

STATE OF MICHIGAN

IN THE 20<sup>TH</sup> CIRCUIT COURT FOR THE COUNTY OF OTTAWA  
SPECIALIZED BUSINESS DOCKET

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Grand Haven, Michigan 49417  
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**CORE-LITE INDUSTRIES, LLC.,**  
a limited liability company,  
Plaintiff/Counter-Defendant,

v

**JEMCO LOGICS, INC.,** a Michigan  
a domestic liability company, and **ERICK**  
**APOL,** an individual,  
Defendants/Counterclaimants,  
and

**JEMCO LOGICS, INC.,** a Michigan  
Domestic liability company, and **ERICK**  
**APOL,**  
Third-Party Plaintiffs,

v

**ROBERT BROCK,**  
Third-Party Defendant.

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**OPINION AND ORDER**

File No. 22-7006-CB

Hon. Jon A. Van Allsburg

At a session of said Court, held in the Ottawa County  
Courthouse in the City of Grand Haven, Michigan,  
on the 23<sup>rd</sup> day of January, 2023,

PRESENT: HON JON A. VAN ALLSBURG, CIRCUIT JUDGE

Third party defendant Robert Brock (Brock) and plaintiff/counter-defendant Core-Lite Industries, LLC (CLI) bring this Motion for Partial Summary Disposition, pursuant to MCR 2.118 (C)(8), seeking to dismiss Count II (Breach of Contract) and Count IV (Breach of Fiduciary Duty) of defendants/counterclaimants/third-party plaintiffs Jemco Logics, Inc (Jemco) and Erick Apol's (Apol) Counterclaim and Third-Party Complaint. For the reasons stated in this Opinion and Order, Brock and CLI's Motion is GRANTED.

### Background

Brock formed CLI in 2011. CLI manufactures foam blocks used to construct risers, stages, and platforms, which are primarily sold to churches, schools, and other venues worldwide. Shortly after its formation, CLI contacted Jemco and Apol to host and manage featherblock.net to increase CLI's marketing, manufacturing, and sales.

In 2020, Brock hired Apol and Jemco to reconfigure featherblock.net to be accessible to customers who use mobile devices and tablets. Instead of reconfiguring featherblock.net, Apol and Jemco, under Brock's approval, created a new website, coreliteindustries.com, which contained the exact content as featherblock.net, only in a mobile friendly version.

In early 2021, near the end of the developmental phase of coreliteindustries.com, Apol asked Brock if CLI would hire him as an employee. Brock agreed, and in April 2021, Apol became a staffed employee of CLI, primarily focusing on online advertising to boost visibility for coreliteindustries.com. In June of 2021, Apol asked Brock if he could become an equity partner in CLI. In October 2021, Apol had his attorney draft two documents: an Assignment of Membership Interest and First Amended Operating Agreement, documenting negotiations as of March 2021. Apol presented the documents to Brock. Allegedly, for months, Apol and Brock attempted to negotiate an agreement but could not agree on the terms. Brock and CLI did not sign any documents involving a partnership agreement with Apol and Jemco.

Allegedly, because of Brock's denial of Apol's partnership propositions, Apol and Jemco interfered with Brock's management of featherblock.net by doing the following: filing certificates of assumed names for Jemco for featherblock.net, Core-Lite, Feather Block, and Featherblock; changing coreliteindustries.com's contact information, including its phone number and email address, to ones controlled by Apol and Jemco; changing the listed designated owner of coreliteindustries.com to Jemco's newly obtained certified name of "Core-Lite;" and sending Brock emails threatening to continue to block Brock's access to coreliteindustries.com unless he agrees to a partnership agreement.

On September 21, 2022, in this Court, Brock and CLI filed a complaint requesting injunctive relief against Apol and Jemco alleging, among other things, Statutory and Common Law Conversion and Tortious Interference with Business Relationship or Expectancy. On the same day, this Court granted relief, finding that "the failure to issue a temporary restraining order will likely result in irreparable harm to Plaintiff should Defendants continue to withhold access to coreliteindustries.com ...."<sup>1</sup>

On October 13, 2022, Apol and Jemco filed a counterclaim and third-party complaint against Brock and CLI, alleging, among other things, Breach of Contract and Breach of Fiduciary

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<sup>1</sup> *Core-Lite Industries, LLC, v Jemco Logistics & Erick Apol*, Ex Parte Temporary Restraining Order and Order to Show Cause of the Ottawa County 20th Circuit Court, issued September 21, 2022 (Docket No. 22-7006-CB).

Duty. On November 21, 2022, Brock and CLI filed this present motion for partial summary disposition pursuant to MCR 2.116(C)(8).

### Standard of Review

“A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint.”<sup>2</sup> “When deciding a motion brought under this section, a court considers only the pleadings.”<sup>3</sup> “All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant.”<sup>4</sup> All reasonable inferences or conclusions that may be drawn from the factual allegations must be accepted by the court as true; however, “conclusory allegations that are unsupported by allegations of fact on which they may be based will not suffice to state a cause of action.”<sup>5</sup> Under MCR 2.116(C)(8), a motion may be granted only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.<sup>6</sup>

### Law and Analysis

#### A. Breach of Contract

Brock and CLI first argue that no agreement or contract regarding ownership in CLI exists between the parties; thus, they contend that Apol and Jemco have failed to establish a claim for breach of contract pursuant to MCR 2.116(C)(8). This Court agrees.

“A party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages as to the party claiming the breach.”<sup>7</sup> Apol and Jemco claim that a contract exists between Apol and Brock because both parties agreed that Apol would provide a website, coreliteindustries.com, in exchange for ownership in CLI. In support, Apol points to two documents drafted by his attorney: Assignment of Membership Interest and First Amended Operating Agreement. However, as Brock and CLI correctly contend, Brock never signed the documents.<sup>8</sup> In other words,

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<sup>2</sup> *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Miller-Davis Co v Ahrens Const, Inc*, 495 Mich 161, 178; 848 NW2d 95 (2014).

<sup>8</sup> Brock and CLI’s Brief, p 7. Moreover, Apol and Jemco state in paragraph 30 of their counterclaim that “Mr. Brock delayed and deflected and ultimately failed to sign the documents.”

the parties only engaged in negotiations and never reached an agreement.

In addition, Apol and Jemco admit in their counterclaim that, to continue negotiating, Brock proposed an additional condition -- a reversion clause -- to be included in the agreement.<sup>9</sup> It is well settled in Michigan contract law that “[a] counter proposition is not an acceptance [and] discussions and negotiation, including unaccepted offers, cannot be a substitute for the formal requirements of a contract.”<sup>10</sup> The essential elements of contract formation are “(1) parties competent to contract, (2) proper subject matter, (3) legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation.”<sup>11</sup> The most vital of these elements is mutuality of agreement, also known as a “meeting of the minds,” which means that the parties mutually assent to all material facts.<sup>12</sup> To determine if there is a meeting of the minds, Michigan courts look at objective evidence from “the expressed words of the parties and their visible acts.”<sup>13</sup> Again, Brock’s counteroffer contained different terms than Apol and Jemco’s offer; and Brock’s tendering of the counteroffer terminated the original offer.<sup>14</sup> Accordingly there was not a meeting of the minds; the only agreement between the parties was merely an agreement to negotiate.

## **B. Breach of Fiduciary Duty**

Brock and CLI argue that because Apol did not enter into any agreement or contract with them, no fiduciary duties were established; accordingly, Brock and CLI argue that any claim arising out of a breach of fiduciary duty must be dismissed. This Court agrees.

“A fiduciary duty arises out of the relation subsisting between two persons of such a character that each must repose trust and confidence in the other and must exercise a corresponding

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<sup>9</sup> Apol and Jemco’s Counterclaim, ¶ 31.

<sup>10</sup> *Kamalnath v Mercy Mem Hosp Corp*, 194 Mich App 543, 549; 487 NW2d 499 (1992).

<sup>11</sup> *Thomas v Leja*, 187 Mich App 418, 422; 468 NW2d 58 (1991).

<sup>12</sup> See *Kloian v Domino’s Pizza, LLC*, 273 Mich App 449, 453; 733 NW2d 766 (2006).

<sup>13</sup> *Huntington Nat Bank v Daniel J. Aronoff Living Trust*, 305 Mich App 496, 508; 583 NW2d 481 (2014) (citations omitted).

<sup>14</sup> *Harper Bldg Co v Kaplan*, 332 Mich 651, 52 NW2d 536 (1952), stating that

“[i]n order that there may be a meeting of the minds which is essential to the formation of a contract, the acceptance of the offer must be substantially as made. There must be no variance between the acceptance and the offer. Accordingly a proposal to accept, or an acceptance, upon terms varying from those offered, is a rejection of the offer, and puts an end to the negotiation, unless the party who made the original offer renews it, or assents to the modification suggested.” (quoting *Thomas v Ledger*, 274 Mich 16, 21; 263 NW 783 (1935)).

degree of fairness and good faith.”<sup>15</sup> “The courts universally recognize the fiduciary relationship of partners and impose on them obligations of the utmost good faith and integrity in their dealings with one another in partnership affairs.”<sup>16</sup> More specifically, the Michigan Court of Appeals has clearly articulated that “the fiduciary duty between partners arises *only* from the partnership agreement.”<sup>17</sup> Again, Apol and Jemco have not shown that there was a contract or an agreement between themselves and Brock and CLI. Accordingly, Apol and Jemco cannot claim that there was fiduciary duty between themselves and Brock and CLI. Thus, without a duty, there is no breach.

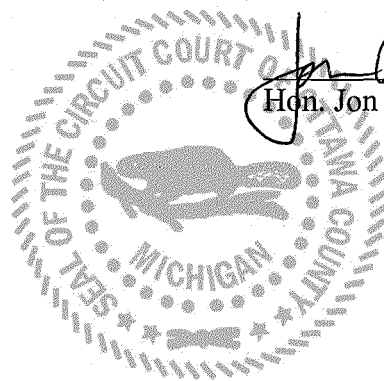
### Conclusion

For the reasons stated above, this Court finds that, pursuant to MCR 2.116(C)(8), defendants/counterclaimants/third-party plaintiffs Jemco Logics, Inc and Erick Apol’s Breach of Contract and Breach of Fiduciary Duty claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.<sup>18</sup> Accordingly, this Court finds that plaintiff/counter-defendant Core-Lite and third-party defendant Robert Brock’s Motion for Partial Summary Disposition, dismissing Jemco Logics, Inc and Erick Apol’s claims for Breach of Contract and Breach of Fiduciary Duty, is GRANTED.

*IT IS SO ORDERED.*

Date: January 23, 2023

  
Hon. Jon A. Van Allsburg, Circuit Judge



<sup>15</sup> *Melynchenko v Clay*, 152 Mich App 193, 197; 393 NW2d 589 (1986).

<sup>16</sup> *Urbain v Beierling*, 301 Mich App 114; 125; 835 NW2d 455 (2013) (citations omitted).

<sup>17</sup> *Id.*, at 125-126.

<sup>18</sup> *Rozwood*, 461 Mich at 119.