IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

JAMES A. PAPPAS and PETER J. PAPPAS, Plaintiffs, v. ATERIAN INVESTMENT MANAGEMENT LP d/b/a ATERIAN INVESTMENT PARTNERS, Defendant.	))))))))))))	C.A. No. N25C-11-281 EMD CCLD

MEMORANDUM OPINION DENYING MOTION TO DISMISS

Submitted: July 13, 2026
Decided: July 28, 2026

DAVIS, P.J.

This is a civil action assigned to the Complex Commercial Litigation Division of the Court arising from Aterian Investment Management d/b/a Aterian Investment Partners' ("Aterian")[1] purchase of P.J. Mechanical through its affiliate, Eaglestone, LLC in 2019.[2] James A. Pappas and Peter J. Pappas (collectively, the "Plaintiffs") assert a tortious interference claim against Aterian for allegedly driving Eaglestone into insolvency with faulty "tax distributions" to avoid earnout payments under the Eaglestone Limited Liability Company Agreement ("LLC Agreement").[3] Aterian moves to dismiss (the "Motion") the single-count Complaint under Superior Court Civil Rule 12(b)(6) because: (1) the Plaintiffs released their claims against Aterian; (2) the Plaintiffs

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[1] Capitalized terms not defined in this Order shall have the meaning ascribed to them in the Complaint ("Compl."). (D.I. No. 1).
[2] *See generally* Compl.
[3] *Id*. ¶¶ 55–60.

fail to state a claim for tortious interference; and (3) the statute of limitations has run on the claim.[4]

The Plaintiffs oppose the Motion.[5] Aterian replied on April 15, 2026.[6] The Court heard argument on July 13, 2026.[7]

DISCUSSION

APPLICABLE LEGAL STANDARD

Aterian seeks dismissal under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. The governing standard requires the Court to "(1) accept all well pleaded factual allegations as true, (2) accept even vague allegations as 'well pleaded' if they give the opposing party notice of the claim, [and] (3) draw all reasonable inferences in favor of the non-moving party."[8] The Court need not "accept every strained interpretation of [the Plaintiffs'] allegations"[9] or conclusory statements "unsupported by allegations of specific facts."[10] Dismissal is appropriate only if the Plaintiffs "'would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof.'"[11]

THE TORTIOUS INTERFERENCE CLAIM IS WELL PLED

To state a claim for tortious interference, the plaintiff must plead: (1) a contract; (2) about which the defendant knew; (3) an intentional act that is a significant factor in

[4] D.I. Nos. 4–5.
[5] D.I. No. 8.
[6] D.I. No. 9.
[7] D.I. No. 10.
[8] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 535 (Del. 2011) (citing *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896–97 (Del. 2002)).
[9] *Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006) (quoting *Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001)).
[10] *In re Lukens Inc. S'holders Litig.*, 757 A.2d 720, 727 (Del. Ch. 1999), *aff'd sub nom., Walker v. Lukens, Inc.*, 757 A.2d 1278 (Del. 2000).
[11] *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896–97 (Del. 2002) (quoting *Kofron v. Amoco Chems. Corp.*, 441 A.2d 226, 227 (Del. 1982).

causing the breach of such contract; (4) without justification; and (5) which causes injury.[12] The affiliate privilege protects business organizations from tort liability for their affiliate's contractual breaches.[13] But the privilege is limited.[14] And to overcome the affiliate privilege, a plaintiff must allege bad-faith conduct that goes beyond a failure to comply with contractual terms.[15] A plaintiff can allege bad-faith conduct by asserting that the defendant caused the party to the contract to become financially unable to comply with contractual duties by extracting funds for the defendant's own benefit.[16]

Here, the Plaintiffs allege that: (1) they entered into the LLC Agreement with Eaglestone;[17] (2) Aterian was Eaglestone's parent and knew that Eaglestone had an LLC Agreement with the Plaintiffs;[18] (3) Aterian directed Eaglestone to withdraw funds from an account that violated the LLC Agreement and caused Eaglestone to lack funds needed to pay earnout payments;[19] (4) Aterian did this without justification and for the benefit of its own investors at the Plaintiffs' expense;[20] and (5) these actions caused the Plaintiffs to miss out on several earnout payments.[21]

As well, the Plaintiffs assert that Aterian took these actions in bad faith because, by directing Eaglestone to withdraw the $20 million in violation of the LLC Agreement, Eaglestone could not satisfy its contractual obligations to make earnout payments as they

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[12] *Conlon v. CGI Mfg. Buyer, LLC*, 2024 WL 3738715, at *7 (Del. Super. Aug. 8, 2024).
[13] *Buck v. Viking Holding Mgmt. Co. LLC*, 2021 WL 673459, at *6 (Del. Super. Feb. 22, 2021).
[14] *Id*.
[15] *Id*.
[16] *Surf's Up Legacy Partners, LLC v. Virgin Fest, LLC*, 2021 WL 117036, at *8–9 (Del. Super. Jan. 13, 2021).
[17] Compl. ¶ 2.
[18] *Id*. ¶ 57.
[19] *Id*. ¶ 58.
[20] *Id*. ¶¶ 5, 59.
[21] *Id*. ¶ 59.

became due.[22] The Plaintiffs also allege that Aterian caused its subsidiaries to miss payroll to cause the allegedly improper tax distributions to Aterian members.[23] Based on these allegations, it is reasonably conceivable that Aterian caused the missed payrolls to trigger the faulty tax distributions and did this to avoid the Plaintiffs' earnout. This is enough to plead Aterian's bad faith to rebut the affiliate privilege.

Aterian counters that the Plaintiffs impermissibly plead actions taken by members of both Eaglestone and Aterian.[24] But group pleading is only disfavored under Delaware law—not entirely prohibited.[25] And dismissal is appropriate only when it leaves multiple defendants unable to discern the claims pled against them.[26] Here, Aterian is the only defendant.[27] And it is not unclear which claim the Plaintiffs brought against Aterian or what the Plaintiffs assert Aterian did to tortiously interfere with the LLC Agreement. Accordingly, the tortious interference claim is well pleaded and puts Aterian on notice of the claim.

THE RELEASE

Generally, the Court will not consider a release interjected by the defendants on a motion to dismiss.[28] Aterian attaches a side letter release (the "Release") to its Opening Brief.[29] Aterian asserts that the Plaintiffs released their claim in the Release.[30] Aterian further argues that the Court can consider the Release because it is integral to the

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[22] *Id*. ¶ 22.
[23] *Id*. ¶¶ 50–52.
[24] Op. Br. at 21-23 (D.I. No. 5).
[25] *In re Swervepay Acquisition, LLC*, 2022 WL 3701723, at *9 (Del. Ch. Aug. 26, 2022).
[26] *Nestor v. Poore*, 2024 WL 326666, at *1 (Del. Ch. Jan. 29, 2024), *report and recommendation adopted,* (Del. Ch. 2024).
[27] *See generally* Compl.
[28] *Furman v. Delaware Dep't of Transp.*, 30 A.3d 771, 774 (Del. 2011).
[29] Op. Br., Ex. 15 (hereinafter, the "Release") (D.I. No. 5).
[30] Op. Br. at 15-20.

Complaint.[31] But the Complaint never mentions the Release.[32] Moreover, the Plaintiffs could sue for tortious interference if the Release did not exist.

Even if the Court would consider the Release, the Motion would still be denied. To release the tortious interference claim, the Release must cover both: (i) Aterian; and (ii) the tortious conduct. Although the Release covers Aterian, the Release does not seem to cover the "PJM Performance Payments" because the Release only covers claims involving P.J. Mechanical's business.[33] At the motion-to-dismiss stage, the Court resolves all contract ambiguities in favor of the nonmoving party.[34] This is so even if the trial court considers one party's interpretation to be more reasonable.[35] Accordingly, because the PJM Performance Payments do not necessarily involve the business of P.J. Mechanical, it is ambiguous as to whether the Release bars the Plaintiffs' claim.[36] Thus, the Release does not bar the claim at the motion-to-dismiss stage.

STATUTE OF LIMITATIONS

Statutes of limitations establish jurisdictional prerequisites for initiating or maintaining a suit.[37] Although harsh by nature, statutes of limitation attempt to balance a

[31] Def.'s Reply Br. at 2-8 (D.I. No. 9).

[32] *See generally* Compl.

[33] See generally the Release § 4:

> Each Pappas Party, on his own behalf and on behalf of his Related Parties (to the extent permitted by Law), generally, irrevocably, unconditionally and completely releases, acquits and forever discharges Buyer, the Company, their Affiliates and the Buyer Released Parties, to the fullest extent permitted by applicable Law, from any and all Losses of every type, kind, nature, description or character, whether known or unknown, liquidated or unliquidated, in law or in equity, that each Pappas Party has, owns or holds, or claims to have, own or hold, or may have, own or hold, in each case, arising from the beginning of time through the Closing Date with respect to any matter involving the business of the Company Group, the equity securities of the Company Group or the 2019 Acquisition, arising contemporaneously with or prior to the Closing.

[34] *LGM Holdings, LLC v. Schurder*, 340 A.3d 1134, 1143-44 (Del. 2025).

[35] *Id*. at 1144.

[36] Although the Plaintiffs have submitted extrinsic evidence to resolve the ambiguity, extrinsic evidence of intent cannot be considered on a motion to dismiss. *Green Plains Renewable Energy Inc. v. Ethanol Holding Co., LLC*, 2015 WL 590493, at *6 (Del. Super. Feb. 9, 2015).

[37] *ISN Software Corp. v. Richards, Layton & Finger, P.A.*, 226 A.3d 727, 731 (Del. 2020).

plaintiff's right to seek a remedy with a defendant's right to avoid defending stale claims.[38] To determine a motion to dismiss based on a statute of limitation defense, the Court determines: (1) the accrual date based on the allegations; (2) whether the plaintiff has pleaded facts sufficient to create a reasonable inference that the statute of limitations has been tolled; and (3) assuming a tolling exceptions is well pled, when the plaintiff was on inquiry notice of the claim based on the allegations.[39]

A statute of limitations begins to run when the cause of action accrues.[40] In Delaware, tort claims accrue at the time of injury.[41] Simply put, a tort action starts the statute-of-limitations clock when an injury, however slight, is sustained from another's wrongful act.[42] For tortious interference, the plaintiff cannot sue until an injury occurs.[43]

Under the doctrine of fraudulent concealment, a statute of limitations can be disregarded and tolled when the defendant fraudulently conceals the facts necessary to put the plaintiff on notice of the truth.[44] Tolling suspends or stops the clock on the limitations period.[45] And the plaintiff shoulders the burden of pleading that a tolling doctrine applies.[46] But if the plaintiff is on inquiry notice, the statute-of-limitations clock keeps ticking.[47]

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[38] *Id*. at 731–32.
[39] *Van Lake v. Sorin CRM USA, Inc.*, 2013 WL 1087583, at *7 (Del. Super. Feb. 15, 2013).
[40] *In re Tyson Foods, Inc.*, 919 A.2d 563, 584 (Del. Ch. 2007), *abrogated on other grounds, as recognized by In re Match Grp., Inc. Deriv. Litig.*, 315 A.3d 446, 470 n.157 (Del. 2024).
[41] *ISN Software Corp.*, 226 A.3d at 732.
[42] *Id*. at 733.
[43] *Atl. Med. Specialists, LLC v. Gastroenterology Associates, P.A.*, 2017 WL 1501444, at *2 (Del. Super. Apr. 20, 2017).
[44] *LGM Holdings, LLC,* 340 A.3d at 1146.
[45] *Id*. at 1147.
[46] *Berg v. Titan Spine, Inc.*, 2026 WL 1878510, at *6 (Del. Ch. June 30, 2026).
[47] *Id*.

For there to be inquiry notice, the plaintiff must possess enough information to cause a reasonable person to investigate the claim further.[48] There must be red flags that would clearly and unmistakably lead a prudent person of ordinary intelligence to inquire and, if pursued, lead to the discovery of the elements of the claim being asserted.[49]

Here, the Parties agree that the applicable statute of limitations is three years.[50] The Plaintiffs sued on November 26, 2025.[51]

The Court finds it is too early to dismiss this case on the basis that the statute of limitations had expired or was otherwise tolled. Based the Parties' arguments, the statute of limitations could have begun running as early as 2020[52] and as late as November 10, 2022. Alternatively, the statute of limitations my have begun to run when the First PJM Performance Period Payment was due in July 2022 or with each subsequent PJM Performance Period Payment due in four equal quarterly installments beginning in July 2023.[53] Arguably, the earnout payments were continuously due into the three-year time period before the Plaintiffs initiated this civil action. Accordingly, the Court finds that this case is too underdeveloped to rule on the statute of limitations issue.[54]

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[48] *Dyton v. Ahern*, 2025 WL 3232911, at *11 (Del. Super. Nov. 19, 2025), *reargument denied,* 2025 WL 3496991 (Del. Super. Dec. 5, 2025).
[49] *Id*.
[50] Op. Br. at 30; Opp'n at 36 .
[51] D.I. No. 1.
[52] Aterian allegedly cause Eaglestone to take $10 million from P.J. Mechanical's cash account and pay that amount to Aterian to eschew making earnout payments to the Plaintiffs. Compl. ¶ 28.
[53] The LLC Agreement provides that the Plaintiffs could obtain two earnout payments, due in quarterly payments, beginning in July 2022 and July 2023. Compl. ¶¶ 22-23.
[54] *See Deshong & Sons Contractors, Inc. v. Wallworks, Inc.*, 2024 WL 4564160, at *5-6 (Del. Super. Oct. 23, 2024) (denying a motion to dismiss on statute-of-limitations grounds when the factual record was unclear as to whether the limitations period had run); *see also Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 321 (Del. 2004) (ruling that the trial court erred when it ruled that the statute of limitations barred a claim and there were factual disputes relating to tolling the limitations period).

CONCLUSION

For the reasons above, the Motion is **DENIED**.

IT IS SO ORDERED.

July 28, 2026
Wilmington, Delaware

/s/ Eric M. Davis
Eric M. Davis, President Judge

cc: File&ServeXpress