IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

PAUL P. CARTANZA, SR.	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N11C-08-180 JRJ CCLD
	)	
SANDRA L. CARTANZA, individually and as Trustee of the Phillip P. Cartanza Trust U/A/D/ 2/5/96 as amended and CARTANZA STORAGE, LLC,	)	
	)	
Defendants.	)	

OPINION

Date Submitted: January 18, 2012
Date Decided: April 16, 2012

Upon Defendant's Motion to Dismiss: **GRANTED**

David N. Williams, Esq., John L. Williams, Esq. (argued), and Brian C. Crawford, Esq., The Williams Law Firm, P.A., 1201 N. Orange Street, Suite 600, P.O. Box 511, Wilmington, DE 19899, Attorneys for the plaintiff.

William E. Manning, Esq. (argued), Jennifer M. Becnel-Guzzo, Esq., Saul Ewing LLP, 222 Delaware Avenue, Suite 1200, Wilmington, DE 19801, Attorneys for the defendants.

Jurden, J.

I. INTRODUCTION

This case stems from a "dust-up" in a family that has owned and operated a farming business for decades.[1] Plaintiff Paul Cartanza ("Plaintiff" or "Mr. Cartanza") brings this action against his mother, Sandra Cartanza ("Mrs. Cartanza") and Cartanza Storage, LLC ("Storage" and collectively, with Mrs. Cartanza, "Defendants"). Plaintiff has attempted to cast his Complaint in a way that entitles him to relief in this Court by alleging that: (1) Mrs. Cartanza wrongfully converted the benefits of Plaintiff's stock in Cartanza Grain, Inc. ("CGI");[2] (2) Defendants have been unjustly enriched by "excessive rents, diversion of community grain business, excessive compensation and unjustified life insurance premiums";[3] and (3) Defendants intentionally interfered in the business relationships of CGI with certain of its customers to the detriment of Plaintiff.[4]

However, the "wrongful acts" that serve as the basis for Plaintiff's claims have an undeniable equitable overtone. The acts as described in the Complaint are:

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[1] Transcript of Oral Argument (Trans. ID. No. 41983528) ("Trans. Or. Arg.") at 3.

[2] Plaintiff's Complaint ("Pl.'s Comp.") (Trans. ID. No. 39452410) at ¶¶ 30-35. Although Plaintiff originally pled that Mrs. Cartanza converted Plaintiff's CGI stock, in Plaintiff's Sur Reply and at oral argument he clarified his claim to assert only that Mrs. Cartanza converted the *benefits* of CGI stock. Plaintiff's Sur Reply ("Pl.'s Sur Rep.") (Trans. ID. No. 41431078) at 2. This argument will be discussed in the Parties' Contentions and the Discussion sections of this Opinion. *See infra* p. 10, n. 41; pp. 17-18.

[3] Pl.'s Comp. at ¶¶ 36-43.

[4] *Id*. at ¶¶ 44-49.

(1) "[t]he expropriation by Sandra Cartanza of the fifty percent (50%) ownership interest in Cartanza Grain, Inc. from her son . . ."[5] (2) "[t]he usurpation by Sandra L. Cartanza of the office of President of Cartanza Grain, Inc. from her son . . ."[6] (3) "[t]he diversion by Sandra L. Cartanza of all the profits of Cartanza Grain, Inc. to or for the benefit of the Trust of which she is the sole Trustee and primary and only beneficiary . . ."[7] and (4) "Sandra L. Cartanza and Cartanza Storage, LLC divert[ing] approximately seventy-five percent (75%) of the business of Cartanza Grain, Inc. . . . to Cartanza Storage, LLC . . . ."[8] The allegations in the Complaint, statements by Plaintiff's counsel at oral argument,[9] and the relief for which Plaintiff prays, sound in equity and are not within this Court's jurisdiction. Consequently as explained below, the Defendants' Motion to Dismiss is **GRANTED**.

II. FACTS

In November 1981, Plaintiff's late father, Phillip Cartanza, incorporated P&M Enterprises, Inc. ("P&M").[10] Phillip's sons, Paul and Mark Cartanza, were each given a 50 percent interest in P&M. Originally P&M was a trucking

[5] *Id*. at ¶1.

[6] *Id*. at ¶ 2.

[7] *Id*. at ¶ 3.

[8] *Id*. at ¶ 4.

[9] *See* n. 2 *supra*.

[10] Pl.'s Comp. at ¶ 9. P&M was a Delaware Corporation. The acronym P&M stood for "Paul and Mark."

company, but later shifted its focus to grain elevator operations, providing services to the "grain community"[11] and Shadybrook Farms.[12] On February 25, 1982, P&M changed its name to CGI.[13] Although a corporation, CGI operated informally; for example, it had no authentic stock ledger and did not issue stock certificates.[14] The only proof of Plaintiff's stock ownership in CGI comes by way of loan documentation[15] and CGI's United States Corporate Tax Returns.[16] Documents filed by CGI with the State of Delaware also listed Plaintiff as CGI's President.[17] Mrs. Cartanza, CGI's acting Secretary/Treasurer at the time,[18] was responsible for filing these documents.[19]

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[11] The "grain community" refers to those entities or persons involved in the grain business in and around the area in which P&M operated.

[12] *Id*. at ¶ 10. The grain elevator tested, dried, sorted, stored, bought and sold grain. *Id*. at ¶ 10. Phillip Cartanza was the sole proprietor of Shadybrook Farms, which is owned by the Phillip Cartanza Trust. Mrs. Cartanza is the sole trustee and beneficiary of the Trust. Pl.'s Comp. at 3. Shadybrook Farms, in the words of counsel, "conducts farming operations." Trans. Or. Arg. at 3. Shadybrook Farms sells crops and products through entities, including CGI. CGI sells grain produced by Shadybrook and other farms in the area. *Id*. at 3-4. Cartanza Farms, L.P. is a "limited partnership that owned real estate upon which these farming operations take place." *Id*. at 4.

[13] *Id*. at ¶ 11.

[14] *Id*.

[15] *Id*. at ¶ 12. Plaintiff states: "A Wilmington Trust Company loan officer for refinancing listed on a loan 'Application Memorandum, [*sic*]' Paul Cartanza and Mark Cartanza as each owning a fifty percent (50%) interest in Cartanza Grain, Inc."

[16] *Id*. at ¶ 15.

[17] *Id*. at ¶ 14. These documents consisted of Delaware Franchise Tax Reports and CGI's United States Corporate Tax Returns. *Id*. at ¶¶ 14, 16.

[18] Plaintiff's complaint claims that Mrs. Cartanza filed CGI's documents from 2001 to 2009 as CGI's Treasurer/Secretary. *See id*. at ¶¶ 14-18.

[19] *Id*. at ¶ 14.

Plaintiff claims that he "learned for the first time in December 2009 from the [CGI] U.S. Corporation Tax Returns . . . for tax years 2005 and subsequent years that Mrs. Cartanza had listed herself as owning one hundred percent (100%) of the stock and as the President of Cartanza Grain, Inc."[20] Plaintiff claims that because he "has never assigned his fifty percent (50%) interest in [CGI] to Mrs. Cartanza and has not resigned as President of [CGI], Mrs. Cartanza unilaterally misappropriated" Plaintiff's interest in the company and "usurped" his role as President starting in 2005.[21]

Plaintiff alleges that in March 2007, Mrs. Cartanza removed Plaintiff from the Shadybrook Farms payroll and "banished" him from family activities, the business office of Shadybrook Farms, and from "any and all operations and/or properties of Shadybrook Farms and Cartanza Farms L.P."[22] As the relationship between Plaintiff and his mother continued to deteriorate, Plaintiff retained legal counsel. The parties, their attorneys, and accountants met in May 2009 to exchange information regarding CGI's financial operations.[23] Thereafter, Mr. Cartanza received CGI's Corporate Tax Returns for 1998 through 2010.[24]

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[20] *Id*. at ¶ 17.

[21] *Id*. at ¶ 20.

[22] *Id*. at ¶19.

[23] *Id*. at ¶ 22.

[24] *Id*.

On October 8, 2010, Mr. Cartanza submitted a books and records demand pursuant to 8 *Del. C.* § 220 to Shadybrook Farms, LLC ("2010 Demand Letter").[25] Among other documents allegedly provided pursuant to this 2010 Demand Letter, Plaintiff received copies of documents Plaintiff believes showed rent payments made by CGI to Shadybrook Farms from 2003 to 2010. Plaintiff claims that the reasonable rent CGI should have paid to Shadybrook Farms was $8,350 per month, $100,200 per year, and bases that amount on copies of checks written by CGI to Shadybrook which indicate a monthly "rent" payment of $8,350.[26] The Court notes that certain of these checks include other amounts in the payments to Shadybrook Farms and that the CGI Tax Return for 2003 (as attached to the Complaint) shows rent payments of $340,100 for 2003 (not $100,200 as Plaintiff claims). Plaintiff notes that GGI paid rent to Shadybrook without a written lease.[27]

Plaintiff accuses Mrs. Cartanza of misappropriating CGI's funds in a variety of ways. For instance, Mrs. Cartanza formed Defendant Storage on March 17, 2008 and is the sole and managing member.[28] Plaintiff alleges "based on our best knowledge and belief" that Mrs. Cartanza and Storage wrongfully diverted

[25] *Id*. at ¶ 23, and Attachment F to the Complaint.

[26] *Id*. at ¶ 23, referencing Exhibits G1-7.

[27] Plaintiff acknowledges that the rent in 2006 was below that amount and has reduced his total claim to allow for a credit of that year's shortfall from Plaintiff's claimed reasonable rent figure.

[28] *Id*. at ¶ 8.

community grain business from CGI to Storage and reduced the profits of CGI by at least $500,000 per year for 2009 and 2010.[29] Plaintiff provides no source or reference in support of these allegations.

Further, according to Plaintiff, in addition to purportedly causing CGI to pay excessive rent to Shadybrook, and diverting the community grain business to Storage, Mrs. Cartanza also allegedly diverted profits from CGI by paying what Plaintiff deems to be excessive salary to at least one employee. When Plaintiff operated CGI, he employed William H. Graham.[30] Mr. Graham's duties consisted of assisting Plaintiff in buying and selling grain. After Mrs. Cartanza took control of CGI, she promoted Mr. Graham to farm manager at Shadybrook.[31] Plaintiff alleges that CGI's books and records show that Mrs. Cartanza paid Mr. Graham $3,269.23 per week (over $150,000 per year) in 2006 and 2007 for his work at CGI – which at the time was considered part-time.[32] The Plaintiff alleges that during the time Plaintiff managed CGI, it was a full-time job, and that he was paid only $41,800 per year.[33] However, Plaintiff claims that Mr. Graham's pay was excessive compensation compared to the amount of work Mr. Graham performed

[29] *Id*. at ¶¶ 24, 38.

[30] *Id*. at ¶ 25.

[31] *Id*. Mr. Graham also continued his duties at CGI.

[32] *Id*.

[33] *Id*. at ¶ 26.

and constitutes yet another example of Mrs. Cartanza's wrongful diversion of profits from CGI.[34]

Plaintiff also claims that CGI's books and records show that once Mrs. Cartanza seized control of CGI, CGI made payments for non-deductible life insurance premiums on a policy or policies, of which CGI was not the owner or beneficiary, and CGI did not have an insurable interest at that time.[35]

Finally, Plaintiff claims that Mrs. Cartanza and Storage interfered with CGI's business relationships with certain of CGI's grain buyers and sellers. Plaintiff claims that there was a "reasonable probability" that the businesses opportunity would have continued with CGI into the future and claims that the damages amount to $500,000 per year, or some other amount as will be shown at trial.[36]

In sum, Plaintiff claims that Mrs. Cartanza wrongfully reaped the benefits of his stock ownership, "usurped" his role as President, and misappropriated his CGI stock and CGI's profits and customers for her benefit, and to his detriment.

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[34] *Id*. at ¶ 25.

[35] *Id*. at ¶27. The amounts paid towards those policies are as follows: 8/31/2006 ($10,096.00); 8/31/2007 ($10,096.00); 8/31/2008 ($5,031.00); 8/31/2009 ($5,031.00); 8/31/2010 ($5,031.00). The total amount paid was $35,285.00.

[36] *Id*. at ¶ 24.

III. PARTIES' CONTENTIONS

A. Plaintiff's Arguments

Plaintiff claims that as a 50 percent owner of CGI, he is entitled to 50 percent of its net equity value.[37] As such, Plaintiff claims he should be compensated by Mrs. Cartanza for her "misappropriation in 2005 of such net equity value after adding back the following amounts to his interest from which she benefitted from 2005 through 2010 as the beneficiary of [ ] Phillip's Trust and as the sole owner and Managing Member of Cartanza Storage, LLC after she wrongfully took control of Cartanza Grain [ ] in 2005."[38] Plaintiff seeks to recover: (1) half of the total excessive rent paid from September 1, 2005 until August 31, 2010, which equals $597,200.00; (2) half of the total excessive manager compensation from September 1, 2005 until August 31, 2010, which equals $300,000.00; (3) $500,000.00, or half of the community grain business; (4) half of the cost of the unjustified life insurance premiums, which amounts to $17,642.00; and (5) 100 percent of lost compensation, equaling $250,800.00.[39] All told, Plaintiff seeks to recover $1,665,642.00.

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[37] *Id*. at ¶ 29.

[38] *Id*.

[39] Although Plaintiff expressly alleges in his Complaint that he is entitled to his lost compensation, totaling $250,800.00, Plaintiff's counsel modified this claim at oral argument. The modification, which is significant for purposes of this motion, is discussed *infra* n. 41.

According to Plaintiff, Mrs. Cartanza: (1) "converted Paul Cartanza's fifty percent (50%) ownership interest in the stock of [ ] [CGI] by wrongfully exerting dominion of Paul Cartanza's stock interest . . .";[40] (2) was unjustly enriched by the "termination of Paul Cartanza's salary for five (5) years from 2005 through 2010 . . .";[41] (3) was unjustly enriched when she misappropriated CGI's funds;[42] and (4) on behalf of Storage, unjustly enriched Storage when she intentionally interfered with CGI's grain business.[43]

[40] *Id*. at ¶ 33. In his Complaint, Plaintiff alleges that "Mrs. Cartanza converted Paul Cartanza's fifty percent (50%) ownership interest in the stock of Cartanza Grain, Inc." Pl.'s Comp. at ¶ 33. However, in response to pointed and extensive questioning by the Court at oral argument, Plaintiff modified his claim, now alleging that Mrs. Cartanza converted the *benefits* of his CGI stock. *See* Trans. Or. Arg. at 27 – 33.

[41] *Id*. at ¶ 37. At oral argument, Plaintiff made clear that his unjust enrichment claim as it relates to unpaid salary is not an allegation that Plaintiff "should have been paid a salary when he wasn't working." Trans. Or. Arg. at 57. Rather, Plaintiff stated that "by not getting paid a salary and leaving the farm, that that [*sic*] money was instead accruing to his benefit as a stockholder." *Id*. Benefits of stock ownership include receiving a dividend (if the company is profitable and decides to issue one), the right to vote at shareholder meetings, and any monetary gain realized by selling said stock. *See* 1 R. Franklin Balotti, Jesse A. Finkelstein, Balotti and Finkelstein's Delaware Law of Corporations and Business Organizations § 9.44 (3d ed. 2012) (citing *.Ala. By-Prods. Corp. v. Cede & Co.*, 657 A.2d 254, 258-59 (Del. 1995) ("[T]he traditional benefits of stock ownership [include]: [T]he right to vote stock and to receive payment of dividends or other distributions upon the shares."))); *accord S. Prod. Co. v. Sabath*, 87 A.2d 128, 134 (Del. 1952) ("he has lost for the time being all the substantial rights of a stockholder -- the right to vote, the right to receive dividends, and the right to receive any distribution upon the shares")). The Court is unaware of, and Plaintiff has not provided, any means to quantify the "benefits" of stock ownership in CGI, or in general. In order to attempt to quantify this claim, Plaintiff needed to allege that CGI previously issued a dividend and the amount. He has not done so. And in the absence of an allegation regarding payment of dividends in the past to Plaintiff or any other shareholder, the amount of the dividend purportedly owed to the shareholders would be speculative. It would require the Court to assume (1) CGI operated at a profit, (2) decided to issue a dividend, and (3) the amount of such dividend.

[42] Plaintiff's claims that Mrs. Cartanza misappropriated CGI's funds relate to: (1) the excessive rent paid to Shadybrook; (2) Mrs. Cartanza's diversion of CGI's business to Cartanza Storage; (3) Mrs. Cartanza's decision to pay a part-time employee over $100,000 per year; and (4) Mrs. Cartanza directing CGI to pay her life insurance premiums. Pl.'s Comp. at ¶¶ 37 – 38.

[43] Pl.'s Comp. at ¶¶ 37 – 38.

B. Defendants' Arguments

Defendants counter by first arguing that Plaintiff lacks standing to pursue two of his claims: (1) that Defendants were unjustly enriched when Mrs. Cartanza misappropriated CGI's funds; and (2) that Mrs. Cartanza intentionally interfered in CGI's business relationships.[44] Defendants maintain that Plaintiff lacks standing because these claims are derivative, and thus they can only be asserted by CGI.[45]

Defendants further contend that Plaintiff's unjust enrichment and conversion claims are barred by the statute of limitations because the alleged conversion took place in 2005.[46] Defendants argue that Plaintiff was on inquiry notice, and possibly actual notice, of wrongdoing because Plaintiff alleges he lost his salary in 2005, Mrs. Cartanza "usurped his role as president … starting in 2005,"[47] and in 2007 he was "banished" from the family business and activities.[48] Defendants posit that "[o]ne would think that if someone truly believed he was a 50% owner of a business and his salary and office were 'usurped,' he would be 'suspicious' that his ownership interest had been taken as well."[49]

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[44] Defendants' Opening Brief in Support of their Motion to Dismiss ("Defs.' Op. Br.") (Trans. ID. No. 40306167) at 8. The specific claims of misappropriation are referenced in n. 27 *supra.*

[45] *Id*.

[46] *Id*. at 5 – 6.

[47] *Id*. at 6 (citing Pl.'s Comp. at ¶¶ 20, 26).

[48] *Id*. at 7.

[49] *Id*. at 6.

IV. STANDARD OF REVIEW

In considering a motion to dismiss, the Court determines whether the complaint states a cause of action if the well-pled allegations of the Complaint are accepted as true. Well-pled allegations are statements of facts, *viz*. he did this, she did not do that, etc., and fair conclusions drawn from those facts. It has long been the rule that conclusory allegations without specific supporting factual allegations are not to be accepted as true in considering a motion to dismiss.[50]

In addition, the Court will grant a dismissal "pursuant to Superior Court Civil Rule 12(b)(1) when it lacks jurisdiction over the subject matter" of the complaint.[51] This Court's jurisdiction lies in matters of law,[52] while the Court of Chancery's jurisdiction lies in matters of equity.[53]

V. DISCUSSION

A. The Court Lacks Jurisdiction to Hear Breach of Fiduciary Duty Claims.

After reading the parties' submissions, listening to their arguments, and reading the relevant case law, the Court concludes it does not have subject matter jurisdiction to hear Plaintiff's claims. Although Defendants have not moved to

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[50] *In re Dean Witter P'ship Litig.*, 1998 WL 442456, at *4 (Del. Ch.).

[51] *Reybold Venture Group XI-A, LLC v. Atlantic Meridian Crossing, LLC*, 2009 WL 143107, at *2 (Del. Super. 2009) (quoting *Smith v. Dep't of Pub. Safety of the State of Del.*, 1999 WL 1225250, at *5 (Del. Super.), *aff'd*, 765 A.2d 953 (Del. 2000) (TABLE))).

[52] *Reybold Venture Group XI-A, LLC*, 2009 WL 143107, at *2. *See also* Del. Const. Art. IV, § 7; 10 *Del. C.* § 541.

[53] *Id*. *See also* 10 *Del. C.* §§ 341, 342.

dismiss on these grounds, "because subject matter jurisdiction is non-waivable, courts have an independent obligation to satisfy themselves of jurisdiction if it is in doubt."[54]

Plaintiff's alleges that Mrs. Cartanza wrongfully "listed herself as owning one hundred percent (100%) of the stock and as the President of Cartanza Grain, Inc"[55] in her capacity as CGI's Secretary/Treasurer because Plaintiff "never assigned his fifty percent (50%) interest in Cartanza Grain, Inc. to Mrs. Cartanza and has not resigned as President of Cartanza Grain, Inc."[56]

Although Plaintiff goes to great lengths to cast his claims in a way that would vest jurisdiction in this Court, *i.e.*, assigning fixed monetary damages to his various claims, "the most cursory examination indicates that this is, at heart, an action for breach of fiduciary duty, the likes of which Chancery Court considers routinely."[57] This attempt to avoid the Court of Chancery "avails . . . [him] nothing, however, because Delaware courts look beyond mere form to the

[54] *Appriva S'holder Litig. Co., LLC v. EV3, Inc.*, 937 A.2d 1275, 1284 (Del. 2007) (other citation omitted).

[55] Pl.'s Comp. at ¶¶ 14, 17.

[56] *Id*. at ¶ 20.

[57] *Albert v. Alex. Brown Mgmt Servs., Inc.*, 2004 WL 2050527, at *2 (Del. Super.). In fact, Plaintiff characterizes Mrs. Cartanza as a fiduciary twice in his Answering Brief, *see* Answering Brief to Defendants' Motion to Dismiss ("Ans. Br.") (Trans. ID. No. 39742003) at 16-17, 26, and does it again in his Sur Reply. *See* Pl.'s Sur Reply at 5. Plaintiff also reiterates Mrs. Cartanza's status as an "officer of the company" at the time he suffered harm. *Id*.

substance of the pleadings when determining subject matter jurisdiction[.]"[58] Indeed, when assessing proper jurisdiction:

> [T]he question as to whether or not equitable jurisdiction exists is to be determined by an examination of the allegations of the complaint viewed in light of what the plaintiff really seeks to gain by bringing his cause of action . . . . [T]he established rule [is] that the prayers of a complaint do not rigidly control this Court's inquiry into [w]hat it is that a plaintiff really seeks in filing a complaint and that this Court should, when required, go behind a façade of prayers in order to determine whether the relief sought is in fact equitable or legal.[59]

The fundamental principles of agency law establish that an agent owes his principal a duty of loyalty, good faith, and fair dealing.[60] "These duties encompass the corollary duties of an agent to disclose information that is relevant to the affairs of the agency entrusted to him and to refrain from placing himself in a position antagonistic to his principal concerning the subject matter of his agency."[61] Agency principles have been held to apply to traditional corporate fiduciaries, such as officers and directors, as well as "key managerial personnel."[62] A breach occurs

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[58] *Id*. at *3.

[59] *Id*. (quoting *Hughes Tool Co. v. Fawcett Publications, Inc.*, 297 A.2d 428, 431-2 (Del. Ch. 1972), *rev'd on other grounds*, 315 A.2d 577 (Del. 1974) (internal citations omitted)).

[60] *Beard Research, Inc. v. Kates*, 8 A.3d 573, 601 (Del. Ch. 2010).

[61] *Id*.

[62] *Id*. (citing *Sci. Accessories Corp. v. Summagraphics Corp.*, 425 A.2d 957, 962 (Del. 1980); *Gantler v. Stephens*, 965 A.2d 695, 708 (Del. 2009)).

when an officer, director, or key managerial personnel commit an unfair, fraudulent, or wrongful act.[63]

As in *Albert v. Alex Brown Mgmt. Servs., Inc.*, where the Plaintiffs were "exceedingly careful to couch the Complaint in common law language,"[64] Plaintiff has done the same here. He alleges that Mrs. Cartanza converted the "benefit" of his stock ownership, a common law cause of action, but Plaintiff's complaint is saturated with allegations that Mrs. Cartanza violated her fiduciary duties as an officer and key managerial component of CGI. "Breach of fiduciary duty is an equitable cause of action and the Court of Chancery has exclusive jurisdiction" to hear that type of claim.[65] Thus, because Plaintiff's conversion claim is actually one for Mrs. Cartanza's alleged breach of fiduciary duty, the Court lacks subject matter jurisdiction over that claim, and Defendants' Motion to Dismiss with respect to Count I of Plaintiff's Complaint is **GRANTED**.

B. The Court of Chancery is Better Suited to Hear Plaintiff's Conversion Claim Under the Theory Alleged.

Even if the Court were to agree with Plaintiff's characterization of his claim, two problems persist: (1) Plaintiff includes an unjust enrichment component in his conversion claim, and (2) how does this Court quantify damages for the loss of

[63] *Id*. at 602.

[64] *Albert*, 2004 WL 2050527, at *2.

[65] *Reybold Venture Group XI-A, LLC*, 2009 WL 143107, at *3 (citing *McMahon v. New Castle Assoc.*, 532 A.2d 601, 604 (Del. Ch. 1987)).

Plaintiff's "benefits of stock ownership" and his usurpation of his role as President of CGI? With respect to the former, unjust enrichment is purely equitable and within the province of the Court of Chancery's jurisdiction.[66] As to the latter, there can be no question that the Court of Chancery is better suited than a jury to quantify damages for an alleged loss of the "benefits of stock ownership" and for a usurpation of the type alleged here.[67]

In *International Business Machines Corp. v. Comdisco, Inc.*, the Court of Chancery analyzed whether a plaintiff's claim for conversion of property provided an adequate remedy at law, and thus, divested the Court of jurisdiction to hear their claim.[68] The Court in *Comdisco* noted that "[t]here is a full legal remedy for coversion," and that the plaintiff had indeed sought money damages in his complaint.[69] The plaintiff argued that the Court of Chancery maintained jurisdiction to hear his conversion claim, however, because the plaintiff also requested an accounting.[70] Although an accounting is within the jurisdiction of the Court of Chancery, the Court of Chancery remarked that "[t]he accounting usually

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[66] *Albert*, 2004 WL 2050527, at *4 (citing *Fleer Corp. v. Topps Chewing Gum, Inc.*, 539 A.2d 1060, 1062 (Del. 1988)).

[67] The Court of Chancery does not have jurisdiction over claims where a remedy provided by a "law court," *i.e.*, this Court, would be "'sufficient', that is, 'complete, practical and efficient[.]'" *Int'l Bus. Mach. Corp. v. Comdisco, Inc.*, 602 A.2d 74, 78 (Del. Ch. 1991). Thus, just as the Court of Chancery evaluates the adequacy of a legal remedy "at law" when determining jurisdiction, so to will this Court.

[68] *Id*.

[69] *Id*.

[70] *Id*.

ordered by this Court, however, involves the wrongdoing of a fiduciary, no allegations of which are involved here."[71]

The plaintiff in *Comdisco* claimed an accounting was necessary because determining the proper amount of damages at law would be far too complex for the finder of fact in a law court. The Court of Chancery dismissed this argument, stating that the plaintiff only needs to prove the item of property converted, and its value.[72] After that, "all that is left for the trier of fact is simple addition, a task that would not appear to be more difficult for a lay juryman than for a vice chancellor."[73]

Plaintiff's claim for conversion in this case is distinguishable from typical conversion claims, like the one in *Comdisco*, because he has not alleged that Mrs. Cartanza physically converted his stock. In that instance, the trier of fact could calculate the value of the stock after hearing from experts to determine Plaintiff's damages.[74] But Plaintiff claims that Mrs. Cartanza converted the *benefits* of owning CGI's stock. As the Court discussed above, the benefits of owning stock are dividends (if the company decides to issue one), the right to vote, and any

[71] *Id*.

[72] *Id*.

[73] *Id*.

[74] This assumes the Court ignores the fiduciary duty aspect to the claim.

profit that comes from selling the stock.[75] In this case, because Plaintiff's allegations are grounded in the benefits he would have received as a result of *owning* the stock, the Court need not consider the monetary gain Plaintiff stood to realize had he sold the stock because he does not allege that he intended to sell his interest in CGI.

The Plaintiff, if his claim were allowed to move forward, would task the jury with how much a hypothetical dividend and the right to vote on corporate decisions is worth. Unlike the conversion of property claim in *Comdisco*, the conversion claim here involves the wrongdoing of a fiduciary, and thus it is within the Court of Chancery's jurisdiction to consider this claim.[76] Furthermore, if the trier of fact had a method to calculate damages, it certainly would not consist of simple addition. Thus, the appropriate Court to hear Plaintiff's claim is the Court of Chancery, because this Court cannot provide a remedy that is "'sufficient', that is, 'complete, practical and efficient'" under these facts and circumstances.[77]

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[75] *See* n. 41.

[76] *See Comdisco, Inc.*, 602 A.2d at 78. *See also Nelson v. Russo*, 844 A.2d 301 (Del. 2004) (finding that although the appellee's complaint "styled an action in ejectment," which is within the Superior Court's jurisdiction, the appellee's claim actually sought "possession" of an "unobstructed view and air space." As such, the Delaware Supreme Court held that the Court of Chancery had exclusive jurisdiction to order the appellant to remove the allegedly encroaching structure.). The Court notes that Plaintiff's claim here is similar to that of the claim in *Nelson* in the sense that Plaintiff seeks relief for a harm that is either difficult or impossible to quantify; rather, the relief Plaintiff actually seeks is a return to his original position as CGI's President and a fifty percent owner, which lies within the jurisdiction of the Court of Chancery.

[77] *Int'l Bus. Mach. Corp.*, 602 A.2d at 78.

C. The Court Lacks Jurisdiction and the Plaintiff Lacks Standing to Pursue His Remaining Claims.

Plaintiff's remaining claims are that Defendants have been unjustly enriched by "excessive rents, diversion of community grain business, excessive compensation and unjustified life insurance premiums,"[78] and Defendants intentionally interfered in the business relationships of CGI with certain of its customers to the detriment of Plaintiff.[79] Again, unjust enrichment is purely equitable, and therefore lies within the jurisdiction of the Court of Chancery.[80]

Plaintiff's subject matter jurisdiction woes aside, Defendants argue that Plaintiff lacks standing to pursue the remainder of his claims because those claims are derivative in nature, *i.e.*, the claims belong to CGI. As noted previously, Plaintiff claims that, at Mrs. Cartanza's direction: (1) CGI paid excessive rent to Shadybrook; (2) CGI paid excessive compensation to Mr. Graham; (3) CGI paid Mrs. Cartanza's personal life insurance premiums despite the fact that CGI had no insurable interest in doing so; and (4) Mrs. Cartanza diverted the Community Grain Business away from CGI to Storage.

In determining whether a stockholder's claim is derivative or direct, the Court must answer two questions: "[W]ho suffered the alleged harm . . . and who

[78] Pl.'s Comp. at ¶¶ 36-43.

[79] *Id*. at ¶¶ 44-49.

[80] *Albert*, 2004 WL 2050527, at *4 (citing *Fleer Corp. v. Topps Chewing Gum, Inc.*, 539 A.2d 1060, 1062 (Del. 1988)).

would receive the benefit of any recovery or other remedy . . . ?"[81] If the corporation suffered a harm, then the corporation is entitled to recover and the claim is derivative.[82] But if the stockholder "suffered harm *independent* of any injury to the corporation that would entitle him to an individualized recovery, the cause of action is direct."[83]

Plaintiff has not and cannot show that he suffered harm *independent* of any injury to CGI. CGI was harmed and Plaintiff has suffered no harm independent of an injury to CGI. It is CGI that is entitled to any recovery from that harm. The Plaintiff cannot demonstrate that the duty allegedly breached was owed to him, and that he could prevail without showing an injury to the corporation.[84] As such, Plaintiff lacks standing to pursue these claims. Defendants' motion relating to the derivative claims for Mrs. Cartanza's alleged misappropriation CGI's profits and diversion of business away from CGI is therefore **GRANTED**.[85]

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[81] *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004).

[82] *Id*. at 1036 (citing *Agostino v. Hicks*, 2004 WL 443987, at *7 (Del. Ch.) ("Looking 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 injury to the corporation?")).

[83] *Feldman v. Cutaia*, 951A.2d 727, 732 (Del. 2008) (citing *Tooley*, 845 A.2d at 1039) ("The stockholder's claimed direct injury must be independent of any alleged injury to the corporation. The stockholder must demonstrate that the duty breached was owed to the stockholder and that he or she can prevail without showing an injury to the corporation.") (emphasis added).

[84] *See id*.

[85] Plaintiff suggests that forcing him to pursue his claims derivatively in this scenario is unfair because CGI is a family business that did not observe corporate formalities and Sandra Cartanza stands to benefit from any recovery by CGI. *See* Pl.'s Ans. Br. at p. 23-25. Plaintiff argues that compensating the corporation in this instance would reward Mrs. Cartanza for her wrongful acts because, currently, she is listed as the one hundred percent owner of CGI. *See id*. at 24. However, Plaintiff never transferred his fifty percent interest to Mrs. Cartanza. *See id*. Plaintiff

VI. CONCLUSION

Because the Court lacks subject matter jurisdiction to hear Plaintiff's conversion and unjust enrichment claims, and the Plaintiff lacks standing to pursue his unjust enrichment and misappropriation claims, Defendant's Motion to Dismiss is **GRANTED**.[86]

IT IS SO ORDERED.

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Jan R. Jurden, Judge

cc: Prothonotary

n. 85 continued . . . argues in the alternative that even assuming his mother is not the sole owner of CGI, she is at least a fifty percent owner because Plaintiff never transferred his fifty percent interest in CGI, and Plaintiff's brother has not made a claim against Mrs. Cartanza for his fifty percent interest. The Court is not persuaded by either argument. As to the first argument, if Plaintiff is not a stockholder, he has no right to pursue the claim. With respect to Plaintiff's second argument, if Plaintiff is still a fifty percent owner, his claim remains derivative despite the small and informal nature of CGI. The fact that Plaintiff's brother has failed to make a claim is of no consequence to the Court's determination of this matter. Whether Plaintiff's brother is a stockholder does not change the Court's analysis because Plaintiff still cannot show an injury that is independent from that of the corporation. *Tooley*, 845 A.2d at 1039.

[86] The Court is mindful that Defendants' Motion to Dismiss was based upon the expiration of the statute of limitations and Plaintiff's lack of standing. However, it became clear at oral argument and through later submissions by the parties that Plaintiff's claims are grounded in equity. Thus, the Court need not address the parties' statute of limitations arguments.