STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

TIMOTHY M. PARSLOW, MICHAEL F. PARSLOW, PATRICK J. PARSLOW, HAROLD W. PARSLOW, SR., and GRAPAR INC.,

Plaintiffs,

Case No.2011-5108-CB

vs.

HAROLD W. PARSLOW, JR., JANET L. PARSLOW, HAROLD W. PARSLOW III, and GREEN AGE PRODUCTS & SERVICES, LLC,

Defendants.
_____/

OPINION AND ORDER

Defendants have filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). Plaintiffs have filed a response and request that the motion be denied.

In addition, Plaintiffs have filed a motion for partial summary disposition pursuant to MCR 2.116(C)(10). Defendants have filed a response and request that the motion be denied.

I. Factual and Procedural History

This matter involves a family shareholder dispute in relation to the family's business, Grapar, Inc. ("Grapar"). Grapar was founded in the 1960s/1970s and was originally owned by Plaintiff Harold Parslow, Sr. ("HPSR") and his wife, Mary Ann Parslow. Grapar manufactured automotive, agricultural, environmental and pharmaceutical machinery, parts and equipment. In 1993 HPSR sold Grapar to his four

sons. The sale was memorialized via a Stock Purchase Agreement and a Promissory Note (collectively, the "Sales Documents"). Pursuant to the Sales Documents, Defendant Harold Parslow, Jr. ("HPJR") and Plaintiff Timothy M. Parslow ("T. Parslow") each received a 30% interest in Grapar, and Plaintiffs Michael F. Parslow ("M. Parslow") and Patrick J. Parslow ("P. Parslow") each received a 20% interest.

Grapar operated on a parcel of real property situated in Warren, MI and located on Flanders Ave. (the "Subject Property"). On June 21, 1993, HPSR, as trustee of a trust, leased the Subject Property to Grapar (the "Lease"). The Lease does not include any personal guaranties.

In the 2000s Grapar, due to the poor economic conditions, obtained a $400,000.00 promissory note from Comerica Bank (the "Note"). The Note was secured by a mortgage encumbering the Subject Property, and by the personal guaranties of HPSR and his four sons. The mortgage was executed by HPSR.

In 2007 HPJR founded Defendant Green Age Products & Services, LLC ("GAPS"). Between 2007 and 2011, GAPS obtained and subcontracted some of its jobs to Grapar. Specifically, GAPS subcontracted the following Grapar: (1) Four seed box washers for Monsanto in 2007-2008, (2) One seed box washer for Bayer in 2010, and (3) One pail washer system for Ennis Trucking.

In October 2011 Grapar shut down its operations. On March 27, 2012, HPSR sold the Subject Property and paid off the Note.

On February 28, 2014, Plaintiffs filed their third amended complaint against Defendants (the "Complaint"). On August 15, 2014, Defendants filed a motion for

summary disposition of all claims brought by HPSR. On October 1, 2014, the Court held a hearing in connection with the motion.

On August 15, 2014, Plaintiffs filed a motion for partial summary disposition pursuant to MCR 2.116(C)(8), (9) and (10). On August 27, 2014, Plaintiffs filed an amended brief in support of their motion. Defendants have since filed a response and request that the motion be denied. Plaintiffs have also filed a reply in support of their motion. On October 1, 2014, the Court held a hearing in connection with the motion and took the matter under advisement. On October 21, 2015, the Court entered its Opinion and Order granting Defendants' motion for summary disposition of HPSR's claims, and granting Defendants summary disposition pursuant to MCR 2.116(I)(2) with respect to Plaintiffs' claims related to the trade names Green Age, Agri-Motion and Power Tower.

On March 11, 2015, Plaintiffs filed their instant motion for partial summary disposition. On March 13, 2015, Defendants filed their instant motion for summary disposition. On April 6, 2015, the parties filed their responses to the opposing parties' motions. On April 27, 2015, the Court held a hearing in connection with the motions and took the matters under advisement.[1]

II. Standard of Review

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party has failed to state a claim upon which relief may be granted. *Radtke v Everett*, 442 Mich 368, 373-374; 501 NW2d 155 (1993). A motion under MCR 2.116(C)(9) tests the sufficiency of a defendant's pleadings by accepting all

[1] Judge Foster subsequently retired

well-pleaded allegations as true. *Id.* If the defenses are so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery, then summary disposition under this rule is proper. *Id.* Further, a court may look only to the parties' pleadings in deciding a motion under MCR 2.116(C)(9). *Id.*

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

III. Arguments and Analysis

A. Claims against Janet Parslow

Janet Parslow ("J. Parslow") is HPJR's wife. J. Parslow works full time as the Oncology Nurse Navigator for the Beaumont Multidisciplinary Prostate and GU and Head and Neck Cancer Center Clinics. (*See* Defendants' Exhibit 16, Affidavit of Janet Parslow, and Exhibit 17, Affidavit of Harold Parslow, III, and Exhibit 8, HPJR deposition testimony.) While J. Parslow is a 1% owner of GAPS, she testified that she has never worked for, or managed, anything in relation to Green Age or GAPS. (*See* Defendants' Exhibit 16.)

The Complaint purports to state claims against J. Parslow in four counts: Count

6: Conversion, Defamation and Business Defamation, Count 7: Injunctive Relief, Count 9: Unjust Enrichment, and Count 16: Conspiracy. (*See* Plaintiffs' Exhibit 1, Complaint.) In their motion, Defendants contend that Plaintiffs have failed to present any evidence in support of any of their claims against J. Parslow.

In their response, Defendants entire answer with respect to J. Parslow is that "Janet L. Parslow, wife, is an owner and check signor of Green Age, LLC, and co-conspirator in making Green Age, LLC operate. Plaintiffs are not attorneys, and may not have had all legal theory available for Deposition, but their claims are stated properly, and the evidence for those claims has been provided." (Plaintiffs' response to Defendants' motion, at ¶13.) Further, Plaintiffs cite to a K-1 evidencing that J. Parslow is an owner of GAPS, and to one check J. Parslow signed on GAPS' behalf. (*See* Plaintiffs' Exhibits 10 and 36.)

While the evidence Plaintiffs' have provided evidences that J. Parslow is a 1% owner of GAPS, and that she executed one check on its behalf, the documents failed to evidence that J. Parslow has engaged in any wrongful conduct whatsoever. Consequently, the Court is convinced that Defendants' motion for summary disposition of Plaintiffs' claims against J. Parslow must be granted.

B. Claims against Harold Parslow, III

Harold Parslow, III ("HPIII") is HPJR and J. Parslow's son. HPIII worked for Grapar and GAPS. The Complaint purports to state claims via seven counts against HPIII: Count 4: Tortious Interference with a Business Expectancy, Count 6: Conversion, Defamation and Business Defamation, Count 7: Injunctive Relief, Count 8: Actual or Threatened Misappropriation of Trade Secrets, Count 9: Unjust Enrichment, Count 11:

Negligent Misrepresentation, and Count 16: Conspiracy. However, in their response to Defendants' motion, Plaintiffs fail to provide the Court with any evidence whatsoever that HPIII engaged in wrongful conduct. Indeed, Plaintiffs fail to even mention HPIII in connection with their discussion of any of the above-referenced claims. For these reasons, the Court is convinced that Defendants' motion for summary disposition of Plaintiffs' claims against HPIII must be granted.

C. Claims against HPJR and GAPS

Count 1: Breach of Fiduciary Duty against HPJR

A fiduciary relationship...exists when there is a reposing of faith, confidence, and trust and the placing of reliance by one on the judgment and advice of another." *Farm Credit Services of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 680; 591 NW2d 438 (1998). A person who is in a fiduciary relationship with another is under a duty to act for the benefit of the other person regarding matters within the scope of the relationship. *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 581; 603 NW2d 816 (1999). "Relief is granted when such position of influence has been acquired and abused, or when confidence has been reposed and betrayed." *Vicencio v Jaime Ramirez, MD, PC*, 211 Mich App 501, 508; 536 NW2d 280 (1995).

MCL 450.1541a(1) governs the fiduciary duties owed by an officer or director of a corporation, and provides:

> (1) A director or officer shall discharge his or her duties as a director or officer including his or her duties as a member of a committee in the following manner:
>
> (a) In good faith.
>
> (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In a manner he or she reasonably believes to be in the best interests of the corporation.

Accordingly, it is clear that HPJR, as an officer and director of Grapar, owed Grapar the fiduciary duties set forth in section 1451. However, the parties vigorously dispute whether HPJR breached those duties.

Whether an individual has breached a fiduciary duty to a corporation is a question of fact. *Commerical Cabinet, Inc v Quint*, unpublished per curium in the Court of Appeals, decided December 16, 2003 (Docket No. 239826), citing *Miller v Magline, Inc.*, 76 Mich App 284, 299-300; 256 NW2d 751 (1977). In their motion and response, Plaintiffs advance numerous bases for their breach of fiduciary duty claims against HPJR. All of Plaintiffs' bases center of HPJR founding and operating GAPS. Specifically, Plaintiffs claim that GAPS competed with Grapar, and that founding a competing business is not in Grapar's best interests. In their response, Defendants contend that founding GAPS benefitted Grapar because GAPS subcontracted all but one project to Grapar up until Grapar closed in October 2011. Further, Defendants contend that the only remaining job, the Mycogen Seed Job, was not subcontracted to Grapar because it was incapable of taking on the additional work. Moreover, Defendants contend that Grapar could not have obtained the jobs with GAPS due to its poor financial condition.

While Defendants have presented evidence that Grapar was paid for its work in connection with the jobs that GAPS subcontracted to it (*See* Defendants' Exhibit 6C.), they have failed to present evidence as to whether Grapar could have obtained the work on its own and obtained the full profits created by the jobs rather than the lesser amount received by receiving the subcontracted work from GAPS. Likewise, Plaintiffs have

failed to present any evidence contradicting Defendants' assertion that Grapar could not have obtained the work in question without GAPS. Consequently, the Court is convinced that neither side has cited to sufficient evidence on these issues to warrant summary disposition.

Plaintiffs also contend that HPJR breached his fiduciary duties by, in his role as director and officer of Grapar, failing to ensure that the required payments were being paid on the Note and that all property taxes were being paid. However, once again neither side has produced any evidence regarding whether Grapar had the ability to pay the liabilities in question and whether paying the bills at issue, given the financial state of Grapar, was in Grapar's best interests. Accordingly, the Court is satisfied that neither party is entitled to summary disposition regarding these allegations.

In addition, Plaintiffs contend that HPJR breached his fiduciary duties to Grapar by ceasing his sales efforts for Grapar, and instead applied all his effort towards obtaining work for GAPS. Like the above-referenced issues, neither side has evidenced whether HPJR could have obtained the work for Grapar had he attempted to do so, or whether Grapar's interests were best served by HPJR seeking jobs on behalf of GAPS that it could then subcontract to Grapar. Consequently, neither side is entitled to summary disposition on this issue.

Lastly, Plaintiffs contend that HPJR breached his fiduciary duties to Grapar by utilizing its assets in connection with his operation of GAPS. Specifically, Plaintiffs contend that HPJR utilized Grapar's trade names, documents, Grapar email address and Grapar-issued cell phone to benefit GAPS. While Plaintiffs have provided evidence that certain trade names applications and documents were transferred to GAPS,

Plaintiffs have failed to provide the Court with any evidence that Grapar's interests were not best served by GAPS utilizing those assets to create work that could be subcontracted to Grapar. Consequently, the Court is convinced that neither party is entitled to summary disposition on this issue.

For the reasons set forth above, the Court is convinced that neither party is entitled to summary disposition as to Plaintiffs' claim for breach of fiduciary duty against HPJR.

Count 2: Silent Fraud, Count 11: Negligent Misrepresentation and Count 12: False Pretenses

In their motion for summary disposition, Defendants contend that Plaintiffs' fraud, negligent misrepresentation, and false pretense claims fail because Plaintiffs have failed to identify any alleged misrepresentation, and have not alleged that they relied on any potential statement(s).

To assert an actionable fraud claim, the plaintiff must demonstrate that: (1) the defendant made a material representation; (2) it was false; (3) when the defendant made it, the defendant knew that it was false, or made it recklessly, without any knowledge of its truth and as a positive assertion; (4) the defendant made it with the intention that it should be acted upon by the plaintiff; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff thereby suffered injury. *Cooper v Auto Club Ins Association*, *supra*; *Hi-Way Motor Co v Int'l Harvester Co*, 398 Mich 330, 336; 247 NW2d 813 (1976). Trial courts must carefully examine whether alleged fraudulent statements are "statements of past or existing fact, rather than future promises or good-faith opinions" and whether the alleged statements "are objectively false or misleading." *Cooper, supra* at 416.

In Counts 2, 11 and 12 of the Complaint, Plaintiffs allege that HPJR stated that he had been acting in the best interests of Grapar, working for the best interests of the Parslow family, that the statement was false, that the statement(s) was/were made with the intention that Plaintiffs' rely on them, that Plaintiffs did believe the statements, and that they have been damaged by HPJR's actions. (*See* Complaint, at ¶54-59, 101-106, 108-113.)

As a preliminary matter, although Plaintiffs allege that they believed HPJR's allege statement(s), they have not alleged that they relied on the statements as is required under *Cooper*. Consequently, Counts, 2, 11 and 12 are properly dismissed under MCR 2.116(C)(8) based on Plaintiffs failure to state a claim.

In addition, Defendants are entitled to summary disposition of Counts 2, 11 and 12 based on the fact that Plaintiff has failed to identify and evidence one or more false statements made by HPJR. In responding to a motion for summary disposition, "[t]he nonmoving party must present more than mere allegations to establish a genuine issue of material fact for resolution at trial." *Civic Assn of Hammond Lake v Hammond Lake Estates No. 3 Lots 126–135,* 271 Mich App 130, 132 n 1; 721 NW2d 801 (2006). In their motion and response, Plaintiffs fail to point to any statements made by HPJR that were materially false. Consequently, Plaintiffs have failed to properly respond the Defendants' motion as to Counts 2, 11 and/or 12. As a result, Plaintiffs' motion for summary disposition of Counts 2, 11 and/or 12 must be granted.

While Plaintiffs have failed to identify any false statement made by HPJR, they do assert that HPJR failed to disclose various facts that he had a duty to disclose.

While Plaintiffs do not acknowledge it, they are arguing that HPJR committed silent fraud/fraudulent concealment.

To prove silent fraud, also known as fraudulent concealment, a plaintiff must establish (1) that the defendant suppressed the truth with the intent to defraud the plaintiff and (2) that the defendant had a legal or equitable duty of disclosure. *Lucas v Awaad,* 299 MichApp 345, 363–364; 830 NW2d 141 (2013). Further, "[a] plaintiff cannot merely prove that the defendant failed to disclose something; instead, 'a plaintiff must show some type of representation by words or actions that was false or misleading and was intended to deceive.' " *Id.* at 364, quoting *Roberts v Saffell,* 280 Mich App 397, 404; 760 NW2d 715 (2008), aff'd 483 Mich 1089 (2009) (internal citation omitted).

While Plaintiffs' position in their motion and response, if proven, may arguable support a claim for silent fraud, Plaintiffs have not stated a claim for silent fraud and/or fraudulent concealment in their complaint. Although Plaintiffs may argue that such a claim falls within their general fraud allegations, fraud must be alleged with particularity. MCR 2.112(B)(1). In this case, Plaintiffs have failed to include their silent fraud allegations in their complaint, much less allege them with particularity. Consequently, Plaintiffs' fraud claim must be dismissed to the extent based on HPJR's failure to disclose certain facts.

Count 3- Breach of Contract

Plaintiffs' breach of contract claims are based on the Sales Documents. The Sales Documents provide, in pertinent parts:

> 20. RESTRICTIONS AGAINST COMPETITION, SOLICITATION, SERVICING, and VIOLATION OF CORPORATE CONFIDENCES.

a. Covenant Not to Compete. The parties agree and acknowledge that, as a material inducement to each other, each Stockholder agrees that, so long as he is an employee, officer, or director of [Grapar], he shall not Compete (as defined in this Paragraph 20) with [Grapar] and, further, that he shall not Compete with the Company during the six (6) month period beginning on the Closing Date for the sale of his shares of the Stock pursuant to Paragraph 11.

b. Covenant Not to Solict or Service. The parties also agree that: (1) [Grapar] has spent significant amounts of time and money developing a list of its customers, (2) this list is not available to the general public or the ordinary employees of [Grapar], (3) this list contains other information about the customers that shall be privileged to this list, (4) the Stockholders shall be privileged to this list, (5) many of the customers on this list do not have an advertised place of business, (6) [Grapar's] competitors could not re-create this list without substantial efforts, and (7) [Grapar's] business would be irreparably and greatly damaged by the use of this information other than for [Grapar's] benefit. Therefore, as a material inducement to entering into this Agreement, each Stockholder agrees and covenants that he will not solicit or do business with, or attempt to solicit or do business with any of [Grapar's] Customers (as defined in this Paragraph 20) except on [Grapar's] behalf, and, further, each Stockholder will not solicit or do business with or attempt to solicit or do business with any of [Grapar's] Customers during the six (6) month period beginning on the Closing Date for the sale of his shares of the Stock pursuant to Paragraph 11.

c. Definitions. For the purposes of this Paragraph 20, the following definitions shall apply:

(1) "Compete" means engaging in the same or any similar business as [Grapar] or any of its Affiliates (as defined in this Paragraph 20), in any manner whatsoever, including competing as a proprietor, partner, investor, stockholder, director, officer, employee, consultant, independent contractor, or otherwise, within a geographic area within twenty-five (25) miles of any office or branch of [Grapar] or any of its Affiliates.

(2) "Affiliates" of [Grapar] include any legal entity that, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with [Grapar].

(3) "Customers" of [Grapar] shall include all persons to whom [Grapar] has sold or attempted to sell any

> product or rendered or attempted to render any service, whether or not for compensation.

(*See* Plaintiffs' Exhibit 4.)

In their motion, Plaintiffs assert that HPJR breached the above-referenced covenants ("Non-Compete") by soliciting to do business with and/or doing business with Pioneer, Bayer, Monsanto, and Mycogen Seed Company. With respect to Pioneer, Plaintiffs contend that HPJR, through GAPS, sold various items to Pioneer, and that Pioneer had been one of Grapar's customers. In support of their position, Plaintiffs rely on various invoices and purchase orders. (*See* Plaintiffs' Exhibit 28.) However, the invoices and purchase orders at issue merely establish that Pioneer was Grapar's customer. Not one of the documents within Exhibit 28 references GAPS or evidences that GAPS conducted any business with Pioneer while Grapar was still operating. Consequently, the Court is convinced that Plaintiff has failed to create a genuine issue of material fact with respect to the portion of their breach of contract claim related to Pioneer.

With respect to Bayer, Monsanto and Mycogen, Plaintiffs' appear to concede that Grapar had not obtained, or sought to obtain, any business from any of those three entities other than receiving subcontract work from GAPS. Consequently, those entities did not fall within the definition of "Customers" as set forth by the Sale Documents. As a result, Defendants' relationships with Bayer, Monsanto and/or Mycogen did not breach the Non-Compete. Accordingly, Defendants are entitled to summary disposition of Plaintiffs' breach of contract claim.

Counts 4 and 13- Tortious Interference with Business Expectancy

In order to maintain a tortious interference claim, a plaintiff must establish: "the existence of a valid business relationship or expectancy, knowledge of the relationship or expectancy on the part of the defendant, an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and resultant damage to the plaintiff." *Cedroni Association, Inc. v Tomblinson, Harburn Associates, Architects & Planners Inc.,* 492 Mich 40, 45–46; 821 NW2d 1 (2012). Business expectancy must be a reasonable likelihood, more than mere wishful thinking. *Trepel v Pontiac Osteopathic Hospital,* 135 Mich App 361, 377; 354 NW2d 341 (1984).

In their motion and response, Plaintiffs contend that HPJR transferred a 2011 Pioneer purchase order from Grapar to GAPS. However, Plaintiffs have failed to cite to any evidence that GAPS obtained or completed any work for Pioneer while Grapar was still operating. A party may not merely state a position and then leave it to the Court to rationalize and discover the basis for the claim, nor may he leave it to the Court to search for authority to sustain or reject his position. *People v Mackle,* 241 Mich App 583, 604 n 4; 617 NW2d 339 (2000). In this case, the Court is convinced that Defendants are entitled to summary disposition of Plaintiffs' tortious interference claims based on Plaintiffs failure to support said claims.

Count 5- Negligence

To establish a prima facie case of negligence, a plaintiff must prove: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages. *Loweke v Ann Arbor Ceiling & Partition Co., LLC,* 489 Mich 157, 162, 809 NW2d 553 (2011). In their response, Plaintiffs assert that HPJR owed them a duty to

"defend [Grapar] from lawsuits", and that he breached that duty by "allowing lawsuits to be received/served without answer or defense." (*See* Complaint, at ¶69-70.) Further, Plaintiffs allege that they have been harmed as a result of HPJR's failure to satisfy his duty. (Id. at ¶71-72.) Accordingly, the Court is satisfied that Plaintiffs have sufficiently pled a negligence to survive Defendants' motion to the extent brought under MCR 2.116(C)(8).

With regards to Defendants' motion for summary disposition pursuant to MCR 2.116(C)(10), a party moving for summary disposition under subsection (10) must support their motion with "affidavits, depositions, admissions, or other documentary evidence." MCR 2.116(G)(3). In their motion, Defendants have not cited to any evidence to support their position that there is no genuine issue of material fact as to one or more of the elements of Plaintiffs' negligence claim. Consequently, Defendants' motion for summary disposition of Plaintiffs' negligence claim pursuant to MCR 2.116(C)(10) must be denied.

Count 6- Conversion, Defamation and Business Defamation

With respect to Plaintiffs' defamation and business defamation claims, Defendants contend that Plaintiffs have failed to identify a single defamatory statement made by any of the Defendants. The first element of a defamation claim is "a false and defamatory statement concerning the plaintiff." *Mitan v Campbell*, 474 Mich 21, 24; 706 NW2d 420 (2005). In their response, Plaintiffs do not refer to any statements that they assert were defamatory. Consequently, the Court is convinced that Defendants' motion for summary disposition of Plaintiffs' defamation and business defamation claims must be granted.

With regards to Plaintiffs' conversion claim, Plaintiffs based their claim on their allegation that Defendants converted Grapar's "trademarks," engineering drawings, and cash. (*See* Plaintiffs' Motion, at p. 20; Plaintiff's Response, at p. 20.)

The common law tort of conversion is defined as "any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein." *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 111; 593 NW2d 595 (1999), quoting *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992). "The gist of conversion is the interference with control of the property." *Sarver v Detroit Edison Co*, 225 Mich App 580, 585; 571 NW2d 759 (1997) (internal citation omitted). In addition, statutory conversion, pursuant to the current version of MCL 600.2919a(1)(a), provides for damages three times the amount of actual damages to a person damaged as a result of another person's stealing or embezzling property or converting property to the other person's own use.

To the extent that Plaintiffs' claims are based on Grapar's trademarks, the Court has, in its October 21, 2014 Opinion and Order, already held Defendants did not take any trademarks owned by Grapar. Consequently, Defendants are entitled to summary disposition of the portion of Plaintiffs' claims related to trademarks.

The next portion of Plaintiffs' conversion claim is based on engineering drawings. In their motion, Defendants contend that GAPS paid Grapar for the engineering drawings. In support of their position, Defendants rely on purchase orders and checks evidencing that GAPS paid Grapar for engineering materials. (*See* Defendants' Exhibit 20.) In their response, Plaintiffs contend that the engineering materials were not paid for. However, Plaintiffs' have failed to support their position. Consequently, the Court is

convinced that Defendants' motion must be granted with respect to the engineering drawings.

Finally, with respect to Plaintiffs' allegation that Defendants' converted cash, "[t]o support an action for conversion of money, the defendant must have an obligation to return the specific money entrusted to his care. The defendant must have obtained the money without the owner's consent to the creation of a debtor and creditor relationship." *Head v Phillips Camper Sales & Rental, Inc.,* 234 Mich App 94, 111–112; 593 NW2d 595 (1999) (citations and quotation marks omitted). When money is placed in a general deposit account, it will inevitably "mingle[] with the money of other depositors in a general fund chargeable with the payment of general deposits, possess[ ] no trust quality, and lose[ ] its special identity in its general comingling with the funds of the bank." *Owosso Masonic Temple Ass'n. v State Savings Bank,* 273 Mich 682, 690; 263 NW 771 (1935). The effect of this comingling makes it impossible for a plaintiff who deposits money in a general deposit account to claim conversion of money placed in the account, as the defendant will not have "an obligation to return the specific money entrusted to his care." *Head,* 234 Mich App at 111.

In this case, Plaintiffs claim is based on commissions Grapar paid to GAPS in connection with the jobs GAPS subcontracted to Grapar. However, Defendants never had an obligation to return the specific funds to Grapar. Consequently, Plaintiffs' claim for conversion based on money fails under *Head*, 234 Mich App 111.

Count 8: Actual or Threatened Misappropriation of Trade Secrets

In their motion, Defendants contend that Plaintiffs have failed to sufficiently plead their misappropriation of trade secrets claim. The party claiming that a trade secret has

been misappropriated "bears the burden of pleading and proving the specific nature of the trade secret." *Innovation Ventures, LLC v Liquid Mfg, LLC*, unpublished per curium in the Court of Appeals, decided October 24, 2014 (Docket No. 315519), quoting *Dura Global Technologies, Inc v Magna Donnelly Corp,* 662 F Supp 2d 855, 859 (ED Mich, 2009) (quotation omitted). "A party alleging trade secret misappropriation must particularize and identify the purported misappropriated trade secrets with specificity." *Id.* (quotation omitted).

In their complaint, Plaintiffs do not specifically identify any assets as trade secrets that were misappropriated by Defendants. (*See* Complaint, at pp.17-18.) Consequently, the Court is convinced that Plaintiffs have failed to properly state a claim for misappropriation. As a result, Defendants' motion for summary disposition of Count 8 pursuant to MCR 2.116(C)(8) must be granted.

Count 9- Unjust Enrichment/Implied Contract

In Count 9 of the Complaint, Plaintiffs allege that J. Parslow has received the benefit of assets transferred to GAPS from Grapar. However, for the reasons discussed above, Plaintiffs' claims against J. Parslow must be dismissed. Moreover, even if Plaintiffs had established that GAPS improperly obtained one or more of Grapar's assets, the law treats a corporation as an entity entirely separate from its stockholders. *Kline v Kline*, 104 Mich App 700, 702; 305 NW2d 297 (1981). For these reasons, Defendants' motion for summary disposition of Count 9 must be granted.

Count 13- Usurpation of a Corporate Opportunity

In their complaint, Plaintiffs allege that HPJR breached his fiduciary duty by, through GAPS, usurping Grapar's business opportunities. (*See* Complaint, at ¶114-

116.) In actuality, Count 13 is a sub-section of Plaintiffs' breach of fiduciary duty claim. For the reasons set forth above, the Court is convinced that neither party is entitled to summary disposition of that claim. Consequently, Defendants' motion for summary disposition of Count 13 must also be denied.

Count 16- Conspiracy

"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." *Admiral Ins Co v Columbia Cas Ins Co.*, 194 Mich App 300, 313, 486 NW2d 351 (1992). In this case, for the reasons discussed above, Defendants are entitled to summary disposition of Plaintiffs' claims against J. Parslow, HPIII, and GAPS. Consequently, Plaintiffs' conspiracy claim also fails.

IV. Conclusion

For the reasons set forth above, Plaintiffs' motion for partial summary disposition is DENIED. In addition, Defendants' motion for summary disposition is GRANTED, IN PART, and DENIED, IN PART. The portions of Defendants' motion requesting summary disposition of Counts 1-Breach of Fiduciary Duty, 5- Negligence, and 13-Usurpation of Corporate Opportunity are DENIED. Defendants' motion for summary disposition of Counts 2-Fraud, 3-Breach of Contract, 4-Tortious Interference, 6-Conversion, 8-Misappropriation of Trade Secrets, 9-Unjust Enrichment, 11-Negligent Misrepresentation/False Pretense, 12-Intentional Misrepresentation/False Pretense, and 16-Conspiracy are GRANTED.

This Opinion and Order disposes of all of Plaintiffs' claims against Defendants Janet L. Parslow, Harold W. Parslow, III and Green Age Products & Services, LLC as

Plaintiffs' breach of fiduciary duty, negligence, and usurpation of corporate opportunity are only brought against Defendant Harold W. Parslow, Jr.

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

IT IS SO ORDERED.

Date: OCT 01 2015

Kathryn A. Viviano

Hon. Kathryn A. Viviano, Circuit Court Judge