

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Chapter 11

DigitalTown, Inc.,

Debtor.

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Richard Pomije,

ADV No. 21-03003

Plaintiff,

v.

DigitalTown, Inc.,

Defendant.

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**ORDER**

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AT: St. Paul, Minnesota.

This matter came on before the undersigned Judge of the United States Bankruptcy Court on the 21<sup>st</sup> day of April, 2021, upon the motion of the defendant, DigitalTown, Inc., for dismissal under Rule 7012 and for summary judgment under Rule 7056 of the Federal Rules of Bankruptcy Procedure. Appearances are as noted in the proceedings.

Based upon all of the files, records and proceedings herein, and arguments of counsel, the court makes the following:

1. Good cause exists for dismissing the complaint under Rule 7012.

- a. The complaint fails to plead fraud with particularity as required by Rule 7009. Although the complaint makes numerous statements, they are vague and conclusory.
  - b. The complaint, taken as a whole, fails to plead a plausible cause of action. Since the plaintiff was the majority shareholder, one of two directors and the chief executive officer, the plaintiff know or is charged with the knowledge of the company's financial condition, the business operations, affairs and circumstances. It is implausible therefore to believe therefore that the plaintiff was either fraudulently induced in entering into any contract, nor that he could justifiability have relied on any fraudulent statements made to him.
  - c. The plaintiff alleges that Willard Olson breached a contract with him on or before October 2017. The tortious interference with contract had to have occurred on or before October 2017. The plaintiff's state court action was commenced more than two years after that occurrence. The applicable statute of limitations is two years. The plaintiff's tortious interference claim is time-barred.
  - d. The only defamatory statement that the plaintiff specifically identifies is the alleged statement inducing Willard Olson to interfere with his alleged contract with the plaintiff. That alleged statement occurred more than two years prior to the commencement of the action against the defendant. The plaintiff's claim for defamation is time-barred by the applicable Minnesota statute of limitations.
2. The plaintiff is entitled to summary judgment on all claims asserted in this action.

3. Based on this record, the plaintiff cannot demonstrate at least three of the requisite elements of a claim of fraud. The plaintiff cannot prove a fraudulent statement that induced him to take action. The plaintiff cannot prove justifiable reliance and cannot prove that his damages are proximately caused by the alleged fraud. For these reasons, the plaintiff cannot establish a claim of fraud.
4. There is no corporate fiduciary duty under Minnesota law, so the defendant is entitled to judgment on the claim of breach of fiduciary duty as a matter of law.
5. The court finds that the statements attributed to the defendant which were alleged to be defamatory were in fact true and therefore not defamatory.
6. The defendant is entitled to summary judgment on its counterclaim to recover voidable transfers under the Minnesota Voidable Transfers Act (Minn. Stat, §§ 513.41).
7. The plaintiff was at all times relevant to these proceedings an insider of DigitalTown,, Inc. He received transfers of \$744,436 on account of antecedent debts. DigitalTown, Inc. was insolvent at the times these transfers were made,
8. The defendant's motion for summary judgment on the claims of its counterclaim is granted.
9. The defendant is entitled to judgment against the defendant in the amount of \$744,436.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Date:

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United States Bankruptcy Judge