IN THE CIRCUIT COURT FOR THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO. CACE 23-014436 04

MIRAYINT CRUISE MANAGEMENT LTD. and LIFE AT SEA CRUISES, INC.,

Plaintiffs,

v.

MIKAEL S. PETTERSON, aka MIKAEL S. PETTERSSON, FOURNEAU INTERNATIONAL LLC, and FOURNEAU MANAGEMENT LLC

Defendants.
_____/

DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

Defendants, Mikael S. Petterson, Fourneau International LLC, and Fourneau Management LLC (collectively, the "Defendants"), by and through their undersigned counsel, hereby file this Motion to Dismiss the Complaint filed by Plaintiffs, Mirayint Cruise Management Ltd. and Life at Sea Cruises, Inc. (collectively, the "Plaintiffs"), and as grounds, therefore, would state:

I. INTRODUCTION

On or about December 1, 2022, plaintiff, Mirayint Cruise Management Ltd. ("Mirayint") entered into an agreement with **nonparty**, Fourneau International Limited ("Nonparty Fourneau"), for Nonparty Fourneau to provide consulting services in the residential cruise industry to Mirayint for a term of three (3) months (the "Consulting Agreement"). When the Consulting Agreement expired Mirayint did not hire Nonparty Fourneau as an employee pursuant to paragraph 5 of the Consulting Agreement. So, a different entity, defendant, Fourneau Management LLC ("Fourneau Management"), agreed to provide sales and marketing services to Mirayint even though neither party agreed expressly or otherwise to sign any new agreements or to otherwise adopt the terms of

the Consulting Agreement. Shortly thereafter, Fourneau Management and its principal Mikael Petterson decided to sever their association with Mirayint because of their legitimate concerns over many things including, the condition of the Gemini (the vessel that was being sold for the round-the-world cruise), the status of the FMC bond which was required if the vessel was going to dock at a US port (which was the itinerary being sold to customers), and the manner in which customer deposits were being held and maintained.

Mirayint and another entity, plaintiff, Life at Sea Cruises, Inc. ("Life at Sea") (who was not a party to the Consulting Agreement and who did not own the vessel, Gemini), have now filed this lawsuit concocting non-existent claims against Defendants in retaliation for Fourneau Management's decision to sever its business relationship with Mirayint. Notwithstanding the falsity of the Plaintiffs' claims, the Complaint must be dismissed because it is legally deficient and fails to adequately plead any valid causes of action.

II. LEGAL ARGUMENT

A. Plaintiffs improperly commingle various claims against Defendants.

As a threshold matter, the Complaint should be dismissed in its entirety because it does not comply with Fla.R.Civ.P. 1.110. In the instant action, the "Defendants" are comprised of three (3) different defendants: an individual and two entities. The Complaint lumps together the "Defendants" in each count and fails to delineate which act, conduct, or statement was committed by which individual or entity. This method of pleading is prohibited under Florida law; accordingly, the Complaint must be dismissed. *See Collado v. Baroukh*, 226 So. 3d 924 (Fla. 4th DCA 2017)(citing Fla.R.Civ.P. 1.110(f))(dismissal appropriate where plaintiff "made blanket references to 'defendants' throughout the complaint" and "failed to clearly allege how each

defendant caused the injury and damages alleged"); *K.R. Exchange Services, Inc. v. Fuerst Humphrey, Ittleman, PL,* 48 So. 3d 889 (Fla. 3rd DCA 2010)(same).

B. The Complaint fails to allege any valid causes of action against Defendants.

Even if Plaintiffs corrected the glaring pleading deficiencies addressed *supra*, the Complaint must still be dismissed because Plaintiffs' allegations taken as true (which they are not) fail to allege any valid causes of action against Defendants.

1. Plaintiffs fail to properly plead a claim for conversion.

Conversion is an "act of dominion wrongfully asserted over another's property inconsistent with his ownership therein." *Edwards v. Landsman*, 51 So. 3d 1208, 1213 (Fla. 4th DCA 2011). "Thus, to state a claim for conversion, one must allege facts sufficient to show ownership of the subject property and facts that the other party wrongfully asserted dominion over that property." *Id.* Plaintiffs have failed to meet this pleading burden for this claim.

First, the Complaint fails to identify the specific property that Defendants allegedly converted. Instead, it contains overbroad descriptions and general categories of property purportedly belonging to Plaintiffs. Specifically, it alleges that Defendants converted "money, intellectual property, confidential business information, trade secrets, and trademark" that Plaintiffs allege are "detailed" in a letter attached as Exhibit 1 to the Complaint. However, neither the allegations in the Complaint nor the letter attached as Exhibit 1 identify the specific property Plaintiffs contend was converted by Defendants, when or where it was converted, or explain how Defendants unlawfully exercised control over the property. *See Am. Seafood Inc v. Clawson,* 598 So. 2d 273 (Fla. 3d DCA 1992)(holding that general conclusory allegations are insufficient to state a cause of action for conversion).[1]

[1] In an untraditional manner, Plaintiffs filed a Motion for Summary Judgment in this case even before the Defendants were served with the Complaint. While the Court is bound by the four

Second, the overbroad categories of property that Plaintiffs allege was converted is not even recoverable in an action for conversion. The Complaint alleged that Defendants converted "money," but it does not allege any specific and identifiable money converted. *Taubenfeld v. Lasko*, 324 So. 3d 529 (Fla. 4th DCA 2021)(money can only be the subject of conversion when it consists of specific money capable of identification).[2] The Complaint also alleged that Defendants converted "confidential business information" and "trade secrets;" however, such claims are preempted by Florida Uniform Trade Secret Act ("FUTSA"). *Taubenfeld*, 324 So. 3d 529 (FUTSA preempted conversion claim that was based upon the conversion of trade secrets).[3] Similarly, Plaintiffs' claim that Defendants converted "intellectual property" and "trademarks," is preempted by copyright and trademark laws. *See Poet Theatricals Marine, LLC v. Celebrity Cruises, Inc.*, 515 F. Supp. 3d 1292 (S.D. Fla. 2021)(when a conversion claim rests on an allegation of wrongful taking of intellectual property, it is equivalent to a copyright infringement claim and thus preempted).

Third, both **Plaintiffs** jointly sued Defendants for conversion of a trademark even though plaintiff, Mirayint, is not even alleged to own the trademark, Life at Sea Cruises. *Page v. Matthews*,

---

corners of the Complaint when determining a Motion to Dismiss and cannot consider the Motion for Summary Judgment or affidavit filed in support thereof in testing the legal sufficiency of the allegations in the Complaint, it must be noted that the Motion creates even more confusion as to the alleged wrongful acts being sued for because it contains different facts than those alleged in the letter attached as Exhibit 1 to the Complaint. *See Stubbs v. Plantation General Hosp. Ltd. Pshp.*, 988 so. 2d 683 (Fla. 4th DCA 2008)(trial court improperly went beyond four corners of the complaint when it improperly relied upon an affidavit in determining a motion to dismiss).

[2] Notably, the only reference to any "money" in Exhibit 1, contradicts the allegations in Count I, as Exhibit 1 contends that money was taken by another individual (not Defendants), and also states that this individual "eventually returned" the money. *See Ginsberg v. Lennar Fla. Holdings, Inc.*, 645 So.2d 490 (Fla. 3d DCA 1994)("exhibits attached to the complaint are controlling and, thus, where allegations of complaint are contradicted by exhibits, plain meaning of exhibits control").

[3] FUTSA also preempts the other tort claims in the Complaint to the extent they are premised on Defendants' alleged misappropriation of a trade secret. *See* Fla. Stat. § 688.008 (FUTSA displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret).

386 So. 2d 815 (Fla. 5th DCA 1980)("In Florida, an action for conversion is regarded as a possessory action and the plaintiff must have a present or immediate right of possession of the property in question.").

Fourth, to the extent that the "intellectual property" or "confidential business information" allegedly converted is social media accounts, then fatally missing from the Complaint are any allegations that Plaintiffs own the web domains/websites that Defendants allegedly converted. *Industrial Park Development Corp. v. American Ex. Bank, FSB*, 960 F. Supp. 2d 1363 (M.D. Fla. 2013)("in order to state a claim of conversion, one must allege facts sufficient to show ownership of the subject property and facts that the other party wrongfully asserted dominion over that property").

Lastly, the Court must strike the improper equitable remedy of permanent injunctive relief sought in this claim.[4] *See In re Tuscany Energy, LLC*, 581 BR 681 (S.D. Fla. 2018)(plaintiff's claim for conversion (and other claims) do not, as a matter of law, support the equitable relief requested in the complaint; such claim culminates in money judgements, not equitable relief).

2. Plaintiffs fail to properly plead a claim for defamation.

Plaintiffs next claim that Defendants defamed them in Count II of the Complaint. This claim must be dismissed because it fails to allege necessary, critical facts to state a valid defamation claim.[5]

[4] The appropriate procedural device for challenging a portion of a cause of action seeking an improper remedy is a motion to strike. *See Abstract Co. of Sarasota v. Roberts*, 144 So. 2d 3 (Fla. 2d DCA 1962)(stating that the proper method of attacking allegations of a complaint with reference to allegations of improper damages is a motion to strike directed to the inappropriate remedy).

[5] To state a cause of action for defamation, Plaintiffs must allege: (1) Defendants published a false statement; (2) about Plaintiffs; (3) to a third party; and (4) Plaintiffs suffered damages as a result of the publication. *Razner v. Wellington Regional Medical Center*, 837 So. 2d 437 (Fla. 4th DCA 2003).

First, both **Plaintiffs** jointly sued Defendants for defamation even though the letter attached as Exhibit 1 to the Complaint fails to allege that Defendants ever made any statements (nevertheless defamatory statements) of or concerning plaintiff, Life at Sea Cruises, Inc. *See Mclver v. Tallahassee Democrat, Inc.,* 489 So. 2d 793 (Fla. 1st DCA 1986)(the defamatory statement must be of or concerning the plaintiff).

Second, Plaintiffs fail to allege *when* the alleged statements about Mirayint were posted or link a particular remark to a particular defendant. *Jackson v. North Broward County Hosp. Dist.*, 766 So. 2d 256 (Fla. 4th DCA)(affirming dismissal of a defamation claim where the complaint failed to specifically identify the persons to whom the allegedly defamatory were made as well as link the particular remarks to a particular defendant); *Woodhull v. Mascarella*, 2009 WL 1790383 (N.D. Fla. 2009)(same).

Third, the subject statements are opinions and not defamatory as a matter of law. Florida courts have long recognized that the prompt dismissal of meritless defamation serves First Amendment values by protecting the robust discussion of public affairs from the burden and expense of litigation. *See Stewart v. Sun Sentinel Co.*, 695 So. 2d 360, 363 (Fla. 4th DCA 1997)("Where the facts are not in dispute in defamation cases…pretrial dispositions are 'especially appropriate' because of the chilling effect these cases have on freedom of speech."). Florida law does not allow "pure opinion" to form the basis for a defamation claim. *See Stembridge v. Mintz,* 652 So. 2d 444 (Fla. 3d DCA 1995). "Pure opinion is based upon facts that the communicator sets forth in a publication, or that are otherwise known or available to the reader or the listener as a member of the public." *Morse v. Ripken,* 707 So. 2d 921, 922 (Fla. 4th DCA 1998). "Whether a statement is one of fact or one of opinion is a question of law" for resolution by courts. *Id.*

In this case, presumably, the alleged defamatory statements upon which the defamation claim is based are contained in a social media post copied into the letter attached as Exhibit 1 to the Complaint, which states that the Gemini vessel "is completely unseaworthy, cannot get USPH certified, and will never be able to complete a world cruise." However, as a matter of law, these statements are of pure opinion because the facts upon which the declarant's opinions are based are also disclosed in the challenged social media post (*i.e.*, Mirayint refused to answer questions on where money will be kept, status of FMC bond, verified ports, escrow balances; Mirayint refused access to Gemini room and lied about the status of Gemini). *Id.* (dismissal of defamation claim where the court concluded that facts upon which declarant based her opinion were conveyed to the reader); *Town of Sewall's Point v. Rhodes*, 852 So. 2d 949 (Fla. 4th DCA 2003)(alleged defamatory statement was non-actionable pure opinion because "all of the facts upon which [the neighbor] based her opinion are contained in the photograph"); *Stembridge,* 652 So. 2d at 447 (ordering judgment for defendant because challenged statements were based on fully disclosed facts).

Lastly, the court must strike the improper remedy for permanent injunctive relief sought in this claim. *Ahern v. Leon* v, 332 So. 3d 1028 (Fla. 4th DCA 2022)("An injunction may not be directed to prevent defamatory speech…prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.").

3. Plaintiffs fail to properly plead a claim for tortious interference.

Plaintiffs' next claim is that "Petterson, directly and acting through the other Defendants, tortiously interfered with Plaintiffs' unidentified "advantageous business relationships" as detailed in a letter attached as Exhibit 1 to the Complaint."[6] However, Exhibit 1 fails to identify a single

[6] To state a cause of action for tortious interference, Plaintiffs must allege: (1) the existence of a business relationship under which they have legal rights; (2) Defendants' knowledge of the relationship; (3) Defendants intentionally and unjustifiably interfered with the relationship; and

business relationship with which Defendants allegedly tortiously interfered. Rather, Exhibit 1 merely refers to these relationships vaguely as "including vendors, supplies, customers, and workers." Count III must be dismissed because it fails to identify a single specific vendor, supplier, customer, or worker who is the subject of the tortious interference claim. *See Perma-Liner Industries, LLC v. D'Hulster*, 2022 WL 772736 (M.D. Fla. 2022), *adopted*, 2022 WL 768362 (M.D. Fla. 2022)(tortious interference claim is insufficient; allegation that defendant interfered with plaintiff's business relationships with customers, vendors and suppliers is too conclusory).

Interference with the public at large or customers in thin air does not support a claim for tortious interference. To be actionable, tortious interference "must be based on a business relationship with an ***identifiable*** party or parties." *Miracle 7, Inc. v. Halo Couture, LLC*, 2014 WL 11696708 (S.D. Fla. 2014); *see Sarkis v. Pafford Oil*, 697 So. 2d 524 (Fla. 1st DCA 1997)(affirming trial court's dismissal of tortious interference claim where the amended complaint failed to identify the "customers" who were the subject of alleged interference).[7]

Additionally, the claim for tortious interference also fails because Plaintiffs fail to identify the acts or conduct that constituted the alleged "interference" or where or when the alleged interference occurred. *Am. Seafood, Inc.*, 598 So.2d at 273 (affirming dismissal of tortious interference claim where complaint failed to allege essential facts upon which the claim is based, including, where or when the alleged interference occurred); *see Pyles v United Airlines Inc.*, 79

---

(4) that Plaintiffs suffered damages from the interference. *Ethan Allen, Inc. v. Georgetown Manor, Inc.*, 647 So. 2d 812 (Fla. 1994).

[7] *See also Coach Services, Inc. v. 777 Lucky Accessories, Inc.*, 752 F. Supp. 2d 1271 (S.D. Fla. 2010)(tortious interference claim failed because the counterclaim failed to allege any identifiable customers who were the subject of the alleged interference; assertion that the counter-defendant interfered with an relationship with "various customers" was too vague and abstract to satisfy first element of a tortious interference claim); *Fin-S Tech, LLC v. Surf Hardware International-USA, Inc.* 2014 WL 12461349 (SD Fla. 2014)(same).

F.3d 1046, 1049 (11th Cir. 1996)(affirming dismissal of tortious interference claims for failure to allege any affirmative act by defendant that interferes with the plaintiff's business relationship).[8]

Moreover, the tortious interference claim also fails as a matter of law because Defendants were not strangers to the customer relationships that are the subject of the claim. Here, Plaintiffs allege that Defendants had a financial interest (*i.e.*, commissions) in their customer relationships; however, for the interference to be "unjustified," the interfering defendant must be a third party, a stranger to the business relationship." *SCI Funeral Services of Fla. v. Henry*, 839 So 2d 702 (Fla. 3d DCA 2002)(A defendant is not a "stranger" to a business relationship if the defendant "has any beneficial or economic interest in, or control over, that relationship."); *Palm Beach County Health Care District v. Professional Medical Education, Inc.*, 13 So. 3d 1090 (Fla. 4th DCA 2009)(same).

Lastly, the Court must strike the improper equitable remedy of permanent injunctive relief sought in this claim. *See supra In re Tuscany Energy, LLC*, 581 BR at 681.

[8] To the extent the alleged unidentified tortious interference is premised upon the defamatory statements underlying the defamation claim, then this claim must also fail because "Florida adheres to the single publication rule: a single publication may give rise to only a single cause of action, and plaintiffs may not proceed on multiple claims for the same challenged defamatory acts." *Tobinick v. Novella*, 2015 WL 328236 (S.D. Fla. 2015)(dismissing tortious interference claim on the basis of Florida's single publication/single action rule; holding that tortious interference claim is barred by the single action rule because the claim involves alleged false and/or defamatory statements and Florida's single publication/single action rule bars multiple counts for what is essentially the same defamatory publication or event); *Klayman v. Judicial Watch,* 22 F. Supp. 3d 1240 (S.D. Fla. 2014)(cause of action for tortious interference is precluded under Florida's single publication/single action rule if based on analogous underlying facts and the causes of action are intended to compensate for the same alleged harm as the defamation claim); *Miller v. Gizmodo Media Group, LLC,* 2019 WL 1790248 (S.D. Fla. 2019)(dismissing tortious interference claim under Florida's single action rule as duplicative of the defamation claim). Thus, Florida's single action rule requires the court to dismiss concurrent counts for related torts based on the same publication and underlying facts as the defamation count.

4. Plaintiffs fail to properly plead a claim for trademark infringement.

Plaintiffs' final claim against the Defendants is a claim for trademark infringement pursuant to Florida Statutes Ch. 495.[9] Trademark infringement occurs when someone uses a mark or any colorable imitation of a mark in connection with the sale or offering of goods or services without the owner's permission, and the use is likely to cause confusion, mistake, or deception. *Great Southern Bank v. First Southern Bank*, 625 So. 2d 463 (Fla. 1993)("a cause of action for infringement is based on 'likelihood of confusion'" and approving of the factors necessary to determine trademark infringement under ch. 495).

While the Complaint contains a conclusory allegation that Defendants "used the trademark name as if he was the owner of same," the Complaint does not contend that Defendants used the trademark name in connection with the sale of goods or services or that the use is likely to cause customer confusion. This generic and vague allegation provides no facts to establish when and under what circumstances the name was allegedly used and fatally fails to allege that the use was in connection with the sale of a good or service likely to cause customer confusion to allege a cause of action for trademark infringement under Fla. Stat. Ch. 495.

III. Conclusion

WHEREFORE, Defendants, request that this Court enter an Order dismissing the Complaint in its entirety and for all further relief that this Court deems necessary and proper.

[9] To state a claim for trademark infringement pursuant to Florida Statutes Ch. 495, Plaintiffs must allege facts to establish, *inter alia*: (1) Plaintiffs' ownership of a valid protectable trademark and (2) the likelihood of confusion caused by Defendants' use or intended use of a certain trademark in connection with the sale, distribution, or advertising of goods or services. *See* Fla. Stat. §495.131 (identifying the elements for trademark infringement).

ROSENTHAL LAW GROUP
2115 N. Commerce Parkway
Weston, Florida 33326
(954) 384-9200 Telephone
(954) 384-0017 Facsimile

By: /s/ Alex P. Rosenthal
Alex P. Rosenthal, Esq.
Fla. Bar No. 815160
alex@rosenthalcounsel.com
Amanda J. Jones, Esq.
Fla. Bar. No. 26260
amanda@rosenthalcounsel.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was filed with the Clerk of the Courts and served via email through the Florida Courts eFiling Portal on the 21st day of July 2023 in accordance with Rule 2.516 of the Florida Rules of Judicial Administration.

/s/ Alex P. Rosenthal
Alex P. Rosenthal