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LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

COURT OF COMMON PLEAS
TOM ORLANDO

TOM ORLANDO, Clerk
JOURNAL ENTRY
Christopher R. Rothgery, Judge

Date 1/4/16

Case No. 14CV183910

CHRISTOPHER COLE
Plaintiff

ERIC H ZAGRANS
Plaintiff's Attorney (216) 771-1000

VS

BARBARA COOK, et al.
Defendant

RICHARD S MITCHELL
Defendant's Attorney (216) 623-0150

This matter is before this Court pursuant to the Civ.R. 56 Motions for Summary Judgment filed by Defendants Barbara Cook and John D. Rybarczyk, hereinafter "Defendants," unless otherwise specified. Plaintiff filed a Brief in Opposition to each of Defendants' Motions and Defendants filed a Reply Brief in Support of their original Motions. Based upon all the above filings and evidence properly before this Court in support of said Motions and Briefs, this Court rules as follows.

LEGAL STANDARD FOR SUMMARY JUDGMENT

In *Dresher v. Burt*, 75 Ohio St.3d 280, the Supreme Court of Ohio held that the moving party in regard to a Civ.R. 56 motion for summary judgment:

[B]ears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on the essential element(s) of the nonmoving party's claims. The moving party cannot discharge its initial burden under Civ.R. 56 simply by making a conclusory assertion that the nonmoving party has no evidence to prove its case. Rather, the moving party must be able to specifically

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TOM ORLANDO, LORAIN COUNTY CLERK OF THE COURT OF COMMON PLEAS
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point to some *evidence* of the type listed in Civ.R. 56(C) which affirmatively demonstrates that the nonmoving party has no evidence to support the nonmoving party's claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. However, if the moving party has satisfied its initial burden, the nonmoving party then has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue for trial and, if the nonmovant does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party.

Id. at 293.

According to *Anderson v. Liberty Lobby, Inc.*, (1986) 477 U.S. 242 “the threshold inquiry of determining whether there is the need for a trial – whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.” *Id.* at 250. The existence of a genuine issue of material fact cannot be demonstrated by merely asserting legal conclusions. *Griggy v. City of Cuyahoga Falls*, 9th Dist. No. 22753, 2006-Ohio-252, ¶11. In this context, material facts are “those that might affect the outcome of the suit under the governing law of the case.” *Westwinds Dev. Corp. v. Outcalt*, 2009 WL 1741978, ¶26 (Ohio App. 11th Dist.). See also *Coleman v. Barnovsky*, 11th Dist. No.2004-T-0101, 2005-Ohio-5867, at ¶ 13. The mere existence of factual disputes, however, if not material, will not defeat a motion for summary judgment. *Buckeye Union Ins. Co. v. Consol. Stores Corp.* (1990) 68 Ohio App.3d 19, 22-23, 587 N.E.2d 391. The onus is upon this Court to determine “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Kemper v. Saline Lectronics*, 366 F.Supp.2d 550, 554 (N.D. Ohio, 2005) quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-252, 106 S.Ct. 2505, 2510-11,



91 L.Ed.2d 202 (1986). See also *Atchley v. RK Co.*, 224 F.3d 537, 539 (6th Cir.2000); *Herald v. Ohio Valley Bank*, 2001 WL 164677 (Ohio App. 4th Dist.).

MOTIONS FOR SUMMARY JUDGMENT

First, Defendants seek summary judgment as to the claims contained in Plaintiff's Complaint. Separately, Defendants seek summary judgment in their favor as to the claim they have alleged in their Counterclaim. This Court will address each of Defendants' Motions separately.

a. Defendants' Motion for Summary Judgment as to the claims contained in Plaintiff's Complaint

The Court will first address Defendants' Motion for Summary Judgment as to the claims contained in Plaintiff's Complaint. Plaintiff's Complaint alleges five claims: 1) fraud, 2) conversion, 3) tortious breach of contract/tortious interference with contract, 4) breach of fiduciary duty, and 5) civil conspiracy. Defendants contend that Plaintiff's entire Complaint is barred under the doctrine of *res judicata* and therefore they are entitled to summary judgment. Defendants also claim they are entitled to summary judgment as Plaintiff has failed to establish sufficient grounds to support the claims contained within his Complaint.



i. Plaintiff's claims in his Complaint are barred by the doctrine of res judicata

Defendants claim they are entitled to summary judgment on all of Plaintiff's claims in his Complaint based upon the doctrine of *res judicata*. Specifically, Defendants contend that the numerous decisions made in the prior litigation between the parties and privies of the parties preclude litigation of the issues complained of in Plaintiff's Complaint. The doctrine of *res judicata* sets forth that a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action. *Grava v. Parkman Township*, 1995-Ohio-331 at 229. The Ohio Supreme Court has also held that "[i]t has long been the law of Ohio that 'an existing final judgment or decree between the parties to litigation is conclusive as to all claims which were or might have been litigated in a first lawsuit.'" *Natl. Amusements, Inc. v. Springdale* (1990), 53 Ohio St.3d 60, 62 quoting *Rogers v. Whitehall* (1986), 25 Ohio St.3d 67, 69. A review of the Complaint filed herein, and the claims Plaintiff has made in prior litigation, reveals that Plaintiff's claims are borne from the same nucleus of facts. This Court previously ruled against Plaintiff as to such claims based upon multiple deficiencies. Said ruling was not appealed and therefore has preclusive effect as a final judgment on said issues. Although the Defendants in that suit are not the same as those herein, the doctrine of *res judicata* still applies to prevent the injustice of continuous claims under slightly different legal theories from being brought against parties who should have been named in the original action. In this matter, the Defendants named herein were both privy to the Defendants in the prior litigation. The Ohio Supreme Court aptly stated the following, which this Court finds applicable to the issues at bar herein:



“[B]y providing parties with an incentive to resolve conclusively an entire controversy involving the same core of facts, such refusal establishes certainty in legal relations and individual rights, accords stability to judgments, and promotes the efficient use of limited judicial or quasi-judicial time and resources. The instability that would follow the establishment of a precedent disregarding the doctrine of *res judicata* for “equitable” reasons would be greater than the benefit that might result from relieving some cases of individual hardship.” *Grava*: at p. 230

The Court finds that Plaintiff’s claims in his Complaint filed herein are barred by the doctrine of *res judicata*. Therefore, the Court finds Defendants’ Motion for Summary Judgment on Plaintiff’s Complaint to be well-taken and granted as to all counts on this ground alone.

ii. *Plaintiff’s claim of fraud contained in Count One of Plaintiff’s Complaint*

In Count One of the Complaint, Plaintiff contends that Defendants have committed fraud by allegedly making different representations of who the majority shareholder of Puritas is, mishandling of the affairs of Puritas, and that such actions have caused damages to Plaintiff. The sum and substance of Plaintiff’s allegations in Count One is that Plaintiff contends that Defendants’ representations made to others has caused injury to himself. Such a claim for fraud is not supported by Ohio law. The Ohio Supreme Court has held that a party cannot maintain an action for fraud when the fraudulent representations were not made to him to induce him to act upon them in any matter affecting his own interests. *Sooy v. Ross Incineration Services, Inc.*, 1999 WL 975112 at *10 citing *Wells v. Cook* (1865), 16 Ohio St. 67, syllabus. Accordingly, a plaintiff claiming that a third party relied on a misrepresentation made by the defendant and that the plaintiff suffered injury thereby does not state a valid cause of action for fraud. *Id.* citing *Russell v. Northwood* (Feb. 27, 1998), Wood App. No WD-97-050. Plaintiff has offered no



evidence in his Brief in Opposition to point to material facts that he contends are in dispute. Further, Plaintiff has not addressed the point of law set forth in *Sooy* which would preclude his claim of fraud. As to Plaintiff's fraud claim, he only disputes the application of the doctrine of *res judicata* to said claim. That is a separate legal ground that Defendants asserted entitles them to summary judgment in this matter. As to Plaintiff's claim of fraud contained in Count One, this Court finds that Defendants have met their *Dresher* burden by pointing to the legal grounds entitling them to summary judgment and the lack of evidence to support such a claim under Plaintiff's theory. This Court further finds that Plaintiff has failed to point to any evidence that would show an issue of material fact exists or that the law does not support a granting of summary judgment in favor of Defendants on said claim. This Court finds the *Sooy* case to be controlling and that Defendants are entitled to summary judgment based upon the law set forth therein and the facts before this Court as to Plaintiff's claim in Count One. Therefore, Defendants' Motion for Summary Judgment as to Count One is well-taken and granted on this ground as well.

iii. *Plaintiff's claim of conversion contained in Count Two of Plaintiff's Complaint*

Defendants contend they are entitled to summary judgment on Count Two of Plaintiff's Complaint. In Count Two, Plaintiff alleges a claim for conversion. "Conversion is the wrongful exercise of dominion over property to the exclusion of the rights of the owner, or withholding it from his possession under a claim inconsistent with his rights." *Perez Bar & Grill v. Schneider*, 9th Dist., 2012-Ohio-5820 at ¶10. "The three basic elements of conversion are: (1) plaintiff's ownership or right to possession of the property at the time of the conversion; (2) defendant's



conversion by a wrongful act or disposition of plaintiff's property rights; and (3) damages." *Id.* The *Perez* Court went on to state: "[i]t is not necessary that the property be wrongfully obtained...[w]hen property is otherwise lawfully held, a demand and refusal ... are usually required to prove the conversion....[t]hus, if the defendant lawfully obtained possession of the property, the plaintiff must offer the defendant an opportunity to restore it to plaintiff's possession before plaintiff can maintain an action in conversion." *Id.*

In Plaintiff's claim for conversion, he asserts that his personal property is being held by Puritas Metal Products, Inc., not by the Defendants personally. Complaint ¶111. Puritas is not a Defendant in this litigation. Plaintiff alleges that Defendants, through their authority as majority shareholder or counsel for Puritas, have denied Plaintiff the enjoyment of his personal property by the continued holding of said property by Puritas. Complaint ¶84. Defendants deny having possession of Plaintiff's personal property. Exhibits 1 and 3. Plaintiff has offered no evidentiary support for the proposition that Defendants Barbara Cook and John Rybarczyk have refused to return Plaintiff's personal property or that they personally have the property. Essentially, Plaintiff's claim is one of conversion against Puritas, but with a belief, and no evidentiary support, that Defendants Barbara Cook and John Rybarczyk aided the corporation in converting Plaintiff's property. Such a claim is not supported by the evidence submitted or the applicable law. As such, the Court finds that Defendants are entitled to summary judgment as to Plaintiff's claim in Count Two. Therefore, Defendants' Motion for Summary Judgment as to Count Two is well-taken and granted on this ground as well.



iv. *Plaintiff's claim of tortious interference contained in Count Three of Plaintiff's Complaint*

Defendants contend they are entitled to summary judgment on Count Three of Plaintiff's Complaint. In Count Three, Plaintiff alleges a claim for tortious interference. In paragraphs 114 through 164 of the Complaint, Plaintiff makes several assertions which will be broken down and dealt with individually.

First, Plaintiff contends Richard Cook swore to a false affidavit. This claim fails as there is no legal support for holding Defendants Barbara Cook and John Rybarczyk liable under the theory of tortious interference. Simply stated, Plaintiff is seeking to hold agents of Puritas responsible for an alleged breach of an agreement that Puritas was a party to, under a theory of tortious interference. Such an assertion is not a proper tortious interference claim. *Dorricott v. Fairhill Center for Aging*, 2 F.Supp.2d 982, 989-990 (N.D. Ohio 1998).

Secondly, Plaintiff's allegation of tortious interference involves the making of allegedly unlawful loans and adverse judgments. Again, all of Plaintiff's allegations refer to Puritas' contracts or business relationships. As agents of Puritas, Barbara Cook and John Rybarczyk cannot be held liable for tortious interference when Puritas was a party to said contracts or dealings.

Thirdly, Plaintiff asserts that Defendants failed to pay an invoice to Campa Distribution, LLC. Again, for the same reasons as cited in the two previous paragraphs, a claim for tortious interference does not lie for such action. Further, Defendants have denied any involvement with Puritas failing to pay said invoice. Exhibits 1 and 3. Plaintiff has not offered any proof in



opposition to Defendants' evidence. As such, the Court finds no Plaintiff has failed to present sufficient evidence to support said claim.

Fourth, Plaintiff alleges Defendants are responsible for Puritas failing to provide insurance coverage and information to Plaintiff. Again, as noted above, a claim for tortious interference does not lie for such actions as Puritas was a party to said contracts. Further, Defendants have denied any involvement in regards to Plaintiff's allegations relative to the insurance issues. Exhibits 1 and 3. Plaintiff has failed to offer any evidence to show an issue of fact exists relative to said claim.

Fifth, Plaintiff alleges Defendants are responsible for Puritas failing to repay a loan which resulted in litigation involving Plaintiff, Puritas, and the creditor. Again, as noted above, a claim for tortious interference does not lie for such actions as Puritas was a party to said contract. Further, Defendants have denied any involvement in regards to Plaintiff's allegations relative to the Cach loan. Exhibits 1 and 3. Plaintiff has failed to offer any evidence to show an issue of fact exists relative to said claim.

As such, based upon the above, the Court finds that Defendants are entitled to summary judgment as to Plaintiff's claim in Count Three. Therefore, Defendants' Motion for Summary Judgment as to Count Three is well-taken and granted on these grounds as well.

*v. Plaintiff's claim of breach of fiduciary duty contained in Count Four of Plaintiff's
Complaint*

Defendants contend they are entitled to summary judgment on Count Four of Plaintiff's Complaint. In Count Four, Plaintiff alleges a claim for breach of fiduciary duty. All of the



assertions made by Plaintiff in said claim have been decided and are therefore barred by the doctrine of *res judicata*, as noted above. Further, it must be noted, as was previously noted, an allegation that Defendants Barbara Cook or John Rybarczyk assisted Puritas in breaching a fiduciary duty owed to Plaintiff, is not a cognizable claim. see *DeVries Dairy*. Finally, Plaintiff has failed to offer admissible evidence to support the claims in his Complaint, despite Defendants having offered evidence to meet their *Dresher* burden showing that they are entitled to summary judgment on said claim. As such, this Court finds Defendants' Motion for Summary Judgment as to Count Four to be well-taken and granted on these grounds as well.

vi. *Plaintiff's claim of civil conspiracy contained in Count Five of Plaintiff's Complaint*

Defendants contend they are entitled to summary judgment on Count Five of Plaintiff's Complaint. In Count Five, Plaintiff alleges a claim for civil conspiracy. Plaintiff has failed to prove an underlying act by the Defendants to warrant a civil conspiracy claim going forward against them. For this reason, as well as the application of the doctrine of *res judicata* barring all of Plaintiff's claims, this Court finds Defendants are entitled to judgment as a matter of law of Plaintiff's claim for civil conspiracy. Therefore, Defendants' Motion for Summary Judgment as to Count Five is well-taken and granted on these grounds as well.

b. Defendants' Motion for Summary Judgment as to their Counterclaim

In Defendants' Counterclaim, they assert that Plaintiff is a vexatious litigator pursuant to R.C. §2323.52. Said statute defines a "vexatious litigator" as:

"any person who has habitually, persistently, and without



reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions. "Vexatious litigator" does not include a person who is authorized to practice law in the courts of this state under the Ohio Supreme Court Rules for the Government of the Bar of Ohio unless that person is representing or has represented self pro se in the civil action or actions." R.C. §2323.52(A)(3).

The statute defines "vexatious conduct" as:

"Vexatious conduct" means conduct of a party in a civil action that satisfies any of the following:

- (a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action.
- (b) The conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.
- (c) The conduct is imposed solely for delay." R.C. §2323.52(A)(2).

The purpose of R.C. §2323.52 is to prevent abuse of the system by those persons who persistently and habitually file lawsuits without reasonable grounds and/or otherwise engage in frivolous conduct in the trial courts of this state. *Mayer v. Bristow*, 91 Ohio St.3d. 3 (2000). Defendants have cited to several actions taken by Plaintiff that they assert are violative of R.C. 2323.52(A)(2)(b). See Defendants' Motion for Summary Judgment on Their Counterclaim pp. 9-22. The facts of these actions by Plaintiff and the legal posture, arguments, and rulings involved therein are all set forth in the exhibits filed by Defendants in support of their Motion. Volumes I-III and Supplemental Exhibits. Specifically, a review of the exhibits, and based upon the decision on the merits of Plaintiff's claim herein, shows Plaintiff has filed multiple complaints that are legally defective, Plaintiff has filed multiple pleadings that were unsupported by the



Ohio Rules of Civil Procedure or case law, Plaintiff has repeatedly pursued discovery that is inappropriate, Plaintiff has repeatedly sought reconsideration of Court orders without reasonable grounds, and Plaintiff has continued to assert arguments and claims that have already been adjudicated against him. As such, a review of each of the complained of acts leads this Court to find that each act constituted vexatious conduct under R.C. §2323.52(A)(2)(b). Further, upon consideration of all the Plaintiff's acts of vexatious conduct, this Court finds that said actions of Plaintiff represent behavior that is habitual, persistent, and without reasonable cause, and therefore warrants Plaintiff being labeled a vexatious litigator pursuant to R.C. 2323.52(A)(3). Based upon a review of said evidence, and the law applicable to Ohio's vexatious litigator statute, this Court finds Defendants have sufficiently met their burden of showing they are entitled to summary judgment on their Counterclaim and that no genuine issue of material fact exists relevant to said claim.

Plaintiff responds to Defendants' Motion for Summary Judgment by arguing about why he pursued the litigation in the manner that he has. First, it must be noted that Plaintiff has not offered any Civ.R. 56 evidence to show a material issue of fact exists as to Defendants' Counterclaim. As such, Plaintiff has not met his reciprocal burden under Civ.R. 56. Further, although Plaintiff, who is now represented by counsel, has acknowledged some errors in his prior actions and asserts that he was only trying to right legal wrongs committed by Courts in their prior decisions, said explanation is legally deficient. The subjective intent of the litigant is not relevant to Ohio's vexatious litigator statute. *Hull v. Sawchyn*, 145 Ohio App.3d. 193 (8th Dist.) and *Borger v. McErlane*, 2001 WL 1591338 (1st Dist.). Although this Court takes no exception to a litigant seeking all remedies available according to law to challenge a ruling of a Court, the



remedies sought must be in accordance with the law. Plaintiff's actions, as outlined by the exhibits submitted in support of Defendants' Motion for Summary Judgment on Their Counterclaim, were not in accordance with the Ohio Civil Rules, the Rules of Appellate Procedure, the Local Rules of Court, the law of the case doctrine, or the doctrine of *res judicata*. This Court finds that the 8th District Court of Appeals dicta in *Hull* to be applicable to the case at bar. "R.C. 2323.52 was designed to address situations such as the one at hand. It is patently unfair and unreasonable that any person should be continually forced to defend against, and the court system should be forced to handle, the same unwarranted complaint that cannot be supported by any recognizable good-faith argument." *Hull* at 197. Quite simply, the pro se filings of Plaintiff that have led to an inordinate amount of time, expense, stress, and strain upon opposing parties, counsel, and the Courts and it must stop and will stop now. Based upon all of the above, this Court finds Defendants' Motion for Summary Judgment on Their Counterclaim to be well-taken and granted. This Court finds Defendants are therefore entitled to judgment in their favor on their Counterclaim filed herein.



CONCLUSION

This Court finds that no genuine issue of material fact exists regarding Plaintiff's claims outlined in the Complaint filed herein and that Defendants are entitled to judgment as a matter of law on said claims. Therefore, Defendants Barbara Cook's and John D. Rybarczyk's Motion for Summary Judgment on the Complaint is well-taken and is hereby GRANTED. The Court hereby grants judgment in favor of Defendants Cook and Rybarczyk on all claims contained in Plaintiff's Complaint.

Further, this Court finds that no genuine issue of material fact exists regarding Defendants' claim in their Counterclaim that Plaintiff is a vexatious litigator and that Defendants are entitled to judgment as a matter of law on said claim. Therefore, Defendants Barbara Cook's and John D. Rybarczyk's Motion for Summary Judgment on Their Counterclaim is well-taken and is hereby GRANTED. The Court hereby grants judgment in favor of Defendants Cook and Rybarczyk on their claim contained in within their Counterclaim. Specifically, the Court finds Plaintiff, Christopher Cole, to be a vexatious litigator and hereby prohibits him from doing any of the following pro se without first obtaining leave of this Court to proceed:

- 1) Instituting legal proceedings in the Court of Claims or in a court of common pleas, municipal court, or county court;
- 2) Continuing any legal proceedings that Christopher Cole instituted in any of the courts specified in section 1) prior to the entry of this Order; and
- 3) Making any application, other than an application for leave to proceed under R.C. §2323.52(F)(1), in any legal proceedings instituted by Christopher Cole in any of the courts specified in section 1).

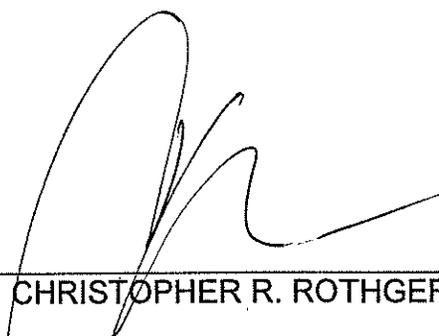


Pursuant to R.C. §2323.52(E), this Order remains in force indefinitely. Further, pursuant to R.C. §2323.52(H), the Clerk of Courts shall send a certified copy of this Order to the Supreme Court of Ohio for publication in a manner that the Supreme Court determines is appropriate.

CASE CLOSED. COSTS TO PLAINTIFF.

IT IS SO ORDERED.

VOL _____ PAGE _____



CHRISTOPHER R. ROTHGERY, JUDGE

cc: ATTY. ZAGRANS by fax 866-261-2008
ATTY. MITCHELL by fax 216-623-0134

TO THE CLERK: THIS IS A FINAL APPEALABLE ORDER. PLEASE SERVE UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR, NOTICE OF THE JUDGMENT AND ITS DATE OF ENTRY UPON THE JOURNAL.