2011). "The essential elements of a cause of action in fraudulent misrepresentation are: (1) a false representation was made as a statement of fact; (2) it was untrue and known to be untrue by the party making it; (3) it was made to induce the other party to act upon it; and (4) the other party did so act upon the false representation to his injury." *LPP Mortgage Ltd.* v. *Underwood Towers Ltd. Partnership*, 205 Conn. App. 763, 835, 260 A.3d 521, 567 (2021). Furthermore, when "a claim for damages is based upon fraud, the mere allegation that a fraud has been perpetrated is insufficient; the specific acts relied upon must be set forth in the complaint." *Nazami* v. *Patrons Mutual Ins. Co.*, 280 Conn. 619, 628, 910 A.2d 209 (2006).

In viewing the revised complaint in the light most favorable to the plaintiffs, this court concludes that the plaintiffs have not sufficiently pled their fraudulent inducement claim against Petrini, Sr. as they fail to allege the specific acts relied upon. The plaintiffs allege in count one that Petrini, Sr. in the beginning of February of 2019, made representations to the plaintiffs regarding Petrini Six. The only possible representations as alleged in the revised complaint during that timeframe is that PFI, then owned and operated by Petrini, Sr. and acting as the landlord for Petrini Six, would provide rent forbearance during initial renovations as well as a discount rent once it was to be paid, that Petrini Six had been making rent payments up to that date, and that gross revenue for Petrini Six had been as high as $1,000,000 in recent years, though it had dropped to about $700,000.

The plaintiffs then allege within this count that "certain representations" made were false or untrue, however the only examples they provide are that "Petrini Six was free from liens, encumbrances and obligations . . . and Petrini Six had been paying rent." As the defendants

correctly point out, there are no facts to establish that the representation concerning "liens encumbrances and obligations" or that "Petrini Six had been paying rent" were false. The plaintiffs also allege generally under this count that "Petrini, Sr. knowingly made the foregoing false representations to induce Plaintiffs to enter into the SPA. . . . Plaintiffs, relying on the aforementioned and knowingly false representations entered into the SPA and sustained significant damage as a result." However, general allegations of false or untrue statements are not sufficient to support a claim of fraudulent misrepresentation.

Accordingly, the defendants' motion to strike count one of the revised complaint is granted.

B. Fraud

The defendants aver that counts ten and eleven allege fraud against Petrini, Sr. and G. Petrini for allegedly false statements made to another entity, co-defendant Singer & Falk. The defendants argue that these counts are insufficiently pled as the plaintiff could not rely upon statements that were never made to them.

The plaintiffs argue that the defendants failed to interpret the allegations in counts ten and eleven. The plaintiffs further argue that although these counts contain specific allegations regarding representations made by each of the defendants to co-defendant, Singer & Falk, each of these counts also incorporates all of the prior allegations of the complaint, including but not limited to the allegations made in the counts alleging fraud against Petrini, Sr. and G. Petrini, and the plaintiffs' reliance on said fraud.

The defendants correctly point out that the allegations made in count ten and eleven involve statements made to other individuals and not the plaintiffs, as such the plaintiffs have insufficiently pled counts ten and eleven.

Accordingly, the defendants' motion to strike count ten and eleven is granted.

C. Breach of Express Warranties

"[A] motion to strike is essentially a procedural motion that focuses solely on the pleadings. . . . It is, therefore, improper for the court to consider material outside of the pleading that is being challenged by the motion. . . . Nonetheless, '[a]ny plaintiff desiring to make a copy of any document a part of the complaint may, without reciting it or annexing it, refer to it as Exhibit A, B, C, etc., as fully as if it had been set out at length; but in such case the plaintiff shall serve a copy of such exhibit or exhibits on each other party to the action forthwith upon receipt of notice of the appearance of such party and file the original or copy of such exhibit or exhibits in court with proof of service on each appearing party. . . .' Practice Book § 10-29 (a). A complaint includes all exhibits attached thereto." (Citation omitted; internal quotation marks omitted.) *Tracy* v. *New Milford Public Schools*, 101 Conn. App. 560, 566, 922 A.2d 280, cert. denied, 284 Conn. 910, 931 A.2d 935 (2007).

The defendants argue that Petrini, Sr. and G. Petrini were not sellers under the language of the SPA, as such they did not make express warranties that were part of the SPA. Rather, the SPA defines the "Seller" as Petrini Six while Petrini, Sr. and G. Petrini were merely acting therein. The defendants further argue that the corporation is the only "Seller" as the SPA states plainly that the "Seller is a State of Connecticut Corporation." (Revised Complaint, Exhibit A.)

The plaintiffs argue that the text of the preamble is unambiguous and clearly indicates that the corporate entity is acted upon in the SPA through Petrini, Sr. and G. Petrini. Through these named defendants, they made various representations and warranties in the SPA on behalf of Petrini Six. The plaintiffs also argue that the defendants' interpretation of the SPA would lead to an absurd result in that "individuals without whom the corporation could not act are relieved

of all liability for any fraudulent representations or acts made or taken on behalf of the corporation as soon as the fraudulent sale has been consummated." (Docket Entry #120.)

"A contract is unambiguous when its language is clear and conveys a definite and precise intent. . . . The court will not torture words to impart ambiguity where ordinary meaning leaves no room for ambiguity.... Moreover, the mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous. . . .

"In contrast, a contract is ambiguous if the intent of the parties is not clear and certain from the language of the contract itself. . . . [A]ny ambiguity in a contract must emanate from the language used by the parties. . . . The contract must be viewed in its entirety, with each provision read in light of the other provisions . . . and every provision must be given effect if it is possible to do so. . . . If the language of the contract is susceptible to more than one reasonable interpretation, the contract is ambiguous." (Internal quotation marks omitted.) *Konover* v. *Kolakowski*, 186 Conn. App. 706, 714, 200 A.3d 1177 (2018). "Our courts refuse to construe a contract's language in such a way that it would lead to an absurd result." (Internal quotation marks omitted.) *Konover* v. *Kolakowski*, supra, 716.

The SPA provides clear language that only the corporation is the "Seller," thus counts two and three against Petrini, Sr. and G. Petrini for breach of express warranties are legally insufficient. Although the SPA states that Petrini, Sr. and G. Petrini are acting herein of Petrini Six, the SPA states clearly and unambiguously under Section 2 titled Representations and Warranties or Seller that the "Seller is a State of Connecticut Corporation duly authorized and validity existing under the laws of the State of Connecticut, and has full power and authority to carry on it current business and to own, use and sell its assets and properties." (Revised

Complaint, Exhibit A.) From this langue it is clear that the only "Seller" is Petrini Six and not Petrini, Sr. and G. Petrini, and as such they cannot make express warranties that were part of the SPA.

Accordingly, the defendants' motion to strike counts two and three is granted.

D. Conversion

The defendants argue that the conversion claims against M. Petrini, J. G. Petrini, Petrini, Sr., and G. Petrini are legally insufficient as the plaintiffs failed to allege these defendants had ownership or held title to any property that is subject to conversion. Rather, the plaintiffs only allege vague monies that have been converted, and do not allege any specific property they owned or held title to at some point. The defendants do, however, concede that monies can be the subject of conversion but requires legal ownership or the right to possession of specific identifiable monies. Nonetheless, the defendants argue that the plaintiffs have not alleged any facts to establish they had possession of or legal title to any specific monies. The defendants also argue that if there are any identifiable monies, ownership would lie with the corporation, not the individual shareholders.

The plaintiffs argue that they have sufficiently pled their conversion claims against M. Petrini and J. G. Petrini as they specifically alleged that: they entered the SPA with M. Petrini and G. Petrini as "Buyer" of Petrini Six; each of the plaintiffs acquired a 24.5% ownership interest in the corporation, entitling them to all the rights of corporate ownership; M. Petrini misappropriated corporate funds through various schemes; J. G. Petrini assisted M. Petrini in blocking the plaintiffs attempts to inspect corporate records; and, lastly, M. Petrini and J. G. Petrini terminated the corporation's lease and divested the corporation of all material assets without providing notice to the plaintiffs. The plaintiffs argue under these allegations they were

entitled to a pro-rata share of each and every unauthorized distribution made as a result of these two defendants' schemes.

"The tort of [c]onversion occurs when one, without authorization, assumes and exercises ownership over property belonging to another, to the exclusion of the owner's rights. . . . Thus, [c]onversion is some unauthorized act which deprives another of his property permanently or for an indefinite time, some unauthorized assumption and exercise of the powers of the owner to his harm. The essence of the wrong is that the property rights of the plaintiff have been dealt with in a manner adverse to him, inconsistent with his right of dominion and to his harm. . . . The term owner is one of general application and includes one having an interest other than the full legal and beneficial title. . . . The word owner is one of flexible meaning, and it varies from an absolute proprietary interest to a mere possessory right. . . . It is not a technical term and, thus, is not confined to a person who has the absolute right in a chattel, but also applies to a person who has possession and control thereof. . . .

"Under our case law, [m]oney can clearly be subject to conversion. . . . The plaintiffs must establish, however, legal ownership or right to possession of specifically identifiable moneys. . . .

"In [*Macomber* v. *Travelers Property & Casualty Corp.*, 261 Conn. 620, 804 A.2d 180 (2002)] we cited approvingly case law from other jurisdictions setting forth the general rule that, [a]n action for conversion of funds may not be maintained to satisfy a mere obligation to pay money. . . . It must be shown that the money claimed, or its equivalent, at all times belonged to the plaintiff and that the defendant converted it to his own use. . . . Thus, [t]he requirement that the money be identified as a specific chattel does not permit as a subject of conversion an indebtedness which may be discharged by the payment of money generally. . . . A mere

obligation to pay money may not be enforced by a conversion action . . . and an action in tort is inappropriate where the basis of the suit is a contract, either express or implied. . . . Consistent with this rule, in our case law sustaining a cause of action wherein money was the subject of the conversion or theft, the plaintiffs in those cases at one time had possession of, or legal title to, the money. . . .

"Applying this rule to the case at hand, we conclude that the plaintiffs' claims of conversion and theft fail as a matter of law. They have not alleged, nor do they contend in their briefs to this court, that they ever possessed or owned legal title to these funds. At best, the defendants merely are obligated to pay the money." (Citations omitted; internal quotation marks omitted.) *Deming* v. *Nationwide Mutual Ins. Co.*, 279 Conn. 745, 770–73, 905 A.2d 623 (2006).

"Money earned by a corporation remains the property of the corporation, and does not become the property of the stockholders, unless and until it is distributed among them by the corporation." *Spooner* v. *Phillips*, 62 Conn. 62, 73, 24 A. 524 (1892).

In viewing the revised complaint in the light most favorable, the plaintiffs have not sufficiently pled their conversion claims against the defendants. Additionally, the plaintiffs' alleges that M. Petrini and J. G. Petrini misappropriated corporate funds and corporate property in a variety of schemes as an individualized harm to the corporation, rather than to its shareholders, as the plaintiffs have no ownership regarding this property.

Regarding the claim of unauthorized distributions at dissolution, the plaintiffs in count six, seven, and twelve respectively against M. Petrini, J. G. Petrini, and Petrini, Sr. only allege a misappropriation of corporate property though various schemes. The plaintiffs do not allege that the defendants caused the corporation to issue an unauthorized distribution until count sixteen, seventeen, and eighteen.

The plaintiffs additionally argue that Petrini, Sr. and G. Petrini have taken possession of the plaintiffs' identifiable monies by misrepresenting their status as owners of the Petrini Six and filing inaccurate tax returns which caused them to absorb all of the tax benefits of Petrini Six for themselves. The plaintiffs cite to no authority where the court found improper receipt of tax benefits to be the subject of a conversion claim. The plaintiffs do not explain how the tax benefits are not a "mere obligation to pay money" and that they have an ownership interest or title to tax benefits generated from misrepresentation of corporate ownership status outside of the allegation of each of the plaintiff's being a 24.5% shareholder.

Accordingly, the defendants' motion to strike count six, seven, twelve, and thirteen is granted.

E. Statutory Theft

The defendants argue that the plaintiffs' statutory theft claims cannot be based on "a mere obligation to pay money." The defendants aver that the alleged property that was stolen from the plaintiffs was their pro rata share of any corporate distribution. Nonetheless, the defendants argue that the plaintiffs do not allege that any distributions were made from assets of Petrini Six to any shareholder. The defendants further argue that dividends from a corporation do not become property of a shareholder until they are made. Until that point, they belong to the corporation. Thus, the plaintiffs count sixteen, seventeen, and eighteen against Petrini, Sr., M. Petrini, and J. G. Petrini fail for reasons similar to their conversion claims, namely that they have not alleged they had possession or legal title to identifiable monies.

The plaintiffs argue that in construing liberally and reading the revised complaint in the light most favorable to the plaintiffs, they have alleged distributions that were made from the

assets of Petrini Six to any shareholder. The plaintiffs argue that they repeatedly alleged unauthorized distributions by Petrini Six caused by the various schemes of M. Petrini, J. G. Petrini, and Petrini, Sr., with Petrini, Sr. playing an active role in the wrongful schemes of M. Petrini and J. G. Petrini. Additionally, the plaintiffs argue that a claim for a pro-rata share of a corporate distribution can support a statutory theft claim. As once corporate monies have become distributed it becomes property of the shareholders.

"In *Macomber* v. *Travelers Property & Casualty Corp.*, 261 Conn. 620, 804 A.2d 180 (2002), our Supreme Court set forth the general rule that, although money may be the subject of civil theft, '[a]n action for conversion of funds may not be maintained to satisfy a mere *obligation* to pay money. . . . [I]n order to establish a valid claim of . . . [civil] theft for money owed, a party must show ownership or the right to possess specific, identifiable money, rather than the right to the payment of money generally. . . . Thus, [t]he requirement that the money be identified as a specific chattel does not permit as a subject of conversion [or civil theft] an indebtedness which may be discharged by the payment of money generally. . . . A mere obligation to pay money may not be enforced by a conversion [or civil theft] action . . . and *an action in tort is inappropriate where the basis of the suit is a contract, either express or implied.*" (Emphasis in original; citations omitted; internal quotation marks omitted.) *Hamann* v. *Carl*, 196 Conn. App. 583, 598, 230 A.3d 803 (2020).

"Money earned by a corporation remains the property of the corporation, and does not become the property of the stockholders, unless and until it is distributed among them by the corporation." *Spooner* v. *Phillips*, supra, 62 Conn. 73.

The plaintiffs' claims of statutory theft are pled insufficiently as the plaintiffs fail to allege that they had any ownership of identifiable monies. The plaintiffs allege under these

counts that the defendants have "appropriated, or caused to be appropriated, Plaintiffs' pro-rata share of any corporate distribution following its dissolution with the intent to deprive Plaintiffs and, in doing so, have wrongfully deprived Plaintiffs of their property." The only dissolution that is specifically alleged is PFI and not Petrini Six. Prior to PFI's alleged dissolution "M. Petrini and J. G. Petrini executed a Termination of Lease Agreement resolving on behalf of Petrini Six to return leased equipment, terminate Petrini Six's ground lease, and assign the right to sell remaining equipment to the landlord, all without providing notice or any opportunity to be heard to Plaintiffs." However, the plaintiffs as shareholders, have no ownership interest in property that was distributed at PFI's dissolution, a corporation of which they are not shareholders of. Thus, the plaintiffs have no ownership interest in identifiable monies as the plaintiffs fail to allege an unauthorized distribution by Petrini Six.

Accordingly, the defendants' motion to strike counts sixteen, seventeen, and eighteen is granted.

CONCLUSION

The plaintiffs have insufficiently pled count one for fraudulent inducement against Petrini, Sr. as they have not alleged any specific acts relied upon; the plaintiffs have insufficiently pled their fraud counts set forth in counts ten and eleven against Petrini, Sr. and G. Petrini as the alleged fraudulent statements were never made to the plaintiffs; the plaintiffs have insufficiently pled their breach of express warranty set forth in counts two and three against Petrini, Sr. and G. Petrini as they are not the "Seller" under the SPA and as such cannot make express warranties under the contract; the plaintiffs have insufficiently pled their conversion claim in counts six, seven, twelve, and thirteen against M. Petrini, J. G. Petrini, Petrini, Sr., and G. Petrini as the plaintiffs have failed to plead any property and/or identifiable monies they had

possession to that was subject to conversion; and lastly the plaintiffs have failed to sufficiently plead their statutory theft counts set forth in counts sixteen, seventeen, and eighteen against Petrini, Sr., M. Petrini, and J. G. Petrini as the plaintiffs have similarly failed to plead any property and/or identifiable monies they had possession to that was subject to statutory theft.

In summary, the defendants' motion to strike counts one, two, three, six, seven, ten, eleven, twelve, thirteen, sixteen, seventeen, and eighteen is granted.

GOLGER, J

Decision enters in accordance with the foregoing. All counsel and self-represented parties of record notified.

5/13/2024

JDNO Notice sent.

Luke Cardamone