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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION - CIVIL

JACOB SINGER AS TRUSTEE OF  
THE MICHAEL SINGER 2005 GST  
EXEMPT TRUST FOR JACOB  
SINGER,

*Plaintiff,*

v.

DAVID SINGER, MICHAEL SINGER,  
INC. T/A MICHAEL SINGER REAL  
ESTATE, KIRK ELDRIDGE and  
MAZARS USA LLP,

*Defendants.*

JULY TERM, 2022

No. 1119

COMMERCE PROGRAM

CONTROL NUMBER 24072889  
24072906  
24072904

DOCKETED

DEC 23 2024

R. POSTELL  
COMMERCE PROGRAM

**ORDER**

AND NOW, this 23rd day of December 2024, upon consideration of the cross-motions for summary judgment of the plaintiff Jacob Singer as trustee of the 2005 GST Exempt Trust for Jacob Singer, and of the defendants David Singer, Michael Singer, Inc. t/a Michael Singer Real Estate (the "Singer defendants"), and Mazars USA LP and Kirk Eldridge (the "Mazars defendants"), it is **ORDERED** that:

1. The motion of the Singer defendants is **GRANTED**;
2. The motion of the Mazars defendants is **GRANTED**;
3. The motion of Jacob Singer is **GRANTED** as to the Singer defendants' third-party claims and counterclaims, and **DENIED** as to his claims; and
4. The complaint is **DISMISSED** with prejudice.

BY THE COURT:

  
ABBE F. FLETMAN, J.

WSJDM Jacob Singer As Trustee Of Michael Singer 2005 Gst [RCP]



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**No. 1119**

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**24072906**

**24072904**

**OPINION**

Before the Court are three cross-motions for summary judgment. For the following reasons, the Court grants the motions of defendants David Singer and Michael Singer, Inc. t/a Michael Singer Real Estate (the “Singer defendants”), and of Mazars USA LP and Kirk Eldridge (the “Mazars defendants”) to the claims of plaintiff Jacob Singer as trustee of the 2005 GST Exempt Trust for Jacob Singer; denies Jacob Singer’s motion for summary judgment to his own claims; grants Jacob Singer’s motion for summary judgment to the Singer defendants’ third-party claims and counterclaims; and dismisses the entire action with prejudice.

**I. Background**

This action is part of a family dispute over the management of a trust. On June 2, 2005, Michael Singer established the Michael Singer 2005 GST Exempt Trust for Jacob Singer (“the Trust”) for the benefit of his son, Jacob Singer, and Jacob Singer’s children. (Singer defendants’ motion for summary judgment, ¶15, Trial Docket (“Dkt.”) at 7/15/2024; response to motion, ¶15, Dkt. at 8/15/2024.) The Trust is managed by Michael Singer, Inc. (“MSI”). David Singer has

been the owner of MSI since 2012. (Singer defendants' motion, ¶10; deposition of Jacob Singer 5/29/2024, 55:4-9, Exhibit C to Singer defendants' motion.) The Trust owns multiple income-generating real properties, in whole or in part. (Complaint, ¶10, Dkt. at 7/14/2022; Singer defendants' answer to complaint, ¶10, Dkt. at 3/14/2023.)

Jacob Singer filed his complaint on July 14, 2022. He alleges that he has a right to full control of the Trust, and that the Singer defendants have refused to provide him with the information and access that he requested. (Complaint ¶¶14-18.) He alleges that the Mazars defendants refused to provide him with financial information about the Trust assets. (Complaint, ¶¶19-21.) Jacob Singer asserts that the defendants have stolen from the trust and allowed its assets to fall into disrepair. (Complaint, ¶24, 26-29.)

Jacob Singer brings claims for fraudulent conveyance, fraud, conversion, replevin, accounting, and conspiracy against the Singer defendants, and claims for conversion, accounting, replevin, and conspiracy against the Mazars defendants. (Complaint, ¶¶35-133.)

In their counterclaims and separate third-party complaint against Jacob Singer individually, the Singer defendants bring claims of tortious interference with business relations, breach of contract, and defamation, based on Jacob Singer's alleged interference with MSI's management of the Trust by filing his complaint (Amended new matter and amended counterclaims, ¶¶222-223, Dkt. at 4/24/2023); interfering in MSI's relationships with tenants, vendors, contractors, suppliers, and bankers (Amended new matter and amended counterclaims, ¶¶235-236; amended third-party complaint, ¶¶86-88, Dkt. at 5/08/2023); and defaming MSI to unidentified parties. (Amended new matter and amended counterclaims, ¶¶244-251; amended third-party complaint, ¶¶92-99.)

## II. Discussion

### a. Jacob Singer's claims

It is well-settled that “a trial court shall enter judgment if, after the completion of discovery, an adverse party who will bear the burden of proof at trial fails to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to the jury.” *Phillips v. Selig*, 959 A.2d 420, 427 (Pa. Super. 2008). “Where the non-moving party bears the burden of proof on an issue, he may not merely rely on his pleadings or answers in order to survive summary judgment. Failure of a non-moving party to adduce sufficient evidence on an issue essential to his case and on which it bears the burden of proof ...establishes the entitlement of the moving party to judgment as a matter of law.” *Murphy v. Duquesne Univ. of the Holy Ghost*, 777 A.2d 418, 429 (Pa. 2001). “A jury cannot be allowed to reach a verdict merely on the basis of speculation or conjecture.” *Young v. Com., Dep't of Transp.*, 744 A.2d 1276, 1277 (Pa. 2000).

Jacob Singer's claims are based on allegations that the Singer defendants, aided by the Mazar defendants: overpaid on obligations owed on the Trust properties (Deposition of Jacob Singer 5/21/24, pp.198:22-200:7, Exhibit B to Singer defendants' motion, Dkt. at 7/15/2024); diverted funds from the Trust (*id.* at 226:14-19, 227:8-19); otherwise misappropriated Trust income (Deposition of Jacob Singer 5/29/2024, pp. 66:18-68:12, Exhibit C to Singer defendants' motion); and allowed some of the properties owned by the Trust to fall into disrepair (Deposition of Jacob Singer 5/21/2024, pp.112:9-120:20, Exhibit B to Singer defendants' motion). He also alleges that they charged below-market rent for Trust properties (Deposition of Jacob Singer 5/21/2024, pp. 261:17-263:13, Exhibit B to Singer defendants' motion).

Jacob Singer has not adduced sufficient evidence, neither of the defendants' liability, nor of his alleged damages, to present any claims to the finder of fact and summary judgment for the defendants is therefore appropriate.

### **1. Lack of expert report**

Jacob Singer makes several specific allegations of fraud and conversion by the Singer defendants. He asserts that that the Singer defendants overpaid for debts owed to the Trust by more than \$6.4 million. (Deposition of Jacob Singer 5/21/24, pp. 198:22-200:7, Exhibit B to Singer defendants' motion.) He asserts that they stole more than \$20 million via "proprietor withdraws" from the Trust. (*Id.* at 226:14-19, 227:8-19.) He further asserts that they misappropriated more than \$16 million of income from Trust properties. (Deposition of Jacob Singer 5/29/2024, pp.66:18-68:12, Exhibit C to Singer defendants' motion.) Jacob Singer bases these allegations on his own examination of the Trust's records, and his own calculations. (Deposition of Jacob Singer 5/21/2024, pp. 154:2 – 155:8, 179:24 –180:7, 226:14-19, 227:8-19, Exhibit B to Singer defendants' motion.)

Jacob Singer provided no expert report. He argues that he could not engage an expert until he had more discovery, and that the evidence is straightforward enough that an expert is unnecessary. (Response to Singer defendants' motion, ¶¶49-50; Deposition of Jacob Singer 5/29/24, p.77:7-10, Exhibit C to Singer defendants' motion.)

The Singer defendants produced the expert report of Glenn Newman of Newman Forensics, LLC, a certified public accountant. (Newman report, Exhibit E to Singer defendants' motion.) The report states that Jacob Singer's claims are unsupported, based on incomplete information, or simply mistaken. (*Id.*)

The Pennsylvania Supreme Court has explained when an expert witness is necessary:

Expert testimony is often employed to help jurors understand issues and evidence which is outside of the average juror's normal realm of experience. We have stated that, the employment of testimony of an expert rises from necessity, a necessity born of the fact that the subject matter of the inquiry is one involving special skill and training beyond the ken of the ordinary layman.... Conversely, if all the primary facts can be accurately described to a jury and if the jury is as capable of comprehending and understanding such facts and drawing correct conclusions from them as are witnesses possessed of special training, experience or observation, then there is no need for the testimony of an expert.

*Young v. Com., Dep't of Transp.*, 744 A.2d 1276, 1278 (Pa. 2000).

When an expert is necessary to establish a *prima facie* case, the Court must grant summary judgment in their absence. *Miller v. Sacred Heart Hosp.*, 753 A.2d 829, 833 (Pa. Super. 2000). Jacob Singer argues that this matter is simple enough to be understood by an ordinary layperson. (Jacob Singer's response to Singer defendants' motion, ¶51.) An ordinary layperson, however, cannot without assistance understand the books of an entity like the Trust, which owns dozens of rent-producing properties, and determine whether money was improperly diverted from it. Indeed, his claim for \$20 million in proprietary withdrawals, and the defendants' defense to that claim, turns on the difference between cash and equity in a capital account. (Deposition of Jacob Singer 5/21/24, pp. 226:14 – 227:3, Exhibit B to Singer defendants' motion; Deposition of Kirk Eldridge, 6/5/2024, pp. 93:19-95:12, Exhibit U to Jacob's response to Singer defendants' motion.) This is not within a layperson's understanding, nor are the other complex financial transactions at issue.<sup>1</sup> Because Jacob Singer failed to produce an expert report, summary judgment is granted to the defendants on his claims.

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<sup>1</sup> Although the Court can find no controlling precedent on point, the Superior Court has noted in a nonprecedential opinion that when a case involves "complex accounting issues...an expert witness [may be] necessary to "elucidate complex issues for a jury of laypersons." *Battaglini & Co., P.C. v. Isadore Brodsky Inst. for Blood Diseases & Cancer*, 2015 WL 7573077, at \*6 (Pa. Super. Ct. Jan. 14, 2015.) See also *Polites v. Contorchick*, 2017 WL 991096, at \*2 (Pa. Super. Ct.

## 2. Lack of damages evidence

“Generally, under Pennsylvania law, damages need not be proved with mathematical certainty, but only with reasonable certainty.” *Delahanty v. First Pennsylvania Bank, N.A.*, 464 A.2d 1243, 1257 (Pa. Super. 1983). “It is well established that mere uncertainty as to the amount of damages will not bar recovery where it is clear that damages were the certain result of the defendant’s conduct.” *Pugh v. Holmes*, 405 A.2d 897, 909–10 (Pa. 1979). Jacob Singer has not adduced evidence that his damages exist, nor that they are the result of the defendants’ conduct.

Throughout his deposition testimony, Jacob Singer was unable to articulate his damages. When asked to describe his damages in the case, he responded, “At this point, due to lack of discovery produced by the defendants, I don't have the full calculation of all the damages made.” (Deposition of Jacob Singer 5/29/2024, pp. 225:24 – 226:4, Exhibit C to Singer defendants’ motion.) When asked, “[P]lease provide specific numbers that you have now discovered in this case that you are claiming for actual damages caused by David Singer,” he responded, “Due to the lack of production of discovery, those numbers are incalculable at this time. When the numbers are -- when full discovery that we asked for is produced, then those numbers could be calculated.” (*Id.* at p.68:2-10.)

Jacob Singer cannot point to non-speculative evidence of the existence of his damages. His analysis of supposed overpayments on the Trust’s promissory notes does not, by his own admission, include all obligations or all payments. (Deposition of Jacob Singer 5/21/2024, pp. 175:2-5, 201: 2–9, Exhibit B to Singer defendants’ motion.) The supposed “proprietor withdraws,” according to the expert and defendant Kirk Eldridge, may not have been

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Mar. 14, 2017) (nonprecedential opinion affirming trial court’s finding that “expert testimony was necessary for analysis of partnership financial records.”)

withdrawals at all. (Newman Report, ¶¶43-46, Exhibit E to Singer defendants' motion; deposition of Kirk Eldridge, 6/5/2024, pp. 93:19-95:12, Exhibit U to Jacob's response to Singer defendants' motion.) Jacob Singer insisted that they represent withdrawals of cash from the capital account but admitted that this is based on his own understanding of what a capital account is, and that he has not consulted with his accountant to confirm this. (Deposition of Jacob Singer 5/29/2024, pp. 282:5-283:7, Exhibit B to Mazar defendants' motion, Dkt. at 7/16/2024.) Jacob Singer could not provide photographic evidence or clear testimony about the properties and their state to support his claim that Trust properties were in disrepair. (Deposition of Jacob Singer 5/21/2024, pp.118:14-133:22, Exhibit B to Singer defendants' motion.) Finally, Jacob Singer asserted in his deposition testimony that he was unable to quantify his damages caused by the Singer defendants charging below-market rent. (Deposition of Jacob Singer 5/21/2024, pp. 261:17-263:13, Exhibit B to Singer defendants' motion.) Jacob Singer argues that he has been prejudiced by the Singer defendants failing to provide him with the information and access to the properties that he would need to make out the claim. (Response to Singer defendants' motion, ¶¶38-39.) It is undisputed, however, that Jacob Singer received the unredacted leases from the Singer defendants in response to the Court's discovery order of April 11, 2024. (Order, Dkt. at 4/11/2024.) Discovery has long since closed, and Jacob Singer cannot defeat summary judgment by complaining about lack of information and without identifiable damages.

**b. The Singer defendants' counterclaims and third-party claims**

Jacob Singer also seeks summary judgment on the Singer defendants' counterclaims and third-party claims against Jacob Singer individually, for breach of contract, tortious interference with business relations, and defamation. The Court grants summary judgment on these claims, and they are dismissed.



## **1. Breach of contract**

The Singer defendants claim that Jacob Singer breached an oral agreement between himself and MSI, which provided that MSI would manage the properties that the Trust owns, to protect the repayment of the promissory notes and advances Michael Singer made to Jacob Singer. (Amended new matter and amended counterclaims, ¶¶222-223, Dkt. at 4/24/2023.) They argue that by bringing this action, Jacob Singer interfered with MSI's management of the properties and thereby breached this agreement. (*Id.* at ¶228.)

“As a general rule there is no civil liability for statements made in the pleadings or during trial or argument of a case so long as the statements are pertinent.” *Panitz v. Behrend*, 632 A.2d 562, 564 (Pa. Super. 1993). This litigation privilege generally applies to tort claims, but it is “equally applicable where the cause of action is stated in terms of misrepresentation or a contractual requirement to exercise due care.” *Id.* “The reasons for the absolute privilege are well recognized. . . to afford freedom of access to the courts, to witnesses to encourage their complete and un intimidated testimony in court, and to counsel to enable him to best represent his client's interests.” *Binder v. Triangle Publications, Inc.*, 275 A.2d 53, 56 (Pa. 1971). The fact of Jacob Singer filing his complaint is privileged and cannot be a basis for liability.

Moreover, the Singer defendants have pointed to no evidence that would show how the filing of the complaint caused them damages. For these reasons, the breach of contract claim is dismissed.

## **2. Tortious interference**

The Singer defendants claim that Jacob Singer interfered with their business relationships with tenants, vendors, contractors, suppliers, and bankers. (Amended new matter and amended

counterclaims, ¶¶235-236, Dkt. at 4/24/2023; Amended third-party complaint, ¶¶86-88, Dkt. at 5/08/2023.)

The elements of tortious interference are:

- (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.

*Pawlowski v. Smorto*, 588 A.2d 36, 40 (Pa. Super. 1991).

The Singer defendants provide no evidence of specific actions Jacob Singer took to harm their business relationships. They cite to sections of David Singer's deposition testimony that do not appear to have been provided to the Court and therefore are not part of the summary judgment record and may not be considered. (Singer defendants' memorandum of law in opposition to Jacob Singer's motion for summary judgment, p.22, Dkt. at 8/15/2024.)

Accordingly, summary judgment is granted on this claim and it is dismissed.

### **3. Defamation**

In an action for defamation, the plaintiff has the burden of proving:

- (1) The defamatory character of the communication.
- (2) Its publication by the defendant.
- (3) Its application to the plaintiff.
- (4) The understanding by the recipient of its defamatory meaning.
- (5) The understanding by the recipient of it as intended to be applied to the plaintiff.
- (6) Special harm resulting to the plaintiff from its publication.
- (7) Abuse of a conditionally privileged occasion.

42 PA. STAT. AND CONS. STAT. ANN. § 8343 (West, Westlaw, through Act 10 of the 2024 Regular Session.)

The Singer defendants claim that Jacob Singer defamed them by alleging that they mismanaged the properties in the Trust, stole money from the Trust, and transferred properties out of the Trust. (Amended new matter and amended counterclaims, ¶¶245-247; Amended third-party complaint, ¶¶93-95.) The Singer defendants, however, do not identify specifically what statements were made, to whom, or the recipients' understanding of the meaning. In response to Jacob Singer's motion, the Singer defendants again cite to deposition testimony from David Singer that does not appear to have been provide to the Court. (Singer defendants' memorandum of law in opposition to Jacob Singer's motion for summary judgment, p.22, Dkt. at 8/15/2024.) Summary judgment is granted to Jacob Singer on this claim as well.

### **III. Conclusion**

For all these reasons, the Court grants summary judgment to defendants David Singer and Michael Singer Inc. t/a Michael Singer Real Estate, Mazars USA LP and Kirk Eldridge as to Jacob Singer's claims; denies Jacob Singer's motion for summary judgment as to his own claims; grants Jacob Singer's motion for summary judgment as to the third-party claims and counterclaims of David Signer and Michael Singer Inc. t/a Michael Singer Real Estate; and dismisses the entire action with prejudice.

**BY THE COURT:**

  
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**ABBE F. FLETMAN, J.**