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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)))	IN THE COURT OF COMMON PLEAS IN THE SEVENTH JUDICIAL CIRCUIT
Gibbs International, Inc., Plaintiff, vs. Sarmad Harake, Eurosa, Inc., Katherine Harake, Defendants.	))))))))))	Civil Action No.: 2017-CP-42-00740 **ORDER ON THE PARTIES' RESPECTIVE MOTIONS TO DISMISS**
Sarmad Harake and Eurosa, Inc., Counterclaim Plaintiffs vs. Gibbs International, Inc., Counterclaim Defendant.	))))))))))))))	

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SC Court of Appeals

Before the Court are three motions: Plaintiff's Motion to Dismiss and to Strike Counterclaims of Sarmad Harake and Eurosa, Inc. ("Motion to Dismiss and Strike"); Defendants Sarmad Harake and Eurosa, Inc.'s (collectively "Harake Defendants") Motion to Dismiss; and Defendant Katherine Harake's Motion to Dismiss. These matters were briefed by the parties, and the Court heard oral argument on the motions on Tuesday, September 22, 2020, via WebEx. For the reasons set forth below, Plaintiff's Motion to Dismiss and Strike is **DENIED** as to the negligent misrepresentation counterclaim and **GRANTED** as to the tortious interference with economic advantage counterclaim. Defendant Katherine Harake's Motion to Dismiss pursuant to 12(b)(2) and 12(b)(3) and pursuant to Rule 12(b)(6) for the causes of action brought for violation of the South Carolina Unfair Trade

Practices Act ("SCUTPA"), fraud, aiding and abetting breach of fiduciary duty, conversion, and accounting is **DENIED**. Katherine Harake's Motion to Dismiss pursuant to Rule 12(b)(6) as to the causes of action of aiding and abetting conversion; civil conspiracy; and unjust enrichment, quasi contract, implied contract, and quantum meruit is **GRANTED**. The Harake Defendants' Motion to Dismiss the civil conspiracy claim against them is **DENIED**.

BACKGROUND

This matter involves corporate and individual parties and contains complex allegations, but at its core, it is a business dispute arising from an alleged breach of contract and request for accounting of an alleged investment agreement between Defendant Eurosa, Inc. ("Eurosa") and Plaintiff Gibbs International, Inc. ("Gibbs"). While Gibbs initially filed this action in March 2017, it was twice amended, with the Second Amended Complaint filed on June 9, 2017. An entry of default was entered against Defendants Sam Harake, Eurosa, and Katherine Harake on July 17, 2017; however, they timely answered the Second Amended Complaint on August 17, 2017. The entry of default was set aside by Order of this Court on December 21, 2017. Katherine Harake was voluntarily dismissed from this litigation on June 1, 2018. Collectively since January 2018, Plaintiff and the Harake Defendants have produced tens of thousands of pages of documents in this litigation, and more than 10 depositions have been taken, including the deposition of Katherine Harake. Gibbs amended the Complaint a third time on August 3, 2020, bringing different causes of action against Katherine Harake as well as additional claims against the Harake Defendants. The Harake Defendants timely filed their Answer and Amended Counterclaims contemporaneously with their Motion to Dismiss on August 24, 2020. Katherine Harake filed her Motion to Dismiss on August

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24, 2020, in lieu of a responsive pleading.[1] *See* K. Harake Motion, p. 1, n.1. Gibbs filed its Motion to Dismiss and to Strike Counterclaims on August 28, 2020, and it timely replied to the Harake Defendants' Counterclaims on September 18, 2020.

APPLICABLE LEGAL STANDARD

The motions at issue before the Court were brought pursuant to Rules 12(b)(2), 12(b)(3), 12(b)(6), and 12(f) of the South Carolina Rules of Civil Procedure. Rule 12(b)(2), SCRCP, allows a party to move for dismissal of a pleading for lack of jurisdiction over the person. *See* 12(b)(2), SCRCP. Rule 12(b)(3), SCRCP, permits dismissal when venue is improper. Under South Carolina law, "[i]t is well-settled that a party seeking to invoke personal jurisdiction over a non-resident defendant via our long-arm statute bears the burden of proving the existence of personal jurisdiction." *Moosally v. W.W. Norton & Co., Inc.*, 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004) (citing *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 423 S.E.2d 128 (1992); *Aviation Assocs. & Consultants, Inc. v. Jet Time, Inc.*, 303 S.C. 502, 402 S.E.2d 177 (1991).

"The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case." *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005) (citing *Engineered Prods.v. Cleveland Crane & Eng'g*, 262 S.C. 1, 201 S.E.2d 921 (1974)). Exercise of personal jurisdiction "must comport with due process requirements and must not offend traditional notions of fair play and substantial justice." *Id.* at 16, 655 S.E.2d at 478 (citing *Cockrell*, 363 S.C. 485, 611 S.E.2d 505). "Due process requires some

[1] To the extent Katherine Harake's Motion to Dismiss is denied as discussed later in this Order, Katherine Harake is directed to serve her answer fifteen day after the filing of this Order as provided in Rule 12(a), SCRCP.

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act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state." *Id.*, 655 S.E.2d at 478 (citing *Hanson v. Denckla*, 357 U.S. 235 (1958)).

Pursuant to Rule 12(b)(6), SCRCP, dismissal is warranted for failure to state facts sufficient to constitute a cause of action. A motion to dismiss should be sustained if facts alleged and reasonable inferences derived therefrom would not entitle the plaintiff to any relief on any theory of the case. *Stiles v. Onorato,* 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995).

"The matter of striking from a pleading, and the matter of admissibility of evidence is largely within the discretion of the trial judge." *Wells Fargo Bank, NA v. Smith*, No. 2009-125666, 2012 WL 10987189, at *1 (S.C. Ct. App. June 13, 2012) (citation omitted). Rule 12(f) provides, in part, that a court "may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter." Rule 12(f), SCRCP. Matter is "immaterial" if it has no relationship to the claim for relief; "impertinent" if it does not pertain to the issues in the case; "scandalous" if it "'reflect[s] cruelly' upon the defendant's moral character, use[s] 'repulsive language' or 'detract[s] from the dignity of the court.'" *Zaloga v. Provident Life and Acc. Ins. Co. of Am.*, 671 F. Supp. 623, 633 (M.D. Pa. 2009) (quoting *Donnelly v. Com. Financial Systems, Inc.*, 2008 WL 762085, *4 (M.D. Pa. 2008)) (construing identical federal rule); Wright & Miller, 5C Fed. Prac. & Proc. Civ. § 1382 (3d ed.) (construing identical federal rule). A Rule 12(f) motion that "challenges a theory of recovery in the pleading" is treated as a challenge to the sufficiency of the pleading under Rule 12(b)(6), SCRCP, and "must be based solely on the allegations set forth on the face of the claim." *Hackworth v. Greywood at Hammett*, LLC, 385 S.C. 110, 114–15, 682 S.E.2d 871, 874 (2009).

DISCUSSION

I. Katherine Harake's Motion to Dismiss Pursuant to Rule 12(b)(2) and 12(b)(3), SCRCP.

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"[T]he party seeking to invoke personal jurisdiction over a nonresident defendant via our long-arm statute bears the burden of proving the existence of personal jurisdiction." *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004). The court need only consider the pleadings in entertaining a motion to dismiss for lack of personal jurisdiction and is not required to verify the allegations within the pleadings. *Springmasters, Inc. v. D & M Mfg.*, 303 S.C. 528, 531, 402 S.E.2d 192, 193 (Ct. App. 1991). The allegations of the complaint are "normally sufficient to warrant the court's exercise of jurisdiction." *See Jenkinson v. Murrow Bros. Seed Co., Inc.*, 272 S.C. 148, 150, 249 S.E.2d 780, 781 (1978). Only when the complaint contains no inference of personal jurisdiction must the plaintiff supply extrinsic evidence of jurisdiction. *Springmasters*, 303 S.C. at 531, 402 S.E.2d at 193.

Under the South Carolina's Long Arm Statute, a court may exercise personal jurisdiction over a defendant for causes of action arising from the defendant's:

(1) transacting any business in this State;

(2) contracting to supply services or things in the State;

(3) commission of a tortious act in whole or in part in this State;

(4) causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State;

(5) having an interest in, using, or possessing real property in this State;

(6) contracting to insure any person, property, or risk located within this State at the time of contracting;

(7) entry into a contract to be performed in whole or in part by either party in this State; or

(8) production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.

S.C. Code Ann. § 36-2-803.

Here, there is sufficient information to conclude that K. Harake is subject to suit under the Long Arm Statute, and that K. Harake has the minimum contacts necessary to comport with the notions of fair play and substantial justice. Plaintiff alleges that K. Harake actually lived in Spartanburg during most of the time periods relevant in this case. (Compl. ¶ 4) ("K. Harake was a citizen and resident of Spartanburg, South Carolina at the time of the filing of the original complaint in this matter" and "[m]uch of the conduct alleged as to K. Harake occurred when she was living in Spartanburg."). Defendant S. Harake, the husband of K. Harake, testified that K. Harake came to Spartanburg to meet with Plaintiff in May 2015 to explain to Plaintiff "how I [S. Harake] work, how I operate and how I operated all my life…." (S. Harake Dep. 25:4-21). S. Harake also testified that Spartanburg was the "center of life" for him and K. Harake (S. Harake Dep. 23). K. Harake herself testified that she moved to Spartanburg in August 2015, that the Harakes' daughter started school at Spartanburg Day School shortly thereafter, and that she resided in Spartanburg for her daughter to attend school until May 2017 when their daughter finished school for the year. (K. Harake Dep. 10:20-12:22). Plaintiff alleges that the Harakes did the majority of their shopping in Spartanburg and expensed a private school education there from 2015 to 2017. (S. Harake Dep. 18:23-19:13). Plaintiff also alleges that K. Harake's own bank records show that she used and spent Plaintiff's money while she was in South Carolina. (K. Harake Dep. 66:9-67:25).

The causes of action against K. Harake allege that, among other things, Gibbs provided money to S. Harake to be used for certain purposes. (*See, e.g.* Compl. ¶ 102). S. Harake then inappropriately provided Gibbs' money to K. Harake's savings account. (Compl. ¶¶ 15, 34). K. Harake then transferred all of that money from her personal savings account to her personal checking account in Spartanburg. (Compl. ¶¶ 34, 58; K. Harake Dep. 63:21-64:2). She then

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inappropriately spent the money out of her checking account in Spartanburg. (Compl. ¶ 34, 58; K. Harake Dep. 63:21-64:25). Over $500,000 of Gibbs' money is alleged to have been spent while she was living in Spartanburg. (Compl. ¶¶ 37, 103, 110). These allegations and admissions, among others, establish sufficient minimum contacts with the State of South Carolina for the Court to exercise personal jurisdiction.

The Court has also considered whether the exercise of personal jurisdiction would offend traditional notions of fair play and substantial justice. The factors to be considered include: the burden on the defendant; the forum state's interest in adjudicating the dispute; the plaintiff's interest in obtaining convenient and effective relief; the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the states in furthering fundamental substantive social policies.

The Court finds that the exercise of personal jurisdiction does not offend traditional notions of fair play and substantial justice. K. Harake chose to live in Spartanburg and educate her daughter there, among other connections previously mentioned. K. Harake has already traveled to Spartanburg for her deposition. As a result, no inappropriate burden is imposed by the exercise of jurisdiction here. South Carolina has an interest in requiring nonresidents and foreign corporations to be held accountable in South Carolina for their activities in the state given significant foreign investment in South Carolina, among other things. Plaintiff does business with foreign entities and much of the conduct at issue in this lawsuit occurred in South Carolina, which weighs in favor of adjudicating the case here. The judicial system also has an interest in adjudication here given the level of activities in this State. In sum, the exercise of personal jurisdiction here is consistent with fair play and substantial justice.

The Court also finds that venue is proper in South Carolina as to K. Harake, S. Harake, and Eurosa. Civil actions may be commenced in South Carolina in the county in which the most substantial part of the alleged act or omission giving rise to the cause of action occurred. S.C. Code Ann. § 15-7-30(D)(1). The same is true as to foreign corporations. In addition, if jurisdiction is proper in South Carolina against any foreign Defendant, then the case can be brought in the county where Plaintiff resided at the time the cause of action arose. S.C. Code Ann. § 15-7-30(D)(2) and S.C. Code Ann. § 15-7-30(G)(2). Plaintiff complains of acts by the Harake Defendants taking place in Spartanburg, South Carolina and when the Harakes were living in Spartanburg. Venue accordingly is proper in Spartanburg County based on the venue statute as well as serving the ends of justice. *Whaley v. CSX Transp, Inc.*; 609 S.E. 2d 286, 362 S.C. 456 (2005); *Varradone v. Hicks*, 213 S.E. 2d 736, 264 S.C. 216 (1975).

For these reasons, among other reasons briefed by the parties and argued at the hearing, this Court finds that there are sufficient facts to establish its personal jurisdiction and proper venue in this action and Defendant K. Harake's motion to dismiss for personal jurisdiction and Defendants K. Harake/S. Harake/Eurosa's motions to dismiss for improper venue are DENIED.

II. Failure to State Facts Sufficient to Constitute a Cause of Action

Plaintiff and Defendants filed their respective motions pursuant to Rule 12(b)(6), SCRP, arguing that various causes of action alleged in either the Third Amended Complaint or the Amended Counterclaims of Sarmad Harake and Eurosa, Inc. should be dismissed. First, Plaintiff argues the counterclaim for negligent misrepresentation should be dismissed because the Harake Defendants failed to plead all elements of the cause of action. Next, Plaintiff argues the counterclaim for tortious interference with economic advantage should be dismissed pursuant to Rule 12(b)(6) or stricken

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pursuant to Rule 12(f), SCRCP, because it is not a recognized cause of action under South Carolina law.

Defendant Katherine Harake argued all of the causes of action alleged by Gibbs against her should be dismissed pursuant to 12(b)(6), SCRCP, and the Harake Defendants also argued the cause of action for civil conspiracy should be dismissed against them because it did not contain facts sufficient to constitute a cause of action.

A party may move to dismiss a claim against them based on failure to state facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6), SCRCP. "Viewing the evidence in favor of the [non-moving party], the motion must be granted if facts alleged in the complaint and inferences reasonably deductible therefrom do not entitle the [non-moving party] to relief on any theory of the case." *Brown v. Theos*, 338 S.C. 305, 309-310, 526 S.E.2d 232, 235 (Ct. App. 1999) (citing *Jarrell v. Petoseed Co., Inc.*, 500 S.E.2d 793 (S.C. App.1998)). Rule 12(f) motions "challeng[ing] a theory of recovery in the pleading" are treated as Rule 12(b)(6), SCRCP, motions. *Hackworth*, 385 S.C. at 114–15, 682 S.E.2d at 874.

Pursuant to this standard, the Court denies the Motion to Dismiss and Strike the Negligent Misrepresentation Counterclaim and grants it as to the Counterclaim for Tortious Interference with Economic Advantage. Additionally, the causes of action against Katherine Harake for aiding and abetting conversion, civil conspiracy, unjust enrichment, quantum meruit, quasi-implied contract must be dismissed as the Third Amended Complaint fails to allege any set of facts sufficient to support those causes of action. However, the Court denies Katherine Harake's Motion to Dismiss as to the causes of action brought under SCUTPA, fraud, aiding and abetting breach of fiduciary duty, conversion and accounting. Finally, the Court denies the Motion to Dismiss

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the civil conspiracy claim against the Harake Defendants. The Court addresses the parties' arguments and its findings in further detail below.

A. The Harake Defendants' Counterclaim of Negligent Misrepresentation

Plaintiff argued the negligent misrepresentation counterclaim should be dismissed because, as pleaded, the allegations fail to address all elements of the cause of action. Specifically, Plaintiff argued the counterclaim did not relate to a present or pre-existing fact. The Harake Defendants, however, argued as the misrepresentations Gibbs made to the Harake Defendants were about present agreements. This Court agrees.

To establish a claim for negligent misrepresentation, a party must allege and later prove "(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; and (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation." *AMA Mgmt. Corp. v. Stashburger*, 309 S.C. 213, 222, 420 S.E.2d 868, 874 (Ct. App. 1992). Generally, a representation should relate to a present or prior existing fact and cannot be based on statements regarding future events. *Sauner v. Pub. Svc. Auth. of S.C.*, 354 S.C. 397, 408, 581 S.E.2d 161, 167 (2003).

Here, the Harake Defendants alleged Gibbs' authorized agent, Jimmy Gibbs, made representations to investors, including the Harake Defendants, that were false related to its commitment to invest in Gibbs Investment Holdings, LLC; Iotive, Inc.; and Paysend Processing. Ans. and Am. Counterclaims, ¶¶ 169-171. Moreover, the present nature of the representations made for each of the commitments was pled in Paragraphs 128 through 160 of the Answer and

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Amended Counterclaims which were incorporated into the Negligent Misrepresentation cause of action. *Id.* at ¶ 168. The Harake Defendants also alleged Gibbs represented it would create Gibbs Investment Holdings, LLC with Eurosa and revenue sharing terms. *Id.* at ¶¶ 130-131. Gibbs admitted that it "agreed to form Gibbs Investment Holdings, LLC," but it referred to its Third Amended Complaint for the particular terms. Reply, ¶¶ 8-9. Gibbs also represented that certain expenses would be considered draws for Eurosa from Gibbs Investment Holdings, LLC as of 2016. Ans. and Am. Counterclaims, ¶ 133. Further, commitments made in Gibbs' representations were present facts as they were confirmed at the time, as alleged, in correspondence or electronic communications providing the terms and conditions or by specific performance. *Id.* at ¶¶ 135-142, 149. Gibbs also admitted agreements existed, but it alleged that the "description of agreements" would be found in its Third Amended Complaint. Reply, ¶¶ 13-20, 27. In addition to alleging false representations about present facts, the Harake Defendants alleged the pecuniary interest Gibbs had related to the false, present commitments it made. Ans. and Am. Counterclaims, ¶ 173. Moreover, the Harake Defendants alleged the duty Gibbs had to the other investors as well as its breach by failing to meet the commitments it made. *Id.* at ¶¶ 174-175. Additionally, the Harake Defendants alleged that they justifiably relied on Gibbs' false, present commitments and were caused damages as a result. *Id.* at ¶¶ 176-181. Accordingly, the allegations, viewed in the light most favorable to the Harake Defendants, have been sufficiently pleaded. Therefore, Gibbs' Motion to Dismiss and Strike is **DENIED** as to the negligent misrepresentation counterclaim.

B. The Harake Defendants' Counterclaim of Tortious Interference with Economic Advantage

Defendants S. Harake/Eurosa's fourth counterclaim for relief is for "tortious interference with economic interest." South Carolina does not have a tort called "tortious interference with economic interest." *See United Educ. Distributors, LLC v. Educ. Testing Serv.*, 350 S.C. 7, 10,

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564 S.E.2d 324, 326, n.1 (Ct. App. 2002), citing *Crandall Corp. v. Navistar Int'l Transp. Corp.,* 302 S.C. 265, 395 S.E.2d 179 (1990) ("Although the trial court identified this action as 'tortious interference with prospective economic advantage,' South Carolina has labeled this tort 'intentional interference with prospective contractual relations."). The recognized "intentional interference with prospective contractual relations" claim involves the general wrong of using "intentional and improper methods of diverting or taking away ongoing or prospective business or contractual rights from another." *Id.*, quoting 45 Am.Jur.2d *Interference* § 36 (1999).

The Harake Defendants did not cite any South Carolina case holding that this state recognizes the claim of "tortious interference with economic interest." Where a party pleads for relief under a tort theory that does not exist under South Carolina law, it is proper to dismiss under Rule 12(b)(6) and/or to strike under Rule 12(f) such pleadings. *Robinson*, 384 S.C. at 588, 682 S.E.2d at 498; *Alladin Plastics*, 301 S.C. at 93, 390 S.E.2d at 372. As noted in *United Educ. Distributors*, "[a] ruling on a motion to dismiss a claim pursuant to Rule 12(b)(6), SCRCP, must be based solely on the allegations set forth on the face of the complaint." *Id.* at 13, 564 S.E.2d at 327 (Emphasis added). The court then affirmed a Rule 12(b)(6) dismissal. As a result, the fourth counterclaim for relief is dismissed because the claim that Counterclaim Plaintiff chose to assert is not recognized in South Carolina. The Court also notes that Counterclaim Plaintiff's fourth counterclaim does not allege "intentional interference," and those words do not appear in the fourth counterclaim for relief or elsewhere in Defendants' Counterclaims.

In the hearing, the Harake Defendants verbally requested to be allowed to amend. No such request was made in their briefing. The Court did not allow an amendment at that time. The Harake Defendants also argued that the amended counterclaim should be converted to a claim of intentional interference with contractual relations. The Court did not re-draft the counterclaim at

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the time of the hearing and dismissed the tortious interference with economic interest counterclaim that was asserted. The Harake Defendants have since moved to reconsider these points and the Court will address the motion to reconsider by subsequent order.

Gibbs also moved to strike Defendants S. Harake/Eurosa's fourth counterclaim pursuant to Rule 12(f) "and/or any other applicable Rule and/or common law." The basis of the motion was that Harake Defendants' counsel instructed S. Harake not to answer certain deposition questions about this claim, which prevented Plaintiff from obtaining information requested about the claim. Rule 30(j)(3), SCRCP provides that counsel directing that a witness not answer on allowable grounds shall move the court for a protective order within five business days of the termination of the deposition. However, the Harake Defendants argued in the hearing that this rule was altered by a verbal agreement between the parties that notice would be provided if the party taking the deposition decided it was necessary for the adverse party to file a motion for a protective order covering the instruction not to answer. Plaintiff responded in the hearing that, although it would not oppose the existence of that verbal agreement if the Harake Defendants' counsel thought that was the case, it did provide notice that a motion for a protective order needed to be filed within five business days when it filed its motion to dismiss/strike on August 28, 2020 seeking dismissal based on the instruction not to answer at S. Harake's deposition.

It is undisputed that the Harake Defendants did not file a motion for a protective order within five business days after Plaintiff filed its motion to dismiss/strike, or within five business days after the hearing when Plaintiff notified the Harake Defendants in open court about its position that the instruction not to answer was improper and the basis for its motion to dismiss/strike. It is also noted that the Harake Defendants have not filed a motion for a protective order as of the submission of a proposed order on this issue on November 2, 2020. The refusal to

allow S. Harake to testify about the basis for the Harake Defendants' new counterclaim justifies dismissal.

Plaintiff's motion to dismiss Defendants S. Harake/Eurosa's fourth counterclaim for relief is hereby GRANTED pursuant to Rule 12(b)(6) and/or Rule 12(f), SCRCP and the fourth counterclaim for relief in their counterclaims is DISMISSED.

C. Plaintiff's Aiding and Abetting Conversion Cause of Action against Katherine Harake

Defendant Katherine Harake argued that "Aiding/Abetting Conversion," the Sixth Claim for Relief in the Third Amended Complaint, is not based in statute or in common law in South Carolina and therefore should be dismissed. Plaintiff argued that since generally South Carolina courts recognize civil liability arising from aiding and abetting a tortious act, the Court should do so here. The Court agrees with Defendant Katherine Harake. There are no South Carolina cases discussing the propriety of aiding and abetting conversion, and the Legislature has never enacted a civil aiding and abetting statute. Although it is within the Court's discretion to determine the state would recognize the cause of action for aiding and abetting conversion rather than dismissing the claim, the Court finds the cause of action for aiding and abetting conversion should be dismissed as pled. *See Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000), *holding modified by State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004) (citations omitted); *see also Fabian v. Lindsay*, 410 S.C. 475, 765 S.E.2d 132 (2014). As there is not a recognized cause of action for aiding and abetting conversion, whether the elements have been sufficiently pled would require there to be elements to test, and such elements have not been presented. Therefore, this Court finds aiding and abetting conversion is not a theory under which Plaintiff can proceed, and as a result, Katherine Harake's Motion to Dismiss is **GRANTED** as to this cause of action.

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D. Plaintiff's Civil Conspiracy Cause of Action Against Katherine Harake

Katherine Harake also argued Plaintiff failed to plead facts as to the necessary elements of the cause of action for civil conspiracy as to her. Specifically, she argued Plaintiff failed to plead any acts in furtherance of the conspiracy that are "separate and independent from other wrongful acts alleged." *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 325, 701 S.E.2d 39 (Ct. App. 2010) (finding in a civil conspiracy claim the plaintiff must plead acts in furtherance of the conspiracy that are "separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim"); *see also Hackworth*, 385 S.C. 110, 682 S.E.2d 871 (noting that a "claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than reallege other claims within the complaint"); *Todd v. S.C. Farm Bureau Mut. Ins. Co.,* 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981) (dismissing the civil conspiracy cause of action because it did no more than incorporate the complaint's allegations in the previous causes of action and because the only alleged wrongful acts pled were those for which damages had already been sought), *rev'd on other grounds,* 283 S.C. 155, 321 S.E.2d 602 (1984) *quashed in part on other grounds,* 287 S.C. 190, 336 S.E.2d 472 (1985). Defendant Katherine Harake further argued that Plaintiff's civil conspiracy allegations incorporate by reference the facts pled in support of its conversion claim.

This Court finds the civil conspiracy cause of action must be dismissed as to Katherine Harake. Plaintiff fails to assert any overt acts as to Katherine Harake. Plaintiff has not pleaded separate, independent facts in furtherance of the conspiracy, and instead only reincorporated the facts concerning the other allegations in the Third Amended Complaint. The Third Amended Complaint also contains no allegations that the primary purpose of Katherine Harake was to injure Plaintiff, nor can the pleadings be reasonably construed to infer such an allegation. Plaintiff also

has failed to allege damages specific to the civil conspiracy cause of action. *See Vaught v. Waites,* 300 S.C. 201, 209, 387 S.E.2d 91, 95 (Ct. App. 1989) (holding that *Todd* barred a conspiracy cause of action because no special damages were alleged aside from the damages already alleged for the plaintiff's breach of contract cause of action in that case). Here, the damages alleged are the same funds sought elsewhere in the Third Amended Complaint. Accordingly, Plaintiff's civil conspiracy claim against Katherine Harake fails as a matter of law and is dismissed. Therefore, Katherine Harake's Motion to Dismiss as to this cause of action is **GRANTED**.

E. Plaintiff's Unjust Enrichment, Quasi Contract, Implied Contract, and Quantum Meruit Cause of Action Against Katherine Harake

Gibbs' claims for unjust enrichment, quasi contract, implied contract, and quantum meruit against Katherine Harake also fail as a matter of law. First, they are equitable remedies which are generally available only where there is no adequate remedy at law. *Santee Cooper Resort, Inc. v. South Carolina Public Service Com'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (S.C. 1989). Gibbs has adequate remedies at law available to it. Gibbs has raised numerous causes of action against the Harake Defendants and Katherine Harake in both contract and tort. Gibbs has not pleaded and cannot show that these remedies are inadequate to redress its alleged issues.

A party seeking to recover for unjust enrichment or quantum meruit must show: (1) a benefit conferred by the plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value. *Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 325, 734 S.E.2d 177, 180 (Ct. App. 2012). Plaintiff failed to plead facts sufficient to show that a benefit was conferred by Gibbs to Katherine Harake. Gibbs has also failed to show Katherine Harake realized any alleged benefit nor that it would be inequitable for her to retain such benefit. Gibbs only alleges that Katherine Harake received money from Sam Harake. Gibbs has not and cannot allege that Katherine

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Harake was aware of any alleged misappropriations or breach of fiduciary duties and that it would be unjust for her to retain any money transferred to her by her husband. This Court finds Katherine Harake's Motion to Dismiss as to this cause of action should be **GRANTED**, and the cause of action for unjust enrichment, quasi contract, implied contract, and quantum meruit is dismissed.

F. Plaintiff's Causes of Action Against Katherine Harake For Violation of SCUTPA, Fraud, Aiding and Abetting Breach of Fiduciary Duty, Conversion, and Accounting

SCUTPA.

The South Carolina Unfair Trade Practices Act ("SCUTPA") provides that "[a]ny person who suffers any ascertainable loss of money or property, real or personal, *as a result of the use or employment by another person of an unfair or deceptive method, act or practice*" may bring an action to recover actual damages. S.C. Code Ann. § 39-5-140(a). Defendant K. Harake argues that the SCUTPA claim against her should be dismissed because she is neither an officer nor a controlling person in a business, and that *State ex rel. McLeod v. C&L Corp., Inc*., 280 S.C. 529, 313 S.E.2d 334 (Ct. App. 1984) holds that SCUTPA liability against individuals is limited to controlling persons of a corporation. Defendant K. Harake misreads *McLeod* and the scope of SCUTPA to individuals. Rather, *McLeod* stands for the proposition that, when employees and/or agents of a corporation engage in deceptive and unfair trade practices, liability under SCUTPA may extend to controlling persons that direct corporate policy or who are deeply involved in the important affairs of the corporation. *Id.* at 530, 313 S.E.2d at 341. However, the *McLeod* case does not limit SCUTPA liability of individuals to just "controlling persons" as K. Harake suggests. Rather, South Carolina courts have held that the "plain language of S.C. Code Ann. § 39-5-140 provides that any person is liable for damages resulting from their use or employment of unfair trade practices." *Plowman v. Bagnal,* 316 S.C. 283, 286, 450 S.E.2d 36, 37 (1994). *Plowman*

actually limits application of the controlling persons doctrine in *McLeod,* holding that directors and officers are not liable for the corporation's unfair trade practices unless they personally commit, participate in, or authorize the unfair or deceptive trade practice. In short, a showing that the defendant engaged in the "use or employment" of an unfair or deceptive practice is what makes "a person" liable under the act, not whether the person is a "controlling person" of a corporation.

To recover in an action under SCUTPA, a plaintiff needs to show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s). S.C. Code Ann. §§ 39-5-10 to -560. "An unfair trade practice has been defined as a practice which is offensive to public policy or which is immoral, unethical, or oppressive." *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 269, 536 S.E.2d 399, 407 (Ct. App. 2000). Whether an act or practice is unfair or deceptive within the meaning of SCUTPA "should not be construed to increase a plaintiff's burden of proving liability since its purpose is to give additional protection to victims of unfair trade practices, not to make a case harder to prove than it would be under common law principles." *Id*.

Plaintiff's allegations in the Third Amended Complaint are sufficient to state a claim against K. Harake under SCUTPA. Plaintiff alleges that Plaintiff's money was embezzled, misappropriated, laundered, misused, and/or mismanaged. Plaintiff also alleges that K. Harake aided and abetted S. Harake and Eurosa's breach of fiduciary duties and mismanagement of the business activities and/or business operations, making K. Harake liable for these damages in addition to the damages for the money inappropriately shifted to her account. (Compl. ¶¶ 30-35). Plaintiff further alleges that K. Harake knew that the money flowing into her personal savings account was unauthorized and stolen from Plaintiff, and yet she said nothing. (Compl. ¶ 33).

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Plaintiff also alleges K. Harake actively participated in the immoral and deceptive scheme to conceal the theft by transferring Plaintiff's money again, this time to her own personal checking account, adding one further step that Plaintiff would ultimately have to chase down to determine where its money went and that she then spent the money for personal purposes. (Compl. ¶ 34). Based on these allegations, among others, Gibbs has alleged facts sufficient to state a cause of action against K. Harake under SCUTPA, and K. Harake's motion to dismiss is therefore DENIED.

Fraud.

The nine elements of actionable fraud in South Carolina are: (1) defendant's representation of fact; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 50, 691 S.E.2d 135, 149 (2010). Concealment of material facts may support an action in fraud. *Holly Hill Lumber Co. v. McCoy*, 201 S.C. 427, 23 S.C.2d 372, 376 (1942).

Plaintiff's Third Amended Complaint adequately pleads the elements including, without limitation, K. Harake's engagement in fraudulent conduct by misappropriating funds and concealing facts related to the misappropriation of funds from Plaintiff (Compl. ¶¶ 82-88). Plaintiff's allegations also, independent of the theft, claim that K. Harake engaged in fraudulent conduct by aiding and abetting the breach of fiduciary duty and mismanagement of the business activities and/or business operations and the concealment of the conduct from Plaintiff. (Compl. ¶¶ 27-38). In addition, Plaintiff alleges that K. Harake's concealment/misrepresentations were material (Compl. ¶ 89), K. Harake's knowledge and/or reckless disregard of the truth or falsity of

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the representation (Compl. ¶ 90), K. Harake's intent that Plaintiff act upon the concealment/misrepresentations (Compl. ¶ 91), Plaintiff's ignorance and justifiable reliance on K. Harake's concealment/misrepresentation (Compl. ¶ 92), and resulting harm to Plaintiff (Compl. ¶ 93). *See Morlan v. Kelly*, Civ. A. No. 2009-UP-002, 2009 WL 9524539, at *1 (S.C. Ct. App. Jan. 5, 2009) (finding the pleadings sufficiently alleged all nine elements of fraud and that the trial court's dismissal of the fraud claim was error). At the end of the day, Plaintiff met the pleading standard and K. Harake's motion to dismiss Plaintiff's fraud claim is therefore DENIED.

Aiding and Abetting Breach of Fiduciary Duty.

The elements for the cause of action of aiding and abetting a breach of fiduciary duty are: (1) a breach of a fiduciary duty owed to the plaintiff; (2) the defendant's knowing participation in the breach; and (3) damages. *Vortex Sports & Entertainment, Inc. v. Ware,* 378 S.C. 197, 204, 662 S.E.2d 444, 448 (Ct. App. 2008). Plaintiff's Third Amended Complaint alleges, among other things, that: "K. Harake knew, or should have known, or had constructive knowledge, that the transfers were made to her account and she did, in fact use the money" (Compl. ¶ 33); that hundreds of thousands of dollars of Gibbs' money was improperly transferred from Eurosa's accounts to K. Harake's personal savings account (Compl. ¶ 34); that K. Harake knew about these improper transfers of Plaintiff's money to her personal savings account (*Id.*); that K. Harake concealed money that was being misappropriated from Plaintiff (*Id.*); that K. Harake knowingly transferred Plaintiff's money from her personal savings account to her personal checking account (*Id.*); and that K. Harake actually spent Plaintiff's money for unauthorized and personal purposes. (*Id.*)

Gibbs' Third Amended Complaint adds multiple causes of action against K. Harake arising from mismanagement, misappropriation, embezzlement, money laundering, and misuse of Gibbs'

funds. Independent of the theft, Gibbs' Third Amended Complaint also adds grounds for multiple causes of action based on K. Harake's participation in S. Harake and Eurosa's breach of fiduciary duties and mismanagement of the business activities and/or business operations and/or duty to act in the best interest of the enterprise.

Plaintiff alleges that K. Harake's accounts gave Defendants S. Harake and Eurosa the means to transfer Plaintiff's money out of their accounts and conceal the improper movement and use of those funds. K. Harake's knowing participation in the alleged scheme would entitle Plaintiff to relief from K. Harake for aiding and abetting a breach of fiduciary duty. Likewise, K. Harake's aiding and abetting in the alleged mismanagement and breach of fiduciary duties, aside from the theft, would independently entitle Plaintiff to relief from K. Harake under aiding and abetting a breach of fiduciary duty. Thus, Plaintiff has alleged sufficient facts to show sufficient facts upon which relief can be granted, and K. Harake's motion to dismiss Plaintiff's claim for aiding and abetting a breach of fiduciary duty is therefore DENIED.

Conversion.

Plaintiff alleges that K. Harake allowed Gibbs' misappropriated funds to be transferred to her personal savings account and she then diverted those funds to her own personal checking account and spent the funds for unauthorized and personal purposes. (Compl. ¶¶ 58-59). Defendants argue that K. Harake's improper use of Gibbs' money to her own benefit (and to the exclusion of Gibbs' use and to the exclusion of the any authorized use of the funds) would not be an "interference" with the property of Gibbs. This Court finds otherwise. "Conversion is defined as the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. *Moseley v. Oswald*, 376 S.C. 251, 254, 656 S.E.2d 380, 382 (2008).

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South Carolina courts have held that money can be the subject of conversion if "it is capable of being identified and there may be conversion of determinate sums even though the specific coins and bills are not identified." *Mullis v. Trident Emergency Physicians*, 351 S.C. 503, 507, 570 S.E.2d 549, 551 (Ct. App. 2002). In this case, Gibbs' has stated facts sufficient enough to constitute a claim for conversion in South Carolina.

K. Harake cites to *Richardson's Rests., Inc. v. Nat'l Bank of S.C.,* 304 S.C. 289, 294, 403 S.E.2d 669, 672 (Ct. App. 1991), a case involving the lawful use of a bank to pay overdraft fees on an account holding the funds of multiple parties, including the plaintiff, for the alleged proposition that money cannot be converted unless there is an obligation on the defendant to deliver "specific, identifiable funds to the plaintiff." In *Richardson's*, no restrictions were placed on funds deposited into the account, and the bank's use of account funds to cover overdraft fees was lawful and authorized by the account holder. *Id.* These facts are wholly inapposite to the facts at issue here.

Although Gibbs alleges and believes that K. Harake knowingly converted Gibbs' money for her own personal use after it was transferred to her personal accounts, South Carolina does not require such knowledge. Under South Carolina law, liability may arise from "innocent" conversions, where the property is converted by mistake or under a bona fide belief or right. *See Green v. Waidner*, 284 S.C. 35, 37-38, 324 S.E.2d 331, 333 (Ct. App. 1984). Thus, the simple fact that K. Harake exercised dominion over Gibbs' funds to its exclusion and harm is sufficient to support Plaintiff's claim for conversion.

Other jurisdictions have found that allegedly "innocent" defendants may be liable for exercising dominion over funds embezzled and misappropriated by family members who give such funds to defendants without the defendants' knowledge of any wrongdoing. In *Chicago Title Ins.*

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Co. v. Ellis, 409 N.J. Super. 444, 978 A.2d 281 (App. Div. 2009), for instance, a verdict for conversion against the parents of a woman who had stolen over $2 million through a fraudulent scheme against Lehman Brothers was affirmed, except to the extent that the money the parents received from their daughter was received as repayment for a loan. The parents admitted that they received $512,845 from their daughter over a 5-month period, and acknowledged that she obtained the money wrongfully through a scheme to defraud Lehman Brothers, but asserted that they had no knowledge of the fraud and that the money was either repayment for the loan or that they were only nominal custodians with no dominion or control over the money. The Court affirmed the verdict, finding that "exercise of dominion or control over the money constitutes conversion" when such exercise of dominion and control was, in fact, inconsistent with the plaintiff's rights, and when the money was not received in exchange for fair value. *Id.* at 449. *See also, Judkins v. Sadler-Mac Neil*, 61 Wash. 2d 1, 4, 376 P.2d 837, 838-39 (1962) ("The foundation for the action of conversion rests neither in the knowledge nor the intent of the defendant. It rests upon the unwarranted interference by defendant with the dominion over the property of the plaintiff from which injury to the latter results.")

Here, Gibbs has plainly pled that its money was improperly transferred to K. Harake's accounts and that she used the money for improper purposes for herself and/or her family and/or other inappropriate purposes. Therefore, the Defendant's motion to dismiss the conversion claim against K. Harake is hereby DENIED.

Accounting.

An accounting cause of action sounds in equity and requires full disclosure and the relinquishment of profits received as the result of a breach of a confidential or fiduciary duty. *Rogers v. Salisbury Brick Corp.*, 299 S.C. 141, 144, 382 S.E.2d 915, 917 (1989). An accounting

is also appropriate without a fiduciary relationship when the defendant is in exclusive control of the information needed to make a determination on the amount plaintiff is owed. *Jefferies v. Harvey*, 206 S.C. 245, 250, 33 S.E.2d 513, 515 (1945).

In the only accounting case that K. Harake cites in her motion to dismiss, *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 673 S.E.2d 448 (2009), the Supreme Court reversed a Court of Appeals decision that an accounting was warranted in the dissolution of an LLC where the parties disputed the distribution of "a relatively small sum of money generated from a single real estate transaction." *Id.* at 429, 673 S.E.2d at 454. The Court held that the LLC's operating agreement did not entitle them to an accounting per se and "a full financial accounting would unnecessarily prolong this otherwise simple matter." *Id.* This case does not support dismissal of Plaintiff's accounting cause of action against K. Harake

Plaintiff claims K. Harake worked with the Harake Defendants to create a cloud of confusion to obscure the fact that money that was being improperly taken from Gibbs and concealing the improper use of those funds by, among other things, moving more than a half million dollars to the personal savings account of K. Harake. (Compl. ¶ 34) K. Harake then added to the confusion, and consummated her own affirmative involvement in the wrongdoing, by transferring Gibbs' money to her own personal checking account for improper, unauthorized, and personal use. (*Id.*) Gibbs is now left trying to untangle the situation created by the Harake Defendants and to determine how much of its money was used for unauthorized purposes, where that money ended up, and whether there was additional, inappropriate use of money.

Plaintiff seeks an accounting and argues that an accounting is needed to track its own money, cut through the confusion that K. Harake and the Harake Defendants created to hide their wrongdoing, and finally determine the full extent to which Gibbs' money was embezzled,

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misappropriated, laundered, misused, and or mismanaged. *See, e.g., Rogers v. Salisbury Brick Corp.*, 299 S.C. 141, 144, 382 S.E.2d 915, 917 (1989) (finding that the plaintiff was entitled to an accounting when there was uncertainty about the damages owed based on the record before the Court); *Jefferies*, 206 S.C. at 250, 33 S.E.2d at 515. In *Jefferies*, for example, the Court affirmed the lower court's order granting an accounting where the resolution involved claims of fraud, deceit and usury in association with promissory notes. Likewise, here, Gibbs alleges that K. Harake and the Harake Defendants, among other things, engaged in breaches of fiduciary duty, fraud, conspiracy, unfair and deceptive trade practices, and conversion, among other things. By their design, tracking Gibbs' misappropriated funds is extremely complicated entitling Gibbs to an accounting.

For the reasons stated herein, K. Harake's motion to dismiss the accounting claim is DENIED. Plaintiff's allegations of K. Harake's and the Harake Defendants' own misconduct and intentional concealment of what they did with Gibbs' money (as well as K. Harake's and the Harake Defendants' participation in the mismanagement of Gibbs' money and breaching of fiduciary duties) are sufficient to state an accounting cause of action.

G. Plaintiff's Civil Conspiracy Cause of Action Against The Harake Defendants

Plaintiff alleges in several claims in Plaintiff's Third Amended Compliant that Defendants S. Harake and Eurosa misappropriated, embezzled, laundered, misused, and mismanaged Plaintiff's funds. (*See, e.g.*, Compl. ¶ 20). But Plaintiff's allegations of the Defendants' misconduct does not stop there. Plaintiff further alleges that Defendants S. Harake and Eurosa engaged in a civil conspiracy with S. Harake's wife, K. Harake, to conceal those funds from Plaintiff by transferring more than $500,000 of Gibbs' stolen money to K. Harake's personal savings account. (Compl. ¶¶ 96-97). The Harake Defendants, including K. Harake, concealed

Gibbs' money funds from Gibbs for the *primary purpose and object* of impairing Gibbs financially. (Compl. ¶ 96).

"A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff." *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 324, 701 S.E.2d 39, 46 (Ct. App. 2010). Contrary to S. Harake and Eurosa's claims, Gibbs' Third Amended Complaint pleads the three requisite elements of a civil conspiracy claim, including: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes special damage. *Id.*

First, S. Harake and Eurosa cite *McMillan v. Oconee Mem'l Hosp., Inc.* for the proposition that a company or corporation cannot conspire against itself. However, S. Harake and Eurosa completely ignores Plaintiff's allegation that Defendant K. Harake actively and knowingly participated in the civil conspiracy to conceal Gibbs' stolen money in her personal account. (Compl. ¶¶ 96-97). In *McMillan*, the Supreme Court reversed a jury verdict against a hospital after the hospital's board informed defendant-physician that his privileges at the hospital would be revoked. *Id.* 367 S.C. 559, 562-63, 626 S.E.2d 884, 886 (2006). The Court reversed the verdict on the grounds that agents for a corporation acting in the scope of their duties cannot conspire with the corporation absent the guilty knowledge of a third party. *Id.* at 564, 626 S.E.2d at 887. Plaintiff alleges K. Harake's knowledge is the "guilty knowledge of a third party" and S. Harake/Eurosa remain liable as they initiated the conduct and the "guilty knowledge of a third party." A dismissal of a claim for civil conspiracy does not relieve S. Harake and Eurosa because they initiated the conduct and the guilty knowledge of a third party exists.

In *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 682 S.E.2d 871 (Ct. App. 2009), cited by Defendants, the court held that the plaintiff failed to properly plead its civil

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conspiracy claim where it alleged precisely the same acts it alleged in its breach of contract claim and repeated verbatim the claim for damages. *See also Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981) (noting that the cause of action "does no more than incorporate the prior allegations and then allege the existence of a civil conspiracy."). Gibbs' Third Amended complaint also adds multiple causes of action against K. Harake arising from mismanagement, misappropriation, embezzlement, money laundering, and misuse of Gibbs' funds. Independent of the theft, Gibbs' Third Amended Complaint also adds grounds for multiple causes of action based on K. Harake's participation in S. Harake's and Eurosa's breach of fiduciary duties and mismanagement of the business activities and/or business operations and/or duty to act in the best interest of the enterprise. These allegations support a claim that S. Harake and Eurosa are liable for these damages in addition to the damages for Gibbs' money that K. Harake is alleged to have inappropriately shifted and received in her personal accounts.

The civil conspiracy cause of action pled by Plaintiff is unique in several respects. First, beyond the transfer of Plaintiff's funds to K. Harake's personal accounts and theft of Gibbs' money, Gibbs alleges that K. Harake conspired with S. Harake and Eurosa and unlawfully agreed to deplete Gibbs' funds from the Eurosa account "with the primary purpose or object to impair Plaintiff financially." (Compl. ¶ 96). *See Mach. Sols., Inc. v. Doosan Corp.*, No. 3:15-CV-03447-JMC, 2016 WL 2756429, at *5 (D.S.C. May 12, 2016) (denying defendants motion to dismiss a civil conspiracy claim where plaintiff alleged concerted effort was "done for the purpose of damaging" the plaintiff).

Gibbs also alleges that the conspiracy to transfer more than $500,000 from the Eurosa account to the personal accounts of K. Harake resulted in special damages "beyond the damages alleged in other causes of action," including opportunity costs associated with the depletion of

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funds Gibbs provided for authorized purposes, including investment and/or the furtherance of business opportunities. (Compl. ¶ 98). Each of the elements of civil conspiracy are alleged in Gibbs' complaint and Defendants' motion to dismiss the civil conspiracy claim as to Defendants S. Harake and Eurosa should be DENIED.

CONCLUSION

For the foregoing reasons, the Court:

1. **DENIES** Plaintiff's Motion to Dismiss and Strike the negligent misrepresentation cause of action; and
2. **GRANTS** Plaintiff's Motion to Dismiss and Strike the tortious interference with economic advantage cause of action; and
3. **GRANTS** Katherine Harake's Motion to Dismiss pursuant to Rule 12(b)(6) as to the aiding and abetting conversion; civil conspiracy; and unjust enrichment, quasi contract, implied contract, and quantum meruit causes of action; and
4. **DENIES** Katherine Harake's Motion to Dismiss pursuant to 12(b)(2) and 12(b)(3) and pursuant to Rule 12(b)(6) as to the causes of action brought under the SCUTPA, fraud, aiding and abetting breach of fiduciary duty, conversion, and accounting; and
5. **DENIES** the Harake Defendants' Motion to Dismiss the civil conspiracy cause of action.

(Judge's electronic signature to follow)

Spartanburg Common Pleas

Case Caption:	Gibbs International, Inc. VS Sam Harake , defendant, et al
Case Number:	2017CP4200740
Type:	Order/Other

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

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