

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

ERICK ROHL,

Plaintiff,

v.

STEPHEN ROHL,

Defendant.

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C.A. No. N25C-04-175 CLS

Date Submitted: August 20, 2025
Date Decided: November 24, 2025

Upon Consideration of the Defendant's Motion to Dismiss.
DENIED.

MEMORANDUM OPINION

Kathleen DeLacy, Esquire, of REGER RIZZO & DARNALL LLP, *Attorney for Plaintiff.*

Madeline R. Silverman, Esquire, of GORDON, FOURNARIS & MAMMARELLA, P.A., *Attorney for Defendant.*

SCOTT, J.

This action arises from the unauthorized transfer of trust assets by a trust beneficiary. The plaintiff brought this action alleging claims for fraud, conversion, and unjust enrichment against the defendant—plaintiff’s brother. The defendant now moves for dismissal for failure to state a claim upon which relief can be granted. For the reasons stated below, the defendant’s motion is **DENIED**.

FACTUAL AND PROCEDURAL HISTORY¹

I. THE PARTIES

Plaintiff, Erick Rohl (“Plaintiff”), is a resident of Maryland.²

Defendant, Stephen Rohl (“Defendant”), is a resident of Delaware.³

II. FACTUAL BACKGROUND

In February 1999, the parties’ mother, Jane Rohl (“Mrs. Rohl”), created a revocable trust (the “Jane Trust”) between herself and The Vanguard Group (“Vanguard”).⁴ The Jane Trust is governed by a revocable trust agreement (“Trust Agreement”) dated February 26, 1999.⁵ The beneficiaries under the Trust Agreement include her husband, Adolph Rohl (“Mr. Rohl”), and her three children: Plaintiff, Defendant, and their sister Wendy Rohl (“Wendy”).⁶ Under the Trust

¹ The facts are drawn from the allegations in the Complaint and are assumed to be true and undisputed for the purposes of the Motion to Dismiss. *See* D.I. 1, Complaint (“Compl.”).

² Compl. ¶ 1.

³ *Id.* ¶ 2.

⁴ *Id.* ¶¶ 8, 21; Revocable Trust Agreement, D.I. 6, at 1 (“Trust Agreement”).

⁵ *See generally* Trust Agreement.

⁶ Compl. ¶ 12; Trust Agreement at 3–6.

Agreement, the Jane Trust assets were to be distributed to Plaintiff, Defendant, and Wendy upon Mrs. Rohl's or Mr. Rohl's death, whichever occurred later.⁷

A. The Successor Trustee

Until Mrs. Rohl's death on January 16, 2021, Mrs. Rohl was both the trustor and trustee of the Jane Trust.⁸ The Trust Agreement provides that following Mrs. Rohl's death, Mr. Rohl would become the successor trustee and her cousin, Craig Marshall ("Mr. Marshall"), would assume the role of trustee if Mr. Rohl could no longer act as trustee.⁹

Mr. Rohl acted as trustee of the Jane Trust until he passed on April 10, 2022.¹⁰ After Mr. Rohl's death, there was no successor trustee because Mr. Marshall passed before Mr. Rohl.¹¹ Consequently, in accordance with the terms of the Trust Agreement, the beneficiaries—i.e., Plaintiff, Defendant, and Wendy—were required to appoint a bank or financial institution as the successor trustee by a majority vote.¹²

B. Defendant Transfers the Jane Trust Assets

Shortly after Mr. Rohl's passing, Defendant allegedly attempted to directly access the Vanguard account holding the Jane Trust.¹³ Vanguard initially denied

⁷ Trust Agreement at 6.

⁸ *Id.* at 1.

⁹ Compl. ¶¶ 9–11.

¹⁰ *Id.* ¶¶ 15–16.

¹¹ *Id.* ¶ 17.

¹² *Id.* ¶ 18; Trust Agreement at 15–16.

¹³ Compl. ¶ 28.

Defendant access to the account.¹⁴ According to the Complaint, Defendant made a successful second attempt to access the Jane Trust around June 2022 by telling a Vanguard agent that he “became the successor trustee for the [Jane] Trust, and requested that his name be substituted for the prior successor trustee, Adolph E. Rohl[.]”¹⁵

Defendant then purportedly told a Vanguard agent that he was the successor trustee for a trust established by Mr. Rohl (the “Adolph Trust”) and requested to establish an account for the Adolph Trust with Vanguard.¹⁶ Based on the representations made by Defendant, Vanguard authorized Defendant to transfer the Jane Trust assets to the Vanguard account holding the Adolph Trust.¹⁷

With the Jane Trust assets transferred to the Adolph Trust, Defendant “was able to transfer the funds out to external accounts, withdraw the funds, change or liquidate investments, and perform other actions to be further found on discovery.”¹⁸ Following the transfer of the Jane Trust assets, Vanguard flagged the account holding the Adolph Trust as “suspicious, and locked the account[.]”¹⁹

¹⁴ Compl. ¶ 29.

¹⁵ *Id.* ¶ 31.

¹⁶ *Id.* ¶ 32.

¹⁷ *Id.* ¶ 36.

¹⁸ *Id.* ¶ 38.

¹⁹ *Id.* ¶ 37.

C. A Successor Trustee is Appointed

After Defendant's actions but before Plaintiff and Wendy knew what Defendant did, they both voted to appoint Bryn Mawr Trust ("BMT") as the successor trustee to Mr. Rohl over Defendant's objection.²⁰

As the successor trustee, BMT tried to gain access to the Jane Trust account with Vanguard, but it "discovered that Defendant improperly gained access to funds and decision making for the" account.²¹ When BMT asked Defendant for the information regarding the alleged transfer for auditing purposes, he "refused" to provide any.²² As a result, BMT charged increased fees because it was prevented from exercising its authority as the trustee of the Trust.²³

III. Procedural Background

Plaintiff filed the instant Complaint on April 18, 2025. The Complaint asserts three claims: Count I for fraud, Count II for conversion, and Count III for unjust enrichment. Plaintiff seeks "damages in an amount to be determined at trial, as well as restitution, legal costs, including attorneys' fees, and any [other] additional costs[.]"²⁴ Defendant moves to dismiss all claims under Superior Court Civil Rule

²⁰ Compl. ¶¶ 40–41.

²¹ *Id.* ¶¶ 42–43.

²² *Id.* ¶¶ 44–45.

²³ *Id.* ¶ 46.

²⁴ *Id.* at 11.

12(b)(6).²⁵ Plaintiff opposes.²⁶ Both parties submitted their relevant pleadings,²⁷ and the matter is ripe for decision.

STANDARD OF REVIEW

Upon a motion to dismiss under Superior Court Civil Rule 12(b)(6), the Court (i) accepts all well-pled factual allegations as true, (ii) accepts even vague allegations as well-pled if they give the opposing party notice of the claim, (iii) draws all reasonable inferences in favor of the non-moving party, and (iv) only dismisses a case where the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances.²⁸ The Court does not, however, accept “conclusory allegations that lack specific supporting factual allegations.”²⁹ But “it is appropriate . . . to give the pleader the benefit of all reasonable inferences that can be drawn from the pleading.”³⁰

²⁵ See generally Defendant’s Motion to Dismiss, D.I. 6 (“MTD”).

²⁶ See generally Plaintiff’s Response to Defendant’s Motion to Dismiss, D.I. 9 (“Resp. to MTD”).

²⁷ MTD; Resp. to MTD.

²⁸ *ET Aggregator, LLC v. PFJE AssetCo Hldgs. LLC*, 2023 WL 8535181, at *6 (Del. Super. Dec. 8, 2023).

²⁹ *Id.* (quoting *Ramunno v. Crawley*, 705 A.2d 1029, 1034 (Del. 1998)).

³⁰ *TrueBlue Inc. v. Leeds Equity Partners IV, LP*, 2015 WL 5968726, at *2 (Del. Super. Sept. 25, 2015) (quotation omitted).

In general, when considering a Rule 12(b)(6) motion to dismiss, the Court “may not consider matters outside the complaint”³¹ unless the documents “are integral to or incorporated by reference[.]”³²

Further, under Rule 9(b), “all averments of fraud, negligence or mistake, the circumstances constituting fraud, negligence or mistake shall be stated with particularity.”

DISCUSSION

Defendant raises various arguments in support of his motion to dismiss. Principally, Defendant argues that Plaintiff does not have standing to pursue the claims asserted in this Court because the action is derivative.³³ Defendant also proffers that Plaintiff fails to state a claim for fraud, conversion, and unjust enrichment.³⁴

I. PLAINTIFF’S CLAIMS ARE NOT DERIVATIVE.

The unique issue here is whether a trust beneficiary who sues another trust beneficiary for allegedly using the absence of a successor trustee to gain control over a trust at the time of distribution is a derivative action.

³¹ *ET Aggregator, LLC*, 2023 WL 8535181, at *6 (quoting Super. Ct. Civ. R. 12(b)).

³² *ET Aggregator, LLC*, 2023 WL 8535181, at *6 (quoting *In re Santa Fe Pac. Corp. S’Holder Litig.*, 669 A.2d 59, 70 (Del. 1995)). The Court concludes—and the parties do not dispute—that despite being a matter outside the Complaint, the Trust Agreement is integral to Plaintiff’s claims and incorporated by reference in the Complaint.

³³ MTD at 3.

³⁴ *Id.* at 4, 6, 8.

Defendant argues that Plaintiff's claims are derivative. Citing *RBC Capital Markets, LLC v. Education Loan Trust IV*,³⁵ Defendant proffers that the excess fees charged by BMT is an injury to the Jane Trust, so any damages awarded belong to the Jane Trust.³⁶ Consequently, Defendant claims the Court lacks subject matter over the action.³⁷ Defendant further contends it would be "futile" for the Court to transfer the action to the Court of Chancery because the Trust terminated in 2023.³⁸

On the other hand, Plaintiff argues that the Court should reject Defendant's arguments for two reasons. First, Plaintiff asserts that the claims are not derivative because the Complaint alleges that he was "deprived of the distribution of the [Jane] Trust according to its terms[,]” and therefore suffered a direct injury.³⁹ Second, Plaintiff contends that the factual issues raised by Defendant are better reserved for discovery rather than the pleading stage.⁴⁰ The Court agrees with Plaintiff.

Standing is a threshold issue for determining whether the Court has jurisdiction over the case.⁴¹ Specifically, "derivative standing is a 'creature of equity' that was created to enable a court of equity to exercise jurisdiction over

³⁵ 2011 WL 6152282, at *5 (Del. Ch. Dec. 6, 2011).

³⁶ MTD at 3–4.

³⁷ *Id.* at 4.

³⁸ *Id.*

³⁹ Resp. to MTD at 6.

⁴⁰ *Id.* at 6–8.

⁴¹ *El Paso Pipeline GP Co., LLC v. Brinckerhoff*, 152 A.3d 1248, 1256 (Del. 2016).

corporate claims asserted by stockholders ‘to prevent a complete failure of justice on behalf of the corporation.’”⁴²

In *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, the Delaware Supreme Court articulated a two-part test to determine whether an action is direct or derivative: (1) “[w]ho suffered the alleged harm” and (2) “who would receive the benefit of the recovery or other remedy?”⁴³ A derivative action allows a stockholder (or beneficiary) to sue on behalf of a corporation (or trust) when the corporation (or trust) itself is harmed.⁴⁴ In contrast, a direct action is when a beneficiary is “directly injured” and “retains the right to bring an individual action for injuries affecting” his legal rights as a beneficiary.⁴⁵

As the Delaware Supreme Court noted in *Brookfield Asset Management, Inc. v. Rosson*, the *Tooley* Court adopted a helpful inquiry applied in *Agostino v. Hicks*:⁴⁶

In the context of a claim for breach of fiduciary duty, the Chancellor articulated the inquiry as follows: “[l]ooking at the body of the complaint and considering the nature of the wrong alleged and the relief requested, has the plaintiff demonstrated that he or she can prevail without showing an injury to the corporation?” We believe that this approach is helpful in analyzing the first prong of the analysis: what person or entity has suffered the alleged harm? The second prong of the analysis should logically follow.⁴⁷

⁴² *Id.* (quoting *Schoon v. Smith*, 953 A.2d 196, 202, 208 (Del. 2008)).

⁴³ 845 A.3d 1031, 1035 (Del. 2004).

⁴⁴ *Tooley*, 845 A.3d at 1036; see also *In re FairPoint Ins. Coverage Appeals*, 311 A.3d 760, 767 (Del. 2023) (applying *Tooley* to an action involving a trust.).

⁴⁵ *Tooley*, 845 A.3d at 1036.

⁴⁶ 845 A.2d 1110, 1121 (Del. Ch. 2004).

⁴⁷ 261 A.3d 1251, 1263 (Del. 2021) (quoting *Tooley*, 845 A.2d at 1036).

As a preliminary matter, the Court finds that *RBC Capital Markets, LLC*, is inapplicable here. There, the Court of Chancery applied New York law to determine whether a complaint alleging that the issuer of auction rate notes from a trust breached a contract with the holder of the notes by causing the trust to be charged excess fees, was a derivative action.⁴⁸ In this case, the Court is applying Delaware law and the Plaintiff does not claim that Defendant breached the Trust Agreement or any other contract associated with the Jane Trust.

The Court finds that Plaintiff asserts a direct cause of action. Defendant attempts to characterize Plaintiff's claims as belonging to the Jane Trust because the Complaint asserts that Defendant "improperly acted as trustee of the Jane Trust by transferring the Jane Trust's Vanguard Account to the Adolph Trust[,]” which injured the Jane Trust because BMT charged excess fees.⁴⁹ But as Plaintiff points out, the Complaint does not allege that Defendant improperly acted as trustee. Rather, it claims that Defendant fraudulently gained control over the Jane Trust to access its assets. This is different from a situation where an authorized trustee failed to act in accordance with fiduciary obligations to a trust.

Further, Plaintiff's injury is independent of the Jane Trust. The gravamen of the Complaint is that Plaintiff's direct pecuniary interest that was held for his benefit

⁴⁸ See generally *RBC Capital Markets, LLC*, 2011 WL 6152282, at *1.

⁴⁹ MTD at 3.

in the Jane Trust was wrongfully taken by Defendant. Section 5(a) of the Trust Agreement instructed the trustee to distribute the residuary trust to her children upon the latter of Mrs. Rohl's or Mr. Rohl's death. It is reasonably conceivable, based on the allegations in the Complaint and the terms of the Trust Agreement, that BMT was appointed as the successor trustee to wind up the Jane Trust assets to distribute to Plaintiff, Defendant, and Wendy. It then logically follows that Plaintiff was entitled to receive his distribution of the Jane Trust at the time of Defendant's wrongful conduct. While the Court notes that the Jane Trust itself was charged excess fees, the Plaintiff asserts in the Complaint that the fees affected his share of the distributions. Consequently, under the circumstances of this case, Plaintiff demonstrates that he can prevail without showing injury to the Jane Trust based on the nature of the wrong alleged and the relief requested.

In sum, Plaintiff has standing to assert a direct cause of action for fraud, conversion, and unjust enrichment, and the Court has subject matter jurisdiction because Plaintiff has an adequate remedy at law as he seeks monetary relief for Defendant's alleged conduct.⁵⁰

II. COUNT I FOR FRAUD SURVIVES.

Defendant claims that Plaintiff "has not pled the circumstances of the alleged fraud with enough detail to apprise Defendant as to the basis of . . . the claim"

⁵⁰ *Workman v. Astronaut Topco, L.P.*, 2025 WL 2506027, at *4 (Del. Super. Sept. 2, 2025).

because the Complaint does not assert that the misrepresentation was made directly to Plaintiff and that Plaintiff took action as a result.⁵¹ Plaintiff avers that Defendant is incorrect under the “common-law principle of indirect reliance.”⁵²

To state a claim for fraud, claimant must allege:

(1) the defendant falsely represented or omitted facts that the defendant had a duty to disclose; (2) the defendant knew or believed that the representation was false or made the representation with a reckless indifference to the truth; (3) the defendant intended to induce the plaintiff to act or refrain from acting; (4) the plaintiff acted in justifiable reliance on the representation; and (5) the plaintiff was injured by its reliance.⁵³

Rule 9(b) also requires that the claims asserts: “(1) the time, place, and contents of the false representation; (2) the identity of the person making the representation; and (3) what the person intended to gain by making the representation.”⁵⁴ The particularity requirement is satisfied if the allegations are made with “detail sufficient to apprise the defendant of the basis for the claim.”⁵⁵

To adequately plead justifiable reliance, a plaintiff must assert facts “making it reasonably conceivable that the plaintiff acted based on the material representation

⁵¹ MTD at 6.

⁵² Resp. to MTD 8–9.

⁵³ *Perfect Game, Inc. v. Rise 2 Greatness Found.*, 2025 WL 1555003, at *5 (Del. Super. June 2, 2025) (quoting *Everphone, Inc. v. Go Tech. Mgmt., LLC*, 2023 WL 7996560, at *4 (Del. Super. Nov. 17, 2023)) (internal quotation marks omitted).

⁵⁴ *Medlink Health Sols., LLC v. JL Kaya, Inc.*, 2023 WL 1859785, at * 2 (Del. Super. Feb. 9, 2023) (quoting *Abry Partners V, L.P. v. F & W Acq. LLC*, 891 A.2d 1032, 1050 (Del. Ch. 2006)) (internal quotation marks omitted).

⁵⁵ *Id.*

or omission.”⁵⁶ “Assessing reliance requires a context-dependent inquiry that takes into account the plaintiff’s knowledge and experience.”⁵⁷ Further, despite Defendant’s assertion, common law fraud does not “only protect[] against misrepresentations made directly from one party to another.”⁵⁸ As a matter of fact,

[o]ne who makes a fraudulent misrepresentation is subject to liability to the persons or class of persons whom he intends or has reason to expect to refrain from action in reliance upon the misrepresentation, for pecuniary loss suffered by them through their justifiable reliance in the type of transaction in which he intends or has reason to expect their conduct to be influenced.⁵⁹

The Complaint alleges that Defendant made a false representation of material fact to Vanguard that he was the successor trustee of the Jane Trust. Given the type of transaction—a transfer of sizeable trust fund assets at the time for distribution of the trust and the lack of a successor trustee to manage the assets—it is reasonable to infer that Defendant intended to obtain control over the Jane Trust to Plaintiff’s detriment. It is equally reasonable to infer that Defendant had reason to expect Plaintiff to justifiably rely on Vanguard to properly manage the account holding the Jane Trust assets. As a practical matter, it would not make sense to conclude that an individual can avoid liability for fraud because the false representation was made to

⁵⁶ *Trifecta Multimedia Holdings, Inc. v. WCG Clinical Servs. LLC*, 318 A.3d 450, 465 (Del. Ch. 2024).

⁵⁷ *Id.*

⁵⁸ *NACCO Indus., Inc. v. Applicia, Inc.*, 997 A.2d 1, 29 (Del. Ch. 2009).

⁵⁹ *NACCO Indus., Inc.*, 997 A.2d at 29 (citing Restatement (Second) of Torts § 531) (internal quotation marks omitted).

an agent/fiduciary charged with protecting Plaintiff's pecuniary interests instead of Plaintiff himself. Hence, the Complaint sufficiently pleads that Plaintiff justifiably relied on Defendant's statement.

Defendant also claims that Plaintiff's claim for fraud fails because the Complaint "does not allege that he took any actions based on Defendant's alleged representations."⁶⁰ Defendant's argument misconstrues the standard for fraud because it is sufficient if the claimant refrained from acting due to the false representation. Here, Plaintiff alleges that he and Wendy appointed BMT as a successor trustee after the fraudulent transfer but before they knew what Defendant did. Moreover, Defendant "vehemently opposed" the appointment of BMT.⁶¹ Therefore, it is reasonably conceivable that Defendant intended to induce Vanguard into transferring the assets before Plaintiff and Wendy appointed a successor trustee that Defendant opposed. It is then plausible that had Plaintiff known of Defendant's attempt to assume the role of successor trustee, Plaintiff would have appointed BMT earlier so the Jane Trust assets could be properly distributed, and Defendant could have been prevented from exercising control over the trust. Thus, Plaintiff alleges he refrained from acting. In conclusion, the Court rejects Defendant's argument that Plaintiff fails to state a claim for fraud.

⁶⁰ MTD at 6.

⁶¹ Compl. ¶ 41.

III. COUNT II FOR CONVERSION SURVIVES.

Defendant next contends that Plaintiff fails to state a claim for conversion because Plaintiff did not have a right to possession as the claims are derivative and the property belonged to the Jane Trust at the time of conversion.⁶² Defendant also argues that Plaintiff's claim for conversion cannot survive because there was no demand made on Defendant to return the property as required under Delaware law.⁶³ Plaintiff asserts that the allegations are sufficient to show that Plaintiff had a right to possession of the property because the Plaintiff was entitled to his portion of the Jane Trust distribution at the time of Defendant's misconduct.⁶⁴ Plaintiff further claims that the demand requirement was not necessary under the facts of this case.⁶⁵

Conversion is "any distinct act of dominion wrongfully exerted over the property of another, in denial of his right, or inconsistent with it[.]"⁶⁶ To state a claim for conversion, a plaintiff must allege: "(1) he had a property interest in equipment or other property; (2) he had a right to possession of the property; and (3) the property was converted, in that the defendant[] wrongfully possess[es] or disposed of the property as if it were their own."⁶⁷ However, the plaintiff must make a demand

⁶² MTD at 7.

⁶³ *Id.*

⁶⁴ Resp. to MTD at 10.

⁶⁵ *Id.*

⁶⁶ *Malca v. Rappi, Inc.*, 2021 WL 2044268, at *6 (Del. Ch. May 20, 2021) (quoting *Drug, Inc. v. Hunt*, 168 A. 87, 93 (Del. 1933)).

⁶⁷ *Malca*, 2021 WL 2044268, at *6 (citations omitted).

on the defendant to return the property before making a claim for conversion unless “the alleged wrongful act amounts to a denial of the rights of the real owner.”⁶⁸

The only element disputed here is whether Plaintiff had a right to possession of the Jane Trust assets at the time of the alleged conversion. As the Court concluded, this is not a derivative action because Plaintiff asserts an injury to his interest in the Jane Trust, which he was entitled to receive under the Trust Agreement at the time of Defendant’s misconduct. For those reasons, the Court concludes that it is reasonable to infer that Plaintiff was entitled to possession of the Jane Trust assets that Defendant wrongfully exerted control over.

The Court also finds that Plaintiff’s failure to make a demand on Defendant to return the property is not dispositive here. Defendant’s alleged conduct amounts to a denial of Plaintiff’s right to receive his distribution, making the demand futile. Accordingly, the Court is unpersuaded by Defendant’s assertion that Plaintiff fails to state a claim for conversion.

IV. COUNT III FOR UNJUST ENRICHMENT SURVIVES.

Finally, Defendant argues that Plaintiff fails to state a claim for unjust enrichment because Plaintiff was not impoverished and Defendant was not enriched.⁶⁹ Instead, according to Defendant, the Complaint alleges that the Jane

⁶⁸ *Id.*

⁶⁹ MTD at 8–9.

Trust was impoverished and the Adolph Trust was enriched—both of which are entities.⁷⁰ Like the claim for conversion, Plaintiff contends that Defendant’s argument makes the “same mistakes: assuming the action is derivative . . . and [that] . . . the assets taken do not belong to plaintiff.”⁷¹

“Unjust enrichment is the ‘unjust retention of a benefit to the loss of another, or the retention of money or property against the fundamental principles of justice or equity and good conscience.’”⁷² To state a claim for unjust enrichment, one must establish: “(1) an enrichment; (2) an impoverishment; (3) a relation between the enrichment and impoverishment; (4) the absence of justification; and (5) the absence of a remedy at law.”⁷³ “The absence of an adequate remedy at law is required only if an unjust enrichment claim is brought in the Court of Chancery and there is no other independent basis for equitable jurisdiction.”⁷⁴

As discussed above, this action is not derivative. Therefore, the allegations make it reasonably conceivable that Defendant was enriched by exercising control over and transferring the Jane Trust at the time for distribution, which impoverished Plaintiff’s portion of the distribution.

⁷⁰ *Id.*

⁷¹ Resp. to MTD at 9.

⁷² *State ex rel. Jennings v. Monsanto Co.*, 299 A.3d 704, 714 (Del. 2019) (quoting *Fleer Corp. v. Topps Chewing Gum, Inc.*, 539 A.2d 1060, 1062 (Del. 1988)).

⁷³ *Delman v. GigiAcquisitions3, LLC*, 288 A.3d 692, 728 (Del. Ch. 2023) (citing *Cantor Fitzgerald, L.P. v. Cantor*, 724 A.2d 571, 585 (Del. Ch. 1988)).

⁷⁴ *State ex rel. Jennings*, 299 A.3d at 391.

Additionally, Defendant's argument that Plaintiff insufficiently pled that Defendant only had the opportunity to transfer the funds, not that he "actually did so," misconstrues the forgiving standard of Rule 12(b)(6).⁷⁵ At this juncture, drawing all reasonable inferences in Plaintiff's favor, it is premature to conclude that no unjust enrichment occurred because discovery may reveal more about what happened with the Jane Trust assets before BMT took over as successor trustee.

Lastly, Defendant's argument that the claim for unjust enrichment should be dismissed if the conversion claim survives lacks merit because this claim was not brought in the Court of Chancery.⁷⁶ Thus, the Court concludes that the Complaint states a claim for relief for unjust enrichment.

CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss is **DENIED**.

IT IS SO ORDERED.

/s/ Calvin Scott
Judge Calvin L. Scott, Jr.

⁷⁵ See MTD at 9.

⁷⁶ MTD at 9.