ARCHER & GREINER
A Professional Corporation
1025 Laurel Oak Road
Voorhees, NJ 08043
856-616-2685
Attorneys for Plaintiffs Dental Health Associates South Jersey, P.A., PG Dental Management II LLC and Dr. Amish Patel

BY: KERRI E. CHEWNING, ESQUIRE (ID No. 023272000)

DENIED

DENTAL HEALTH ASSOCIATES SOUTH JERSEY, P.A.; PG DENTAL MANAGEMENT II LLC; and DR. AMISH PATEL, Plaintiffs, v. RRI GIBBSBORO LLC; SCOTT SINGER; TODD SINGER; SAMANTHA WOLFF; DENTAL OF CLEMENTON LLC; and JAMES MARMO, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION, CAMDEN COUNTY DOCKET NO. CAM-L-003993-20 **ORDER GRANTING PLAINTIFFS' MOTION FOR RECONSIDERATION OF THE APRIL 12, 2023 ORDER LIMITING THE OPINION AND TESTIMONY OF RODNEY CRAWFORD**

DENIED

THIS MATTER having come before the Court upon the Plaintiffs' Motion for Reconsideration of the April 12, 2023 Order Limiting the Expert Opinion And Testimony of Rodney Crawford; and the Court having considered the parties' submissions and oral argument; and for good cause shown:

IT IS, on this 1st day of June, 2023,

ORDERED that Plaintiffs' Motion for Reconsideration of the April 12, 2023 Order Limiting the Expert Opinion And Testimony of Rodney Crawford be and hereby is **GRANTED** and the April 12, 2023 Order is hereby **VACATED**; and it is

DENIED

FURTHER ORDERED that the Singer Defendants' Motion to Strike the Opinion and Testimony of Rodney Crawford is now hereby **DENIED**.

DENIED

Hon. Steven J. Polansky, P.J. Civ.

✓ Opposed

___ Unopposed

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"Reasons set forth ~~On the Record~~" → on attached Memorandum Decision

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

DENTAL HEALTH ASSOCIATES SOUTH JERSEY, P.A., et al.	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION / CAMDEN COUNTY
Plaintiffs,	: DOCKET NO. CAM-L-3993-20
v.	: **(CBLP)**
RRI GIBBSBORO LLC, et al.,	: **MEMORANDUM DECISION**
Defendants.	:

RRI GIBBSBORO LLC, et al.,	:
Counterclaimants,	:
v.	:
DENTAL HEALTH ASSOCIATES SOUTH JERSEY, P.A., et al.,	:
Counterclaim Defendants.	:

Decided: June 1, 2023

Kerri E. Chewning, Esquire, Jeffrey M. Scott, Esquire (Pro Hac Vice), Archer & Greiner, P.C., Counsel for Plaintiffs, Dental Health Associates South Jersey, P.A., PG Dental Management II LLC and Dr. Amish Patel

Elliot D. Ostrove, Esquire, Epstein Ostrove, LLC, Counsel for Defendants, RRI Gibbsboro, LLC, Scott Singer and Todd Singer

STEVEN J. POLANSKY, P.J.Cv.

Plaintiff moves for reconsideration of the court's decision finding that the valuation of damages based upon selling the purchased business as a growing concern five years down the road was not a proper measure of damages for the claims asserted either for breach of contract, tortious interference with contract or violation of the New Jersey Law Against Discrimination. Specifically, plaintiff asserts that with a tortious interference claim, there are additional remedies separate and apart from those in the breach of contract claim.

Defendant responds that the court properly barred evidence of potential lost investment value in the future as too remote and speculative. Defendant points to the

court's reliance upon Seaman v. U.S. Steel Corp., 166 N.J. Super. 467 (App. Div.), certif. denied 81 N.J. 282 (1989) where the court applied a similar standard to claims involving allegations of sounds in tort and claiming Uniform Commercial Code claims.

The court in its March 31, 2023 oral decision explained the reason for its conclusion that damages calculated based not upon a loss of profits from an ongoing business concern being purchased, but rather based upon a hypothetical sale of the business five years down the road, were too remote and too speculative, and therefore not the proper measure of damages here. By Order of April 10, 2023, the court granted in part and denied in part the motion for summary judgment. The court in an Order dated April 12, 2023 precluded evidence of lost enterprise value.

Plaintiff's amended complaint originally asserted the following claims:

COUNT I:
CONVERSION AGAINST TODD SINGER, SCOTT SINGER AND RRI

COUNT II:
CONVERSION AGAINST DoC AND WOLFFF

COUNT III:
BREACH OF CONTRACT AGAINST WOLFFF

COUNT IV:
CONVERSION AGAINST MARMO

COUNT V:
BREACH OF CONTRACT AGAINST MARMO

COUNT VI:
TORTIOUS INTERFERENCE WITH CONTRACT AND/OR BUSINESS EXPECTANCY AGAINST ALL DEFENDANTS

COUNT VII:
BREACH OF CONTRACT AGAINST RRI

COUNT VII:
VIOLATION OF N.J.S.A. 10:5-12 (NEW JERSEY LAW AGAINST DISCRIMINATION)

COUNT VIII:
DEFAMATION

This case arises from an asset purchase agreement between PG Dental Health Management II, LLC and Dental Health Associates South Jersey with Dimensional Dental Management LLC for multiple dental practices, including a dental practice located in Clementon, New Jersey. Under the terms of that contract, the seller who is not a party was required to terminate the employment of all employees effective the closing date of January 1, 2020. There is no dispute that such termination occurred.

The asset purchase agreement required the assignment of lease agreements for all properties involved, including the Clementon location. The original lease was between RRI Gibbsboro LLC and Brighter Living Dental Care of New Jersey for the 250 Gibbsboro Road property. By way of a third amendment to the lease dated November 1, 2016, the lease was modified to reflect Clementon Dental & Specialty Group LLC as the tenant. The term of the lease was to run to October 31, 2026. This amendment to the original lease included a replacement of the assignment provisions. Under this provision of the lease, consent of the landlord was required. The tenant was required to give notice to the landlord of its intention to assign or sublease the premises along with credit information reflecting the financial ability of the assignee to the satisfaction of the landlord. Landlord was given 30 days to respond to any such requests.

Under subsection h, the contract provides that upon ten days prior notice and without landlord's right of approval, tenant could assign the lease to a subtenant with a tangible net worth excluding goodwill at least equal to or greater than the net worth of the tenant immediately prior to assignment or to a dental practice. Under these circumstances, tenant was required to deliver to the landlord at least ten days prior to the transaction proof satisfactory to the landlord of such minimum net worth or written evidence reasonably necessary to show that such assignee is in the practice of providing dental practice management services or is a dentist. It is disputed whether the proper notice was provided. The actual assignment was made by Dental Partners I, LLC who is not the tenant under the 2016 lease amendment. Defendant admits that there was a subsequent lease assignment between Clementon Dental & Specialty Group LLC and Dental Partners I LLC, although no documents were provided to support this assignment.

Pursuant to the original lease agreement, the lease could be terminated on 90 days notice. It is asserted that instead of honoring the assignment, defendants precluded plaintiffs from taking possession of the property and engaged in self help by essentially locking plaintiffs out of the property instead of following the proper procedures under landlord tenant law and seeking court assistance.

There are allegations of racial animus. It is alleged that Scott Singer said to Amish Patel, that it was "time to bring these Indians down". It is further alleged that Singer called Dr. Patel and his family scum, said his offices were infested with rats and

further falsely claimed that Dr. Patel had been arrested at the dental office and taken out by the FBI in handcuffs.

The present motion comes before the court on plaintiff's motion for reconsideration of an April 12, 2023 Order precluding plaintiff from asserting a damage claim based upon the predicted value of the business five years in the future. Plaintiff's damage claim asserted in part that the conduct of defendants precluded plaintiff from continuing the dental practice and earning profits over a five-year period, and then further precluded plaintiff from a lost business opportunity of being able to sell the business after five years at a profit.

Compensatory damages are intended to make a litigant whole for a loss, no more, no less. Tarr v. Ciasulli, 181 N.J. 70 (2004). A party is typically entitled to compensatory damages which may be fairly considered to have arisen naturally from a defendant's breach of contract. See Coyle v. Englander, 199 N.J. Super. 312 (App. Div. 1985). These damages are intended to place the injured party in as good a position as they would have enjoyed had the contract been performed as promised. Any such loss however must be foreseeable as a result of any breach at the time the contract was entered. George H. Swatek, Inc. v. North Star Graphics, 246 N.J. Super. 281, 285 (App. Div. 1991).

Before consequential damages can be considered by a jury, a defendant must be shown to have reason to foresee the injury at the time the contract was made, and not at the time of the breach. Coyle v. Englander, 199 N.J. Super. at 220. Lost profits are a type of consequential damage. Seaman v. United States Steel Corp., 166 N.J. Super. 467, 471 (App. Div. 1979). Here, plaintiff presents no evidence that defendant was aware of its undisclosed intent to operate the business for a fixed period of time and then flip or sell the business. Without such evidence, this type of consequential damage is not recoverable. Seaman v. United States Steel Corp., 166 N.J. Super. at 471-472.

Plaintiffs in their motion for reconsideration assert that the damages recoverable on a tort theory or a Law Against Discrimination claim are far broader than those permitted in a claim asserting a breach of contract. They assert that damages are "not tied to or limited by the defendant's foreseeable expectations" related to the business relationship. Plaintiff does acknowledge that proximate cause or legal causation does preclude the recovery of some unforeseeable damages or damages that are speculative. Williamson v. Waldman, 150 N.J. 232, 246 (1997).

Under New Jersey law, "lost profits may be recoverable if they can be established with a 'reasonable degree of certainty,' 'but anticipated profits that are remote, uncertain or speculative...are not recoverable'". Schwartz v. Menas, 251 N.J. 556, 576 (2022) (quoting Passaic Valley Sewerage Commissioners v. St. Paul Fire & Marine Ins. Co., 206 N.J. 596, 609-610 (2011); Perth Amboy Iron Works, Inc. v. American Home Assurance Co., 226, N.J. Super. 200, 224 (App. Div. 1988).

The court on motion concluded that calculating damages based upon a theoretical sale of the Clementon location or, for that matter, all locations purchased at an arbitrary point five years down the road was far too remote, uncertain and speculative under the facts presented here.

While plaintiff claims that different rules should apply to a tort claim or LAD claim as opposed to a breach of contract claim, this ignores the fact that the guidelines for permitting the recovery for lost profit damages set forth in Schwartz v. Menas, supra., included a claim alleging tortious interference. Regardless of whether the claim is characterized as a contract claim, tort claim or LAD claim, plaintiff is still required to prove damages of anticipated lost profits with reasonable certainty. Where, as here, a theory of lost profits seeks recovery of damages that are too remote, uncertain or speculative, such a damage recovery is precluded.