

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

Daniel Gilk and Samuel Gilk, each individually and derivatively on behalf of Fly Boatworks, LLC v. Mark L. Fisher, Errol Galt, Mark Baker, and Axocon Polymers, LLC, formerly known as Trident Polymers, LLC

Gilk v. Fisher · No. Civil No. 25-2158 (JRT/LIB) · Decided March 31, 2026

SUMMARY

The United States District Court for the District of Minnesota considers Defendants’ motion to dismiss the Gilks’ First Amended Complaint arising from alleged misappropriation of Fly Boatworks’ trade secrets and usurpation of a business opportunity involving Martac. The court denies dismissal under Federal Rules of Civil Procedure 8 and 23.1, concludes that the fraud claim satisfies Rule 9(b), and addresses the parties’ arguments under Rule 12(b)(6). The document is a memorandum opinion and order granting in part and denying in part the motion to dismiss.

CASE DETAILS

COURT	United States District Court for the District of Minnesota
WRITING FOR THE COURT	John R. Tunheim
JURISDICTION	United States District Court for the District of Minnesota
DECIDED	March 31, 2026
DOCKET	Civil No. 25-2158 (JRT/LIB)
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved under Federal Rules of Civil Procedure 8(a), 9(b), and 12(b)(6) to dismiss Plaintiffs' First Amended Complaint asserting trade-secret, contract, fiduciary-duty, tort, equitable, and remedial claims.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true, construes the complaint and reasonable inferences in the plaintiff’s favor, and asks whether the complaint states a claim for relief that is plausible on its face. Under Rule 9(b), fraud must be pleaded with particularity. Under Rule 23.1, derivative-action demand or demand futility must be stated with particularity.
PRECEDENTIAL VALUE	unpublished district court opinion

PARTIES

Daniel Gilk, Samuel Gilk, Fly Boatworks, LLC v. Mark L. Fisher,
Errol Galt, Mark Baker, Axocon Polymers, LLC

TOPICS

motions to dismiss

trade secrets

civil procedure

limited liability companies

fiduciary duty

PRACTICE AREAS

civil procedure

commercial litigation

trade secrets

limited liability companies

breach of contract

fiduciary duty

torts

remedies

QUESTIONS PRESENTED

1. Whether the First Amended Complaint violated Rule 8 by engaging in shotgun pleading or impermissible group pleading.
2. Whether Plaintiffs adequately pleaded demand futility for their derivative claims under Rule 23.1 and Minnesota law.
3. Whether Plaintiffs pleaded fraud with particularity under Rule 9(b).
4. Whether the independent-duty rule barred Plaintiffs' tort and related claims at the pleading stage.
5. Whether Plaintiffs plausibly alleged trade secrets and misappropriation under the DTSA and MUTSA.
6. Whether MUTSA displaced Plaintiffs' contract, fiduciary-duty, conspiracy, conversion, unjust-enrichment, interference, and fraud claims in whole or in part.
7. Whether Plaintiffs plausibly stated conversion and civil-theft claims.
8. Whether Plaintiffs could plead unjust enrichment in the alternative to contract and statutory claims.
9. Whether accounting and injunctive relief were independent causes of action or available remedies.
10. Whether Plaintiffs plausibly alleged damages for tortious interference.

HOLDINGS

1. The complaint did not violate Rule 8 because, read as a whole, it attributed sufficient conduct to the defendants and provided fair notice of the claims and alleged misconduct.
2. Plaintiffs adequately pleaded demand futility under Rule 23.1 and Minnesota law.
3. Plaintiffs pleaded their fraud claim with sufficient particularity to survive dismissal.
4. The independent-duty rule did not warrant dismissal of the challenged fiduciary-duty, civil-conspiracy, conversion, unjust-enrichment, tortious-interference, or fraud claims at this stage.
5. Plaintiffs plausibly alleged the existence and sufficient description of trade secrets under the DTSA and MUTSA.
6. MUTSA did not displace Plaintiffs' contract or good-faith-and-fair-dealing claims, and displaced the fiduciary-duty, conspiracy, conversion, unjust-enrichment, tortious-interference, and fraud claims only to

the extent those claims were based on trade-secret misappropriation.

7. Plaintiffs failed to plausibly state conversion or civil-theft claims.

8. Dismissal of the unjust-enrichment claim was premature, although the claim was dismissed to the extent based on trade-secret misappropriation.

9. Accounting and injunctive relief were remedies rather than independent causes of action, but Plaintiffs could pursue them in connection with other claims.

KEY QUOTATIONS

“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”

“The Court concludes that Plaintiffs have plausibly alleged the existence of trade secrets.”

FACTUAL BACKGROUND

The Gilks founded Fly Boatworks, LLC, developed the F2 Carbon skiff and related design innovations with Mark Fisher, and later entered an operating agreement with Fisher, Galt, and Baker. The operating agreement gave the owners specified interests, required unanimous approval for company actions, and imposed loyalty obligations. After Fly Boatworks began negotiating a potential \$23 million-per-year Martac business opportunity, the Individual Defendants allegedly formed Axocon and related entities, diverted the opportunity, used Fly Boatworks' designs and innovations, and sought to remove Fly Boatworks' branding. Plaintiffs alleged misappropriation of trade secrets, contractual and fiduciary breaches, fraud, interference, and related misconduct.

PROCEDURAL HISTORY

Plaintiffs filed the action individually and derivatively on behalf of Fly Boatworks, LLC, sought temporary and preliminary injunctive relief, and later filed a First Amended Complaint. The court previously granted Plaintiffs' motion for a temporary restraining order and preliminary injunction and denied Defendants' corresponding motion. On Defendants' motion to dismiss, the court denied dismissal of most claims, dismissed the conversion and civil-theft claim, dismissed accounting and injunctive relief as independent causes of action while allowing those remedies to proceed in connection with surviving claims, and dismissed portions of several claims to the extent based on trade-secret misappropriation.

DISPOSITION

other

CASES CITED

- *Gilk v. Fisher*, 2025 WL 1920496, at *5, *8, *9–10 (D. Minn. July 11, 2025)
- *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
- *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)

- Ashley County v. Pfizer, Inc., 552 F.3d 659, 665 (8th Cir. 2009)
- Schriener v. Quicken Loans, Inc., 774 F.3d 442, 444 (8th Cir. 2014)
- Porous Media Corp. v. Pall Corp., 186 F.3d 1077, 1079 (8th Cir. 1999)
- Gurman v. Metropolitan Housing & Redevelopment Authority, 842 F. Supp. 2d 1151, 1153 & n.2 (D. Minn. 2011)
- Tatone v. SunTrust Mortgage, Inc., 857 F. Supp. 2d 821, 831 (D. Minn. 2012)
- Matrixx Initiatives, Inc. v. Siracusano, 563 U.S. 27, 47 (2011)
- Cottrell v. Duke, 737 F.3d 1238, 1247 (8th Cir. 2013)
- Gomes v. American Century Companies, Inc., 710 F.3d 811, 815 (8th Cir. 2013)
- Novak v. Miller, No. A22-1164, 2023 WL 2847207, at *3 (Minn. Ct. App. Apr. 10, 2023)
- Winter v. Farmers Educational & Cooperative Union of America, 107 N.W.2d 226, 227 (Minn. 1961)
- Abels v. Farmers Commodities Corp., 259 F.3d 910, 920 (8th Cir. 2001)
- Streambend Properties II, LLC v. Ivy Tower Minneapolis, LLC, 781 F.3d 1003, 1013 (8th Cir. 2015)
- United States ex rel. Joshi v. St. Luke's Hospital, Inc., 441 F.3d 552, 556 (8th Cir. 2006)
- U.S. Bank N.A. v. Cold Spring Granite Co., 802 N.W.2d 363, 373 (Minn. 2011)
- Wild v. Rarig, 234 N.W.2d 775, 789 (Minn. 1975)
- Hanks v. Hubbard Broadcasting, Inc., 493 N.W.2d 302, 308 (Minn. Ct. App. 1992)
- AKA Distributing Co. v. Whirlpool Corp., 137 F.3d 1083, 1086 (8th Cir. 1998)
- Berreman v. Western Publishing Co., 615 N.W.2d 362, 367 (Minn. Ct. App. 2000)
- BitNile, Inc. v. Perrill, Civ. No. 22-2911, 2023 WL 5723818, at *8 (D. Minn. Sept. 5, 2023)
- United States v. Bame, 721 F.3d 1025, 1030 (8th Cir. 2013)
- U.S. Bank National Association v. San Antonio Cash Network, 252 F. Supp. 3d 714, 721 (D. Minn. 2017)
- Protégé Biomedical, LLC v. Z-Medica, LLC, 394 F. Supp. 3d 924, 938–39 (D. Minn. 2019)
- AvidAir Helicopter Supply, Inc. v. Rolls-Royce Corp., 663 F.3d 966, 974 (8th Cir. 2011)
- Prime Therapeutics LLC v. Beatty, 354 F. Supp. 3d 957, 967–68 (D. Minn. 2018)
- Prairie Field Services, LLC v. Welsh, 497 F. Supp. 3d 381, 396 (D. Minn. 2020)
- Eaton Corp. v. Appliance Valves Corp., 971 F.2d 136, 141 (8th Cir. 1992)
- Deluxe Financial Services, LLC v. Shaw, Civ. No. 16-3065, 2017 WL 3327570, at *4 n.3 (D. Minn. Aug. 3, 2017)
- SL Montevideo Technology, Inc. v. Eaton Aerospace, LLC, 292 F. Supp. 2d 1173, 1179 (D. Minn. 2003)
- Micro Display Systems, Inc. v. Axtel, Inc., 699 F. Supp. 2d 202, 205 (D. Minn. 1988)
- Jacobs v. Gradient Insurance Brokerage, Inc., Civ. No. 15-3820, 2016 WL 1180182, at *3 (D. Minn. Mar. 25, 2016)
- RSS Fridley, LLC v. Northwest Orthopaedic Surgeons Partnership, LLP, No. A21-664, 2022 WL 200359, at *12 (Minn. Ct. App. Jan. 24, 2022)
- TCI Business Capital, Inc. v. Five Star American Die Casting, LLC, 890 N.W.2d 423, 429, 431 (Minn. Ct. App. 2017)

- Staffing Specifix, Inc. v. TempWorks Management Services, Inc., 896 N.W.2d 115, 126 (Minn. Ct. App. 2017)
- De Castro v. Castro, Civ. No. 18-1449, 2018 WL 6026089, at *4 (D. Minn. Nov. 16, 2018)
- Hajiabdi v. Metropolitan Transportation Network, Inc., Civ. No. 21-268, 2021 WL 5177413, at *5 (D. Minn. Nov. 8, 2021)
- Masterson Personnel, Inc. v. The McClatchy Co., Civ. No. 05-1274, 2005 WL 3132349, at *7 (D. Minn. Nov. 23, 2005)
- Motley v. Homecomings Financial, LLC, 557 F. Supp. 2d 1005, 1014 (D. Minn. 2008)
- N. PCS Services, LLC v. Sprint Nextel Corp., Civ. No. 05-2744, 2006 WL 1072075, at *3 (D. Minn. Apr. 21, 2006)
- Gieseke ex rel. Diversified Water Diversion, Inc. v. IDCA, Inc., 844 N.W.2d 210, 219 (Minn. 2014)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/united-states-district-court-for-the-district-of-minnesota-united-states-district-court-for-the-dist/2026/daniel-gilk-and-samuel-gilk-each-individually-and-yozz7aoe>