

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT
AT NASHVILLE, BUSINESS COURT

FAMILY TRUST SERVICES, LLC,)
STEVEN REIGLE, REGAL HOMES CO.,)
BILLY GREGORY, JOHN SHERROD,)
CARL CHAMBERS, and DEBRA IRVIN, on)
behalf of themselves and those similarly)
situated,)

Plaintiffs,)

v.)

NO. 15-780-BC
JURY DEMAND

GREEN WISE HOMES, LLC,)
CHARLES E. WALKER, JON PAUL)
JOHNSON, JULIE COONE,)
NATIONWIDE INVESTMENTS, LLC,)
MERDAN IBRAHIM, and JAMES BRETT,)

Defendants.)

MEMORANDUM AND ORDER

The Court has pending before it four motions in this matter: 1) Motion for Class Certification; 2) Motion for Judgment on the Pleadings on the claims against Defendant Charles E. Walker, Jon Paul Johnson, and Green Wise Homes, LLC; 3) Motion for Judgment on the Pleadings on the claims against Defendant Nationwide Investments, LLC; and 4) Rule 12 Motions of Brett, Coone, and Ibrahim. The Motion for Class Certification was heard on January 14, 2020. The Court determined it could not rule on that motion until it heard the three pending Rule 12 motions to dismiss, which were originally set for hearing on March 3, 2020, and were reset for April 8, 2020 because of the Nashville tornado.

The August 1, 2019 Fourth Amended and Restated Class Action Complaint (“the Operative Complaint”) was filed by plaintiffs Family Trust Services, LLC, Steven Reigle, Regal Homes Co., Billy Gregory, John Sherrod, and Carl Chambers (individually “FTS” and “Reigle” and “RHC”

and “Gregory” and “Sherrod” and “Chambers”), on behalf of themselves and those similarly situated. The defendants are Green Wise Homes, LLC, Charles E. Walker, Jon Paul Johnson, Julie Coone, Nationwide Investments, LLC, and Merdan Ibrahim (“Green Wise” and “Walker” and “Johnson” or collectively “the REO Defendants” and “Coone and “Nationwide” and “Ibrahim”). These plaintiffs originally sought certification of three classes pursuant to Tenn. R. Civ. P. 23.02(3). They have revised their request for certification of one class – all persons who owned an interest in real property fraudulently redeemed from a tax sale by the Defendants or their Confederates.¹ The Operative Complaint included eleven (11) causes of action, as follows:

Count I: Defamation of Title –only against the non-REO Defendants²

Count II: Fraud – against all defendants

Count III: Liability Pursuant to Tenn. Code Ann. § 66-22-113 – only against Defendants Coone, Walker and Johnson³

Count IV: Unfair Competition – brought by all plaintiffs other than Chambers against non-REO Defendants

Count V: Unjust Enrichment – against all defendants

Count VI: Intentional Interference with Advantageous Business Relations – brought by all plaintiffs other than Chambers against non-REO Defendants

Count VII: Malicious Prosecution – only against the non-REO Defendants

Count VIII: Theft of Right of Redemption – against all defendants

Count IX: Theft and Trespass on Real Property – against all defendants

¹ The Court will address the term “Confederate,” as defined in the Operative Complaint, herein.

² Prior proceedings in this lengthy and complex litigation, through the court that handled the bankruptcy of Defendant Walker in case number 3:16-BK-03304, included a settlement between some of the Plaintiffs and the REO Defendants. Thus, some of the claims in the Operative Complaint cannot be brought against the REO Defendants.

³ The Court makes this assumption based upon paragraphs 243-250 of the Operative Complaint.

Count X: Civil Conspiracy – against all defendants

Count XI: Fraudulent Transfer of Assets – against all defendants

On September 30, 2019, intervenor plaintiff Debra Irvin (“Irvin”) filed a Complaint in Intervention (“the Intervenor Complaint”) on behalf of herself and those similarly situated, against the same set of defendants, with the addition of defendant James Brett (“Brett”). The Intervenor Complaint incorporates paragraphs 180 through 204 of the Operative Complaint, which include factual allegations related to Irvin, and includes five (5) of the causes of action from the Operative Complaint against all defendants, *i.e.*, Fraud, Liability Pursuant to Tenn. Code Ann. § 66-22-113, Unjust Enrichment, Civil Conspiracy, and Fraudulent Transfer of Assets.

In the pending Rule 12 motions, the REO Defendants and Nationwide seek to dismiss all claims against them, Brett challenges the Court’s personal jurisdiction over him and seeks a more definite statement as to the claims against him, and Coone and Ibrahim similarly seek a more definite statement as to the claims against them.

The Court has now heard all of the pending motions in this case. All of the parties have had the opportunity to brief the issues and engage in extensive argument with the Court. The Court has reviewed the pleadings and applicable caselaw and is now ready to rule.

Rule 12 Motion to Dismiss Legal Standard

A motion pursuant to Tenn. R. Civ. P. 12.02 challenges only the legal sufficiency of the complaint, not the strength of the plaintiff’s proof or evidence. *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011) (citing *Highwoods Props., Inc. v. City of Memphis*, 297 S.W.3d 695, 700 (Tenn. 2009)). The resolution of a Rule 12.02 motion to dismiss is determined by an examination of the pleadings alone. *Leggett v. Duke Energy Corp.*, 308 S.W.3d 843, 851 (Tenn. 2010); *Trau-Med of Am., Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 696

(Tenn. 2002). A defendant who files a motion to dismiss ““admits the truth of all of the relevant and material allegations contained in the complaint, but . . . asserts that the allegations fail to establish a cause of action.”” *Brown v. Tenn. Title Loans, Inc.*, 328 S.W.3d 850, 854 (Tenn. 2010) (quoting *Freeman Indus., LLC v. Eastman Chem. Co.*, 172 S.W.3d 512, 516 (Tenn. 2005)). In considering a motion to dismiss, courts ““must construe the complaint liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences.”” *Tigg v. Pirelli Tire Corp.*, 232 S.W.3d 28, 31-32 (Tenn. 2007) (quoting *Trau-Med*, 71 S.W.3d at 696); *Leach v. Taylor*, 124 S.W.3d 87, 92-93 (Tenn. 2004). ““While a complaint in a tort action need not contain in minute detail the facts that give rise to the claim, *it must contain direct allegations on every material point* necessary to sustain a recovery on any legal theory, even though it may not be the theory suggested . . . by the pleader, *or contain allegations from which an inference may fairly be drawn that evidence on these material points will be introduced at trial.*”” *Webb*, 346 S.W.3d at 427 (quoting *Leach v. Taylor*, 124 S.W.3d at 92 (Tenn. 2004) (emphasis in original)).

Considering an earlier version of the Operative Complaint, with some different legal claims, Chancery Court Part III denied Rule 12 motions to dismiss filed by all of these defendants, other than Brett, who was not a party at the time. In a July 6, 2018 Order, the Part III Chancellor did a thorough analysis regarding the pleadings standard applicable to Rule 12 motions to dismiss, and the broad application of Tennessee conspiracy law in conferring jurisdiction on identified confederates in actionable conspiracies. The Court does not restate that analysis here, but gives it weight in ruling on the pending motions to dismiss the Operative and Intervenor Complaints.

Rule 23 Class Certification Legal Standards

In order to demonstrate entitlement to pursue a class action claim, the moving plaintiffs must demonstrate, as a pre-requisite: “(1) the class is so numerous that joinder of all members is

impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interest of the class.” Tenn. R. Civ. P. 23.01. Additionally, the case must meet one of the three criteria for class actions set out in Rule 23.02. Plaintiffs are proceeding pursuant to Rule 23.02(3), seeking class status because “the question of law or fact common to the members of the class predominate over any questions affecting only individual members, and . . . a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” In making this determination, the Court must consider “(a) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (d) the difficulties likely to be encountered in the management of a class action.” *Id.* In this case, Chambers and Irvin are the proposed class representatives, and the class action defendants for the putative class are Walker, Johnson and Green Wise.

Chambers and Irvin have the burden of demonstrating a class action is appropriate given these legal standards. *Walker v. Sunrise Pontiac-GMC Truck, Inc.*, 249 S.W.3d 301, 307 (Tenn. 2008) (citing *Hamilton v. Gibson County Util. Dist.*, 845 S.W.2d 218, 225 (Tenn. Ct. App. 1992)). The moving plaintiffs must first meet the numerosity, commonality, typicality, and adequacy of representation requirements in Tenn. R. Civ. P. 23.01. *Id.* at 307-08. Second, they must meet the Tenn. R. Civ. P. 23.02(3) requirements, with the Court making its own inquiry as to the factors in addition to what the moving plaintiffs demonstrate. *Wofford v. M.J. Edwards & Sons Funeral Home Inc.*, 528 S.W.3d 524, 538 (Tenn. Ct. App. 2017).

Factual Allegations in Operative and Intervenor Complaints

The two complaints detail redemption proceedings associated with twelve (12) properties that were the subject of delinquent tax sales in Davidson, Maury and Hamilton Counties. Eleven (11) of the properties were redeemed by the REO Defendants or Nationwide, or redemption proceedings were initiated but abandoned by them, based upon fraudulent documents filed with the Register of Deeds Offices, purporting to transfer ownership interests. Some of the documents were not signed by the purported signatory. Some of the documents were signed by an actual person, but that person was not the purportedly interested party. Some of the documents bear fake notarizations. The named defendants are all entities or individuals involved in these transactions as transferors, transferees, notaries or participants in some other capacity.

The Irvin Property involves a different fact scenario, in which the owner of the redemption rights signed away her interest, but claims information regarding her redemption interests was fraudulently concealed from her.

LEGAL ANALYSIS OF RULE 12 MOTIONS

Some of the defendants in this case have moved for some or all of the causes of action to be dismissed based upon a failure to state a claim upon which relief can be granted, or a failure of definiteness in regard to the initial pleadings. The Court addresses each cause of action as to each moving defendant herein. The Court notes, as a backdrop to this analysis, that paragraph 32 of the Operative Complaint states that the term “Confederates” refers to the non-REO Defendants. The Intervenor Complaint refers to Brett also as a “Confederate.” Thus, pursuant to the liberal pleading standard in Tennessee, the Court reads each allegation that includes “Confederate” as encompassing all defendants, although the detailed factual allegations may only identify one or more defendant by name.

Count I: Defamation of Title

Defamation of title, also known as slander or libel of title, is a cause of action recognized in Tennessee by a plaintiff showing “(1) that it has an interest in the property, (2) that the defendant published false statements about the title to the property, (3) that the defendant was acting maliciously, and (4) that the false statements proximately caused the plaintiff a pecuniary loss.” *Brooks v. Lambert*, 15 S.W.3d 482, 484 (Tenn. Ct. App. 1999). Plaintiffs assert this claim against Defendants Coone, Nationwide and Ibrahim. These three defendants seek dismissal of this claim against them based either upon an assertion that they did not cause the Plaintiffs’ loss, and/or that even taking the allegations as true, they had limited involvement in a limited number of the properties.

As set out above, the claims against the REO Defendants’ “Confederates” are sufficiently broad to plead significant involvement in the entirety of the described fraudulent scheme. Even though these defendants are only identified by name a few times, or are only directly tied to a few of the identified properties, they are pled to be Confederates in all activities included in the Operative and Intervenor Complaints. Paragraphs 229 through 233 describe this cause of action in the Operative Complaint. The Confederates are lumped into those allegations, and thus are sufficiently pled as active participants.

The issue of causation is one that requires some attention in responding to these motions. The allegation is that Chambers and the putative class members (“the Taxpayer Plaintiffs”) would have lost their properties anyway because, first, they failed to pay property taxes such that the delinquent tax sale resulted, and second, they then failed to redeem or, even after redemption rights

were stolen from them, to inquire about redemption.⁴ In other words, even if all allegations are taken as true, these defendants did not cause the Taxpayer Plaintiffs' loss. Nationwide also argues that in the case of the Cleveland Property, it withdrew its redemption claim, rendering moot any claims against it in regard to that case. These defendants are asking the Court to disregard the allegations of damages in the Operative Complaint, as set out in paragraph 233. However, this is an issue for consideration in a later motion, not in a Rule 12 motion based solely on pleadings. The Taxpayer Plaintiffs allege they suffered damages because of the slander to their titles, and the Court will allow those claims to proceed based upon the Tennessee pleadings standard.

Count II: Fraud⁵

The fraud assertions, summarized in paragraphs 234 through 240 of the Operative Complaint and 10 through 14 of the Intervenor Complaint, are that Defendants (including Confederates) intentionally and falsely represented the status and titles of the subject properties, which representations were relied upon to fail to redeem or oppose redemption. Further, that damages resulted. The elements of intentional misrepresentation or fraud are:

(1) the defendant made a representation of an existing or past fact; (2) the representation was false when made; (3) the representation was in regard to a material fact; (4) the false representation was made either knowingly or without belief in its truth or recklessly; (5) the plaintiff reasonably relied on the misrepresented material fact; and (6) plaintiff suffered damage as a result of the misrepresentation.

Stanfill v. Mountain, 301 S.W.3d 179, 188 (Tenn. 2009) (citing *Walker v. Sunrise Pontiac-GMC*, 249 S.W.3d at 311). The representations at issue in the Operative Complaint are the allegedly fraudulent filings with the Register of Deeds Offices falsely asserting an interest in the title to

⁴ Irvin is not included in this discussion, and did not bring a defamation of title action, because the facts associated with her loss of redemption rights are factually and legally distinguishable from those regarding the other properties at issue in this case.

⁵ This is Count I in the Intervenor Complaint.

facilitate the redemptions. The Defendants argue that because there was no representation to the Plaintiffs, and no reliance, this claim must fail.

The Intervenor Complaint asserts that statements made to Irvin regarding her interests constituted intentional concealment of what she could recover if she exercised her redemption rights. An intentional fraudulent concealment is demonstrated through a showing that there was not only a failure to disclose a known fact but there is also “a trick or contrivance,” or there exists a duty to disclose. *Continental Land Co., Inc. v. Investment Properties Co.*, No. M1998-00431-COA-R3-CV, 1999 WL 1129025, *5 (Tenn. Ct. App. Dec. 10, 1999). Irvin alleges that the subject misrepresentations “were made in the course of a scheme or artifice to defraud.”

The Court finds that if the allegations are taken as true, the representations included in the forged property title documents filed with the Register of Deeds Office could be false representations upon which it was expected that the public, including the Plaintiffs, would rely. *Davis v. McGuigan*, 325 S.W.3d 149, 159 (Tenn. 2010) (“The maker of a fraudulent misrepresentation is subject to liability for pecuniary loss to another who acts in justifiable reliance upon it if the misrepresentation, although not made directly to the other, is made to a third person and the maker intends or has reason to expect that its terms will be repeated or its substance communicated to the other, and that it will influence his conduct in the transaction or type of transaction involved.”)⁶. The Court further finds that Irvin has sufficiently pled that Defendants, through their Confederate Coone, engaged in a trick or contrivance that could be determined to be a fraudulent concealment. These claims are appropriately pled and supported by the allegations in the Operative and Intervenor Complaints.

⁶ This finding relies on the generally accepted legal premise that filing with the Register of Deeds Office is “notice to all the world” of the subject document. *See generally Haiser v. McClung*, No. E2017-00741-COA-R3-CV, 2018 WL 4150877, *6 (Tenn. Aug. 29, 2018).

Count III: Violation of Tenn. Code Ann. § 66-22-113⁷

This statute establishes liability for any notary public who fails to comply with and discharge the duties associated with that position. It provides for a \$100 fine, as well as liability for damages resulting to the injured party. Tenn. Code Ann. § 66-22-113. Defendants Coone, Walker and Johnson, against whom these allegations are made, assert that Plaintiffs cannot demonstrate an injury resulting from the purportedly false notarizations on the title documents that facilitated the subject redemptions. As with their defamation of title actions, Plaintiffs allege an injury naturally results from the violation of the notary duties through execution of the subject title documents. The Court must take those assertions as true and will allow this claim to go forward allowing Plaintiffs an opportunity to demonstrate how they were injured and if they are entitled to a recovery.

Counts IV and VI: Unfair Competition and Intentional Interference with Advantageous Business Relations

These two business torts are, for all practical purposes, duplicative of each other. As to both, the Operative Complaint alleges that the non-REO Defendants were engaged in the business of investing in properties sold at public tax sales, the subject plaintiffs and defendants were competitors in this business, that the alleged wrongful acts allowed the subject defendants to benefit and gain an unfair competitive advantage over others engaged in the business, and to interfere with others' business relations, resulting in damages. As reiterated in *B & L Corp. v. Thomas & Thorngren*, 162 S.W.3d 189 (Tenn. Ct. App. 2004), from a prior appeal in the same case at 917 S.W.2d 674, 681 (Tenn. Ct. App. 1995):

Unfair Competition is a generic name for several related torts involving improper interference with business prospects. Prosser and Keeton on the Law of Torts § 130 at 1013 (5th ed.1984). ... [U]nfair competition, or for that matter other interferences with prospects, can be found when the defendant engages in any conduct that

⁷ This is Count II in the Intervenor Complaint.

amounts to a recognized tort and when that tort deprives the plaintiff of customers or other prospects. Liability for such losses may be imposed from defamation, disparagement, intimidation or harassment of the plaintiff's customers or employees, obstruction of the means of access to his place of business, threats of groundless suits, commercial bribery and inducing employees to commit sabotage.

Id. at 215-16. Tortious interference with business relationships is discussed at length by the Tennessee Supreme Court in *Trau-Med*, 71 S.W.3d at 701, and identified as an actionable tort in Tennessee. The elements are: (1) an existing or prospective business relationship with an identifiable class of third persons; (2) the defendant's knowledge of the relationship; (3) the defendant's intent to cause a breach or termination of the business relationship; (4) the defendant's improper motive or use of an improper means; and (5) damages resulting from the improper interference. *Id.*

Given the liberal pleading standard established for Tennessee courts to apply to Rule 12 motions for failure to state a claim, the Court finds the Plaintiffs (other than the Taxpayer Plaintiffs) have sufficiently pled these claims against the non-REO Defendants.

Count V: Unjust Enrichment⁸

“Unjust enrichment is a quasi-contractual theory or is a contract implied-in-law in which a court may impose a contractual obligation where one does not exist.” *Whitehaven Cmty. Baptist Church v. Holloway*, 973 S.W.2d 592, 596 (Tenn. 1998) (citing *Paschall's Inc. v. Dozier*, 407 S.W.2d 150, 154-55 (Tenn. 1966)). As a general matter, this cause of action arises when one party provides goods and services to another without an enforceable contract, under circumstances in which there was an expectation of compensation without it being forthcoming, and it would be unjust for the benefit to remain with the receiving party. *In re Estate of Jane Kathryn Ross*, No.

⁸ This is Count III in the Intervenor Complaint.

M2013-02218-COA-R3-CV, 2014 WL 2999576 (Tenn. Ct. App. June 30, 2014) (citing *Forrest Constr. Co. LLC v. Laughlin*, 337 S.W.3d 211, 227 (Tenn. Ct. App. 2009)).

In *B & L Corp.*, the Court found the claim of unjust enrichment inapplicable to the claims asserted by the plaintiff, which were that the defendants had misappropriated business techniques and business property and confidential information upon leaving employment. 162 S.W.3d at 217-218. The Court held “We are unaware of any case applying an unjust enrichment theory of recovery under circumstances similar to those in the case at bar. Quasi-contractual theory of recovery involves the willing conferring of a benefit by one party to the other and is contraindicated when the benefit alleged is involuntarily conferred.” *Id.* at 217. Similarly, in this case, Plaintiffs (other than Irvin) all base their claims on the Defendants’ actions to take the redemption opportunities through fraud and covert actions. There was not an expectation of compensation from the Defendants in this case because the Plaintiffs did not know about the Defendants’ actions. The Plaintiffs, other than Irvin, cannot sustain a claim for unjust enrichment given the facts as they allege them in the Operative Complaint.

Plaintiff Irvin’s situation is different than the others, but likewise does not state a claim of unjust enrichment. This quasi-contract claim is inapplicable to Irvin’s claims because she did, in fact, sign a contract and receive compensation. She alleges fraud in the execution of that agreement, which she can pursue through her other causes of action. She does not, however, have a claim for unjust enrichment.

Count VII: Malicious Prosecution

This claim is brought against the non-REO Defendants based upon the redemption proceedings that are the subject of the Operative Complaint. Malicious prosecution is demonstrated by showing that a prior lawsuit or judicial proceeding was brought against the

plaintiff without probable cause, with malice, and was terminated in the plaintiff's favor. *Lane v. Becker*, 334 S.W.3d 756, 761 (Tenn. Ct. App. 2010) (citing *Parrish v. Marquis*, 172 S.W.3d 526, 530 (Tenn. 2005)). The non-REO Defendants argue that many of the redemption actions were voluntarily dismissed and thus did not "terminate in the plaintiff's favor." The allegations in the Operative Complaint are that the redemption proceedings were initiated based upon fraudulently prepared documents evidencing title and therefore lacked probable cause. Further, that a number of them have been subsequently resolved adversely to the REO Defendants as lacking merit, or that attempts to redeem that were abandoned are still actionable. The Court finds the allegations of malicious prosecution in the Operative Complaint are sufficiently pled for them to be pursued at this stage of proceedings.

Counts VIII and IX: Theft of the Right of Redemption and Theft/Trespass on Real Property

These are companion claims asserting a theft of intangible property rights, namely the right to redemption, and theft of and trespass on real property. Defendants assert that there is not a cause of action for theft of an intangible property right, and specifically not for a right of redemption, and that a trespass action cannot be sustained without a physical entry onto the subject property, citing the recent *Twenty Holdings, LLC* decision. *Twenty Holdings, LLC v. Land South TN, LLC*, No. M2018-01903-COA-R3-CV, 2019 WL 4200970 (Tenn. Ct. App. Sept. 5, 2019). Plaintiffs rely on a criminal case, *State v. Gentry*, for the proposition that theft of title or ownership through improper means, although of something intangible, is actionable. 538 S.W.3d 413, 421-27 (Tenn. 2017). In that case, the Tennessee Supreme Court recognized it was appropriate to criminally charge the defendant with theft of real property not because she was an unauthorized squatter, but because she filed documents with the Register of Deeds Office attempting to exclude the rightful property owner of its interest. *Id.* at 427.

Civil cases that have analyzed the tort of conversion have consistently held that it is actionable for the appropriation of *tangible property only* and this Court is aware of no case in which conversion has been recognized as actionable for an intangible property right, including the right of redemption. *See PNC Multifamily Capital v. Bluff City*, 387 S.W.3d 525, 553 (Tenn. Ct. App. 2012). In fact, there are a number of cases applying Tennessee law specifically holding that conversion of intangible property is *not* recognized in Tennessee. *See B & L Corp.*, 917 S.W.2d at 679-680 (citing *H.J. Inc., v. International Tel. and Tel. Corp.*, 867 F.2d 1531 (8th Cir.1989) and *Unlimited Screw Products, Inc. v. Malm*, 781 F.Supp. 1121 (E.D.Va.1991)); *Intera Co., LTD. v. Dow Corning Corp.*, No. No. 92-6324, 1994 WL 69582, *4 (6th Cir. Mar. 7, 1994); *Federal Express Corp. v. Accu-Sort Systems, Inc.*, No. 01-2503 Ma/A, 2005 WL 8156707, *20 (W.D. Tenn. Mar. 30, 2005); *Stratienko v. Cordis Corp.*, No. 1:02-CV-005, 2003 WL 23471546, *6 (E.D. Tenn. Dec. 4, 2003); *Ralph v. Pipkin*, 183 S.W.3d 362, 368 (Tenn. Ct. App. 2005); *River Park Hosp., Inc. v. BlueCross BlueShield of Tenn., Inc.*, 173 S.W.3d 43, 60 (Tenn. Ct. App. 2002).

The Operative Complaint relies solely on the theft of intangible property, e.g. redemption rights, for its theft claims. This Court does not read the Tennessee Supreme Court's holding in *Gentry* to change Tennessee law regarding the civil claim of theft/conversion, and finds that the law does not support the Plaintiffs' claim in that regard. That claim is therefore dismissed.

The Operative Complaint does allege that the Defendants physically trespassed upon three of the subject properties – namely the Bottoms, Chambers and Irvin Properties. The trespass claims as to those three properties are not dismissed.⁹

⁹ It is unclear why Irvin did not include this claim in the Intervenor Complaint.

Count X: Civil Conspiracy¹⁰

A civil conspiracy is an agreement between two or more persons to do an unlawful act or to do a lawful act in an unlawful way. *Trau-Med*, 71 S.W.3d at 703; *Chenault v. Walker*, 36 S.W.3d 45, 52 (Tenn. 2001). It is a derivative claim that requires the existence of an underlying tort or wrongful act committed by one or more of the conspirators in furtherance of the conspiracy. *Forrester v. Stockstill*, 869 S.W.2d 328, 330 (Tenn. 1994); *Tenn. Publ'g Co. v. Fitzhugh*, 52 SW.2d 157, 158 (1932); *Levy v. Franks*, 159 S.W.3d 66, 82 (Tenn. Ct. App. 2004). The elements of a civil conspiracy claim are: (1) an agreement between two or more persons, (2) to engage in some concerted action either for an unlawful purpose or for a lawful purpose by unlawful means, (3) the commission of a tortious or wrongful act by one or more of the conspirators, and (4) resulting injury or damage to person or property. *Kincaid v. Southtrust Bank*, 221 S.W.3d 32, 38 (Tenn. Ct. App. 2006); *Kirksey v. Overton Pub., Inc.*, 739 S.W.2d 230, 236-37 (Tenn. Ct. App. 1987).¹¹

The Court has detailed the claims Plaintiffs brought in this action against the various Defendants, as well as the alleged facts that support them. Plaintiffs have alleged sufficient facts to support their claim for a civil conspiracy, including the commission of underlying torts.

Count XI: Fraudulent Transfer of Assets¹²

The Uniform Fraudulent Transfer Act is codified in Tennessee at Tenn. Code Ann. § 66-3-301, *et seq.* (“the UFTA”). Section 305 of the UFTA creates a cause of action by a creditor against a debtor who transfers property with the intent to hinder, delay or defraud the creditor. In the Operative Complaint, at paragraphs 308 through 314, and in the Intervenor Complaint at paragraphs 37 through 42, Plaintiffs allege claims under the UFTA as to the sixteen properties

¹⁰ This is Count IV in the Intervenor Complaint.

¹¹ This is largely a reiteration of citations included in the July 6, 2018 Order in this matter, citing as the primary source *Stanfill v. Hardney*, No. M2004-02768-COA-R3-CV, 2007 WL 2827498, **7-8 (Tenn. Ct. App. Sept. 27, 2007).

¹² This is Count 5 of the Intervenor Complaint.

listed therein. Further, they allege that the transfers were made to hinder, delay and defraud them as creditors because those transfers occurred in September of 2018, well after the initiation of this action. Given the facts as pled in the Operative and Intervenor Complaints, the Court finds Plaintiffs have stated a claim under the UFTA that they are entitled to pursue.

Personal Jurisdiction Over Defendant Brett

Brett was added as a party defendant in the Intervenor Complaint. It is asserted that he is a resident of the State of Nevada and that this Court does not have personal jurisdiction over him. In response, Plaintiffs rely on Tennessee caselaw conferring jurisdiction over nonresidents who are alleged to be participants in a conspiracy with others over whom the state does have jurisdiction.

Tennessee's long-arm statute is set out in Tenn. Code. Ann. § 20-2-214(a), and provides for jurisdiction over nonresidents as to any action or claim for relief arising from:

- (1) The transaction of any business within this state;
- (2) Any tortious act or omission within this state;
- (3) The ownership or possession of any interest in property located within this state;
- (4) Entering into any contract of insurance, indemnity or guaranty covering any person, property or risk located within this state at the time of contracting;
- (5) Entering into a contract for services to be rendered or for materials to be furnished in this state;
- (6) Any basis not inconsistent with the constitution of this state or of the United States;
- (7) Any action of divorce, annulment or separate maintenance where the parties lived in the marital relationship within this state, notwithstanding one party's subsequent departure from this state, as to all obligations arising for alimony, custody, child support or marital dissolution agreement, if the other party to the marital relationship continues to reside in this state.

Conspiracy theory personal jurisdiction arises from the commission of a tort in the state, as set out in subpart (2) of the above statute. Where there is an actionable tort, liability may be imputed to another person under the tort of conspiracy, which Tennessee law defines as “an agreement ‘between two or more persons to accomplish by concert an unlawful purpose, or to accomplish a purpose not in itself unlawful by unlawful means.’” *First Community Bank, N.A. v. First Tennessee Bank, N.A.*, 489 S.W.3d 369, 395 (Tenn. 2015) (quoting *Chenault*, 36 S.W.3d at 52). “The agreement by conspirators `need not be formal, the understanding may be a tacit one, and it is not essential that each conspirator have knowledge of the details of the conspiracy.’” *Id.* at 396 (quoting *Dale v. Thomas H. Temple Co.*, 208 S.W.2d 344, 354 (1948)). A claim for conspiracy must be pled with specificity. *McGee v. Best*, 106 S.W.3d 48, 64 (Tenn. Ct. App. 2002).

In *Chenault, supra*, the Tennessee Supreme Court adopted the conspiracy theory of personal jurisdiction in conjunction with the long-arm statute. In essence, the co-conspirator’s minimum contacts are imputed to the out-of-state individual to confer personal jurisdiction if the subject acts are in furtherance of the illegal agreement. *Id.* at 53-54. The doctrine requires a showing that: (i) two or more individuals conspired to do something, (ii) that they could reasonably expect to lead to consequences in Tennessee, if (iii) one co-conspirator commits overt acts in furtherance of the conspiracy, and (iv) those acts are of a type which, if committed by a non-resident, would subject the non-resident to personal jurisdiction under the long-arm statute of Tennessee. 36 S.W.3d at 53.

In the Intervenor Complaint, Irvin identifies Brett as a “Confederate” as defined in the Operative Complaint. He is only mentioned in one paragraph of 314 in the Operative Complaint, specifically in paragraph 203, where it is alleged that he signed a court pleading as the authorized

representative of Defendant Nationwide. Nationwide is mentioned many more times in the Operative Complaint, and is identified as the alter-ego of Defendants Walker and Johnson. The Confederates are mentioned many, many times throughout the Operative Complaint, and, as stated above, Brett is alleged to be among them. The question for the Court is whether or not there are sufficient factual allegations regarding Brett for it to exercise its long arm jurisdiction to pull him into Court in Tennessee. As set out in *Manufacturers Consol. Service v. Rodell*, 42 S.W.3d 846 (Tenn. Ct. App. 2000), all that is required to establish personal jurisdiction through conspiratorial activities is that the conspirator purposefully directs his activities toward citizens of the forum state and should reasonably anticipate being hailed into court there. *Id.* at 859. Although the other Defendants are alleged to have had a much more active role in these activities than Brett, the Court finds a conspiracy between the other Defendants is sufficiently pled to establish conspiracy jurisdiction as to him.

Sufficient Definiteness of the Operative Complaint

The Court finds that the claims in this case have been pled with sufficient definiteness to survive Defendants Coone, Ibrahim and Brett's motion.

LEGAL ANALYSIS OF CLASS CERTIFICATION MOTION

The Taxpayer Plaintiffs bring class allegations as representatives of other, similarly situated persons, who "owned an interest in real property fraudulently redeemed from a tax sale by the Defendants or their Confederates." Plaintiffs assert the proposed class will include approximately thirty-five (35) people and involve twelve (12) properties. Additionally, they contend that the questions of fact and law, and relevant defenses, are sufficiently similar to support the request for class certification, and that Chambers and Irvin will adequately represent the class

members. The Court does not find that the Taxpayer Plaintiffs have sufficiently met their burden regarding all relevant factors.

First, the Court finds that the Taxpayer Plaintiffs have failed to meet the numerosity requirement of Rule 23. Classes exceeding forty persons are generally deemed to satisfy the numerosity requirement. *Wofford*, 528 S.W.3d at 528 (citing *In re Am. Med. Sys. Inc.*, 75 F.3d 1069, 1079 (6th Cir. 1996) and *Ham v. Swift Transp. Co., Inc.*, 275 F.R.D. 475 (W.D. Tenn. 2011)). In *Wofford*, the potential class involved the family members of 1,288 deceased individuals who were bringing claims against a number of funeral home defendants and the Court of Appeals found the numerosity burden was met. “Other factors enter into the determination of impracticability of joinder, including but not limited to the nature of the claim, the size of the individual claims, location of the members of the proposed class, and whether it would be impossible to obtain personal service over some members of the class.” *Albriton v. Hartsville Gas Co.*, 655 S.W.2d 153, 155 (Tenn. Ct. App. 1983).

In this case, there is a much smaller number of potential class members (35) and sources of claims (12 properties). These numbers are significantly less than those in *Wofford*, and less than the presumptive number of forty that other courts have used. The particular eligible properties have been identified and the heirs with interests in those properties identified – indeed, they were listed in an exhibit to Plaintiffs’ Motion for Class Certification. The Court does not believe the number of potential plaintiffs is so numerous that joinder is infeasible.

The Court also finds that Irvin’s claims, although involving legal claims shared by the putative class members, are not factually similar to or typical of those claims. She voluntarily, although allegedly based upon the fraudulent concealment of material facts, forfeited her

redemption rights, while all of the others had their rights taken through fake title transfer documents. That is a significant difference and, in fact, caused Irvin to file a separate complaint.

Finally, the Court does not find a class action superior to joinder in this case. This prong is related to the numerosity prong, in that joinder is an appropriate and feasible mechanism pursuant to Rule 19.

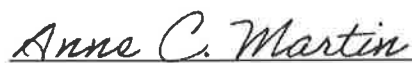
The Court therefore denies the Taxpayer Plaintiffs' Motion for Class Certification. They may seek to join the other interested property owners as party plaintiffs.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Counts V, VIII and IX of the Operative Complaint are DISMISSED, other than Count IX for trespass as to the Bottoms, Chambers and Irvin Properties.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that Count III of the Intervenor Complaint is DISMISSED.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the motion for class certification is DENIED.

It is so ORDERED.



ANNE C. MARTIN
CHANCELLOR
BUSINESS COURT DOCKET
PILOT PROJECT

cc by U.S. Mail, fax, or e-filing as applicable to:

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