

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

G.M. PUSEY AND ASSOCIATES,
INC., *et al.*,

Plaintiffs,

v.

Civil Action No.: RDB-07-3229

BRITT/PAULK INSURANCE
AGENCY, INC.,

Defendant.

* * * * *

MEMORANDUM OPINION

This case arises from alleged breaches of a Confidentiality Agreement and an Employment Agreement. George M. Pusey, individually and as an authorized officer of G.M. Pusey and Associates, Inc. (“GMP”), executed these agreements with the Defendant corporation, Britt/Paulk Insurance Agency, Inc. (“Britt/Paulk” or “Defendant”). GMP and Mary Anne Pusey, both individually and as Personal Representative of her deceased husband’s estate, (collectively, “Plaintiffs”) have brought this action against Britt/Paulk. Currently pending before this Court is a Motion to Dismiss or, in the Alternative, Motion for a More Definite Statement. (Paper No. 13.) This Court has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332.¹ The

¹ Plaintiff Mary Anne Pusey is an individual citizen of the State of Maryland. Since she is also bringing suit as the Personal Representative of the Estate of George M. Pusey, Ms. Pusey, in her representative capacity, is “deemed to be a citizen only of the same State as the decedent.” 28 U.S.C. § 1332 (c)(2). There is currently no information in the pleadings before this Court to establish the citizenship of the decedent, George M. Pusey. Since Mary Anne Pusey and George M. Pusey were married at the time of Mr. Pusey’s death, it appears from the parties’ submissions that Mr. Pusey was also a citizen of the State of Maryland. The Defendant, Britt/Paulk Insurance Agency, Inc., is a corporation organized under the laws of the State of Georgia and has its principal place of business in the State of Georgia with a branch office in the State of Delaware.

parties' submissions have been reviewed and no hearing is necessary. *See* Local Rule 105.6 (D. Md. 2008). For the reasons that follow, the Motion to Dismiss is GRANTED in part and DENIED in part. Specifically, the Motion to Dismiss is GRANTED as to Counts II and III as well as to Plaintiff Mary Anne Pusey in her individual capacity, although she will remain a Plaintiff in her capacity as Personal Representative of the Estate of George M. Pusey. The Motion to Dismiss is DENIED as to Counts I, IV, V, and VI. The alternative Motion for a More Definite Statement is DENIED.

BACKGROUND

The alleged facts are viewed in a light most favorable to the Plaintiffs. *Venkatraman v. REI Sys., Inc.*, 417 F.3d 418, 420 (4th Cir. 2005). George M. Pusey, for thirty years prior to his death, worked in the insurance industry—initially as a claims adjuster, then as a salesperson, producer, and independent agent. (Compl. ¶ 5.) During this time, Mr. Pusey developed and maintained relationships with people and companies within the business community, including but not limited to policyholders, customers, clients, joint ventures, distributors, associations, insurance companies, insurance agencies, and underwriters. (*Id.*) In addition, Mr. Pusey developed and maintained special skills, abilities, knowledge, and information in the insurance field specifically tailored to the commercial forestry/timber harvesting (*i.e.*, logging) industry. (*Id.*)

Over the years, Mr. Pusey began to write insurance policies within the logging industry for several different insurance companies, such as Reliance Insurance Company, The Hartford Insurance Company, Royal Insurance, and Empire Insurance Company. (*Id.* ¶ 6.) Mr. Pusey operated as a “managing general agent” with a group of independent agencies and producers

operating for him throughout the country. (*Id.*) Providing insurance policies for this network became a highly profitable business for Mr. Pusey, generating approximately \$6 million in insurance premiums annually (hereinafter this will be referred to as the “logging insurance program”). (*Id.*)

In or about 1994, Mr. Pusey decided to become an independent agent for O’Donovan and Associates (“O’Donovan”), an independent insurance agency. (*Id.* ¶ 7.) However, Mr. Pusey continued to maintain and develop his logging insurance program. (*Id.*) Mr. Pusey was an agent of O’Donovan until approximately 2001. (*Id.* ¶ 8.)

In or about 1999, Mr. Pusey organized G.M. Pusey and Associates, Inc. (“GMP”) under the laws of the State of Maryland. (*Id.* ¶ 9.) This corporation lay dormant until approximately 2001 when Mr. Pusey began to operate GMP as an independent insurance agency. (*Id.*) Mr. Pusey continued to focus his business on the logging industry, utilizing his network of independent agencies, producers, and policyholders throughout the country. (*Id.*) During this time, GMP continued to issue policies through O’Donovan with the understanding that O’Donovan would receive a portion of the commissions earned by GMP. (*Id.* ¶ 10.)

In late 2005 or early 2006, Mr Pusey decided to market himself and GMP to other insurance companies as a specialist in insurance related to the logging industry. (*Id.* ¶ 13.) During this effort, Mr. Pusey contacted Munich Re Group (“Munich”) to discuss the possibility of Munich becoming the issuing company for the logging industry insurance policies that Mr. Pusey and GMP would write in the future. (*Id.*) Munich had been issuing policies through Britt/Paulk Insurance Agency, Inc. (“Britt/Paulk”) for quite some time. (*Id.* ¶ 14.) Munich arranged a meeting between Mr. Pusey and representatives of Britt/Paulk to discuss the

possibility of Britt/Paulk becoming the sponsoring agency for Mr. Pusey and GMP through which they would manage and conduct the logging insurance program. (*Id.*)

In an effort to continue the discussions, Britt/Paulk entered into a “Confidentiality Agreement” with Mr. Pusey and GMP. (*See id.* at Ex. B.) This agreement stated in pertinent part: “Britt Paulk has expressed its interest in entering into a business arrangement or transaction . . . with [GMP and Mr. Pusey]; and . . . in connection therewith it may be desirable for the Parties to consult and for [GMP] and/or [Mr. Pusey] to disclose to Britt Paulk certain proprietary and confidential information relating to [GMP] and [Mr. Pusey].” (*Id.* at Ex. B.) Under the agreement, Britt/Paulk agreed not to “disclose, disseminate, or publish” the confidential information or use it “for any purpose other than in connection with its own internal discussion, negotiation, evaluation, or execution of the Transaction.” (*Id.*) The scope of the “confidential information” was broad, including “information relating to [GMP’s] and/or [Mr. Pusey’s] prospects and clients,” “information, documents and files that [GMP] and/or [Mr. Pusey] has already provided to Britt Paulk,” and all information generated by or for Britt Paulk . . . that in whole or in part include, reflect or are based on Confidential Information obtained from [GMP] and/or [Mr. Pusey].” (*Id.*) This Confidentiality Agreement has a three-year term, which commenced on February 22, 2006. (*Id.*)

After extensive negotiation, GMP and Mr. Pusey agreed that Britt/Paulk would become the sponsoring agency through which GMP and Mr. Pusey would continue to manage the logging insurance program and Munich would serve as the issuing insurance carrier. (*Id.* ¶ 19.) Mr. Pusey agreed to become an employee of Britt/Paulk pursuant to an Employment Agreement dated September 1, 2006. (*Id.* at Ex. C.)

Since Mr. Pusey's death in March of 2007, Britt/Paulk has allegedly continued to maintain and profit from the logging insurance program and the alleged confidential information related to that program. (Compl. ¶ 24.) At no time did GMP or Mr. Pusey's estate transfer, assign, or waive its rights to the confidential information or the logging insurance program. (*Id.* ¶ 21.) Thus, Britt/Paulk has allegedly failed to pay GMP, the Estate of George Pusey, or Mary Anne Pusey (as widow and Personal Representative of his Estate) any kind of compensation for use of the information. (*Id.*)

On October 22, 2007, Mary Anne Pusey, both individually and in her capacity as Personal Representative of the Estate of George M. Pusey, and GMP originally filed a Complaint against Britt/Paulk in the Circuit Court for Worcester County, Maryland. On November 30, 2007, Britt/Paulk filed a Notice of Removal to this Court on the basis of diversity jurisdiction, pursuant to 28 U.S.C. §§ 1332 and 1441.

The Complaint contains a total of six counts. (Paper No. 2.) Count I alleges that Britt/Paulk breached the Confidentiality and Employment Agreements by failing to compensate GMP and Mr. Pusey's estate for its continued use of the confidential information. (*Id.* ¶¶ 25-27.) Count II is worded identically but purports to state a claim for breach of the fiduciary duties that were allegedly owed to the Plaintiffs by Britt/Paulk. (*Id.* ¶¶ 28-30.) In Count III, Plaintiffs allege that Britt/Paulk breached the duty of good faith and fair dealing during negotiations and after Mr. Pusey's death by continuing to use his insurance logging program for profit without providing compensation. (*Id.* ¶¶ 31-33.) Count IV alleges that Britt/Paulk made false representations of material facts to Mr. Pusey and GMP when it promised to compensate them for use of the confidential information and logging insurance program, because GMP and Mr.

Pusey reasonably and justifiably relied on those misrepresentations. (*Id.* ¶¶ 35-37.) Count V alleges that Britt/Paulk has been unjustly enriched. (*Id.* ¶¶ 38-41.) Finally, Count VI alleges that Britt/Paulk “has engaged and is continuing to engage in conduct constituting willful and malicious misappropriation of trade secrets within the meaning of the Maryland Uniform Trade Secrets Act,” Md. Code Ann., Com. Law §§ 11-201, *et seq.* (*Id.* ¶¶ 42-44.)

On December 21, 2007, Defendant, Britt/Paulk, filed a Motion to Dismiss, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, or in the alternative, a Motion for a More Definite Statement pursuant to Rule 12(e) of the Federal Rules of Civil Procedure. (Paper No. 13.)

STANDARD OF REVIEW

Defendant has moved for dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Under Rule 12(b)(6), a complaint may be dismissed for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A Rule 12(b)(6) motion tests the legal sufficiency of a complaint. *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). Therefore, the court must accept all well-pleaded allegations as true and construe the facts and reasonable inferences derived therefrom in the light most favorable to the plaintiff. *Ibarra v. United States*, 120 F.3d 472, 473 (4th Cir. 1997). A complaint must meet the “simplified pleading standard” of Rule 8(a)(2), *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 513 (2002), which requires only a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a).

Although Rule 8(a)(2) requires only a “short and plain statement,” the Supreme Court of the United States recently explained that a complaint must contain “more than labels and

conclusions” or a “formulaic recitation of the elements of a cause of action.” *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007). The factual allegations contained in a complaint “must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *Id.* at 1965. Thus, a complaint must allege “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 1974.

While “notice pleading requires generosity in interpreting a plaintiff’s complaint[,] . . . generosity is not fantasy.” *Bender v. Suburban Hosp., Inc.*, 159 F.3d 186, 191 (4th Cir. 1998). In considering a motion to dismiss, the court “need not accept as true unwarranted inferences, unreasonable conclusions, or arguments” nor “the legal conclusions drawn from the facts.” *Eastern Shore Mkts., Inc. v. J.D. Assocs. Ltd. P’ship*, 213 F.3d 175, 180 (4th Cir. 2000) (citations omitted).

DISCUSSION

Britt/Paulk Insurance Agency, Inc. has moved to dismiss all counts of the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. As a general matter, Britt/Paulk contends in its Motion to Dismiss that Mary Anne Pusey, in her individual capacity, should be dismissed from this case for lack of standing² on the grounds that she was not a party to any of the contracts or an owner of any of the confidential information at issue. To meet the standing requirement, “[a] plaintiff must allege personal injury fairly traceable to the defendant’s

² The Defendant states that Ms. Pusey should be dismissed under Rule 12(b)(6) of the Federal Rules of Procedure, but this dismissal should be decided under Rule 12(b)(1). Since subject matter jurisdiction can be raised at any time by the court *sua sponte*, this Court can properly decide at this time whether Ms. Pusey lacks standing and should be dismissed under Rule 12(b)(1).

allegedly unlawful conduct and likely to be redressed by the requested relief.” *Allen v. Wright*, 468 U.S. 737, 750 (1984); *see also Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 154 (4th Cir. 2000). It is well established that a plaintiff must prove three elements: “(1) injury in fact; (2) traceability; and (3) redressability.” *Friends of the Earth*, 204 F.3d at 154; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Plaintiffs argue that Ms. Pusey has standing in her individual capacity because of the clause found in the Confidentiality Agreement which states in part that the contract “shall be binding upon, and shall inure to the benefit of, the Parties and their respective, [sic] parent, subsidiary and other affiliated and related firms, and their successors, assigns, executors, administrators and personal representatives.” (Compl. Ex. B.) However, the clause specifically leaves out heirs, thus, Ms. Pusey cannot claim to have suffered any injury in fact in her individual capacity. Rather, this clause makes the appropriate party of interest the Estate of George M. Pusey and not Ms. Pusey. Therefore, while Ms. Pusey may properly sue as the personal representative of the Estate of George M. Pusey, she will be dismissed for lack of standing in her *individual* capacity.

As this Court’s jurisdiction is based on diversity of citizenship, this Court will apply Maryland law with respect to the Defendant’s Motion to Dismiss. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938) (“Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State.”); *Limbach Co., LLC v. Zurich Am. Ins. Co.*, 396 F.3d 358, 361 (4th Cir. 2005) (“The district court must apply the law of the forum state, including its choice of law rules.”).

I. Count I: Breach of Contract

As to Count I, Britt/Paulk argues that the Plaintiffs failed to state a claim for breach of

contract because the merger and integration clauses contained in the subsequent Employment Agreement extinguished the initial Confidentiality Agreement.³ Specifically, the Employment Agreement provides “[t]his instrument contains the entire and only agreement between the parties respecting its subject matter and supercedes all preexisting agreements between the[m], oral or written, regarding that subject matter.” (Compl. Ex. B.) However, Maryland has long recognized that this theory can only be applied to an agreement that is executed by the *same parties* and relates to the *same subject matter*. See *Hercules Powder Co. v. Harry T. Campbell Sons Co.* 144 A. 510, 516 (Md. 1929) (citation omitted) (“[A] subsequent contract completely covering the same subject matter, and made by the same parties, as an earlier agreement, but containing terms inconsistent with the former contract, so that the two cannot stand together, rescinds, substitutes, and is substituted for the earlier contract and becomes the only agreement of the parties on the subject.”).

As this Court has previously noted,

“[a]n integrated agreement is a writing or writings constituting a final

³ Britt/Paulk raises the same argument with respect to an integration clause in a Broker Agreement between itself and GMP. (Def.’s Mem. Supp. Mot. Dismiss Ex. A.) Ordinarily, when the parties attach extrinsic documents, such as the Broker Agreement in this case, to a motion to dismiss for failure to state a claim, the motion must be converted to one for summary judgment assuming the parties have had reasonable time to conduct discovery. See Fed. R. Civ. P. 12(b). The Fourth Circuit has created an exception such that “when a defendant attaches a document to its motion to dismiss, ‘a court may consider it in determining whether to dismiss the complaint [if] it was integral to and explicitly relied on in the complaint and [if] the plaintiffs do not challenge its authenticity.’” *Am. Chiropractic v. Trigon Healthcare*, 367 F.3d 212, 234 (4th Cir. 2004) (citations omitted); see also *Blankenship v. Manchin*, 471 F.3d 523, 526 n.1 (4th Cir. 2006). Here, Plaintiffs argue that the Broker Agreement “is not executed by [Britt/Paulk],” that Defendant has not attached the appropriate affidavit to support a Rule 56 motion, and that it has not had an opportunity to conduct discovery to oppose a motion for summary judgment. (Pls.’ Mem. Opp’n Mot. Dismiss 2, 4.) Accordingly, this Court will not rely on the Broker Agreement at this time and, therefore, need not convert the motion to dismiss to one for summary judgment.

expression of one or more terms of an agreement.” “Where the parties reduce an agreement to a writing which in view of its completeness and specificity reasonably appears to be a complete agreement, it is taken to be an integrated agreement unless it is established by other evidence that the writing did not constitute a final expression.” An integrated agreement is “completely integrated” if it is adopted as the “complete and exclusive statement of the terms of the agreement”; otherwise it is “partially integrated.” Whether an agreement [sic] integrated, and whether it is completely or partially integrated, are preliminary questions determined by the court.

Reutemann v. Lewis Aquatech, Inc., 2005 U.S. Dist. LEXIS 13272, *7-8 (D. Md. July 5, 2005) (quoting Restatement (Second) of Contracts §§ 209-210 (1981)) (internal citations omitted).

Here, the Confidentiality Agreement was made between Mr. Pusey, individually, and GMP and Britt/Paulk. (*See* Compl. Ex. B.) The Employment Agreement, in contrast, was only between Mr. Pusey and Britt/Paulk; GMP was not a party to that contract. (*See* Compl. Ex. C.) The subject matter of the contracts was also different. The Confidentiality Agreement dealt with the protection of confidential information that Mr. Pusey and GMP provided to Britt/Paulk during negotiations to form a business relationships. (*Id.* at Ex. B.) In contrast, the Employment Agreement addressed confidential information that Britt/Paulk provided to Mr. Pusey and precluded Mr. Pusey from revealing that information. (*Id.* at Ex. C.) The Employment Agreement specifically excluded any information that Mr. Pusey or GMP may have given to Britt/Paulk in the course of their negotiations and ongoing business relationship. (*Id.* (“[A]ny information relating to pre-existing customer relationships, and any other information, skills and knowledge in [Mr.] Pusey’s possession prior to his [Britt/Paulk] employment, shall not be considered Confidential Information for the purposes of this Agreement”))

In *D&G Flooring, LLC v. Home Depot U.S.A., Inc.*, Civil Case No. JFM-04-2954, 2005 U.S. Dist. LEXIS 3992 (D. Md. Mar. 15, 2005), a case cited by Britt/Paulk, this Court held that

the plaintiff flooring company could not reasonably believe that it was the exclusive flooring installer for Home Depot because the parties' 1997 contract expressly provided that there was no exclusivity and the parties' 2002 contract, which fully integrated the 1997 contract, likewise made no mention of exclusivity. *D&G Flooring, LLC* is distinguishable from this case, however, because only D&G Flooring, LLC and Home Depot were parties to both the 1997 and 2002 contracts and because the subject matter was the same in both—the terms by which D&G Flooring rendered flooring installation services for Home Depot. In contrast, in this case, all of the parties to the Confidentiality Agreement are not included in the Employment Agreement and the subject matter of the two contracts—the protection of confidential information shared during negotiations and an individual's terms of employment, respectively—are not the same.

At this stage in the proceedings, this Court finds that the integration clause in the Employment Agreement does not extinguish the Confidentiality Agreement. Accordingly, the Defendant's Motion to Dismiss pursuant to Rule 12(b)(6) is DENIED as to Count I.

II. Count II: Breach of Fiduciary Duty

As to Count II, Britt/Paulk notes that Maryland does not recognize an independent cause of action for breach of fiduciary duty. *Int'l Brotherhood of Teamsters v. Willis Corroon Corp.*, 802 A.2d 1050, 1052 n.1 (Md. 2002); *Vinogradova v. Suntrust Bank, Inc.*, 875 A.2d 222, 231 (Md. Ct. Spec. App. 2005) (quoting *Int'l Brotherhood of Teamsters*, 802 A.2d at 1052 n.1). This Court has also recognized this principle of Maryland law. See *Swedish Civil Aviation Admin. v. Project Management Enterprises, Inc.*, 190 F. Supp. 2d 785, 801 (D. Md. 2002) (“[T]here is no independent tort for breach of fiduciary duty in Maryland, especially in light of the multiple alternative remedies involving the alleged breach available.”); *Kerby v. Mortgage Funding*

Corp., 992 F. Supp. 787, 803 (D. Md. 1998) (“Maryland recognizes no universal or omnibus tort for the redress of breach of fiduciary duty, at least in a situation where other remedies exist. . . .”) (internal quotations omitted); *McGovern v. Deutsche Post Global Mail, Ltd.*, 2004 WL 1764088, 11-12 (D. Md. 2004) (“[A] breach of fiduciary duty can give rise to a cause of action-- that is, it can be a component of a cause of action--but it cannot be a cause of action standing alone.”).

The Plaintiffs argue that the Maryland Court of Appeals in *Kann v. Kann*, 690 A.2d 509 (Md. 1997), left the door open for an independent cause of action for breach of fiduciary duty. In *Kann*, the court held that “this does not mean that there is no claim or cause of action for breach of fiduciary duty.” *Id.* at 521. However, “a careful reading of [*Kann*] merely leads to the conclusion that a breach of fiduciary duty would continue to be part of other causes of action.” *Swedish Civil Aviation*, 190 F. Supp. 2d at 801. Since the Plaintiffs have a variety of alternative remedies, including the breach of contract claim, in which a breach of fiduciary duty may be a part, Defendant’s Motion to Dismiss is GRANTED as to Count II.

III. Count III: Breach of Duty of Good Faith and Fair Dealing

Britt/Paulk also argues that Maryland does not recognize an independent cause of action for breach of the duty of good faith and fair dealing. Specifically, in *Mount Vernon Props., LLC v. Branch Banking & Trust Co.*, 907 A.2d 373, 382 (Md. Ct. Spec. App. 2006), the Court of Special Appeals of Maryland held that “there is no independent cause of action at law in Maryland for breach of the implied covenant of good faith and fair dealing.” This Court has similarly recognized this principle of Maryland law. *Abt Assocs., Inc. v. JHPIEGO Corp.*, 104 F. Supp. 2d 523 (D. Md. 2000) (quoting *Parker v. Columbia Bank*, 91 Md. App. 346, 366, 604 A.2d 521 (1992) (“[T]he Court of Special Appeals stated that the implied duty of good faith

‘simply prohibits one party to a contract from acting in such a manner as to prevent the other party from performing his obligations under the contract.’”); *Baker v. Sun Co., Inc.*, 985 F. Supp. 609, 610 (D. Md.1997).

However, Maryland has recognized an imposition of the duty of good faith and fair dealing in the *performance of a contract*. See *Food Fair Stores, Inc. v. Blumberg*, 200 A.2d 166 (Md. 1964) (“[I]n every contract there exists an implied covenant that each of the parties thereto will act in good faith and deal fairly with the others.”). Therefore, Plaintiffs’ claim for breach of duty of good faith and fair dealing is merely a part of the breach of contract claim, and this Court has already held that Count I states a claim for breach of contract. Accordingly, Defendant’s Motion to Dismiss Count III is GRANTED.

IV. Count IV: Misrepresentation

Count IV of the Complaint alleges misrepresentation on the part of Britt/Paulk regarding the negotiations and ongoing business dealings between the parties.⁴ Britt/Paulk argues that this count is in all practicality an “artfully plead claim for fraud” (Def’s Mot. to Dismiss 11 (internal quotation omitted)) and that, therefore, it fails to comply with the particularity requirements of Rule 9(b) of the Federal Rules of Civil Procedure. Rule 9(b) states in pertinent part: “In all averments of fraud . . . , the circumstances constituting fraud . . . shall be stated with particularity.” Fed. R. Civ. P 9(b). This rule essentially requires plaintiffs to plead specific allegations with regard to “the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby.”

⁴ This Court notes that this action was originally brought in the Circuit Court for Worcester County, Maryland. Under the Maryland Rules, there is no corollary to Rule 9(b) in the Federal Rules of Civil Procedure.

Harrison v. Westinghouse Savannah River Co., 176 F.3d 776, 784 (4th Cir. 1999). A failure to comply with this rule is treated as a failure to state a claim under Rule 12(b)(6). *See Harrison*, 176 F.3d at 783 n.5. Before the motion to dismiss will be granted, “[a] court should hesitate to dismiss a complaint under Rule 9(b) if the court is satisfied (1) that the defendant has been made aware of the particular circumstances for which she will have to prepare a defense at trial, and (2) that plaintiff has substantial pre-discovery evidence of those facts.” *Id.* at 784.

In this case, Plaintiffs allege in Count IV that Britt/Paulk, “through its agents and representatives,” made false misrepresentations of material fact (Compl. ¶ 35), although the Complaint does not specify which agents made the statements. The Complaint also articulates the contents of these misrepresentations, including that Britt/Paulk would only use the confidential information as specified in the Confidentiality Agreement, and that it would not disclose the confidential information without compensating Mr. Pusey and GMP as contemplated by the Employment Agreement. (*Id.*) In addition, the Complaint alleges that these representations were made during the negotiations between Britt/Paulk and Mr. Pusey and GMP. (*Id.*) This Court finds that Count IV of the Plaintiffs’ Complaint sufficiently puts the Defendant on notice of the specific circumstances giving rise to its claim for misrepresentation and, therefore, satisfies the particularity requirement for a fraud claim set forth in Rule 9(b) of the Federal Rules of Civil Procedure. Therefore, the Defendant’s Motion to Dismiss is DENIED as to Count IV .

V. Count V: Unjust Enrichment

Count V of the Complaint alleged unjust enrichment on the part of Britt/Paulk. Britt/Paulk argues that this claim must fail as a matter of law, because it is a quasi-contract

remedy and because there is already an express agreement that controls between the parties. The equitable remedy for unjust enrichment permits recovery “where, in fact, there is no contract, but where circumstances are such that justice warrants a recovery as though there had been a promise.” *County Comm'rs of Caroline County v. J. Roland Dashiell & Sons, Inc.*, 747 A.2d 600, 606 (Md. 2000) (citation omitted). Britt/Paulk is correct that a plaintiff cannot recover under a quasi-contract claim “when a contract exists between the parties concerning the same subject matter on which the quasi-contractual claim rests. . . .” *Id.* at 607. However, although the Plaintiffs “may not recover under both contract and quasi-contract theories, [they are] not barred from pleading these theories in the alternative where the existence of a contract concerning the subject matter is in dispute.” *Swedish Civil Aviation Admin. v. Project Management Enterprises, Inc.*, 190 F.Supp.2d 785, 792 (D.Md.2002). Therefore, since there is a dispute regarding the validity of the Confidentiality Agreement, Plaintiffs may plead their claim for unjust enrichment.

Additionally, the Federal Rules of Civil Procedure allow parties to plead claims in the alternative. Rule 8(e)(2) states in part, “[a] party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal [or] equitable... grounds.” Fed. R. Civ. P 8(e)(2). Accordingly, Plaintiffs may plead claims both in contract and quasi-contract. Therefore, Defendant’s Motion to Dismiss Count V is DENIED.

VI. Count VI: Violation of the Maryland Uniform Trade Secrets Act

In Count VI of the Complaint, the Plaintiffs allege that Britt/Paulk violated the Maryland Uniform Trade Secrets Act (“MUTSA”), Md. Code Ann., Com. Law §§ 11-1201, *et seq.*, by continually using the confidential information that Mr. Pusey and GMP disclosed to Britt/Paulk.

MUTSA defines a “trade secret” as

information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value . . . from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Id. § 11-1201(e). Since the record does not include detailed information about what was contained within the alleged confidential information, this Court cannot make a determination at this stage whether the information either derived independent economic value or was subject to reasonable efforts to maintain its secrecy. Therefore, at this stage of the proceedings, this Court must assume that the allegation in the Complaint that the confidential information constituted a “trade secret” under MUTSA.

Defendant primarily argues that Plaintiffs failed to state a claim for relief under MUTSA, because they did not allege that Britt/Paulk used improper means to acquire the information or disclose any trade secrets. (Def.’s Mem. Supp. Summ. J. 15.) In support, Defendant relies on *LeJeune v. Coin Acceptors, Inc.*, 849 A.2d 451, 465 (Md. 2004), in which the Maryland Court of Appeals noted that section 11-1201(c) “describes two general types of misappropriation: (1) acquisition of a trade secret by improper means or (2) disclosure of a trade secret.” As to the first kind of misappropriation, the statute clearly states that “improper means” can come in several forms including: “theft, bribery, *misrepresentation*, breach or inducement of a *breach of a duty to maintain secrecy*, or espionage . . .” Md. Code Ann., Com. Law § 11-1201(b) (emphasis added). In Count IV of the Complaint, which this Court has already held survives the Motion to Dismiss, Plaintiffs properly allege that Britt/Paulk improperly acquired and used the

confidential information through misrepresentation. (*See* Compl. ¶¶ 34-37.) Additionally, in Count I, which this Court has also held survives the Motion to Dismiss, Plaintiffs claim that the Confidentiality Agreement established a duty of secrecy pertaining to the confidential information. (*See id.* ¶¶ 25-27.) Thus, the Complaint sufficiently alleges facts that, if proven, would support a finding that Britt/Paulk obtained the confidential information by improper means.

As to the second kind of misappropriation, despite the phrasing used in *LeJeune*, MUTSA clearly states that “disclosure or *use* of a trade secret” satisfies the definition of “misappropriation.” Md. Code Ann., Com. Law § 11-1201(c)(2) (emphasis added). The Plaintiffs allege numerous times throughout their Complaint that Britt/Paulk has and is continuing to use the confidential information that is covered by the Confidentiality Agreement. Accordingly, Defendant’s Motion to Dismiss Count VI is DENIED.

As a final matter, Defendant has alternatively moved for a more definite statement. Pursuant to Rule 12(e) of the Federal Rules of Civil Procedure, “[a] party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response.” However, as this Court has held that Counts I, IV, V, and VI have stated a claim upon which relief can be granted, Defendant’s Motion for a More Definite Statement is DENIED.

CONCLUSION

For the forgoing reasons, the Defendant’s Motion to Dismiss with respect to Counts II and III is GRANTED. The Defendant’s Motion to Dismiss with respect to Counts I, IV, V, and VI is DENIED. The Defendant’s Motion in the alternative for a More Definite Statement is

DENIED. The Defendant's Motion to Dismiss Ms. Pusey in her individual capacity will be
GRANTED. A separate Order follows.

Date: May 6, 2008

/s/
Richard D. Bennett
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

G.M. PUSEY AND ASSOCIATES,
INC., *et al.*,

Plaintiffs,

v.

Civil Action No.: RDB-07-3229

BRITT/PAULK INSURANCE
AGENCY, INC.,

Defendant.

* * * * *

ORDER

Based on the reasons stated in the foregoing Memorandum Opinion, IT IS this 6th day of
May, 2008, HEREBY ORDERED that

- a. Defendant Britt/Paulk Insurance Agency, Inc.'s Motion to Dismiss or, in the
Alternative, Motion for a More Definite Statement (Paper No. 13) is GRANTED
in part and DENIED in part;
 - i. The Motion to Dismiss is GRANTED as to Counts II and III, which are
dismissed with prejudice, as well as to Plaintiff Mary Anne Pusey in her
individual capacity;
 - ii. The Motion to Dismiss is DENIED as to Counts I, IV, V, and VI;
 - iii. The Motion for a More Definite Statement is DENIED;
- b. Defendant Britt/Paulk Insurance Agency, Inc. shall file an Answer to the
Complaint within twenty (20) days; and

- c. The Clerk of the Court transmit copies of this Order and the accompanying Memorandum Opinion to counsel of record.

/s/

Richard D. Bennett
United States District Judge