IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

BRADLEY BAKOTIC and JOSEPH HACKEL,	)	
Plaintiffs,	)	
v.	)	C.A. No. N17C-12-337 WCC
BAKO PATHOLOGY LP and BPA HOLDING CORP.,	)	
Defendants.	)	

Submitted: July 13, 2018
Decided: December 10, 2018

Plaintiffs' Rule 12(c) Motion for Judgment on the Pleadings
DENIED IN PART, GRANTED IN PART

MEMORANDUM OPINION

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CARPENTER, J.

Before the Court is Bradley Bakotic's ("Bakotic") and Joseph Hackel's ("Hackel") (jointly "Plaintiffs") Rule 12(c) Motion for Judgment on the Pleadings. For the reasons set forth in this Opinion, Plaintiffs' Rule 12(c) Motion for Judgment on the Pleadings is denied as to Count I and Counterclaims I and II. Counterclaims III, IV, and VI are dismissed. Counterclaim V against Hackel is dismissed, but remains as to Bakotic.

I. FACTUAL & PROCEDURAL BACKGROUND

The crux of this case is whether Plaintiffs' various post-term non-compete agreements with Bako Pathology LP and BPA Holding Corporation (jointly "Defendants") are enforceable.

Bakotic and Hackel are both licensed physicians.[1] Plaintiffs were previously employed by Bakotic Pathology Associates, LLC, a Georgia company providing clinical pathology, anatomic pathology, and dermatopathology-related services to podiatrists (the "Company").[2] Defendant Bako Pathology LP owns Defendant BPA Holding Corporation, which is the sole member of the Company.[3]

Prior to their separation from the Company, Bakotic was President and Chief Executive Officer, and Hackel served as Medical Director and Vice President.[4] As

[1] Bakotic is a doctor of podiatric and osteopathic medicine and Hackel is a medical doctor. Pls.' Opening Br. Rule 12(c) Mot. at 4.
[2] Compl. ¶¶ 10-11.
[3] *Id.* ¶¶ 9-10.
[4] *Id.* ¶ 12. Countercl. ¶¶ 20-21.

President and Chief Executive Officer, "Plaintiff Bakotic's job duties included … marketing, regulatory matters, management, sales, lecturing, and supervision."[5] Defendants allege Plaintiff Hackel had similar responsibilities in his position, which he denies.[6]

On September 8, 2017, Bakotic was allegedly terminated by the Company for cause, and Hackel subsequently resigned from his position on September 30, 2017.[7] A few days later, on October 3, 2017, Plaintiffs formed the Rhett Foundation for Podiatric Medical Education, Inc. ("Rhett Foundation"), an alleged educational institution.[8] Plaintiff Bakotic also registered Rhett Diagnostics, LLC ("Rhett Diagnostics"), a medical laboratory, with the Georgia Secretary of State on December 28, 2017.[9] One former employee and one prospective employee of Defendants both now work for Plaintiffs at the Rhett Foundation and/or Rhett Diagnostics.[10]

Plaintiffs' post-term relationships with Defendants are governed by three agreements: (1) a 2011 Employee Confidentiality, Non-Solicitation, and Non-Competition Agreement; (2) a 2015 Merger Agreement; and (3) a 2016 Partnership

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[5] Countercl. ¶ 20.
[6] Countercl. ¶¶ 20-21; Reply ¶¶ 20- 21.
[7] Countercl. ¶¶ 33, 35.
[8] *Id.* ¶¶ 42, 44.
[9] *Id.* ¶ 47.
[10] *See id.* ¶¶ 37, 39, 41, 45, 47.

Agreement (collectively "the Agreements").[11] In light of the Agreements, Plaintiffs filed this action on December 17, 2017, seeking a declaratory judgment that their various covenants not to compete are unenforceable under Delaware law.[12] Defendants filed an answer and several counterclaims against Plaintiffs in response.[13] Their counterclaims against both Plaintiffs are for declaratory judgment, breach of contracts, breach of the duty of loyalty, unjust enrichment, and tortious interference with business, contractual, and employment relations.[14] Defendants also have a counterclaim for slander against Plaintiff Bakotic.[15]

Shortly after Defendants filed their answer and counterclaims, Plaintiffs made the instant Motion for Judgment on the Pleadings. Plaintiffs request that judgment be entered in their favor on Count I of the Complaint (declaratory judgment) and against Defendants on Count I of the Counterclaims (declaratory judgment).[16] Plaintiffs also seek judgment against Defendants for Counterclaims II (breach of contracts), III (breach of duty of loyalty), IV (unjust enrichment), V (tortious interference), and VI (slander).[17]

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[11] *See* Compl., Ex. 1-2; Countercl., Ex. 2.
[12] *See* Compl.
[13] *See* Answ.; Countercl.
[14] *See* Countercl. Counts I-V.
[15] *See* Countercl. Count VI.
[16] Pls.' Opening Br. Rule 12(c) Mot. at 10-11.
[17] *Id.* at 11-12.

On April 30, 2018, the Court heard oral arguments on Plaintiffs' Motion for Judgment on the Pleadings, and reserved its decision. The Court urged the parties to attempt to reach an agreement before the Court issued its opinion on the Motion. In spite of the Court's comments, the parties were unsuccessful in reaching an agreement. In fact, the dispute has expanded into the Court of Chancery, where the Defendants filed for injunctive relief on July 18, 2018.

II. STANDARD OF REVIEW

Pursuant to Superior Court Civil Rule 12(c), any party may move for judgment on the pleadings after the pleadings are closed but within such time as not to delay trial.[18] However, "[t]he standard for granting a motion for judgment on the pleadings is stringent,"[19] and the motion will be denied unless there are no material issues of fact and the movant is entitled to judgment as a matter of law.[20] Importantly, a court considering a motion for judgment on the pleadings must "view the facts pleaded and the inferences to be drawn from such facts in a light most favorable to the non-moving party."[21] Where a document is integral to the pleadings, the court

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[18] Super. Ct. Civ. R. 12(c).
[19] *Artisans' Bank v. Seaford IR, LLC*, 2010 WL 2501471, at *2 (Del. Super. Ct. June 21, 2010).
[20] *See Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P.*, 624 A.2d 1199, 1205 (Del. 1993).
[21] *Id.* (citing *Warner Commc'ns Inc. v. Chris-Craft Indus., Inc.*, 583 A.2d 962, 965 (Del. Ch.), *aff'd without opinion*, 567 A.2d 419 (Del. 1989)).

may consider it in deciding a Rule 12(c) motion without converting it to one for summary judgment.[22]

III. DISCUSSION

Before the Court begins its analysis, it would like to make clear that Delaware law will be applied in the decision on Plaintiffs' Motion. Section 6.5.1 of the Partnership Agreement expressly states that Delaware Law shall be applied. Accordingly, "Delaware courts will generally honor a contractually-designated choice of law provision so long as the jurisdiction selected bears some material relationship to the transaction."[23] Here, the Court sees no reason not to use Delaware law, even for the Defendants' Counterclaims, which do not all stem from the Partnership Agreement, and the parties have not requested the Court to do otherwise.

A. DECLARATORY JUDGMENT

Plaintiffs argue that they are entitled to declaratory judgment invalidating the various non-compete agreements at issue.[24] More specifically, Plaintiffs contend that the Agreements are unenforceable under 6 Del. C. § 2707, which invalidates covenants restricting a physician's right to practice medicine.[25] The applicable statute states:

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[22] *See, e.g., Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 320 (Del. 2004).
[23] *J.S. Alberici Constr. Co. v. Mid-West Conveyer Co.*, 750 A.2d 518, 520 (Del. 2000).
[24] *See* Pls.' Opening Br. Rule 12(c) Mot. at 18-22.
[25] *See id.*

> Any covenant not to compete provision of an employment, partnership or corporate agreement between and/or among physicians which restricts the right of a physician to practice medicine in a particular locale and/or for a defined period of time, upon the termination of the principal agreement of which the said provision is a part, shall be void; except that all other provisions of such an agreement shall be enforceable at law, including provisions which require the payment of damages in an amount that is reasonably related to the injury suffered by reason of termination of the principal agreement. Provisions which require the payment of damages upon termination of the principal agreement may include, but not be limited to, damages related to competition. [26]

Defendants, on the other hand, believe the Court should declare the Agreements as valid and enforceable against Plaintiffs because the covenants at issue are not between and/or among physicians, and therefore are not covered by § 2707.[27] They also argue that the non-compete provisions only prevent Plaintiffs from carrying out the same or similar duties previously performed for Defendants, which did not include the practice of medicine.[28] Therefore, according to Defendants, Plaintiffs have failed to establish how the covenants restrict their practice of medicine and why § 2707 should be applied to invalidate them.[29]

The Court finds that material issues of fact remain as to what Plaintiffs are actually doing in their new venture at the Rhett Foundation and/or Rhett Diagnostics,

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[26] 6 *Del. C.* § 2707.
[27] Defs.' Resp. Opp'n Pls.' Rule 12(c) Mot. at 19.
[28] *Id.* at 24.
[29] *Id.*

and whether that activity falls within the purview of the various non-compete provisions contained in the three Agreements. The Plaintiffs' current roles and responsibilities at the Rhett Foundation and/or Rhett Diagnostics have only been vaguely defined, and it remains to be seen if they are the "same or similar" to those previously performed for Defendants, within the meaning of the Agreements. The assertion that Plaintiffs simply wanted to be physicians again and practice podiatric medicine is hotly contested by the Defendants and, without discovery, the Court is unwilling to assume the representations of counsel are consistent with the conduct of his clients.

Without this basic factual foundation, the Court cannot determine if or how § 2707 applies to the parties' present situation and, consequently, whether or not the various non-compete covenants are enforceable against Plaintiffs. Therefore, Plaintiffs' Motion for Judgment on the Pleadings as to Count I and Counterclaim I is denied.

B. COUNTERCLAIM II: BREACH OF CONTRACTS

In Delaware, a breach of contract claim requires Defendants to demonstrate: (1) a contractual obligation, (2) a breach of that obligation, and (3) resulting damages.[30]

[30] *Interim Healthcare, Inc. v. Spherion Corp.*, 884 A.2d 513, 548 (Del. Super. Ct. Feb. 4, 2005).

Plaintiffs argue that the Court should grant judgment on the pleadings in their favor as to Defendants' Counterclaim II because Defendants have failed to make any well-pled allegations that Plaintiffs, especially Plaintiff Hackel, solicited their employees or disclosed any confidential information, in violation of the Agreements.[31] They also claim that Defendants only offered conclusory allegations as to damages.[32]

Defendants contend that "the pleadings are rampant with facts demonstrating that both Plaintiffs have solicited and/or induced Defendants' employees/contractors to end their relationships with Defendants, and are abusing their roles as former executives to access and/or use Defendants' confidential information to compete with Defendants and solicit their current and potential investors, clients, and other business relationships."[33]

When viewing the facts pleaded and the inferences to be drawn from those facts in a light most favorable to Defendants, the Court finds that Plaintiffs are not entitled to judgment as a matter of law on the breach of contracts counterclaim. At least one former employee and one prospective employee of Defendants now work for Plaintiffs at the Rhett Foundation and/or Rhett Diagnostics[34] and, recognizing

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[31] *See* Pls.' Opening Br. Rule 12(c) Mot. at 23-24.
[32] *Id.* at 24.
[33] Defs.' Resp. Opp'n Pls.' Rule 12(c) Mot. at 27.
[34] *See* Countercl. ¶¶ 37, 39, 41, 45, 47.

the acidic relationship between the parties, the Court believes it is a logical inference that Plaintiffs likely recruited these individuals in breach of their non-solicitation covenants contained in the Agreements.

Furthermore, the prospective employee of Defendants actually accepted an offer to serve as Director of Podiatric Medicine for the Company, but ultimately rescinded his acceptance before starting that position.[35] The Court again finds it likely that Plaintiffs used and/or disclosed Defendants' confidential information in order to persuade that individual to rescind his acceptance of the offer and instead work for them in their new venture. Given these factual inferences and because the case is in the early stages of litigation, the Plaintiffs are not entitled to judgment as a matter of law on Defendants' breach of contracts claim.

The Court also finds that factual issues remain regarding the role that Bakotic and Hackel each may have played in the alleged breach. Therefore, Plaintiffs' Motion for Judgment on the Pleadings as to Counterclaim II for breach of contracts is denied.

C. COUNTERCLAIM III: BREACH OF DUTY OF LOYALTY

Under Delaware law, officers and directors of a corporation are bound by the duty of loyalty, which "mandates that the best interest of the corporation and its

[35] *Id.* ¶¶ 39, 41, 47.

shareholders takes precedence over any interest possessed by a director, officer or controlling shareholder and not shared by the stockholders generally."[36]

Plaintiffs again claim Defendants failed to offer any well-pled allegations that they used or disclosed Defendants' confidential information, and therefore breached the duty of loyalty.[37] They also argue that their duty of loyalty to Defendants ended when the agency relationship was terminated, and that a former agent's potential misappropriation of confidential information does not constitute a breach of the duty of loyalty.[38]

Defendants argue that Plaintiffs violated their common law duty of loyalty owed to the Company. More specifically, Plaintiffs breached their duty of loyalty by "(1) soliciting employees to cease working for Defendants and/or to work for a Competing Business; (2) convincing a person to revoke his acceptance to serve as Director of Podiatric Medicine for Defendants; (3) utilizing and disclosing Confidential Information to build a Competing Business; and/or (4) soliciting customers and/or other prohibited parties to a Competing Business."[39]

While the Court has concerns about whether this Court is the proper jurisdiction to hear such a claim, the allegations here are nothing more than a

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[36] *Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 361 (Del. 1993).
[37] *See* Pls.' Opening Br. Rule 12(c) Mot. at 25-27.
[38] *Id.* at 26.
[39] Countercl. ¶ 84.

repackaging of the same claim set forth in the breach of contracts count. While Plaintiffs may not breach their non-competition covenants, to assert they have some duty of loyalty once they are terminated from the Defendants' company is not supported. As such, to the extent such claim is even recognized as a valid one under Delaware law, which the Court doubts, the facts simply do not support it in this litigation. Therefore, Count III of Defendants' Counterclaims is dismissed.

D. COUNTERCLAIM IV: UNJUST ENRICHMENT

Unjust enrichment is "'the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience.'"[40] It is usually, but not always, an equitable claim.[41] Where a plaintiff pleads unjust enrichment but seeks "money damages in order to be made whole, Chancery has no jurisdiction because no equitable remedy is sought."[42] In such cases, this Court has routinely entertained claims for unjust enrichment.

Plaintiffs argue that judgment on the pleadings is proper as to Counterclaim IV because the enforceability of the Merger Agreement is undisputed, and a claim for unjust enrichment cannot survive when such an enforceable contract exists.[43]

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[40] *Nemec v. Shrader*, 991 A.2d 1120, 1130 (Del. 2010) (quoting *Fleer Corp. v. Topps Chewing Gum, Inc.*, 539 A.2d 1060, 1062 (Del. 1988)).
[41] *Caldera Properties-Lewes/Rehoboth VII, LLC v. Ridings Dev., LLC*, 2009 WL 2231716, at *31 (Del. Super. Ct. May 29, 2009).
[42] *Grace v. Morgan*, 2004 WL 26858, at *3 (Del. Super. Ct. Jan. 6, 2004).
[43] Pls.' Opening Br. Rule 12(c) Mot. at 27.

Additionally, Plaintiffs believe that, even if the Court finds the restrictive covenants in the Merger Agreement to be unenforceable, there is no issue because the Merger Agreement contains a severability clause.[44]

Defendants contend that Plaintiffs received significant compensation from Defendants while they "repeatedly engaged in … gross misconduct … which distracted from their abilities to perform their jobs and put Defendants at legal and financial risk."[45] They also assert that a claim of unjust enrichment can survive, even when a contract's validity is challenged.[46]

The Court finds that Defendants' unjust enrichment counterclaim is improper and must be dismissed. Regardless of whether the restrictive covenants and confidentiality requirements in the Agreements are found to be enforceable or not, the Court believes there is no valid unjust enrichment claim. The compensation that has allegedly unjustly enriched Plaintiffs was given to them as consideration under the Merger Agreement. Plaintiffs' alleged misconduct occurred well after the sale of the businesses, which was governed by the Merger Agreement, and is unrelated to this sum of money. If Defendants are entitled to compensation, it would relate to the damages they suffered from Plaintiffs violating the non-competition agreement. There is no suggestion that the compensation for the sale of this business was

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[44] *Id.*
[45] Defs.' Resp. Opp'n Pls.' Rule 12(c) Mot. at 35-36.
[46] *Id.* at 35.

improper or that Defendants did not receive exactly what was bargained for. Plaintiffs' conduct may have caused Defendants damages, but if so the proper recovery is under the breach of contracts claim. Therefore, the Court finds there is no valid, proper unjust enrichment claim, and Count IV of Defendants' Counterclaims is dismissed.

E. COUNTERCLAIM V: TORTIOUS INTERFERENCE

To prevail on a claim for tortious interference with an existing contract, a party must demonstrate: (1) the existence of a contract, (2) about which the interferer knew and (3) an intentional act that is a significant factor in causing the breach of such contract (4) without justification (5) that causes injury.[47] Likewise, a claim for tortious interference with prospective business relations requires: (1) a reasonable probability of a business opportunity; (2) intentional interference by Plaintiffs with that opportunity; (3) proximate causation; and (4) damages.[48]

Plaintiffs argue that a claim for tortious interference "requires an independently wrongful act" and cannot be predicated on a "mere breach of contract," as Defendants attempt to do in this case.[49] They also contend that

[47] *Irwin & Leighton, Inc. v. W.M. Anderson Co.*, 532 A.2d 983, 992 (Del. Ch. Aug. 11, 1987).
[48] *Beard Research, Inc. v. Kates*, 8 A.3d 573, 607-08 (Del. Ch. Apr. 23, 2010).
[49] *See* Pls.' Opening Br. Rule 12(c) Mot. at 28-29.

Defendants have not offered any well-pled factual allegations to support a claim of tortious interference or damages suffered, especially in regards to Plaintiff Hackel.[50]

Defendants claim that Plaintiffs "have piggy-backed off the goodwill and reputation they developed as former executives of Defendants ... to induce [providers, distributors, and suppliers] to terminate their relationships with Defendants and provide their services to Plaintiffs."[51] They also argue that Plaintiffs' tortious interference is evidenced by the fact that at least one former employee and one prospective employee of Defendants now work for Plaintiffs at the Rhett Foundation and/or Rhett Diagnostics.[52] Finally, Defendants claim that Plaintiff Bakotic "tortiously interfered with Defendants' Medical Director Services Agreement with [the Ankle and Foot Centers of Georgia] ... by refusing to step down as Medical Director" after being terminated as CEO of the Company.[53]

The Court believes that the Counterclaim for tortious interference against Plaintiff Hackel must be dismissed, as Defendants have not asserted any wrongful conduct beyond his alleged breach of the non-solicitation covenants contained in the Agreements. As this Court has previously stated: "Even an intentional, knowing, wanton, or malicious action by the [Plaintiffs] will not support a tort claim if the

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[50] *Id.*
[51] Defs.' Resp. Opp'n Pls.' Rule 12(c) Mot. at 33-34.
[52] *See id.* at 34.
[53] *Id.*

[Defendants] cannot assert wrongful conduct beyond the breach of contract itself."[54] The Court finds Defendants have failed to plead any facts showing that Plaintiff Hackel's "alleged contractual breach was accompanied by the breach of an independent duty imposed by law."[55] Instead, Defendants merely claim that he tortiously interfered with their business, contractual, and employment relations by "using [his] prior position … to unlawfully solicit employees, dissuading a potential employee from accepting employment, [and] dissuading employees from continuing to work for Defendants."[56] Based on the facts pled, the Court believes Plaintiff Hackel's alleged breach of the three Agreements at issue in this litigation was not accompanied "by the breach of an independent duty imposed by law."[57] Therefore, Counterclaim V for tortious interference against Plaintiff Hackel is dismissed.

However, the Court finds Plaintiffs' arguments unavailing in regards to Bakotic, as Defendants have pled facts independent of the alleged breach of contracts to support their claim for tortious interference against him.[58] More specifically, Defendants allege that they "entered into a[n exclusive] Medical Director Services Agreement with the Ankle and Foot Centers of Georgia

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[54] *Data Management Internationals, Inc. v. Saraga*, 2007 WL 2142848, at *3 (Del. Super. Ct. July 25, 2007).
[55] *Id.*
[56] Countercl. ¶ 98.
[57] *Data Management Internationals, Inc.*, 2007 WL 2142848, at *3.
[58] *See* Countercl. ¶¶ 52-55.

("AFCG"),"[59] and appointed "Plaintiff Bakotic to serve as the Medical Director of AFCG pursuant to this contract."[60] Since Plaintiff Bakotic was terminated as CEO of the Company, he has refused to step down as AFCG's Medical Director.[61] As a result, Defendants have been unable to appoint a new director and provide AFCG with medical director services, in accordance with the terms of their contract.[62] Based on these factual pleadings, the Court believes Defendants should be allowed to proceed with their tortious interference claim against Plaintiff Bakotic. Therefore, Plaintiff Bakotic's motion for judgment on the pleadings as to Counterclaim V for tortious interference is denied.

F. COUNTERCLAIM VI: SLANDER

To state a claim for slander, Defendants must allege facts showing: (1) a defamatory communication; (2) publication; (3) that the communication refers to Defendants; (4) the third party's understanding of the communication's defamatory character; and (5) injury.[63] The injury "element is met when the alleged defamatory statement constitutes slander per se, or involves a statement 'maligning a person in their trade, business, and profession.'"[64]

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[59] *Id.* ¶ 52.
[60] *Id.* ¶ 54.
[61] *Id.* ¶ 55.
[62] *See id.*
[63] *Read v. Carpenter,* 1995 WL 945544, at *2 (Del. Super. Ct. June 8, 1995).
[64] Defs.' Resp. Opp'n Pls.' Rule 12(c) Mot. at 31 (citing *Washington v. Talley*, 2017 WL 1201125 (Del. C.P. Feb. 15, 2017)).

Plaintiffs urge the Court to enter judgment against Defendants on Counterclaim VI, slander, and in favor of Plaintiff Bakotic.[65] Plaintiffs argue that the five elements of slander cannot be satisfied because Bakotic's alleged slanderous statements are not facts but opinions, are not disparaging comments, and, in some cases, are not even about Defendants.[66] Plaintiffs also assert that Defendants' slander counterclaim fails to demonstrate how Defendants were financially harmed or injured by the statements.[67]

Defendants contend that they have alleged sufficient facts to support their claim for slander.[68] They cite to numerous allegedly harmful statements Plaintiff Bakotic made about Defendants, and argue the statements are more slanderous than those in other cases that have been allowed to proceed before this Court.[69]

Even though the parties to this litigation are based in Georgia, they have properly brought their action in Delaware, pursuant to a forum selection clause in the Agreements. However, the Court believes that this contractually-based forum selection clause does not encompass Defendants' slander counterclaim, and this is not the appropriate forum for its resolution. In *Ashall Homes Ltd.*, the Delaware Court of Chancery analyzed whether a party's non-contract claims fell within the

[65] Pls.' Opening Br. Rule 12(c) Mot. at 12.
[66] *See id.* at 30-31.
[67] *Id.* at 31-32.
[68] Defs.' Resp. Opp'n Pls.' Rule 12(c) Mot. at 30.
[69] *See id.* at 31-33.

scope of a forum selection provision.[70] Then Vice-Chancellor Strine cited an opinion from the United States District Court for the Southern District of New York, which states that:

> … a contractually-based forum selection clause will also encompass tort claims if the tort claims ultimately depend on the existence of a contractual relationship between the parties ... or if resolution of the claims relates to interpretation of the contract, ... or if the tort claims involve the same operative facts as a parallel claim for breach of contract.... [The] common thread running through these various formulations [of the rule] is the inquiry whether the plaintiff's claims depend on rights and duties that must be analyzed by reference to the contractual relationship.[71]

The Court finds that Defendants' slander counterclaim in this case does not depend on the existence of a contractual relationship between the parties, nor relate to the interpretation of the Agreements, or involve the same operative facts as the breach of contracts claim. The mere fact that a business relationship existed between the parties and justified their use of this Court to resolve their business differences does not open the door to every dispute between them. The conduct of Plaintiffs may in fact provide a basis for a slander suit in Georgia where the conduct occurred. But

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[70] *See Ashall Homes Ltd. V. ROK Entertainment Group Inc.*, 992 A.2d 1239, 1252-53 (Del. Ch. Apr. 23, 2010).

[71] *Direct Mail Prod. Serv. Ltd. v. MBNA Corp.*, 2000 WL 1277597, at *6 (S.D.N.Y. Sept. 7, 2000).

the childish name calling and behavior alleged in this count has no place in this Court. Therefore, Counterclaim VI for slander against Plaintiff Bakotic is dismissed.

IV. CONCLUSION

For the reasons set forth in this Opinion, Plaintiffs' Rule 12(c) Motion for Judgment on the Pleadings is denied as to Count I and Counterclaims I and II. Counterclaims III, IV, and VI are dismissed. Counterclaim V against Hackel is dismissed but remains as to Bakotic.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.