IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

J.R. MALL, INC. and WHITE OAK FORESTRY, Plaintiffs,	:	No. CV 23-01,042
vs.	:	CIVIL ACTION - LAW
HEMLOCK RIDGE ESTATES I, L.P., BIG IRON LOGGING, and WAGNER LUMBER COMPANY, Defendants.	:	

OPINION AND ORDER

AND NOW, this 25th day of February, 2025, upon consideration of the preliminary objections filed by the Defendants,[1] Plaintiffs' responses to them,[2] and the arguments of the parties,[3] it is hereby ORDERED and DIRECTED that the preliminary objections are SUSTAINED in part and OVERRULED in part, as explained in detail below.

I. BACKGROUND.

Plaintiffs J.M. Mall, Inc. and White Oak Forestry commenced this action by Complaint filed on September 21, 2023 against Defendants Hemlock Ridge Estates I, L.P., Big Iron Logging and Wagner Lumber Company.[4] Subsequent to resolution

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[1] Defendants filed the following preliminary objections: (1) "Preliminary Objections of Defendants Hemlock Ridge Estates I, L.P. and Big Iron Logging to Plaintiffs' Amended Complaint," filed October 10, 2024 (the "Hemlock Objections"); and (2) "Preliminary Objections of Defendant, Wagner Lumber Company, to the Amended Complaint," filed October 17, 2024 (the "Wagner Objections").

[2] Plaintiff filed: (1) "Plaintiffs' Response to Defendants, Hemlock Ridge Estates I, L.P. and Big Iron Logging[,] Preliminary Objections to Plaintiffs' Complaint," filed October 29, 2024 (the "Response to Hemlock"); and (2) "Plaintiffs' Response to the Preliminary Objections of Defendant, Wagner Lumber Company[,] to the Amended Complaint," filed October 29, 2024 (the "Response to Wagner").

[3] The Court heard argument on both sets of preliminary objections on October 31, 2024. Order dated October 15, 2024 and entered October 16, 2024. Lucasz Selwa, Esq. argued for Plaintiffs; Stuart L. Hall, Esq. argued for Defendants Hemlock and Big Iron; and Lars H. Anderson, Esquire argued for Defendant Wagner.

[4] Plaintiffs' "Complaint," filed on September 21, 2023; "Praecipe to Attach Exhibit "B" to the Complaint, filed on September 21, 2023.

of preliminary objections filed by all of the Defendants,[5] Plaintiffs filed their Amended Complaint on September 23, 2024.[6] Defendants again filed preliminary objections, which are now before the Court.

A. Plaintiffs' amended complaint.

The Amended Complaint alleges that on or about August 16, 2021, J.R. Mall entered into a Timber Sales Agreement for Stumpage with Hemlock Ridge (the "Hemlock Contract")[7] and that on or about August 31, 2022 White Oak and Big Iron entered into an Agreement for Timber Harvest Operation (the "Logging Contract").[8] Pursuant to the Hemlock Contract and the Logging Contract, Plaintiffs were to obtain 1,298 trees for $65,000.00 from Hemlock;[9] Plaintiffs paid an additional $10,000.00 to add pulpwood/firewood size trees to the existing contract, for a total amount of $75,000.00 paid.[10] Plaintiffs' were entitled to receive 332,565 board feet of lumber but only received 118,611, claiming a footage deficit of 213,954 board feet.[11]

Plaintiffs claim that Big Iron took and Hemlock sold trees rightfully owned by Plaintiffs and that Wagner purchased trees rightfully owned by Plaintiffs when Wagner knew or should have known Plaintiffs were the legal owner of the trees.[12] Further, Wagner bought three hundred of the trees owned by Plaintiffs from Hemlock.[13] Plaintiffs assert that their agent cut trees in or about August and September, 2022 and that Big Iron began working on or about December 15, 2022, meaning that "the conversion occurred sometime after December 15, 2022 and well

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[5] Opinion and Order, dated and entered September 3, 2024.
[6] "Amended Complaint," filed September 23, 2024.
[7] Amended Complaint, ¶ 15; *see also* the Hemlock Contract, attached to the Complaint as Exh. A.
[8] *Id.*, ¶ 16; *see also* the Logging Contract, attached to the Complaint as Exh. B.
[9] *Id.*, ¶ 17.
[10] *Id.*, ¶¶ 18-19.
[11] *Id.*, ¶¶ 25-27.
[12] *Id.*, ¶¶ 31-33.
[13] *Id.*

within the two (2) year statute of limitations imposed on conversion claims."[14] In addition to their other losses, Plaintiffs contend they incurred additional costs, including clear cutting the timber in excess of $25,000.00, travel costs, and labor costs.[15]

Plaintiffs' Amended Complaint asserts fifteen causes of action: (1) J.R. Mall's breach of contract against Hemlock (Count I);[16] (2) White Oak's breach of contract against Big Iron (Count II);[17] (3) J.R. Mall's and White Oak's conversion against Hemlock (Count III);[18] (4) J.R. Mall's and White Oak's conversion against Big Iron (Count IV);[19] (5) J.R. Mall's and White Oak's conversion against Wagner (Count V);[20] (6) J.R. Mall's claim for unjust enrichment against Hemlock (Count VI);[21] (7) J.R. Mall's claim for unjust enrichment against Big Iron (Count VII);[22] (8) J.R. Mall's and White Oak's claim for unjust enrichment against Wagner (Count VII);[23] (9) J.R. Mall's and White Oak's fraud against Hemlock (Count IX);[24] (10) J.R. Mall's and White Oak's fraud against Big Iron (Count X);[25] (11) White Oak's tortious interference with business relations against Hemlock (Count XI);[26] (12) J.R. Mall's tortious interference with business relations against Hemlock (Count XII);[27] (13) J.R. Mall's tortious interference with business relations against Big Iron (Count XIII);[28] (14) J.R. Mall's and White Oak's tortious interference with business relations against

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[14] *Id.*, ¶ 34.
[15] *Id.*, ¶ 37.
[16] *Id.*, ¶¶ 39-43.
[17] *Id.*, ¶¶ 44-48.
[18] *Id.*, ¶¶ 49-55.
[19] *Id.*, ¶¶ 56-62.
[20] *Id.*, ¶¶ 63-69.
[21] *Id.*, ¶¶ 70-74.
[22] *Id.*, ¶¶ 75-79.
[23] *Id.*, ¶¶ 80-84.
[24] *Id.*, ¶¶ 85-92.
[25] *Id.*, ¶¶ 93-100.
[26] *Id.*, ¶¶ 101-06.
[27] *Id.*, ¶¶ 107-12.
[28] *Id.*, ¶¶ 113-18.

Wagner Lumber (Count XIV);[29] and (15) J.R. Mall's damages per 42 Pa. C.S. Section 8311 against Hemlock, Big Iron and Wagner (Count XV).[30] Plaintiffs seek damages in excess of $50,000, plus interest, costs, punitive damages and other remedies.[31]

B. Defendants' preliminary objections.

Hemlock and Big Iron filed preliminary objections to the Amended Complaint on October 10, 2024.[32] The Hemlock Objections assert (i) that Plaintiff White Oak Forestry lacks standing to sue because it is not the real party in interest;[33] (ii) that Plaintiffs lack standing to sue because Plaintiff J.R. Mall, Inc. sold any right it had to the timber at issue to Big Mountain Lumber, LLC, which is not a party to this case, and, therefore, Big Mountain, LLC is the only party that can pursue a claim pertaining to the timber;[34] (iii) that the Amended Complaint is insufficiently specific in a variety of particulars;[35] (iv) that the Amended Complaint improperly includes impertinent matter;[36] (v) that Counts IX and X of the Amended Complaint fail to state a claim upon which relief can be granted for fraudulent misrepresentation;[37] (vi) that the Amended Complaint fails to state a claim upon which relief can be granted for

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[29] *Id.*, ¶¶ 119-24.
[30] *Id.*, ¶¶ 125-28.
[31] *Id.*, *ad damnum* clauses. $50,000.00 is the jurisdictional limit for compulsory arbitration in Lycoming County. Local Rule L1301.A. provides that "[a]ll civil cases that fall within the jurisdictional limits set by Section 7361 of the Judicial Code, 42 Pa. C.S. §7361, shall be submitted to compulsory arbitration." 42 Pa. C.S. Section 7361(b)(2) provides that matters may not be submitted to arbitration when "the amount in controversy, exclusive of interest and costs, exceeds $50,000." Thus, cases filed in Lycoming County are referred to compulsory arbitration, unless the amount in controversy, exclusive of interest and costs, exceeds $50,000.00. "The amount in controversy generally will be determined from the pleadings," but the Court may determine the amount in controversy and enter an appropriate Order based on its findings. *See* Lyc. Cnty. Local R. Civ. P. L1301.A.
[32] Hemlock Objections. *See*, *supra*, n.1.
[33] *Id.*, ¶¶ 5-10.
[34] *Id.*, ¶¶ 11-15.
[35] *Id.*, ¶¶ 16-21.
[36] *Id.*, ¶¶ 22-24.
[37] *Id.*, ¶¶ 25-29.

punitive damages;[38] (vii) that Plaintiffs lack standing to prosecute the claims for conversion of timber in Counts III, IV, V and XV of the Amended Complaint because they were not the owner of the timber at the time of the alleged conversion;[39] and (viii) that Counts XI and XII of the Amended Complaint fail to state a claim upon which relief can be granted for interference with business relations.[40] The Hemlock Objections seek dismissal of Plaintiffs as parties and dismissal of the Amended Complaint.[41] Plaintiffs responded to the Hemlock Objections on October 29, 2024,[42] wherein Plaintiffs demand that the Court overrule the objections and direct the Defendants to file an answer within twenty (20) days.[43]

Subsequently, Wagner filed preliminary objections to the Complaint on October 17, 2024.[44] The Wagner Objections assert (i) that that the Amended Complaint fails to conform to law or rule of court, in that it fails to state the material facts upon which the claims are based in a concise and summary form, fails to state averments of fraud with particularity, and fails to state averments of time and place with specificity;[45] (ii) that the Amended Complaint is insufficiently specific in a variety of particulars;[46] and (iii) that the Amended Complaint is legally insufficient because the claims of conversion, unjust enrichment and tortious interference with business relations fail to state claims upon which relief can be granted.[47] The Wagner

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[38] *Id.*, ¶¶ 30-38.
[39] *Id.*, ¶¶ 39-41.
[40] *Id.*, ¶¶ 42-51.
[41] *Id.*, claim for relief. *See generally* Pa. R. Civ. P. 1028(a)(2)-(5) ("Preliminary objections may be filed by any party to any pleading … [for] (2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter; (3) insufficient specificity in a pleading; (4) legal insufficiency of a pleading (demurrer); [and] (5) lack of capacity to sue …").
[42] Response to Hemlock. *See*, *supra*, n.2.
[43] Response to Hemlock, claim for relief.
[44] Wagner Objections. *See*, *supra*, n.1.
[45] *Id.*, ¶¶ 10-21. *See also* Pa. R. Civ. P. 1019(a) ("The material facts on which a cause of action … is based shall be stated in a concise and summary form"), 1019(b) ("Averments of fraud … shall be averred with particularity"), 1019(f) ("Averments of time [and] place … shall be specifically stated").
[46] Wagner Objections, ¶¶ 28-34.
[47] *Id.*, ¶¶ 35-57.

Objections seek dismissal of the Amended Complaint.[48] Plaintiffs responded to the Wagner Objections on October 29, 2024,[49] wherein Plaintiffs demand that the Court overrule the objections and direct the Defendants to file an answer within twenty (20) days.[50]

The Court consolidated the various preliminary objections for argument, which was held on October 31, 2024.[51] The Hemlock Objections and the Wagner Objections are now ripe for resolution.

II. LAW AND ANALYSIS.

The Court will consider both sets of preliminary objections together, by issue raised.

A. Plaintiffs' Standing.

The Hemlock Objections assert three objections claiming Plaintiffs lack standing: (1) Plaintiff White Oak Forestry lacks standing to sue because it is not the real party in interest; (2) Plaintiffs lack standing to sue because Plaintiff J.R. Mall, Inc. sold any right it had to the timber at issue to Big Mountain Lumber, LLC, which is not a party to this case, and, therefore, Big Mountain, LLC is the only party that can pursue a claim pertaining to the timber; and (3) Plaintiffs lack standing to prosecute their claims for conversion of timber because they were not the owner of the timber at the time of the alleged conversion. The Wagner Objections do not assert an objection alleging lack of standing.[52]

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[48] *Id.*, ¶ 58, claim for relief. *See generally* Pa. R. Civ. P. 1028(a)(2)-(4) ("Preliminary objections may be filed by any party to any pleading ... [for] (2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter; (3) insufficient specificity in a pleading; and (4) legal insufficiency of a pleading (demurrer) ...").
[49] Response to Wagner. *See*, *supra*, n.2.
[50] Response to Wagner, claim for relief.
[51] *See*, *supra*, n.3.
[52] *See*, *supra*, Part I.B.

The Pennsylvania Rules of Civil Procedure permit a preliminary objection for a party's lack of capacity to sue.[53] Because standing goes to a party's capacity to sue, a standing objection typically is raised by a preliminary objection asserting lack of capacity to sue.[54] Generally, "capacity to sue refers to the legal ability of a person to come into court, and '[w]ant of capacity to sue has reference to or involves only a general legal disability, ... such as infancy, lunacy, idiocy, coverture, want of authority, or a want of title in plaintiff in the character in which he or she sues.'"[55]

A standing objection occasionally turns of pure questions of law. More typically, however, evaluation of a standing objection requires resolution of questions of fact and calls for the court to "consider evidence by depositions or otherwise."[56] Where all facts necessary for the trial court to resolve a standing issue are of record, however, the Court may address a standing objection as an objection asserting legal insufficiency of the subject claims.[57]

1. Whether White Oak is the real party in interest.

Subject to limited exceptions, none of which are applicable here, all claims must be prosecuted "by and in the name of the real party in interest."[58] A "real party

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[53] *See* Pa. R. Civ. P. 1028(a)(5) ("Preliminary objections may be filed by any party to any pleading [for] ... lack of capacity to sue").

[54] *C.G. v. J.H.*, 172 A.3d 43, 53-54 (Pa. Super. 2017).

[55] *In re Estate of Sauers*, 32 A.3d 1241, 1248 (Pa. 2011) (quoting 67A C.J.S. Parties § 11) (emphasis omitted).

[56] *Id.*, at 54; *see also* Pa. R. Civ. P. 1028(c)(2) ("The court shall determine promptly all preliminary objections. If an issue of fact is raised, the court shall consider evidence by depositions or otherwise").

[57] *See, e.g.*, *Petty v. Hospital Service Ass'n of Northeastern Pa.*, 967 A.2d 439, 443-44 (Pa. Commw. 2009) (holding that where all facts necessary to address a standing objection were of record, the trial court properly resolved the objection under Pa. R. Civ. P. 1028(a)(4) (pertaining to demurrers), rather than under Pa. R. Civ. P. 1028(a)(5) (pertaining to capacity to sue)).

[58] Pa. R. Civ. P. 2002 ("(a) Except as otherwise provided in clauses (b), (c) and (d) of this rule, all actions shall be prosecuted by and in the name of the real party in interest, without distinction between contracts under seal and parol contracts. (b) A plaintiff may sue in his or her own name without joining as plaintiff or use-plaintiff any person beneficially interested when such plaintiff (1) is acting in a fiduciary or representative capacity, which capacity is disclosed in the caption and in the plaintiff's initial pleading; or (2) is a person with whom or in whose name a contract has been made for the benefit of another. (c) Clause (a) of this rule shall not apply to actions where a statute or

in interest" is a party who "has the legal right under the applicable substantive law to enforce the claim in question."[59]

> [T]he real party in interest is the person who has the power to discharge the claim upon which suit is brought and to control the prosecution of the action brought to enforce rights arising under the claims. ... To be a real party in interest, then, one must not merely have an interest in the result of the action, but must be in such command of the action as to be legally entitled to give a complete acquittal or discharge to the other party upon performance.[60]

A plaintiff who is not a "real party in interest" lacks capacity to sue,[61] in that there is a " 'want of authority[] or a want of title in plaintiff in the character in which he or she sues.' "[62]

The Hemlock Objections assert (a) that White Oak is not a real party in interest because the Amended Complaint does not allege that J.R. Mall assigned rights in the timber to White Oak; (b) that the Amended Complaint admits there are no written agreements between J.R. Mall and White Oak and does not set forth the terms of any oral agreement between them; and (c) that the allegations of the Amended Complaint "do not give White Oak Forestry standing as a party in this matter."[63] As actions generally must be prosecuted by the real party in interest and as White Oak is not a real party in interest, the Hemlock Objections conclude that White Oak should be dismissed as a party.[64]

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ordinance provides otherwise. (d) Clause (a) of this rule shall not be mandatory where a subrogee is a real party in interest.").

[59] *Cole v. Boyd*, 719 A.2d 311, 313 (Pa. Super. 1998) (quoting Black's Law Dictionary 874 (6th ed. 1991)).

[60] *Clark v. Cambria Cnty. Bd. of Assessment Appeals*, 747 A.2d 1242, 1246 (Pa. Commw. 2007) (citing *Spires v. Hanover Fire Ins. Co.*, 70 A.2d 828 (Pa. 1950), overruled in part on other grounds by *Guy v. Liederbach*, 459 A.2d 744 (Pa. 1983); *Kusmaul v. Stull*, 51 A.2d 602 (Pa. 1947); *Lore v. Sobolevitch*, 675 A.2d 805 (Pa. Commw. 1996)).

[61] *See, e.g.*, *Clark*, *supra*.

[62] *Estate of Sauers*, *supra*, 32 A.3d at 1241 (quoting 67A C.J.S. Parties § 11) (emphasis omitted).

[63] Hemlock Objections, ¶¶ 5-10.

[64] *Id.*

Plaintiffs' Response denies the standing objection and refers the Court to the Amended Complaint.[65] Among other things, the Amended Complaint alleges (i) that "J.R. Mall is owned by Steven Hoffman, Father, and White Oak is owned by Abram Hoffman, Son, who regularly conduct business with one another and operate their respective businesses from the same office location;" (ii) that "[t]here are no assignments or written agreements between J.R. Mall and White Oak and all agreements between the two entities has been, currently is and will be by oral agreements between Father and Son acting on behalf of their respective companies;" (iii) that "Father and Son do handle all business operations together where … J.R. Mall enters into the timber sales agreements and White Oak enters into the agreements for Timber Harvest Operations for the sales agreements generated by J.R. Mall;" (iv) that "J.R. Mall is the management company and/or escrow account where all monies are paid to and timber is transferred from and White Oak is performing work in the field;" and (v) that "J.R. Mall pays White Oak as a 1099 subcontractor."[66]

As the Hemlock Objections are not endorsed with a notice to plead, which would require filing of a responsive pleading,[67] the Court will treat Hemlock's standing objection as in the nature of a demurrer and will not consider extrinsic evidence at this time.[68] Taking as true "all material facts set forth in the [Amended Complaint] and all inferences reasonably deducible therefrom,"[69] it is apparent that

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[65] Response to Hemlock, ¶¶ 5-10.
[66] Amended Complaint, ¶¶ 6-10.
[67] Pa. R. Civ. P. 1026(a) ("[N]o pleading need be filed unless the preceding pleading contains a notice to defend or is endorsed with a notice to plead").
[68] Although the Court is not proceeding in accordance with Pa. R. Civ. P. 1028(c)(2), Defendants are not precluded from raising this standing issue in the future *via* a motion for summary judgment should facts emerge during discovery warranting the same.
[69] *See*, *infra*, Part II.D.

White Oak may "ha[ve] the legal right under the applicable substantive law to enforce the claim in question" and, thus, may be a "real party in interest" in this litigation.[70] Because a demurrer may be sustained only when "on the facts averred, the law says with certainty that no recovery is possible"[71] and because White Oak may have a right to recovery here, the Court cannot conclude that White Oak lacks standing to pursue claims here.

Accordingly, Hemlock's preliminary objection asserting that White Oak lacks standing to sue here is OVERRULED.

2. ***Whether Big Mountain Lumber, LLC is the only party which can pursue a claim pertaining to the timber.***

The Hemlock Objections assert (a) that the Amended Complaint avers Plaintiffs sold their interest in the timber to Big Mountain Lumber, LLC ("Big Mountain"), which is not a party to this lawsuit; (b) that Plaintiffs do not state the date of the assignment but that the Amended Complaint implies it was prior to initiation of this litigation; (c) that Big Mountain is the proper party here; (d) that once J.R. Mall sold its rights in the 332,565 board feet of lumber to Big Mountain, Plaintiffs no longer had standing to pursue this lawsuit; and (e) that Plaintiffs are not proper parties to this lawsuit.[72]

Again, Plaintiffs' response denies the standing objection and refers to the Amended Complaint.[73] Among other things, the Amended Complaint alleges that applicable contracts provided (i) that Hemlock Ridge was to deliver an estimated 332,565 board feet of lumber to Plaintiffs; (ii) that Plaintiffs entered into a contract to deliver 332,565 board feet of lumber to Big Mountain; (iii) that only 118,611 board

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[70] *Cole*, *supra*, 719 A.2d at 313.
[71] *See*, *infra*, Part II.D.
[72] Hemlock Objections, ¶¶ 11-15.
[73] Response to Hemlock, ¶¶ 6-15.

feet were harvested and delivered to Big Mountain, leaving a deficit of 213,954 board feet; (iv) that, as a result, Plaintiffs were unable to perform their contractual obligations with Big Mountain; and (v) that Plaintiffs suffered resultant damages.[74]

As explained above, the Court will treat Hemlock's standing objection as in the nature of a demurrer and will not consider extrinsic evidence at this time.[75] Regardless of whether Plaintiffs currently are entitled to the subject timber, Plaintiffs have sufficiently alleged a right to the timber in the past, actions by the Defendants that deprived them of the timber, and resultant damages. The Court considers this sufficient to establish Plaintiffs' standing to sue. Should facts emerge during discovery demonstrating that some or all of Plaintiffs' damages should properly go to Big Mountain, Defendants may revisit this issue. At this stage of the litigation, however, Plaintiffs have sufficiently alleged an interest in the timber to proceed.

Accordingly, Hemlock's preliminary objection asserting that Big Mountain Lumber, LLC is the only party that can properly pursue a claim pertaining to the timber and that, thereby, Plaintiffs lack standing is OVERRULED.

3. Whether Plaintiffs lack standing to sue for conversion of timber because they were not the owners of the timber at the time of the alleged conversion.

Similar to the preceding objection, the Hemlock Objections assert that Plaintiffs lack standing to prosecute the claims for conversion of timber in Counts III, IV, V and XV of the Amended Complaint because Plaintiffs were not the owner of the timber at the time of the alleged conversion.[76] Specifically, Defendants contend that recovery of damages under Section 8311 of the Judicial Code[77] is limited to Big

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[74] Amended Complaint, ¶¶ 13, 25-27, 35-38.
[75] *See*, *supra*, Part II.A.1.
[76] Hemlock Objections, ¶¶ 39-41.
[77] 42 Pa. C.S. § 8311

Mountain Lumber, LLC, the owner of the timber at the time of the alleged conversion.[78] Plaintiffs deny the factual allegations made in the preliminary objections and rest on the allegations of the Amended Complaint.[79]

Again, as explained above, the Court will treat this standing objection as in the nature of a demurrer and will not consider extrinsic evidence at this time.[80] In light of the Court's remit to consider only the well pleaded allegations of the Amended Complaint and to sustain a demurrer only when the law says with certainty that no recovery is possible, the Court must overrule this objection for the same reasons the Court overruled the objection that Big Mountain is the only party who can bring suit concerning the timber. The Amended Complaint alleges Plaintiffs' interest in the timber and actual damages caused by Defendants' interruption of that interest. That is sufficient for Plaintiffs to make a *prima facie* case which, in turn, means that a demurrer cannot be sustained.

Accordingly, Hemlock's preliminary objection asserting that Plaintiffs lack standing to pursue a claim for conversion of timber is OVERRULED.

B. Failure to conform to law or rule of court and inclusion of impertinent matter.

The Wagner Objections assert that that the Amended Complaint fails to conform to law or rule of court, in that it (1) fails to state the material facts upon which the claims are based in a concise and summary form, (2) fails to state averments of fraud with particularity, and (3) fails to state averments of time and place with specificity. The Hemlock Objections assert that the Amended Complaint

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[78] Hemlock Objections, ¶¶ 39-41 (citing 42 Pa. C.S. § 8311(a) ("In lieu of all other damages or civil remedies provided by law, a person who cuts or removes **the timber of another person without the consent of that person shall be liable to that person** in a civil action for an amount of damages equal to….") (emphasis supplied)).
[79] Response to Hemlock, ¶¶ 39-41.
[80] *See*, *supra*, Part II.A.1.

improperly includes impertinent matter. The Pennsylvania Rules of Civil Procedure permit a preliminary objection for failure of a pleading to conform to law or rule of court and for inclusion of scandalous or impertinent matter.[81]

1. Whether the Amended Complaint fails to state the material facts upon which Plaintiffs' claims are based in a concise and summary form.

Rule 1019(a) provides that "[t]he material facts on which a cause of action or defense is based shall be stated in a concise and summary form."[82] " 'Material facts' are 'ultimate facts,' *i.e.*, those facts essential to support the claim. Evidence from which such facts may be inferred not only need not but should not be alleged."[83] Although parties must plead the material facts upon which their claims are based, they need not plead the evidence upon which they will rely to establish those facts.[84]

While "the line between pleading facts and evidence is not always bright[,]" two conditions "must always be met: [t]he pleadings must adequately explain the nature of the claim to the opposing party so as to permit him to prepare a defense and they must be sufficient to convince the court that the averments are not merely subterfuge."[85] When determining whether a claim has been pled with the requisite

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[81] *See* Pa. R. Civ. P. 1028(a)(2) ("Preliminary objections may be filed by any party to any pleading [for] ... failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter").

[82] Pa. R. Civ. P. 1019(a).

[83] *Baker v. Rangos*, 324 A.2d 498, 505 (Pa. Super. 1974) (citing *United Refrigerator Co. v. Applebaum*, 189 A.2d 253 (Pa. 1963) (allegation of defense by accommodation parties that plaintiff was accommodated party to whom they were not liable sufficient; reason for accommodation evidentiary fact that need not be alleged); *Smith v. Allegheny County*, 155 A.2d 615 (Pa. 1959) (complaint accusing defendants of failure to provide adequate drainage sufficient; source and means of flow either through pipes or strata of rock a matter of evidence)).

[84] *Com. by Shapiro v. Golden Gate National Senior Care LLC*, 194 A.3d 1010, 1029-30 (Pa. 2018) (citing *United Refrigerator*, *supra*, 189 A.2d at 255; *Unified Sportsmen of Pa. v. Pa. Game Comm'n*, 950 A.2d 1120, 1134 (Pa. Commw. 2008)). "[T]he complaint need not cite evidence but only those facts necessary for the defendant to prepare a defense." *Unified Sportsmen*, *supra*, 950 A.2d at 1134.

[85] *Bata v. Cent.-Penn Nat. Bank of Philadelphia*, 224 A.2d 174, 179 (Pa. 1966).

specificity, a court does not analyze the specificity of a particular paragraph or allegation; rather, it views the allegations in the context of the pleading as a whole.[86]

Further, in *Connor v. Allegheny General Hospital*, our Supreme Court held that a proposed amendment to a complaint in trespass and assumpsit arising out of alleged medical malpractice was not barred by the statute of limitations where the amendment did not add new allegations of negligence based on a different theory but merely amplified an existing allegation of the original complaint.[87] The Court so held because the right to amend a pleading should be granted liberally at any stage in the proceeding, absent "resulting prejudice" to the adverse party. Thus, an amendment that merely amplifies what has already been averred must be permitted, while an amendment introducing a new cause of action after the statute of limitations has run in favor of the defendant constitutes "resulting prejudice" to the adverse party and must not be allowed.[88]

When a pleading fails to satisfy the necessary requirements, the adverse party may move to strike the pleading[89] or move for a more specific pleading.[90] Such motions may be granted when the pleading fails to conform to law or rule of court or when it is otherwise so insufficient that the adverse party cannot understand the claims it sets forth.[91] When presented with a motion to strike or a motion for a

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[86] *Yacoub v. Lehigh Valley Med. Assocs., P.C.*, 805 A.2d 579, 589 (Pa. Super. 2002) (en banc). A complaint must do more than merely "'give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.' ... It should formulate the issues by fully summarizing the material facts." *Baker, supra*, 324 A.2d at 505 (quoting *Conley v. Gibson*, 78 S. Ct. 99, 103, (1957) (statement made in reference to Fed. R. Civ. P. 8(a)).
[87] *Connor v. Allegheny General Hospital*, 461 A.2d 600, 602 (Pa. 1983).
[88] *Id.* (citing *Schaffer v. Larzelere*, 189 A.2d 267, 270 (Pa. 1963)).
[89] Pa. R. Civ. P. 1028(a)(2) ("Preliminary objections may be filed by any party to any pleading ... [for] failure of a pleading to conform to law or rule of court....").
[90] Pa. R. Civ. P. 1028(a)(3) ("Preliminary objections may be filed by any party to any pleading ... [for] insufficient specificity in a pleading").
[91] *Connor, supra*, 461 A.2d at 602-03.

more specific pleading, the court may exercise "broad discretion in determining the amount of detail that must be averred."[92]

The Wagner Objections assert that Paragraphs 33, 64-69 and 120-24 of the Amended Complaint are insufficiently specific, "vague and fail[ ] to set forth a clear and concise statement of material facts as required by Rule 1019[a]."[93] These Paragraphs state as follows:

> 33. Upon information and belief, Wagner Lumber Company purchased trees rightfully owned by J.R. [Mall] and subject to the Logging Contract when they knew it was the property of said companies or should have known that J.R. Mall and White Oak were legal owners of those trees as they were marked with paint spots.
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> ...
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> 64. It is believed and therefore averred, that approximately in December of 2022 and multiple times thereafter, Wagner Lumber acquired possession of the trees/timber with the intent to assert a right over it which was adverse to the lawful owner, J.R. Mall per the Sales Contract and White Oak per the Logging Contract.
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> 65. In approximately December of 2022, and multiple times thereafter, Wagner Lumber acquired possession of the trees/timber which deprived the lawful owner, J.R. Mall per the Sales Contract and White Oak per the Logging Contract.
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> 66. In approximately December of 2022, and multiple times thereafter, Wagner Lumber withheld possession of the trees/timber from its lawful owner, J.R. Mall per the Sales Contract and White Oak per the Logging Contract.
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> 67. In approximately December of 2022, and multiple times thereafter, Wagner Lumber willfully and without justification interfered with the Plaintiff's lawful possession of the trees/timber.
>
> 68. In approximately December of 2022, and multiple times thereafter, Wagner Lumber bought the trees/timber which were ultimately, to be sold at a profit.

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[92] *United Refrigerator*, *supra*, 189 A.2d at 255.
[93] Wagner Objections, ¶ 12.

69. Plaintiffs suffered money damages as a result of the missing footage and request damages[ ] as outlined in 42 Pa. C.S. § 8311.

. . .

120. Wagner Lumber made factual misrepresentations to Hemlock and Wagner including Plaintiffs, by asserting a right over the trees/timber owned by or having right to the trees/timber as outlined in the Sales Contract and logging Contract to J.R. Mall and White Oak.

121. That representation was made knowing and willfully as the trees were marked and subject to the contracts referenced herein and Wagner proceeded with the purchase, notwithstanding the fact that J.R. Mall had a contract with Big Mountain, J.R. Mall had a contract with Hemlock and White Oak had a contract with Big Iron.

122. Big Mountain, Hemlock and Big Iron relied on these representations as they were all under contract with Plaintiff's in different capacities for the trees/timber.

123. Additionally, Plaintiffs relied on the representations from Big Iron and Hemlock whereby they contracted for logging and agreed to deliver the timber to Big Mountain Lumber LLC, ultimately, making it impossible for Plaintiffs to fulfill their obligation to Big Mountain Lumber LLC as the timber/logs were never delivered to Big Mountain but were retained by Wagner Lumber.

124. This reliance resulted in financial harm, and reputational harm as set forth herein in excess of $50,000.00.[94]

With respect to Paragraph 33, Wagner complains that "Plaintiffs do not specifically state how Wagner Lumber would have knowledge that the trees they purchased w[ere] allegedly the property of the Plaintiffs" and that "Wagner Lumber has no knowledge of an ownership dispute."[95] Plaintiffs may allege intent, knowledge and similar conditions of mind generally,[96] as they have done here. Wagner's knowledge, or lack thereof, is a matter properly raised in an answer.

[94] Amended Complaint, ¶¶ 33, 64-69, 120-124 (footnote omitted).
[95] Wagner Objections, ¶¶ 15-16.
[96] Pa. R. Civ. P. 1019(b).

With respect to Paragraphs 64-69, Wagner complains that "Plaintiffs assert Wagner Lumber intended to deprive Plaintiffs of trees/timber. Plaintiffs do not provide any facts or specifics regarding this alleged deprivation, and because Wagner Lumber had no knowledge of an ownership dispute, the failure to provide clear and concise factual allegations impairs Defendant's ability to respond to the Amended Complaint and prejudices Defendant's ability to defend against the claims."[97] As stated above, Plaintiffs are permitted to allege conditions of mind generally, and the Amended Complaint identifies the trees/timber that is in dispute. Wagner's knowledge, or lack thereof, should be raised in an answer, with facts in support of the parties' respective positions to be revealed during discovery.

With respect to Paragraphs 120-24, Wagner complains that "Plaintiffs assert Wagner Lumber made factual misrepresentations to obtain the trees/timber. Plaintiffs do not assert any facts or specifics regarding such misrepresentations, and because Wagner Lumber had no knowledge of an ownership dispute, the failure to provide clear and concise factual allegations impairs Defendant's ability to respond to the Amended Complaint and prejudices Defendant's ability to defend against the claims."[98] For the same reasons asserted above, the Court finds these allegations sufficiently comply with the requirement to plead the material facts in support of the claims in a concise and summary form.[99]

While the Amended Complaint is not as clear as it could be, the Court finds that Plaintiffs have alleged sufficient material facts to enable Wagner to understand the claims against it and to file an answer. Further, the Court does not believe that there is a risk of additional claims being asserted via amendment after expiration of

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[97] Wagner Objections, ¶ 17.
[98] *Id.*, ¶ 18.
[99] As indicated below, however, the allegations do not sufficiently allege fraud with particularity.

the statute of limitations, as all of the allegations refer to the same trees/timber over which there is an ownership dispute. Accordingly, the objection that the Amended Complaint fails to state the material facts upon which Plaintiffs' claims are based in a concise and summary form is OVERRULED.

2. Whether the Amended Complaint fails to state averments of fraud with particularity.

Rule 1019(b) provides that averments of fraud or mistake must be plead particularly but that malice, intent, knowledge, and other conditions of mind may be averred generally.[100] Wagner contends that Paragraphs 120-24 of the Amended Complaint, which are quoted above, assert a claim of fraud against Wagner and the Plaintiffs have failed to state their claim of fraud with particularity.[101]

Paragraphs 120-24 are contained in Count XIV of the Amended Complaint, which is titled as a claim for tortious interference with business relations against Wagner. To the extent that Count XIV asserts a claim of fraud, the Court agrees that a " '[p]laintiff must set for the exact statements or actions plaintiff alleges constitute the fraudulent misrepresentations.' "[102] Plaintiffs have not done that here. Nevertheless, it is not clear to the Court that Plaintiffs intend to assert a fraud claim against Wagner in Count XIV. In any event, Plaintiffs must clarify Count XIV. If they are asserting a fraud claim, they must plead it with particularity. If not, Count XIV is sufficiently specific for purposes of Rule 1019(a).

Accordingly, Wagner's Objection that the Amended Complaint fails to state allegations of fraud with particularity is SUSTAINED. If Plaintiffs intend to assert a fraud claim in Count XIV, they shall amend Count XIV to comply with Rule 1019(b).

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[100] Pa. R. Civ. P. 1019(b).
[101] Wagner Objections, ¶¶ 19-21.
[102] *Youndt v. First Nat. Bank of Port Allegany*, 868 A.2d 539, 545 (Pa. Super 2005) (quoting *McGinn v. Valloti*, 525 A.2d 732, 734 (Pa. Super. 1987)).

If Plaintiffs do not intend to assert a fraud claim in Count XIV, they may so state on the record, in which event Count XIV need not be amended.

3. Whether the Amended Complaint fails to state averments of time and place with specificity.

Rule 1019(f) provides that "[a]verments of time, place and items of special damage shall be specifically stated."[103] Plaintiff alleges that "Plaintiffs still did not identify when Wagner Lumber received the trees or when the trees were processed and paid for;" that Plaintiffs allege Wagner "interfered" with trees owned by Plaintiffs in December of 2022, which is insufficiently specific since Wagner has no knowledge of actual dates; that Wagner cannot have knowledge of any dates concerning interference because it had no knowledge of an ownership dispute; and that these averments are insufficiently specific to enable Wagner to prepare its defense.[104]

Plaintiffs pleaded Wagner's knowledge and state of mind generally, which they are permitted to do, as the Court has previously stated. In order to challenge Plaintiffs' allegations concerning state of mind, Wagner must include appropriate denials in its answer. Plaintiffs have alleged an approximate time during which the alleged interference occurred. It is plausible and, indeed, to be expected, that Plaintiffs' knowledge of Wagner's acts and omissions and state of mind is less detailed that Wagner's own knowledge of the same.

"The specificity with which time and place must be alleged to satisfy Rule 1019(f) 'depends on the nature of the complaint.' "[105] Whether the allegations of time and place are sufficiently specific to enable the Defendant to prepare a defense and where greater specificity will not aid in answering the complaint, a court may

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[103] Pa. R. Civ. P. 1019(f).
[104] Wagner Objections, ¶¶ 22-27.
[105] *Baker, supra*, 324 A.2d at 509.

deem allegations that could be stated more definitively or pleaded more artfully to be sufficiently specific.[106] Here, the Court concludes that Plaintiffs have pleaded averments of time with sufficient specificity to enable Wagner to prepare a defense.

Accordingly, Wagner's Objection that the Amended Complaint fails to state averments of time and place with specificity is OVERRULED.

4. *Whether the Amended Complaint improperly includes impertinent matter.*

The Hemlock Objections assert that Paragraphs 36, 37 and 47 of the Amended Complaint contain impertinent matter that should be stricken.[107] Those Paragraphs state as follows:

> 36. Plaintiffs were required to pay costs to A.M. Logging and Benjamin Barner Logging for services rendered at the subject property.
>
> 37. Plaintiffs expended considerable field costs as a result of the aforementioned breaches for clear cutting of timber in excess of $25,000.00, travel costs, and labor costs.
>
> 47. Big Iron breached the Logging Contract by not providing the board feet of lumber to Big Mountain Lumber, LLC as they were required.[108]

Hemlock contends these allegations are impertinent (i) because the costs alleged in Paragraphs 36 and 37 would be a normal cost of operation of J.R. Mall, and the Amended Complaint fails to specify how or why White Oak incurred such costs; (ii) because the Amended Complaint does not specify how the field costs alleged in Paragraph 37 resulted from a breach when they occurred before the breach, and the lack of specificity also violates Rule 1019(a); and (iii) because reference to Big Mountain in Paragraph 47 is inappropriate when Big Mountain is not

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[106] *Gen. State Auth. v. Lawrie and Green*, 372 A.2d 45, 46 (Pa. Commw. 1977); *Baker*, *supra*, 324 A.2d at 509.
[107] Hemlock Objections, ¶¶ 22-24.
[108] Amended Complaint, ¶¶ 36, 37, 47.

a party to this litigation and when the contract does not require Big Iron to provide any lumber to Big Mountain and does not reference any board feet, in violation of Rules 1028(a)(2), (3) and (4).[109]

Plaintiffs respond that they alleged many additional material facts in their Amended Complaint and that they are unable to provide additional details until after discovery enables them to obtain additional facts.[110]

"In order to be scandalous or impertinent, 'the allegation must be immaterial and inappropriate to the proof of the cause of action.' "[111] In pleading, a matter is impertinent when it "is not relevant to the action or defense,"[112] and it is scandalous when "it is both disgraceful (or defamatory) and irrelevant to an action or defense."[113]

Our courts have been restrained in striking impertinent matter:

> [T]here is some authority for the proposition that, even if the pleading of damages was impertinent matter, that matter need not be stricken but may be treated as "mere surplusage" and ignored.... Furthermore, the right of a court to strike impertinent matter should be sparingly exercised and only when a party can affirmatively show prejudice.[114]

Courts do not exercise such restraint with respect to scandalous matter, however. As explained in *Goodman's Estate*:[115]

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[109] Hemlock Objections, ¶¶ 22-24.
[110] Response to Hemlock, ¶¶ 22-24.
[111] *Breslin v. Mountain View Nursing Home, Inc.*, 171 A.3d 818, 822 (Pa. Super. 2017) (quoting *Common Cause/Pennsylvania v. Com.*, 710 A.2d 108 (Pa. Commw. 1998)); *see also Biros v. U Lock Inc.*, 255 A.3d 489, 497 (Pa. Super. 2021) (striking as scandalous or impertinent corporate debtor's allegation that creditor acquired funds to lend debtor from illicit gambling where the dispute concerned failure to pay and creditor pled and proved that she paid for the property at issue expecting repayment, while debtor has remained in possession and enjoyment of the property without any apparent ability to make repayment); *Common Cause*, *supra*, 710 A.2d at 115 (striking petitioners' introductory statement that was "an editorialized history of lawmaking in Pennsylvania" and "include[d] allegations regarding the procedures used by the Governor and the legislative leadership in enacting certain other pieces of legislation, not here before [the court]" which "are immaterial to Petitioners' cause of action").
[112] Black's Law Dictionary (12th ed. 2024), impertinent matter.
[113] Black's Law Dictionary (12th ed. 2024), scandalous matter.
[114] *Com., Dep't of Envt'l Resources v. Hartford Accident & Indem. Co.*, 396 A.2d 885, 888 (Pa. Commw. 1979) (citations omitted).
[115] *Goodman's Estate*, 28 Pa. D. 127 (O.C. Phila. Cnty. 1918).

> [A] statement is impertinent if irrelevant.... Impertinent matter is not necessarily scandalous, but all scandalous matter is impertinent....
>
> [S]triking impertinent matter from a declaration is a practice not to be encouraged, because such motions are dilatory in their effect, and also because the rights of the parties can be fully guarded at the trial. If the matter is impertinent, it will not be put in issue by a plea of non-assumpsit, and the danger to which the defendant may consider himself exposed will not arise. Furthermore, an averment which may appear irrelevant at one stage of the proceedings may subsequently be shown at the trial to be relevant, thus necessitating an amendment to the pleadings with the attendant delay....
>
> Impertinent matter which is also scandalous is, however, to be considered from a different viewpoint, and that it will be stricken from the record in proper cases is shown by numerous authorities.
>
> Scandalous matter has been defined to be 'unnecessary matter, criminatory of the defendant or any other person....' 'It consists of an unnecessary allegation bearing cruelly on the moral character of an individual, or stating matter contrary to good manners or unbecoming the dignity of the court to hear;' but, on the other hand, 'matter which is relevant can never be scandalous....'[116]

Upon review of Paragraphs 36, 37 and 47 of the Amended Complaint, it is apparent that the challenged allegations are not scandalous. Thus, the question before the Court is whether the allegations indeed are impertinent and, if so, whether they should be stricken.

The averments of Paragraphs 36 and 37 of the Amended Complaint allege that Plaintiffs were required to pay costs to other companies or to incur additional costs themselves as a result of Defendants' alleged breaches. The Court does not find this to be irrelevant to the Plaintiffs' claims and, therefore, does not find it to be impertinent. These allegations may or may not be "material facts," *i.e.*, those facts essential to support the claim,[117] but, if not, they are mere surplusage and should not be stricken for reasons explained in *Goodman's Estate, supra*.

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[116] *Id.*, at 127-28 (citations omitted).
[117] *See, supra*, Part II.B.1.

The Hemlock Objections also claim Paragraphs 36 and 37 are insufficiently specific, in violation of Rule 1019(a). The Court does not find them to be insufficiently specific because they pertain to Plaintiffs' damages, if any, and are not capable of being expanded into additional causes of action. The Court notes, however, that, to the extent these alleged damages are "special damages,"[118] Plaintiff is obliged to plead them specifically[119] and will be required to move to amend at the appropriate juncture.

The averments of Paragraph 47 of the Amended Complaint allege that Big Iron breached the Logging Contract when it failed to deliver the appropriate amount of timber to Big Mountain. Defendants contend this is impertinent because Big Mountain is not a party to the litigation and because the contract does not require Big Iron to deliver timber to Big Mountain. In the context of the rest of the Amended Complaint, the Court does not find this allegation impertinent. The Amended Complaint alleges Plaintiffs entered into a contract with Big Mountain selling the lumber Plaintiffs expected to receive from Defendants to Big Mountain.

Plaintiffs' allegation that Defendants failed to deliver the requisite amount of timber to Big Mountain is relevant to whether Defendants' breached their agreements with Plaintiffs. As such, it is not impertinent. Moreover, the Court does not find Paragraph 47 to be insufficiently specific or legally insufficient in the context of the Amended Complaint, for the same reasons explained above.

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[118] "'Special damages' are damages that are the 'actual, but not the necessary, result of the injury complained of, and which, in fact, follow it as a natural and proximate consequence in the particular case, that is, by reason of special circumstances or conditions.'" *Morin v. Brassington*, 871 A.2d 844, 848-49 (Pa. Super. 2005) (quoting *Aerospace Fin. Leasing v. New Hampshire Ins. Co.*, 696 A.2d 810, 812 n. 5 (Pa. Super. 1997) (citation omitted)).

[119] Pa. R. Civ. P. 1019(f) ("items of special damage shall be specifically stated").

Accordingly, Hemlock's objection that Paragraphs 36, 37 and 47 of the Amended Complaint contain impertinent matter that should be stricken is OVERRULED.

C. Insufficient Specificity.

The Pennsylvania Rules of Civil Procedure permit a preliminary objection for insufficient specificity of a pleading.[120] Pennsylvania is a fact-pleading state. "As a minimum, a pleader must set forth concisely the facts upon which his cause of action is based."[121] Thus, "[t]he complaint must not only apprise the defendant of the claim being asserted, but it must also summarize the essential facts to support the claim."[122] To determine if a pleading is sufficiently specific, a court must ascertain "'whether the complaint is sufficiently clear to enable the defendant to prepare his defense,' or 'whether the plaintiff's complaint informs the defendant with accuracy and completeness of the specific basis on which recovery is sought so that he may know without question upon what grounds to make his defense.'"[123]

The Hemlock Objections and the Wagner Objections both assert that the Amended Complaint is insufficiently specific in a variety of particulars.

1. Hemlock's specificity objections.

The Hemlock Objections assert that the Amended Complaint is insufficiently specific (1) because Paragraph 17 (and the rest of the Amended Complaint) fails to indicate how Plaintiff White Oak Forestry obtained an interest in the subject trees

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[120] *See* Pa. R. Civ. P. 1028(a)(3) ("Preliminary objections may be filed by any party to any pleading [for] ... failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter").

[121] *McShea v. City of Phila.*, 995 A.2d 334, 339 (2010) (quoting *Line Lexington Lumber & Millwork Co., Inc. v. Pa. Publ'g Corp.*, 301 A.2d 684, 688 (Pa. 1973)).

[122] *Id.* (quoting *Landau v. W. Pa. Nat'l Bank*, 282 A.2d 335, 339 (Pa. 1971)).

[123] *Rambo v. Greene*, 906 A.2d 1232, 1236 (Pa. Super. 2006) (quoting *Ammlung v. City of Chester*, 302 A.2d 491, 498 n. 36 (Pa. Super. 1973) (quoting 1 Goodrich-Amram § 1017(b)-9)); *see also Unified Sportsmen*, *supra*, 950 A.2d at 1134.

when, among other things, Hemlock was not a party to any agreement with White Oak; (2) because Paragraph 25 references a contract between Plaintiffs and Big Mountain Lumber, LLC without attaching a copy of the contract to the pleading and fails to state the date of the assignment; (3) because Paragraphs 31 through 33 are inconsistent in that they reference trees owned by J.R. Mall and "subject to the Logging Contract," when J.R. Mall is not a party to the logging contract, and in that the Amended Complaint never explains how White Oak was a legal owner of the trees; (4) because Paragraph 35 explains that Plaintiffs were unable to perform the contractual obligations with Big Mountain without explaining what those obligations were; and (5) because Paragraph 46 alleges White Oak performed its obligations under the Logging Contract by paying consideration to Big Iron without specifying the amount and date of such alleged payments.[124] Plaintiffs respond that they added many additional facts in their Amended Complaint; that they have properly included the necessary material facts; and that the case should proceed to discovery.[125]

Hemlock first complains that Paragraph 17 (and the rest of the Amended Complaint) fails to indicate how Plaintiff White Oak Forestry obtained an interest in the subject trees when, among other things, Hemlock was not a party to any agreement with White Oak. Paragraph 17 states that "[p]er the contracts referenced supra, Plaintiffs were to obtain 1,298 trees for $65,000.00 from Hemlock for the contracted area located in Lycoming county, McN[e]tt Township, Mohnton[ ] Rd."[126] Paragraph 17 does not indicate any interest White Oak has in the timber. However, in evaluating a pleading, the Court looks to the document as a whole rather than to

[124] Hemlock Objections, ¶¶ 16-21.
[125] Response to Hemlock, ¶¶ 16-21.
[126] Amended Complaint, ¶ 17.

an individual paragraph.[127] The Amended Complaint states that J.R. Mall and White Oak are owned by father and son who regularly conduct business together and who operate their businesses out of the same location; that there are no written assignments or agreements between them but that they operate through oral agreements;[128] that their practice is for J.R. Mall to enter into timber sales agreements and for White Oak to enter into timber harvest agreements for the sales agreements generated by J.R. Mall; that J.R. Mall is a management company or escrow agent that handles timber purchases, while White Oak performs work in the field; and that J.R. Mall pays White Oak as a 1099 subcontractor.[129] It further alleges that White Oak is party to the Logging Contract.[130] The Court finds that, for pleading purposes, these allegations are sufficient to establish White Oak's interest in the subject trees/timber and to enable Defendants to prepare their defense.

Hemlock complains that Paragraph 25 references a contract between Plaintiffs and Big Mountain Lumber, LLC without attaching a copy of the contract to the pleading and fails to state the date of the assignment. Paragraph 25 states that "[a]s a result of the aforementioned contracts, Plaintiffs entered into a contract for 332,565 board feet of lumber with Big Mountain Lumber, LLC."[131] Rule 1019(i) provides that "[w]hen any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof…."[132] When reading the Amended Complaint as a whole, the Court is satisfied that Plaintiffs' claim is not

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[127] *Yacoub*, *supra*, 805 A.2d at 589.
[128] It is well-settled that oral agreements, in appropriate circumstances, are enforceable and legally binding under Pennsylvania law. *See, e.g.*, *Pulcinello v. Consolidated Rail Corp.*, 784 A.2d 122, 124 (Pa. Super 2001).
[129] Amended Complaint, ¶¶ 6-10.
[130] *Id.*, Exh. B.
[131] *Id.*, ¶ 25.
[132] Pa. R. Civ. P. 1019(i).

"based on" the agreement with Big Mountain. To the contrary, Plaintiffs contend that they were harmed by their inability to fulfill the Big Mountain contract, which occurred as a result of the actions of the Defendants, and they seek damages as a result. As Plaintiffs claims are not "based on" the Big Mountain contract, they need not attach it to their Amended Complaint.[133] The Complaint details the alleged "footage deficit" in what Plaintiffs were able to deliver to Big Mountain and alleges that Defendants took trees included within that deficit.[134] The Court finds these allegations are sufficiently specific to enable Defendants to prepare their defense.

Hemlock complains that Paragraphs 31 through 33 are inconsistent in that they reference trees owned by J.R. Mall and "subject to the Logging Contract," when J.R. Mall is not a party to the logging contract, and in that the Amended Complaint never explains how White Oak was a legal owner of the trees. As indicated above, the Court finds that, for pleading purposes, Plaintiffs have made allegations sufficient to establish White Oak's interest in the subject trees/timber and to enable Defendants to prepare their defense.

Hemlock complains that Paragraph 35 explains that Plaintiffs were unable to perform the contractual obligations with Big Mountain without explaining what those obligations were. As indicated above, the Amended Complaint alleges that Plaintiffs contracted to deliver a certain amount of timber to Big Mountain and that they were unable to do so as a result of actions by the Defendants. These allegations are sufficiently specific to enable Defendants to prepare their defense.

Finally, Hemlock complains that Paragraph 46 alleges White Oak performed its obligations under the Logging Contract by paying consideration to Big Iron

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[133] *Dep't of Transp. v. Bethlehem Steel Corp.*, 368 A.2d 888, 894 (Pa. Commw. 1977).
[134] Amended Complaint, ¶¶ 25-33.

without specifying the amount and date of such alleged payments. Paragraph 46 alleges that "White Oak performed their obligations under the Logging Contract by paying consideration in the form of money to Big Iron for said timber harvest."[135] Performance of conditions precedent—such as performance of the contract by the party alleging breach by the opposing party—may be averred generally.[136] Further, as the alleged payments here were made to Big Iron, a defendant related to Hemlock, Hemlock has ready access to any payments made to Big Iron by White Oak. These allegations are sufficiently specific to enable Defendants to prepare their defense and sufficiently inform the Defendants of the specific basis on which recovery is sought so that they may know without question upon what grounds to make their defense.

Accordingly, Hemlock's objection that the Amended Complaint is insufficiently specific is OVERRULED.

2. Wagner's specificity objections.

The Wagner Objections assert that "Plaintiffs do not aver to any specific, material facts in the Amended Compliant;" that "[w]hile the Amended Complaint raises claims for conversion, unjust enrichment and tortious interference, the Amended Complaint includes conclusory allegations without identifying the specific actions, omissions, or events that would give rise to the asserted claims;" and that "[w]ithout these crucial facts, Wagner Lumber is left to speculate about the nature of the claims against them, which unduly prejudices their ability to respond and defend against the allegations, especially since Wagner Lumber had no knowledge of the ownership dispute."[137] Plaintiffs rest on the allegations of the Amended Complaint

[135] *Id.*, ¶ 46.
[136] Pa. R. Civ. P. 1019(c).
[137] Wagner Objections, ¶¶ 28-34.

and add that Wagner can determine exactly when the alleged conversion occurred as Wagner has work logs that specify when it was at the property and can review the relevant contracts and that Wagner must have known the alleged trees were the subject of an ownership dispute as they were marked with paint spots.[138]

The Amended Complaint alleges that Plaintiffs were party to contracts with Hemlock and Big Iron concerning certain trees/timber; that the subject trees were marked with paint spots; that Plaintiffs paid for the trees; that Hemlock thereafter entered into an agreement with Big Mountain to provide a certain footage of lumber; that Defendants converted some of the trees/timber, including selling a portion of the area to Wagner; that Wagner knowingly purchased trees belonging to Plaintiffs; that as a result, Plaintiffs were unable to fulfill their contractual obligations to Big Mountain; and that, as a further result, Plaintiffs suffered damages.[139]

While the Amended Complaint is not completely clear and is in-artfully pleaded in some respects, it is sufficiently clear to enable Wagner to prepare its defense, and it sufficiently informs Wagner of the specific basis on which recovery is sought so that it may know without question upon what grounds to make its defense.

Accordingly, Wagner's objection that the Amended Complaint is insufficiently specific is OVERRULED.

D. Demurrers.

The Hemlock objections assert that the Amended Complaint is legally insufficient because Plaintiffs' claims for fraudulent misrepresentation, punitive damages, conversion[140] and tortious interference with business relations fail to state

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[138] Response to Wagner, ¶¶ 28-34.
[139] Amended Complaint, ¶¶ 6-38.
[140] Hemlock asserts its objection to the conversion claim as an objection to Plaintiffs' standing; however, as noted above, a court may resolve a standing objection under Pa. R. Civ. P. 1028(a)(4) where all facts necessary to resolve the objection are of record. *See*, *supra*, Part II.A.

claims upon which relief can be granted. The Wagner Objections assert that the Amended Complaint is legally insufficient because Plaintiffs' claims of conversion, unjust enrichment and tortious interference with business relations fail to state claims upon which relief can be granted.

The Pennsylvania Rules of Civil Procedure permit a preliminary objection for legal insufficiency of a pleading (demurrer).[141] "'[A] demurrer is a preliminary objection to the legal sufficiency of a pleading and raises questions of law.'"[142] Since a demurrer tests the legal sufficiency of a pleading, it will be granted only when "on the facts averred, the law says with certainty that no recovery is possible."[143]

> [A] demurrer is properly granted where the contested pleading is legally insufficient.... "Preliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by the demurrer." ... All material facts set forth in the pleading and all inferences reasonably deducible therefrom must be admitted as true.[144]

1. Whether Plaintiffs' claims for fraudulent misrepresentation are legally insufficient.

A plaintiff may bring a claim for fraudulent misrepresentation when another "fraudulently makes a misrepresentation of fact or law for the purpose of inducing [plaintiff] to act or refrain from acting in reliance thereon in a business transaction" and the plaintiff suffers harm "caused ... by his justifiable reliance upon the

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[141] *See* Pa. R. Civ. P. 1028(a)(4) ("Preliminary objections may be filed by any party to any pleading [for] ... legal insufficiency of a pleading (demurrer)").
[142] *Matteo v. EOS USA, Inc.*, 292 A.3d 571, 576 (Pa. Super. 2023) (quoting *Laret v. Wilson*, 279 A.3d 56, 58 (Pa. Super. 2022)).
[143] *Vattimo v. Lower Bucks Hospital, Inc.*, 465 A.2d 1231, 1232 (Pa. 1983) (citing *Hoffman v. Misericordia Hospital of Philadelphia*, 267 A.2d 867 (Pa. 1970)).
[144] *Weiley v. Albert Einstein Medical Center*, 51 A.3d 202, 208 (Pa. Super. 2012) (quoting *Cardenas v. Schober*, 783 A.2d 317, 321-22 (Pa. Super. 2001) (citing Pa. R. Civ. P. 1028(a)(4))).

misrepresentation."[145] In order to support a claim for fraudulent misrepresentation, a plaintiff must allege the following elements:

> "(1) a misrepresentation, (2) a fraudulent utterance thereof, (3) an intention by the maker that the recipient will thereby be induced to act, (4) justifiable reliance by the recipient upon the misrepresentation and (5) damage to the recipient as the proximate result."[146]

The misrepresentation need not be in the form of a positive assertion:[147]

> "fraud consists in anything calculated to deceive, whether by single act or combination, or by suppression of truth, or a suggestion of what is false, whether it be direct falsehood or by innuendo, by speech or silence, word of mouth, or look or gesture. It is any artifice by which a person is deceived to his disadvantage."[148]

The Hemlock Objections lodge a demurrer to the claims for fraudulent misrepresentation in Counts IX and X of the Amended Complaint, contending that Plaintiffs have failed to allege that the misrepresentations in question were made to the Plaintiffs and that Plaintiffs relied on the misrepresentations.[149] Plaintiffs deny Hemlock's assertions and rest on the allegations of the Amended Complaint.[150]

In support of the fraud claim against Hemlock, the Amended Complaint alleges that Hemlock "made factual misrepresentations to Big Iron and Wagner including Plaintiffs" by asserting rights over the timber owned by Plaintiffs; that the representations were made knowingly and willfully; that Big Iron, Wagner and Plaintiffs relied on the representations; and that Plaintiffs suffered resulting

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[145] *Shane v. Hoffmann*, 324 A.2d 532, 536 (Pa. Super. 1974) (citing *Savitz v. Weinstein*, 149 A.2d 110 (Pa. 1959)).
[146] *Martin v. Lancaster Battery Co., Inc.*, 606 A.2d 444, 448 (Pa. 1992) (quoting *Scaife Co. v. Rockwell–Standard Corp.*, 285 A.2d 451, 454 (Pa. 1971), cert. denied, 92 S. Ct. 2459 (1972)).
[147] *Shane*, *supra*, 324 A.2d at 536.
[148] *In re McClellan's Estate*, 365 401, 407, 75 A.2d 595, 598 (Pa. 1950) (quoting *In re Reichert's Estate*, 51 A.2d 615, 617 (Pa. 1947)).
[149] Hemlock Objections, ¶¶ 25-29.
[150] Reply to Hemlock, ¶¶ 25-29.

damages.[151] In support of the fraud claim against Big Iron, the Amended Complaint makes similar allegations.[152]

The Amended Complaint sufficiently alleges a claim of fraud against the Hemlock Defendants. The Hemlock Defendants read the Amended Complaint too narrowly when construing Counts IX and X as claims for fraudulent misrepresentation, rather than a general claim for fraud. It is unnecessary for the alleged fraudulent statements to have been made to the Plaintiffs to sustain a fraud claim,[153] particularly given the very broad definition of fraud as "anything calculated to deceive." Further, the Amended Complaint alleges Plaintiffs relied on the alleged misrepresentations.[154]

Under the circumstances, Plaintiffs have alleged sufficient facts in their Amended Complaint to survive a demurrer. As the burden to prove fraud is "clear and convincing evidence,"[155] however, Defendants may revisit this issue after discovery *via* a motion for summary judgment, should Plaintiffs fail to adduce sufficient evidence in support of their claims.

Accordingly, the demurrers to Plaintiffs' claims of fraud against Hemlock and Big Iron (Counts IX, X) are OVERRULED.

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[151] Amended Complaint, ¶¶ 85-92.

[152] *Id.*, ¶¶ 93-100.

[153] The elements of a fraud claim are "(1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance." *Gruenwald v. Advanced Computer Applications, Inc.*, 730 A.2d 1004, 1014 (Pa. Super. 1999) (citing *Gibbs v. Ernst*, 647 A.2d 882, 889 (Pa. 1994)).

[154] Amended Complaint, ¶¶ 91, 97.

[155] *Weissberger v. Myers*, 490 A.3d 730, 735 (Pa. Super. 2014). "Clear and convincing evidence is the highest burden in our civil law and requires that the fact-finder be able to come to clear conviction, without hesitancy, of the truth of the precise fact in issue." *Spaw v. Springer*, 715 A.2d 1188, 1189 (Pa. Super. 1998) (quotation marks and citation omitted).

2. *Whether Plaintiffs' claims for punitive damages are legally insufficient.*

Punitive damages are damages, other than compensatory or nominal damages, awarded to punish a defendant for outrageous conduct and to deter similar conduct in the future.[156] There is no independent cause of action for punitive damages; rather, punitive damages are an element of damages.[157] "Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others."[158] They are penal in nature and are proper only where the defendant's actions are so outrageous as to demonstrate willful, wanton or reckless conduct.[159] Conduct is "outrageous" when the defendant's actions show either "an evil motive or reckless indifference to the rights of others."[160] "The state of mind of the actor is vital. The act, or the failure to act, must be intentional, reckless or malicious."[161]

> [A] punitive damages claim must be supported by evidence sufficient to establish that (1) a defendant had a subjective appreciation of the risk of harm to which the plaintiff was exposed and that (2) he acted, or failed to act, as the case may be, in conscious disregard of that risk.[162]

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[156] *B.G. Balmer & Co., Inc. v. Frank Crystal & Company, Inc.*, 148 A.3d 454, 463 (Pa. Super. 2016). *See also Kirkbride v. Lisbon Contractors, Inc.*, 555 A.2d 800, 802 (Pa. 1989) (citing Restatement (Second) Torts § 908(1)) (Punitive damages are awarded to punish a defendant for "outrageous conduct").
[157] *Kirkbride, supra*, 555 A.2d at 802.
[158] *Feld v. Merriam*, 485 A.2d 742, 747 (Pa. 1984) (quoting Restatement (Second) of Torts § 908(2) (1979)).
[159] *Hutchison ex rel. Hutchison v. Luddy*, 870 A.2d 766, 770 (Pa. 2005).
[160] *J.J. DeLuca Co., Inc. v. Toll Naval Associates*, 56 A.3d 402, 415–416 (Pa. Super. 2012). "'Reckless indifference to the interests of others', or as it is sometimes referred to, 'wanton misconduct,' means that the actor has intentionally done an act of an unreasonable character, in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow." *Lomas v. Kravitz*, 130 A.3d 107, 128-29 (Pa. Super. 2015) (en banc) (quoting *McClellan v. Health Maint. Org. of Pa.*, 604 A.2d 1053, 1061 (Pa. Super. 1992) (citations omitted)).
[161] *Feld, supra*, 485 A.2d at 748.
[162] *Hutchinson, supra*, 870 A.2d at 772 (citing *Martin v. Johns–Manville Corp.*, 494 A.2d 1088, 1097-98 (Pa. 1985) (plurality opinion)).

Thus, an award of punitive damages is not supported where the actor merely knows or has reason to know of facts that create a high degree of risk of harm to another "but does not realize or appreciate the high degree of risk involved, although a reasonable man in his position would do so."[163]

The Amended Complaint alleges a claim for punitive damages in the demands for relief associated with each of its counts.[164] The Hemlock Objections assert demurs to each of the claims for punitive damages, contending (1) that punitive damages are not available in claims for breach of contract (Counts I and II) and, by extension, unjust enrichment (Counts VI-VIII); (2) that the statute for conversion of timber does not permit recovery of punitive damages (Counts III-V and XV); and (3) that the averments in the additional counts (Counts IX-XIV) do not sufficiently set forth facts which would support an award of punitive damages.[165]

Plaintiffs contend in response that the statute regarding conversion of timber is "punitive in nature;" that punitive damages may be recoverable incident to fraud claims when the conduct was outrageous, malicious, wanton, reckless, willful or oppressive; and that the Amended Complaint makes specific allegations that Defendants' conduct was outrageous, malicious, wanton, reckless, willful or oppressive.[166]

Punitive damages are not available in an action sounding in breach of contract,[167] because "punishment is inconsistent with traditional contract theories."[168]

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[163] *Id.* at 771 (quoting *Martin*, *supra*, 494 A.2d at 1097-98).
[164] Amended Complaint, demands for relief.
[165] Hemlock Objections, ¶¶ 30-38.
[166] Response to Hemlock, ¶¶ 30-38.
[167] *DiGregorio v. Keystone Health Plan East*, 840 A.2d 361, 370 (Pa. Super 2003) (citing *Thorsen v. Iron and Glass Bank*, 476 A.2d 928 (Pa. Super. 1984).
[168] *Id.* (citing *Johnson v. Hyundai Motor America*, 698 A.2d 631, 639 (Pa. Super. 1997) ("Whereas in contract actions, damages are awarded to compensate an injured party for the loss suffered due to the breach, the purpose of punitive damages is to punish outrageous and egregious conduct done in

Thus, punitive damages are not available for Counts I and II of the Amended Complaint. Further, as a claim for unjust enrichment is a contractual claim[169] and as "punitive damages will not be assessed for a breach of mere contractual duties,"[170] punitive damages are not available for Counts VI-VIII of the Amended Complaint.

Plaintiffs brought their conversion claims (Counts III-V and XV) pursuant to Section 8311 of the Judicial Code,[171] which states, in pertinent part:

> ***In lieu of all other damages or civil remedies provided by law***, a person who cuts or removes the timber of another person without the consent of that person shall be liable to that person in a civil action for an amount of damages equal to....[172]

The statute is "punitive by nature," in that it specifically permits enhanced damages in appropriate circumstances.[173] As punitive damages are a category of damages provided by law, they fall within the category of "all other damages or civil remedies provided by law" and are explicitly precluded by statute. In other words, a plaintiff who seeks statutory damages under Section 8311 is precluded from recovering punitive damages in addition to those statutory damages. Accordingly, punitive damages are not available for Counts III-V and XV of the Amended Complaint.

The Hemlock objections contend that the allegations of Counts IX-XIV "do not sufficiently set forth facts which would support an award of punitive damages."[174]

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a reckless disregard of another's rights; it serves a deterrence as well as a punishment function") (citations and quotations omitted).

[169] *See, e.g.*, *Northeast Fence & Iron Works, Inc. v. Murphy Quigley Co., Inc.*, 933 A.2d 664 (Pa. Super. 2007).

[170] *Daniel Adams Assoc., Inc. v. Rimbach Pub. Inc.*, 429 A.2d 726, 728 (Pa. Super. 1981) (citation omitted). "Only where the person who breaks a contract also breaches some duty imposed by society will compensatory or punitive damages be imposed against the wrongdoer in order to punish the wrongful act and in order to serve as a deterrent." *Id.*

[171] 42 Pa. C.S. § 8311.

[172] 42 Pa. C.S. § 8311(a) (emphasis added).

[173] *See, e.g.*, 42 Pa. C.S. § 8311(a)(2) (permitting damages of two times the market value of timber cut or removed if the act is determined to have been negligent and three times the market value if the act is determined to have been deliberate).

[174] Hemlock Objections, ¶ 37.

Plaintiffs disagree, contending "[t]he Amended Complaint outlines specific averments whereby Defendants conduct was 'outrageous, malicious, wanton, reckless, willful, or oppressive.' "[175] The Amended Complaint alleges, *inter alia*,

> 28. Steve Hoffman, on behalf of J.R. Mall met with Martin Weaver, on behalf of Hemlock Ridge, on or about January 24, 2023.
>
> 29. Hemlock Ridge stated to J.R. Mall that they were "handing over" to Contract to Big Iron notwithstanding the Sales Contract between J.R. Mall and Hemlock subject to this litigation.
>
> 30. Thereafter, a portion of the sale area was sold to Wagner Lumber Company.
>
> ...
>
> 32. Upon information and belief, Hemlock Ridge sold trees rightfully owned by J.R. Mall and subject to the Logging Contract.
>
> 33. Upon information and belief, Wagner Lumber Company purchased trees rightfully owned by J.R. [Mall] and subject to the Logging Contract when they knew it was the property of said companies or should have known that J.R. Mall and White Oak were legal owners of those trees as they were marked with paint spots.
>
> ...
>
> 92. Hemlock's conduct was outrageous, wanton, reckless, willful or oppressive as they were contracted with White Oak and proceeded with selling the trees/timber notwithstanding the Sales Contract and Logging Contract, and therefore, Plaintiffs request punitive damages.
>
> ...
>
> 100. Big Iron's conduct was outrageous, wanton, reckless, willful or oppressive as they were contracted with White Oak and proceeded with the timber harvest notwithstanding the referenced Logging Contract, and therefore, Plaintiffs request punitive damages.
>
> ...
>
> 109. J.R. Mall had a contractual relationship with Big Mountain Lumber, LLC at all relevant times herein and Hemlock knew of the Contract.

[175] Response to Hemlock, ¶ 37.

> 110. Notwithstanding Hemlock's knowledge of the Big Mountain relationship, Hemlock told J.R. Mall that they would be contracting with Big Iron Directly and ultimately sold the trees/timber to Wagner and others (subject to discovery) that were subject to the Big Mountain contractual relationship.
>
> ...
>
> 114. Big Iron made factual misrepresentations to Hemlock and Wagner including Plaintiffs, by asserting a right over the trees/timber owned by or having right to the trees/timber as outlined in the Sales Contract and Logging Contract to J.R. Mall and White Oak.
>
> 115. That representation was made knowing[ly] and willfully as the contract was still being fulfilled and Big Iron contracted with Wagner, et al. and ultimately, delivered trees/timber to Wagner Lumber and perhaps, others.
>
> ...
>
> 120. Wagner Lumber made factual misrepresentations to Hemlock and Wagner including Plaintiffs, by asserting a right over the trees/timber owned by or having right to the trees/timber as outlined in the Sales Contract and Logging Contract to J.R. Mall and White Oak.
>
> 121. That representation was made knowing[ly] and willfully as the trees were marked and subject to the contracts referenced herein and Wagner proceeded with the purchase, notwithstanding the fact that J.R. Mall had a contract with Big Mountain, J.R. Mall had a contract with Hemlock and White Oak had a contract with Big Iron.
>
> ...
>
> 127. Here, Hemlock, Big Iron and Wagner knew that the trees were rightfully owned by J.R. Mall and asserted rights over the trees rightfully owned by J.R. Mall in violation of 42 Pa. C.S. § 8311.[176]

These allegations are sufficient to enable a fact-finder to find that Defendants' actions "are so outrageous as to demonstrate willful, wanton or reckless conduct."[177]

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[176] Amended Complaint, ¶¶ 28-30, 32-33, 92, 100, 109-10, 114-15, 120-21, 127.

[177] *Hutchison*, *supra*, 870 A.2d at 770. *N.b.*, "[m]alice, intent, knowledge, and other conditions of mind may be averred generally." Pa. R. Civ. P. 1019(b). Thus, the allegations that Defendants acted intentionally, coupled with the general allegations that their conduct was outrageous, wanton, reckless, willful or oppressive are sufficient for purposes of surviving a demurrer.

Accordingly, punitive damages may be available for Counts IX-XIV of the Amended Complaint.

Accordingly, the demurrers to Plaintiffs' demand for punitive damages are SUSTAINED in part and OVERRULED in part. The demurrers are SUSTAINED with respect to Counts I-VIII and XV of the Amended Complaint, and the demand for punitive damages is STRICKEN from those Counts.[178] The demurrers are OVERRULED with respect to Counts IX-XIV of the Amended Complaint.

3. *Whether Plaintiffs' claims for conversion are legally insufficient.*

"Conversion is the deprivation of another's right of property in, or use or possession of, a chattel, without the owner's consent and without lawful justification."[179] Thus, the elements of a claim of civil conversion are: (1) deprivation of another's right of property in, or use or possession of, (2) a chattel, (3) without the owner's consent, and (4) without lawful justification.[180] Plaintiff must have actual or constructive possession of the chattel at the time of the alleged conversion.[181]

a. *Conversion claims against Hemlock and Big Iron.*

The Hemlock Objections assert that the Amended Complaint fails to state a claim for conversion upon which relief can be granted against Hemlock and Big Iron

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[178] The Court will not permit amendment here. Although "it is generally an abuse of discretion to dismiss a complaint without leave to amend," *Harley Davidson Motor Co., Inc. v. Hartman*, 442 A.2d 284, 286 (Pa. Super. 1982), "where it is clear that amendment is impossible and where to extend leave to amend would be futile" the right to amend may be withheld, since there is no reasonable possibility that amendment can be accomplished successfully. *Otto v. American Mutual Ins. Co.*, 393 A.2d 450, 451 (Pa. 1978). As punitive damages are not available as a matter of law for the causes of action asserted in Counts I-VIII and XV of the Amended Complaint, there is no reasonable possibility that amendment can be accomplished successfully and extension of leave to amend would be futile.
[179] *Shonberger v. Oswell*, 530 A.2d 112, 114 (Pa. Super. 1987) (citing *Stevenson v. Economy Bank of Ambridge*, 197 A.2d 721, 726 (Pa. 1964)).
[180] *Pittsburgh Constr. Co. v. Griffith*, 834 A.2d 572, 581 (Pa. Super. 2003).
[181] *Id.*

because White Oak never had any right in the timber and because J.R. Mall sold its interest in the timber to Big Mountain.[182]

The Court has already addressed Hemlock's demurrer to the conversion claims and has found that Plaintiffs' made out a *prima facie* case for conversion sufficient to survive a demurrer.[183] In addition to what has been stated above, however, a plaintiff may sue in conversion if his possession of the chattel at issue is merely constructive.[184] Thus, even if Plaintiffs did not have actual possession of the timber at the time of the alleged conversion, they may still proceed with their conversion claims if they had constructive possession at the time of the alleged conversion. Given the allegations of the Amended Complaint that Hemlock and Big Iron willfully deprived Plaintiffs of their rights in the timber without Plaintiffs' consent and without lawful justification,[185] the Court finds that the Amended Complaint sufficiently alleges claims of conversion against Hemlock and Big Iron to survive a demurrer.

Accordingly, the demurrers to Plaintiffs' claims of conversion against Hemlock and Big Iron (Counts III, IV) are OVERRULED.

b. Conversion claims against Wagner.

The Wagner Objections assert that the Amended Complaint fails to state a claim for conversion upon which relief can be granted against Wagner because the Amended Complaint does not allege any material facts contending that Wagner

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[182] Hemlock Objections, ¶¶ 39-41.
[183] *See*, *supra*, Part II.A.
[184] *Pittsburgh Constr.*, *supra*, 834 A.2d at 581-83 (finding, in a dispute involving entitlement to escrowed funds, that the party entitled to receipt of funds according to a draw schedule has a possessory interest in the funds to the extent it met the corresponding prerequisites for a draw).
[185] Amended Complaint, ¶¶ 49-62, 125-28.

knew of the ownership dispute concerning the timber and intentionally deprived Plaintiffs of their rights, if any, in it.[186]

Plaintiffs deny Wagner's lack of knowledge of the ownership dispute concerning the timber and rests on the allegations of the Amended Complaint.[187] Count V of the Amended Complaint is a claim for conversion by Plaintiffs against Wagner. Count V asserts that in approximately December, 2022 Wagner "acquired possession of the timber with the intent to assert a right over it which was adverse to the lawful owner[s]," Plaintiffs; that Wagner deprived Plaintiffs of the timber multiple times; that it "willfully and without justification" interfered with Plaintiffs' lawful possession; and that Plaintiffs suffered damages as a result.[188]

Under our rules of pleading, "[m]alice, intent, knowledge, and other conditions of mind may be averred generally."[189] The allegations that Wagner obtained the timber "with the intent to assert a right over it which was adverse to the [Plaintiffs]" and that Wagner "willfully and without justification" interfered with Plaintiffs ownership interest in the timber sufficiently allege that Wagner intentionally deprived Plaintiffs of their ownership interest in the timber to survive a demurrer. If facts ultimately emerge through discovery demonstrating that Wagner had no knowledge of Plaintiffs' alleged ownership interest, Wagner may seek dismissal of the conversion claim *via* a motion for summary judgment, if appropriate.

Accordingly, Wagner's demurrer to Plaintiffs' claim of conversion against Wagner (Count V) is OVERRULED.

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[186] Wagner Objections, ¶¶ 35-45.
[187] Response to Wagner, ¶¶ 35-45.
[188] Amended Complaint, ¶¶ 62-69.
[189] Pa. R. Civ. P. 1019(b).

4. Whether Plaintiffs' claims for tortious interference with business relations are legally insufficient.

Under Pennsylvania law,

> Tortious interference with prospective or existing contractual relations consists of the following elements:
>
> > (1) the existence of a contractual, or prospective contractual relation between the complainant and a third party;
> >
> > (2) purposeful action on the part of the defendant, specifically intended to harm the existing relation, or to prevent a prospective relation from occurring;
> >
> > (3) the absence of privilege or justification on the part of the defendant; and
> >
> > (4) the occasioning of actual legal damage as a result of the defendant's conduct.
>
> In determining whether a particular course of conduct is improper for purposes of setting forth a cause of action for intentional interference with contractual relationships, or, for that matter, potential contractual relationships, the court must look to section 767 of the Restatement (Second) of Torts. This section provides the following factors for consideration: 1) the nature of the actor's conduct; 2) the actor's motive; 3) the interests of the other with which the actor's conduct interferes; 4) the interests sought to be advanced by the actor; 5) the proximity or remoteness of the actor's conduct to interference, and 6) the relationship between the parties.[190]

The Amended Complaint asserts four causes of action for tortious interference with business relations: Count XI (White Oak vs. Hemlock), Count XII (J.R. Mall vs. Hemlock), Count XIII (J.R. Mall vs. Big Iron), and Count XIV (J.R. Mall and White Oak vs. Wagner Lumber). The Hemlock Objections and the Wagner Objections both assert that Plaintiffs' claims for tortious interference with contractual relations fail to state claims upon which relief can be granted.

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[190] *Maverick Steel Co., L.L.C. v. Dick Corporation/Barton Malow*, 54 A.3d 352, 354-55 (Pa. Super. 2012) (quoting *Steffy & Son, Inc. v. Citizens Bank of Pa.*, 7 A.3d 278, 288 (Pa. Super. 2010) (quoting *Strickland v. Univ. of Scranton*, 700 A.2d 979, 985 (Pa. Super. 1997) (citations omitted))).

The Hemlock Objections assert that Count XI is legally insufficient because White Oak had no rights in the timber and, therefore, cannot assert claims against anyone for tortious interference with business relations; that Counts XI and XII lack specificity necessary to assert a viable claim; that Count XII fails to allege how J.R. Mall suffered financial harm or reputational harm; and that J.R. Mall does not have a valid claim because it sold its interest in the timber to Big Mountain.[191] Plaintiffs deny the claims are legally insufficient and rest on the allegations of the Amended Complaint.[192]

The Wagner Objections assert that Plaintiffs do not plead any facts to support their claim of tortious interference with business relations against Wagner (Count XIV), that Paragraphs 119-124 are bald legal conclusions without factual support; that there are no allegations that Wagner took purposeful actions intended to harm the Plaintiffs; and that Paragraph 88 of the Amended Complaint pleads that Wagner relied upon representations by Hemlock to purchase the timber at issue.[193] Plaintiffs deny the claims are legally insufficient and rest on the allegations of the Amended Complaint.[194]

Count XI of the Amended Complaint alleges that White Oak had a contract with Big Iron and that Hemlock knew about it; that Hemlock nevertheless told J.R. Mall it would be contracting with Big Iron directly; that there was no justification for Hemlock's conduct; and that this resulted in financial and reputational harm to White Oak.[195] Count XII alleges that J.R. Mall had a contract with Big Mountain and that Hemlock knew about it; that Hemlock nevertheless told J.R. Mall it would be

[191] Hemlock Objections, ¶¶ 42-51.
[192] Response to Hemlock, ¶¶ 42-51.
[193] Wagner Objections, ¶¶ 50-57.
[194] Response to Wagner, ¶¶ 51-57.
[195] Amended Complaint, ¶¶ 101-06.

contracting with Big Iron directly; that there was no justification for Hemlock's conduct; and that this resulted in financial and reputational harm to J.R. Mall.[196] Count XIII is a claim by J.R. Mall against Big Iron,[197] but no demurrer is asserted to Count XIII. Count XIV alleges that Wanger Lumber made factual misrepresentations to Hemlock by asserting a right over the timber owned or contracted to Plaintiffs; that the misrepresentations were made knowingly and willfully as the trees were marked; that Wagner nonetheless proceeded with the purchase; that Plaintiffs, Big Mountain, and others relied on these representations as they were under contract relating to the timber; that Plaintiffs relied on the misrepresentations when entering into an agreement with Big Mountain; and that Plaintiffs were unable to fulfill their contract with Big Mountain when the same timber was sold to Wagner, causing financial and reputational harm to Plaintiffs.[198]

With respect to Count XI, the Court has already determined that the Amended Complaint sufficiently alleges that White Oak had an interest in the timber.[199] The remaining question, then, is whether Count XI lacks the specificity necessary to assert a viable claim. The Court concludes that it is sufficiently specific. The Amended Complaint alleges facts in support of the claims that White Oak had a contract with Big Iron to harvest timber and that Hemlock knew about the Big Iron Contract;[200] that Hemlock engaged in purposeful action specifically intended to harm the existing relation;[201] that Hemlock did not have privilege or justification for doing so;[202] and that White Oak suffered actual legal damage as a result of the Hemlock's

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[196] *Id.*, ¶¶ 107-12.
[197] *Id.*, ¶¶ 113-18.
[198] *Id.*, ¶¶ 119-24.
[199] *See, supra*, Part II.A.1.
[200] Amended Complaint, ¶¶ 6-28, 103-04.
[201] *Id.*, ¶¶ 28-33, 104.
[202] *Id.*, ¶¶ 29-33, 105.

conduct.[203] These factual allegations sufficiently allege a cause of action for tortious interference with business relations sufficient to survive a demurrer.

With respect to Count XII, the Court has already determined that the Amended Complaint sufficiently alleges that J.R. Mall had an interest in the timber and that Big Mountain is not the only party with standing to sue.[204] The remaining question, then, is whether the Amended Complaint sufficiently alleges that J.R. Mall suffered financial harm or reputational harm. The Court concludes that it has done so. Among other things, the Amended Complaint alleges that as a result of the various breaches of contract Plaintiffs were unable to perform their contractual obligations to Big Mountain, that Plaintiffs paid costs to various third parties for services rendered, that Plaintiffs expended considerable field costs such as travel and labor, and that Plaintiffs suffered reputational damages as a result of not being able to fulfill their contract with Big Mountain.[205] Thus, Count XII sufficiently alleges a cause of action for tortious interference with business relations sufficient to survive a demurrer.

With respect to Count XIV, the Court has already determined that the Amended Complaint sufficiently alleges that Wagner took purposeful actions intended to harm Plaintiffs.[206] The Amended Complaint alleges facts in support of the claims that Plaintiffs had a contract with Hemlock for timber sales and Big Iron for timber harvest and that Wagner knew about these contracts;[207] that Wagner engaged in purposeful action specifically intended to harm the existing relation;[208]

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[203] *Id.*, ¶¶ 35-38, 106.
[204] *See*, *supra*, Parts II.A.2, II.A.3.
[205] Amended Complaint, ¶¶ 35-38.
[206] *See*, *supra*, Part II.D.3.b.
[207] Amended Complaint, ¶¶ 6-28, 33, 120-21.
[208] *Id.*, ¶¶ 33, 121.

that Wagner did not have privilege or justification for doing so;[209] and that Plaintiffs suffered actual legal damage as a result of the Hemlock's conduct.[210] These factual allegations sufficiently allege a cause of action for tortious interference with business relations sufficient to survive a demurrer.

Accordingly, Hemlock's and Wagner's demurrers to Plaintiffs' claims for tortious interference with business relations (Counts XI-XIV) are OVERRULED.

5. Whether Plaintiffs' claims for unjust enrichment are legally insufficient.

"To sustain a claim of unjust enrichment, a claimant must show that the party against whom recovery is sought either 'wrongfully secured or passively received a benefit that it would be unconscionable for her to retain.' "[211] The elements of a claim for unjust enrichment are:

> "[1] benefits conferred on defendant by plaintiff; [2] appreciation of such benefits by defendant; and [3] acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value."[212]

Upon such a showing, "the law implies a contract, which requires the defendant to pay to the plaintiff the value of the benefit conferred,"[213] because "[t]he doctrine of unjust enrichment contemplates that '[a] person who has been unjustly enriched at the expense of another must make restitution to the other.'"[214]

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[209] *Id.*, ¶¶ 30, 33, 120-22.
[210] *Id.*, ¶¶ 35-38, 122-24.
[211] *Torchia v. Torchia*, 499 A.2d 581, 582 (Pa. Super. 1985) (quoting *Roman Mosaic & Tile Co. v. Vollrath*, 313 A.2d 305, 307 (Pa. Super. 1973)).
[212] *Schenck v. K.E. David, Ltd.*, 666 A.2d 327, 328 (Pa. Super. 1995) (citing *Wolf v. Wolf*, 514 A.2d 901 (Pa. Super. 1986), overruled on other grounds, *Van Buskirk v. Van Buskirk*, 590 A.2d 4 (Pa. 1991)).
[213] *Durst v. Milroy General Contracting, Inc.*, 52 A.3d 357, 360 (Pa. Super. 2012) (citing *Schenck, supra*, 666 A.2d at 328-29).
[214] *Am. and Foreign Ins. Co. v. Jerry's Sport Center, Inc.*, 2 A.3d 526, 545 (Pa. 2010) (quoting *Wilson Area School Dist. v. Skepton*, 895 A.2d 1250, 1254 (Pa. 2006) (opinion announcing the judgment of the court)).

The Amended Complaint asserts a single cause of action for unjust enrichment against Wagner (Count VIII). The Wagner Objections assert that "Wagner Lumber did not 'unconscionably' retain the trees/lumber, because it did not know about an ownership dispute, and it received the trees in good faith that were processed and paid for."[215] Plaintiffs respond by denying that Wagner "did not know" that ownership of the trees/lumber was in dispute because the subject trees had been marked with paint spots.[216] Moreover, the Amended Complaint alleges that Wagner knew or should have known that ownership of the trees was in dispute.[217]

When resolving a demurrer, a court may not look beyond the challenged pleading. Here, the Court must accept as true all well-pleaded material facts set forth in the complaint and all inferences reasonably deducible from them.[218] Thus, for purposes of resolving Wagner's demurrer, the Court must accept as true Plaintiffs' allegations that Wagner knew of the ownership dispute concerning the trees/timber. As such, the Court cannot find that "on the facts averred, the law says with certainty that no recovery is possible"[219] against Wagner for unjust enrichment.

Accordingly, Wagner's demurrer to Plaintiffs' claim for unjust enrichment (Count VIII) is OVERRULED.

III. CONCLUSION AND ORDER.

As spelled out in detail above, the preliminary objections filed by the Defendants are SUSTAINED in part and OVERRULED in part, as follows:

1. Wagner's Objection that Count XIV of the Amended Complaint fails to state allegations of fraud with particularity is SUSTAINED. If

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[215] Wagner Objections, ¶ 48.
[216] Response to Wagner, ¶ 48.
[217] Amended Complaint, ¶¶ 33, 67, 121.
[218] *Weiley*, *supra*, 51 A.3d at 208.
[219] *Vattimo*, *supra*, 465 A.2d at 1232.

Plaintiffs intend to assert a fraud claim in Count XIV, they shall amend Count XIV to comply with Rule 1019(b). If Plaintiffs do not intend to assert a fraud claim in Count XIV, they may so state on the record, in which event Count XIV need not be amended. Within **twenty (20) days** after entry of this Order, Plaintiffs shall either (a) amend Count XIV to state their allegations of fraud with particularity, or (b) file a statement of record that Count XIV does not state a claim for fraud.

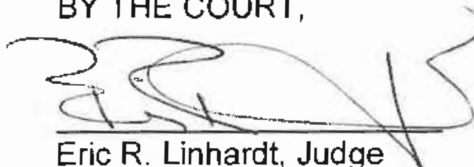
2. Within **twenty (20) days** after Plaintiffs file either an amended Count XIV or a statement of record that Count XIV does not state a claim for fraud, Defendants shall file their responsive pleadings to the then-operative complaint.

3. The demurrers to Plaintiffs' demand for punitive damages are SUSTAINED with respect to Counts I-VIII and XV of the Amended Complaint, and the demand for punitive damages is STRICKEN from those Counts.

4. The remaining preliminary objections are OVERRULED.

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/bel

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