

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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STRATEGIC ENERGY CONCEPTS, LLC,

Plaintiff,

v.

**ORDER**

Civil File No. 16-463 (MJD/BRT)

OTOKA ENERGY, LLC, et al.,

Defendants.

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Arthur G. Boylan and Christopher J. Haugen, Anthony Ostlund Baer & Louwagie PA, Counsel for Plaintiff.

Brooks F. Poley, Winthrop & Weinstine, PA, and Sean T. Carnathan O'Connor and Carnathan and Mack, LLC , Counsel for Defendants State Street Bank and Trust Company and Antrim Corporation.

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The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Becky R. Thorson dated November 18, 2016. Defendants State Street Bank and Trust Company and Antrim Corporation filed objections to the Report and Recommendation. Specifically, they objected only to the portions of the Report and Recommendation denying the motion to dismiss Counts 4, 5, and 8. They do not object to the remainder of the Report and Recommendation; no other Defendants

have filed objections; and Plaintiff has not objected to the Report and Recommendation.

Pursuant to statute, the Court has conducted a de novo review upon the record of the portion of the Report and Recommendation that has been objected to. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). Based upon that review, the Court adopts the Report and Recommendation of United States Magistrate Judge Thorson.

Accordingly, based upon the files, records, and proceedings herein, **IT IS**

**HEREBY ORDERED:**

1. The Court **ADOPTS** the Report and Recommendation of United States Magistrate Judge Becky R. Thorson dated November 18, 2016 [Docket No. 58].
2. Defendants' Joint Motion to Dismiss [Docket No. 44] is **GRANTED IN PART** and **DENIED IN PART** as follows:
  - a. Defendants' motion to dismiss Count 1: Breach of Contract is **DENIED**;
  - b. Defendants' motion to dismiss Count 2: Breach of Fiduciary duty is **DENIED**;
  - c. Defendants' motion to dismiss Count 3: Breach of Covenant of Good Faith and Fair Dealing is **DENIED**;
  - d. Defendants' motion to dismiss Count 4: Tortious Interference with Contract is **DENIED**;

- e. Defendants' motion to dismiss Count 5: Unjust Enrichment is **GRANTED IN PART** with respect to Plaintiff's claim for unjust enrichment against Otoka and BVBD, and otherwise **DENIED**;
  - f. Defendants' motion to dismiss Count 6: Tortious Interference with Prospective Economic Advantage is **GRANTED**;
  - g. Defendants' motion to dismiss Count 7: Promissory Estoppel is **GRANTED**;
  - h. Defendants' motion to dismiss Count 8: Aiding and Abetting is **DENIED**; and
  - i. Defendants' motion to dismiss Count 9: Civil Conspiracy is **GRANTED**.
3. All claims in Plaintiff's Amended Complaint [Docket No. 5] as to which Defendants' motion is **GRANTED** are **DISMISSED WITHOUT PREJUDICE** pursuant to Fed. R. Civ. P. 12(b)(6).

Dated: January 3, 2017

s/ Michael J. Davis

Michael J. Davis

United States District Court