

STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

MOUNT GROUP, LLC,
MOUNT CLEMENS INVESTMENT GROUP, LLC,
And HAMMOUD FAMILY, LLC,

Plaintiffs,

vs.

Case No. 18-256-CB

MOSTAFA M. AFR, A&A
MANAGEMENT SERVICES, LLC,
TURFAH FAMILY HOLDINGS,
HUSAIN SALEH, and ZEINAB AFR,

Defendants,

OPINION AND ORDER

Plaintiffs Mount Group, LLC ("Mount Group"), Mount Clemens Investment Group, LLC ("MC Investment Group") and Hammoud Family, LLC (or together as "Plaintiffs") filed a Motion for Summary Disposition under MCR 2.116(C)(10).

Defendants Mostafa A. Afr ("Mr. Afr"), A&A Management Service, LLC ("A&A") and Husain Saleh (together as "Defendants") filed a motion for summary disposition under MCR 2.116(C)(7), (8) and (10).

I. Background

Mr. Afr acted as an accountant and advisor for plaintiff Hammoud Family, LLC and for Dr. Yassar Hammoud.¹ Plaintiffs allege that as the relationship between Dr. Hammoud and Mr. Afr developed, Mr. Afr solicited from Dr. Hammoud money for investment in business ventures including Mount Group and MC Investment Group. Plaintiffs allege that in addition to being the accountant for those two entities, Mr. Afr was also the managing member of both. Amended Complaint ¶¶11.

MC Investment Group owned a shopping center located at 50 North Groesbeck Highway in Mount Clemens, Michigan ("The Property") that included an O'Reilly Auto Parts store.² Plaintiffs allege that Mount Group managed the Property.

In the Amended Complaint, plaintiffs allege that as a result of representations made by Mr. Afr, Dr. Hammoud tendered to Mr. Afr \$500,000 on the understanding that the funds would be used to repair the Property including the roof, parking lot, and other improvements. See, Amended Complaint Exhibit C (promissory note). Plaintiffs aver that once the funds were deposited into Mount Group accounts, the money was then diverted into A&A and has not been fully repaid.

Plaintiffs also allege that in August 2015, Mr. Afr created a false consent resolution to purport to act as the sole member of MC Investment Group in order to sell the parcel of property with the O'Reilly Auto Parts store. *Id.* Exhibit F. According to Plaintiffs, Mr. Afr did not obtain approval for the sale from the other members of MC Investment Group. Plaintiffs also allege that Mr. Afr caused the store to be sold for less than its fair market value.

Defendants admit that in December 2015, a warranty deed conveyed the O'Reilly Auto Parts store to Zubi, LLC. Answer, ¶38; see also Amended Complaint ¶40.

¹ Admitted in Answer to Amended Complaint, ¶5 and 11.

² Plaintiffs conceded at oral argument that MC Investment Group owned the Property. Further, Plaintiffs alleged in the Amended Complaint ¶2 that MC Investment Group owns the shopping center. Plaintiffs stated in response to Defendants' Interrogatory 1 that Mount Group did not hold title to the Property at any time relevant to this Complaint. Defendants' Exhibit D. Defendants cite to an appraisal that indicates MC Investment Group was the owner of the Property. Defendants' Exhibit F. The allegedly falsified Consent Resolution authorizing the sale of the Property was on behalf of MC Investment Group. Amended Complaint Exhibit F. Plaintiffs have presented no contrary evidence to show any other owner of the Property.

Plaintiffs eventually learned of the sale and it is undisputed that Mr. Afr distributed to MC Investment Group members some proceeds from the sale of the store.³

Regarding the ownership of MC Investment Group, Plaintiffs attach to the Amended Complaint an Admission Agreement and Amendment to the Operating Agreement from August 2012, which indicates that in 2012, Dr. Hammoud had a 35% interest in MC Investment Group. Amended Complaint Exhibit A.⁴ Plaintiffs also attach to the Amended Complaint, a Membership Purchase Agreement from April 2017 indicating that Hammoud Family, LLC owned a 40% interest in MC Investment Group and purchased an additional 40% from several persons and entities. Amended Complaint Exhibit J. Defendants concede in their brief that by 2017, Hammoud Family, LLC had purchased Defendants' remaining interest in MC Investment Group and Mount Group.

Plaintiffs allege that as a result of Hammoud Family, LLC's purchase of remaining interests, they discovered that Mr. Afr and A&A had falsified accounting records, created false entries for expenses that were not actually incurred, and made untrue entries on tax returns and financial records of Mount Group and MC Investment Group. Therefore, according to Plaintiffs, Mr. Afr, through his company A&A, abused his position of managing member, director, officer and accountant of Mount Group and

³ See Amended Complaint ¶¶43-44 (Mr. Afr did distribute some of the proceeds). See also, Amended Complaint Exhibit G, Request to Admit 6 (admitting December 2015 distributions); Exhibit H (ledger showing December 2015 distributions); Defendants' Exhibit C, Dr. Hammoud testified that he was authorized to speak on behalf of Hammoud Family, LLC, MC Investment Group and Mount Group. Dr. Hammoud further testified that he learned of the sale late in 2015.

⁴ A previous Operating Agreement for MC Investment Group shows that Mr. Afr was the sole member in December 2004. Amended Complaint Exhibit I.

MC Investment Group.

On May 22, 2019, Plaintiffs filed a First Amended Complaint alleging: count I, breach of common law and statutory fiduciary duty against Mr. Afr; count II, claim for accounting under MCL 600.3605 and MCL 450.4503; count III, accounting malpractice against Mr. Afr and A&A; count IV, breach of contract; and count V, unjust enrichment.

On November 4, 2019, the Court heard oral argument on the cross motions for summary disposition and took the motions under advisement. At that time, the Court also gave the parties an opportunity to file supplemental briefing, which they have done.

II. Standards of Review

Summary disposition of all or part of a claim or defense may be granted when a claim is barred because it was filed beyond the period set forth in the applicable statute of limitations. MCR 2.116(C)(7); *Vandenberg v Vandenberg*, 253 Mich App 658, 660; 660 NW2d 341 (2002). The grounds for a motion under MCR 2.116(C)(7) must generally be raised in the party's responsive pleading. MCR 2.116(D)(2). Affidavits, deposition, admissions and documentary evidence in support of or opposition to a motion based on this subrule shall only be considered to the extent the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion. MCR 2.116(G)(6).

Summary disposition under MCR 2.116(C)(8) is appropriate where a party fails to state a claim upon which relief can be granted. *Carter v Ann Arbor City Attorney*, 271 Mich App 425, 426-427; 722 NW2d 243 (2006) (citation omitted). A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 119-20; 597 NW2d 817 (1999). The court accepts all well-pleaded factual

allegations as true and construes them in a light most favorable to the non-moving party. *Id.* citation omitted. A court will only grant a motion under MCR 2.116(C)(8) where the claims alleged are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Id.* When deciding a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5).

A motion under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.* at 121. Indeed, “an adverse party may not rest upon the mere allegations or denials of his or her pleadings, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial.” MCR 2.116(G)(4).

III. Arguments, Law and Analysis

A. Defendant’s Motion for Summary Disposition

1. Breach of Common Law and Statutory Fiduciary Duty (Afr) (Count I)

Defendants argue that the Court should dismiss count I of Plaintiffs First Amended Complaint because: Plaintiffs had no legal interest in the O'Reilly store and therefore lack standing; the statute of limitations bars the breach of fiduciary duty claim;

Mr. Afr had authority to sell the store; and the store sold for an amount above the appraised value.

In Response, and by their own motion seeking summary disposition on count 1, Plaintiffs argue that as an officer, director and manager of Mount Group, Mr. Afr: diverted more than a million dollars from the Mount Group entities, submitted tax documents attesting to a higher value of assets than reported to Plaintiffs' members, and sold the O'Reilly Auto Parts property without authority. Plaintiffs argue that their claim is not time-barred.

Defendants first argue that the former title owner of the O'Reilly Auto Parts store—MC Investment Group—is not a party to this litigation. According to Defendants, since neither Mount Group nor Hammoud Family, LLC owned the store, the present Plaintiffs lack standing to assert a claim for breach of fiduciary duty relating to the alleged unauthorized sale of the store.

It is clear that MC Investment Group and not Mount Group or Hammoud Family, LLC owned the O'Reilly Auto Parts store before the 2015 sale. See footnote 2. Therefore, Mount Group and Hammoud Family, LLC have no standing to assert a breach of fiduciary duty claim relating to the sale of the Property, as they had no property interest. See Amended Complaint ¶¶2 and Exhibit F, Defendants' Exhibit D and F. Therefore, to the extent Mount Group or Hammoud Family, LLC assert a claim for breach of fiduciary duty relating to the sale of the Property, the claim is dismissed for lack of standing.

However, regarding MC Investment Group's claim for breach of fiduciary duty relating to the sale of the O'Reilly Auto Parts store, the Court finds no basis to conclude

that MC Investment Group is not a plaintiff in this matter. Even though Defendants omit MC Investment Group from its caption, MC Investment Group is a named plaintiff in the First Amended Complaint. The Court could locate no order dismissing MC Investment Group as a party. Some defendants did settle claims with MC Investment Group. Specifically, on May 31, 2019, the Court entered an Order of Dismissal of all claims by MC Investment Group against A&A, Turfah Family Holdings and Zeinab Afr. However, the Order did not dismiss claims by MC Investment Group against Mr. Afr. As a result, MC Investment Group remains a plaintiff in this matter as to Mr. Afr and therefore has standing to assert a claim relating to the sale of the Property.

Defendants next argue that the statute of limitations bars MC Investment Group's claim in count I. Plaintiffs expressly base their breach of fiduciary duty claim on MCL 450.4407, MCL 450.4404, and MCL 450.1541a.⁵ MCL 450.4404(6) provides, "An action against a manager for failure to perform the duties imposed by this act shall be commenced within 3 years after the cause of action has accrued or *within 2 years after the cause of action is discovered* or should reasonably have been discovered by the complainant, *whichever occurs first*." (Emphasis added). The Business Corporations Act, which Plaintiffs also cite, uses the same limitations language as it relates to actions against directors or officers. See MCL 450.1541a.⁶

Here, it is undisputed that the sale of the O'Reilly store occurred in August 2015.

⁵ In the Amended Complaint, Plaintiffs also reference "applicable bylaws, operating agreements and the common law of Michigan." Amended Complaint, ¶79. However, in the present motions, Plaintiffs cite no law and provide no argument or analysis relating to operating agreements or common law fiduciary duty.

⁶ Plaintiffs also cite MCL 450.4407, but that provision concerns limitations in operating agreements with regard to a manager's liability for breach of duties under MCL 450.4404.

Dr. Hammoud testified that he learned of the transaction "at the latter part of '15. . ." Defendants' Exhibit C at 37. In their briefing, Plaintiffs recognize that Dr. Hammoud learned of the sale in December 2015.⁷ See also Amended Complaint Exhibits G, H (distributions made in 2015).

However, Plaintiffs do not read the limitations language in MCL 450.4404 as barring the claim because "the sale occurred first"—that is, the sale occurred in August 2015 before Dr. Hammoud learned of it in December 2015. However, Dr. Hammoud could never have learned of the sale before the sale occurred. Indeed a party could never learn of an event before it occurs. Clearly the statutory language refers to which date occurs first, not which event occurs first.

Applying the statute to the present facts, by the express terms of MCL 450.4404(6), an action against a manager for breach of statutory fiduciary duty must be commenced within three years of the accrual of the cause of action, or within two years of discovery of the cause of action, "whichever occurs first." The parties recognize that the sale in question occurred in August 2015. Therefore, the claim would have accrued in August 2015 and must have been brought within three years, or by August 2018.

However, MCL 450.4404(6) also requires the claim to be brought within two years of the date of discovery of breach. Since Plaintiffs learned of the cause of action by December 2015, two years later would be December 2017. Since December 2017 occurred before August 2018, the applicable date for the purposes of the statutory breach of fiduciary duty claim is December 2017.

The present Plaintiffs filed their claim on January 18, 2018. Plaintiffs' Verified

⁷ Plaintiffs do not distinguish between Dr. Hammoud and plaintiff Hammoud Family,

Complaint. Therefore, the statute of limitations bars MC Investment Group's statutory claim as it relates to the sale of the O'Reilly Auto Parts store. Because the claim concerning the sale of the store is time-barred, that portion of MC Investment Group's claims against Mr. Afr is dismissed. Having reached a dispositive decision on MC Investment Group's breach of fiduciary duty claim, the Court does not need to address Defendants' remaining arguments that Mr. Afr had authority to sell the store or that he sold the store above appraised value.

The Court makes no decision on Plaintiffs' breach of fiduciary duty claims in count I to the extent it relates to tax returns and financial improprieties. Defendants make no statute of limitations argument regarding alleged breaches other than the sale of the O'Reilly Auto Parts store. Therefore, the Court grants Defendant's motion for summary disposition on count I to the extent MC Investment Group alleges breach of fiduciary duty under MCL 450.4404 with regard to the sale of the O'Reilly Auto Parts store. In addition, the Court grants Defendants' motion to the extent Hammoud Family, LLC or Mount Group assert any fiduciary duty claim relating to the sale of the Property.

2. Accounting (Count II)

In count II of the Amended Complaint, plaintiff Hammoud Family, LLC, as a shareholder of the Mount Group entities, asserted a claim for accounting under MCL 600.3605 and MCL 450.4503(5). Defendants argue that Plaintiffs rely on inapplicable statutes to support their accounting claim. Specifically, MCL 450.4503 relates to current financial information while MCL 600.3605 applies to dissipation of assets leading to insolvency according to Defendants. Further, Defendants deny that Mr. Afr has any

records of the current state of the financial affairs of the company since Hammoud Family, LLC purchased the entire interest in 2017.

In Response and by their own motion for summary disposition, Plaintiffs argue that since Mr. Afr was the only person responsible for management and taxes of Plaintiff entities, he is solely responsible for the "hiding of the money." According to Plaintiffs, a member of a limited liability company may inspect the corporate records whenever circumstances render it reasonable. Therefore, Plaintiffs conclude, that since Mr. Afr submitted fraudulent financials, Hammoud Family, LLC is entitled to an accounting as a member of the entities. Plaintiffs recognize that Hammoud Family, LLC now owns the entities, but maintain that they still do not have all the relevant documents.

MCL 450.4503(5) provides, "A member may have a formal accounting of a limited liability company's affairs, as provided in an operating agreement or whenever circumstances render it just and reasonable." MCL 450.4503(5).

Here, it is undisputed that Mr. Afr currently has neither an interest in nor manages Mount Group or MC Investment Group. Indeed, Plaintiffs filed their Complaint in this matter on January 18, 2018, well after the April 2017 Membership Purchase Agreement, which states, "After consummation of the Purchase and Sale, Seller shall own 0.00% of Mount Clemens Investment Group, LLC and 0.00% of Mount Group, LLC." Plaintiffs' First Amended Complaint, Exhibit J. "Seller" was a defined term that included the various undersigned entities of which Mr. Afr was Trustee or Partner. In their Reply brief filed October 31, 2019, Plaintiffs state that, "In April 2017, Hammoud Family, LLC acquired 100% of the Mt. Group entities from Afr and his family." Reply at 1. Consequently, the Court has no basis to conclude that at any time during the

pending litigation, Mr. Afr had an interest or was a member in any of the Plaintiff entities.

Therefore, Plaintiffs quizzically seek an accounting from a non-member who presently has no connection to the entities of Mount Group or MC Investment Group. Stated differently, Plaintiffs seek an accounting of entities entirely under their own control rather than Mr. Afr's control. Plaintiffs have not shown that Mr. Afr has the authority or even the ability to provide the accounting sought.

In addition, Plaintiffs do not cite to any provision in their operating agreement relating to an accounting, as the language of the statute contemplates. Finally, Courts have held that an accounting is unnecessary where discovery is sufficient. See, *Boyd v Nelson Credit Centers, Inc*, 132 Mich App 774, 779; 348 NW2d 25 (1984) citation omitted. Here, to the extent Mr. Afr has documents from previous years relating to the Plaintiff entities, Plaintiffs could obtain those documents through discovery. For those reasons, the Court is not persuaded that an accounting is necessary or "just and reasonable" as described in MCL 450.4503(5).

Plaintiffs also rely on MCL 600.3605 as a basis for their accounting claim. MCL 600.3605(1)(a) states that actions may be brought "to compel persons to account for their conduct in the management and disposition of the corporate funds and corporate property committed to their charge." While not binding authority, the Court finds the reasoning persuasive in *Noel v Scholastic Sols., LLC*, unpublished per curiam opinion of the Court of Appeals, issued October 10, 2019 (Docket No. 343580), p 6 n5, where the Court of Appeals stated that MCL 600.3605 does not apply to limited liability companies. Here, Plaintiffs seek an accounting of limited liability companies and cite only to two unpublished cases. The Court is persuaded that Plaintiffs are not entitled to an

accounting under MCL 600.3605. Accordingly, Defendants' motion on count II is granted and Plaintiffs' motion is denied.

3. Accounting Malpractice (Count III)

In Count III of the Amended Complaint, plaintiffs Mount Group and MG Investment Group allege accounting malpractice against Mr. Afr and A&A. Mr. Afr and A&A argue that Plaintiffs' malpractice claim fails because Plaintiffs produced no expert to establish a professional standard of care.

Plaintiffs respond and argue by their own motion for summary disposition, that Mr. Afr and his company A&A were the accountants for the Mount Group entities and intentionally hid money from members leaving the operation of the entities in financial ruin. According to Plaintiffs, no expert is needed where the lack of professional care is obvious to lay people. Plaintiffs conclude that lay people would know an accountant should not submit fraudulent tax documents.

MCL 600.2962(1) sets forth limitations on liability for accounting malpractice against certified public accountants.⁸ Under MCL 600.2962, a "certified public accountant is liable for civil damages in connection with public accounting services performed" only in the following situations: (a) "a negligent act, omission, decision or other conduct of the certified public accountant" or (b) an "act, omission, decision, or conduct of the certified public accountant that constitutes fraud or an intentional misrepresentation."

"Professional malpractice involves the breach of a duty owed by one rendering

⁸ In the Amended Complaint, Plaintiffs allege Mr. Afr was a certified public accountant who prepared the taxes and accounting records for Mount Group and MG Investment Group. ¶¶ 97-101.

professional services to a person who has contracted for such services.” *Saur v Probes*, 190 Mich App 636, 638; 476 NW2d 496 (1991) citation omitted. “A professional malpractice claim is a tort claim predicated on the failure of the defendant to exercise the requisite professional skill.” *Broz v Plante & Moran, PLLC*, 326 Mich App 528, 535–36; 928 NW2d 292 (2018), judgment vacated in part, app den in part 504 Mich 892; 928 NW2d 698 (2019) citation omitted.

“Generally, to state a claim for malpractice, a plaintiff must allege (1) the existence of a professional relationship, (2) negligence in the performance of the duties within that relationship, (3) proximate cause, and (4) the fact and extent of the client’s injury. *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995); see also, *Midwest Mem Group LLC v Citigroup Glob. Markets Inc*, unpublished per curiam opinion of the Court of Appeals, issued September 17, 2015 (Docket No. 322338), p 4 (Applying *Simko* in context of accounting malpractice).

A malpractice claim requires proof of simple negligence based on a breach of a professional standard of care. *Phillips v Mazda Motor Mfg (USA) Corp*, 204 Mich App 401, 409–10; 516 NW2d 502 (1994), abrogated on other grounds by *Ormsby v Capital Welding, Inc*, 471 Mich 45; 684 NW2d 320 (2004), citation omitted.

“Expert testimony is usually required to establish the applicable standard of conduct and its breach.” *Id.* citation omitted. “However, no expert testimony is required where the negligence claimed is a matter of common knowledge and interpretation . . .” *Id.*; see also *Elher v Misra*, 499 Mich 11, 21–22; 878 NW2d 790 (2016) (An exception exists when the professional’s breach of care is so obvious it is within the common knowledge and experience of an ordinary layperson).

In the present case, Defendants first argue that plaintiff Hammoud Family, LLC may only bring an accounting malpractice claim derivatively. However, according to the Amended Complaint, only plaintiffs Mount Group and MG Investment Group assert a claim in count III. Plaintiffs make no argument in their Response regarding any claim by Hammoud Family, LLC for count III. Accordingly, Hammoud Family, LLC asserts no claim for accounting malpractice, even derivatively.

With regard to the lack of expert testimony, Defendants recognize that usually a plaintiff in a malpractice claim must introduce expert testimony. Moreover, Plaintiffs do not dispute their lack of expert testimony. However, Plaintiffs argue that a lay person would not need expert testimony to understand Mr. Afr submitted fraudulent tax documents. Plaintiffs assert that Mr. Afr had complete control over the finances of the Mount Group entities as their manager and only accountant. At this juncture, the Court cannot conclude as a matter of law that plaintiffs' claim requires expert testimony. Given the recognized exception to the general rule regarding expert testimony, Plaintiffs could establish a malpractice claim without such testimony so long as the alleged breach of care is within the common knowledge or experience of a common layperson. Consequently, Defendant's motion for summary disposition is denied. Because a question of fact exists as to whether defendants Mr. Afr and A&A breached any such standard of care, Plaintiffs' motion for summary disposition is also denied as to count III.

4. Breach of Contract (Count IV)

In Count IV of the Amended Complaint, Plaintiffs allege breach of contract against Mr. Afr with regard to admission agreements, operating agreements and "other governing documents." ¶110. In addition, Plaintiffs allege that a loan of \$500,000 from

Dr. Hammoud to Mount Group constituted a contract between Dr. Hammoud and Mount Group that was breached. ¶113.

Mr. Afr moves for summary disposition of Count IV. Mr. Afr argues, none of the defendants were parties to the loan contract with Dr. Hammoud. Second, Mr. Afr argues that the undisputed facts show that the loan to Dr. Hammoud was repaid.

In Response, Plaintiffs argue that Mr. Afr breached the operating agreement and Membership Agreement related to the Mount Group entities. Plaintiffs maintain that Dr. Hammoud was not fully repaid.

To begin with, since Dr. Hammoud is not a party in this litigation in his individual capacity, and Mr. Afr was not a party to the loan agreement with Dr. Hammoud, the Court dismissed the breach of contract claim on the record to the extent Count IV is based on any claim by Dr. Hammoud.

Further, it is unclear how Plaintiffs seek to establish a breach of contract claim based on the loan to non-party Dr. Hammoud. While Plaintiffs make a general reference to breach of “foundational documents”, they cite only to a clause in a “Membership Agreement” where the seller warranted that they “had not engaged in any wrongful conduct or willful gross conduct.” Plaintiffs’ Exhibit G.⁹

As their Exhibit G, Plaintiffs attach an Admission Agreement and Amendment of Operating Agreement dated August 2012, between MC Investment Group, Mr. Afr, Dr. Hammoud, and various other individuals and entities. The Court could not locate the language to which Plaintiffs refer but, in any event, the alleged wrongful conduct in this

⁹ To the extent Plaintiffs meant to reference the Membership Purchase Agreement as indicated in their Amended Complaint, Mr. Afr was not a party to that agreement. Amended Complaint Exhibit J.

case, including the loan from Dr. Hammoud, occurred after August 2012. See Complaint Exhibit C (Promissory Note dated February 2015). Therefore, Plaintiffs cannot base their breach claim on a warranty against past conduct that occurred before the alleged wrongful conduct. In sum, Plaintiffs have not articulated or supported a claim for breach of contract. Accordingly, Defendants' motion for summary disposition on Court IV is granted.

5. Unjust Enrichment (Count V)

Finally, Defendants seek summary disposition of count V on the basis that Plaintiffs do not identify any benefit received by A&A or Mr. Afr from Mount Group or Hammoud Family, LLC. With regard to a claim against Husain Saleh, Plaintiffs argue, as a third-party, Saleh's retention of a benefit is not unjust.

Unjust enrichment is an equitable counterpart to a claim of breach of contract. *AFT Michigan v Michigan*, 303 Mich App 651, 677–78; 846 NW2d 583 (2014), *aff'd sub nom. AFT Michigan v State of Michigan*, 497 Mich 197; 866 NW2d 782 (2015), citation omitted. To sustain a claim of unjust enrichment, a plaintiff must establish (1) the receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant. *Id.* citation omitted. "A third party is not unjustly enriched when it receives a benefit from a contract between two other parties, where the party benefited has not requested the benefit or misled the other parties. . ." *Karaus v Bank of New York Mellon*, 300 Mich App 9, 24; 831 NW2d 897 (2012) citation omitted.

Here, there is a question of material fact regarding money that A&A transferred to its bank account from Mount Group. Defendants maintain that the funds were to

reimburse estimated tax payments made on behalf of Dr. Hammoud. Plaintiffs maintain that the funds were “pilfered.” Plaintiffs have alleged that Mr. Afr and A&A received an unjust benefit in the form of those funds from Mount Group. However, Plaintiffs make no allegation or argument related to any benefit conferred upon Mr. Afr or A&A from Hammoud Family, LLC. Therefore, Hammoud Family, LLC’s claim in count V for unjust enrichment is dismissed.

With regard to Husain Saleh, the caption of count V in the Amended Complaint does not indicate that Mr. Saleh is a defendant in count V. However, ¶¶126-128 of the Amended Complaint aver that Mr. Saleh accepted a benefit in the form of a K-1, which positively impacted his 2015 tax return. Plaintiffs have not alleged or shown that Mr. Saleh requested such a benefit or misled other parties to receive it. *Karaus*, 300 Mich App at 24. Accordingly, count V is dismissed as to Mr. Saleh.

For their motion for summary disposition regarding count V, Plaintiffs cite no law and provide no analysis. In sum, Defendants’ motion on count V is denied except for claims by Hammoud Family, LLC and claims against Mr. Saleh.

B. Plaintiff’s Motion for Summary Disposition

1. Breach of Common Law and Statutory Fiduciary Duty (Afr) (Count I)

With regard to Plaintiffs’ motion for summary disposition on count I, Plaintiffs argue that Mr. Afr submitted tax documents showing a higher value of assets than what he reported to members of Mount Group in 2015 and 2016. Plaintiffs cite to a letter from Housam Deeb, an accountant, who attests that the tax returns show discrepancies. Plaintiffs’ Exhibit A. Plaintiffs also cite to tax returns and transcripts from the IRS. Plaintiffs’ Exhibit B.

In response, Defendants cite to amended tax returns and argue that tax returns are different than balance sheet data that is reported to a company. Defendants argue that Plaintiffs offer no appraisal, bank statements, leases or other documents to show that the entities assets were more than what was reported on the tax returns.

Plaintiffs' Amended Complaint and briefing do not clearly identify which Plaintiffs assert a claim for breach of fiduciary duty or on what basis. At best, a question of fact remains as to whether Defendants breached a fiduciary duty to Plaintiffs. Plaintiffs have not clearly established their claim(s) as a matter of law or shown that no question of material fact exists. Therefore, Plaintiffs' motion for summary disposition on count I is denied.

2. Accounting (Count II)

For the reasons set forth in Paragraph III(A)(2) above, Plaintiff's motion for summary disposition as to count II is denied.

3. Accounting Malpractice (Count III)

For the reasons set forth in Paragraph III(A)(3) above, Plaintiff's motion for summary disposition as to count III is denied.

4. Breach of Contract (Count IV)

As to Plaintiffs motion for summary disposition of count IV, Plaintiff provides the Court with only a few sentences of analysis. Plaintiffs cite only one case—for the proposition that courts prefer fair construction of contracts over less reasonable construction. Plaintiffs maintain that Mr. Afr violated the "foundational documents of the Mt. Group entities" but do not identify what provisions or which documents upon which they rely. Plaintiffs do not even specify which entity asserts the claimed breach. Clearly

Plaintiffs have not establish breach of contract as a matter of law; accordingly, their motion is denied as to count IV.

IV. Conclusion

For the reasons set forth above,

A. Defendants' motion for summary disposition is GRANTED in part and DENIED in part as follows:

1. On count I for breach of fiduciary duty, Defendants' motion is GRANTED as to any claim by Mount Group and Hammoud Family, LLC related to the sale of the O'Reilly Auto Parts store. Further, MC Investment Group's claim is barred by the statute of limitations to the extent it relates to the sale of the O'Reilly Auto Parts store. Defendants' motion regarding count I is DENIED in all other respects.

2. As to count II for an accounting, Defendants' motion is GRANTED.

3. As to count III for accounting malpractice, Defendants' motion is DENIED.

4. As to count IV for breach of contract, Defendants' motion is GRANTED.

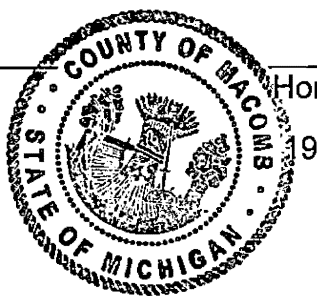
5. As to count V for unjust enrichment, Defendants' motion is GRANTED as to claims by Hammoud Family, LLC and defendant Mr. Saleh. Defendants' motion regarding count V is DENIED in all other respects.

B. For the reasons set forth above, Plaintiffs' motion for summary disposition is DENIED.

In compliance with MCR 2.602(A)(3), this *Opinion and Order* neither resolves the last pending claim nor closes this case.

IT IS SO ORDERED.

Date: JAN 15 2020



Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge