

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR OAKLAND COUNTY
IN THE BUSINESS COURT**

PINNACLE NORTH, LLC,

Plaintiff,

v.

KEITH A. WHITE,

Defendant.

Case No. 2020-183261-CB

Hon. Victoria A. Valentine

ALTIOR LAW, P.C.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

At a session of said Court held on the 27th day of March 2023
in the County of Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter before the Court relates to Plaintiff PINNACLE NORTH, LLC's Complaint against Defendant KEITH A. WHITE, which seeks to recover from Defendant White those damages previously awarded to Plaintiff in a prior action¹ that resulted in a default judgment entered against Marketplace Home Mortgage, LLC ("MHM").² At issue is whether a \$50,000 payment from MHM to White in December 26, 2019, was a repayment of a

¹ Oakland County Circuit Court Case No. 19-176181-CB ("prior action").

² The Default Judgment awarded Pinnacle \$52,548.24 plus interest, costs, and attorney fees from the date of the Judgment (October 17, 2019) going forward.

\$275,000 “loan” White allegedly made to MHM in late November 2018, or whether it was a distribution.

BACKGROUND

In August of 2019 Plaintiff filed the prior action³ against MHM for breach of the lease alleging, *inter alia*, failure to make payments due under the Lease. On October 17, 2019, the Court entered a Default Judgment against MHM in the amount of “\$52,548.24, plus interest, costs, an attorney fees.” (“Default Judgment.”) Plaintiff unsuccessfully attempted to collect on the Judgment.⁴

Consequently, Plaintiff filed the instant action against Defendant KEITH A. WHITE seeking to “Pierce the Corporate Veil” (Count I) and recover the Default Judgment from White under the Michigan Uniform Voidable Transactions Act, MCL 566.31 *et seq.* (Count III).⁵ Plaintiff filed a Motion for Partial Summary Disposition based upon MCR 2.116(C)(10), which this Court’s predecessor issued an Opinion and Order Denying Plaintiff’s Motion for Partial Summary Disposition and Denying Defendant’s Request for Summary under MCR 2.116(I)(2).⁶ The Opinion states in part:

Plaintiff argues that there is a question of fact as to whether the \$50,000 paid to White in December 2019 was for repayment of a loan or was, in fact, a distribution to a shareholder. If it was the former, as discussed above, the \$50,000 was not a “transfer” as defined by the MUVTA and Plaintiff cannot support a claim as a matter of law. However, if it was the latter, that is, if it was a distribution, then there is no claimed security interest by White and, thus, apparently no dispute that a “transfer” occurred so that Plaintiffs claim does not fail as a matter of law.¹⁵

¹⁵ White apparently does not disagree with this assertion.

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³ Oakland County Circuit Court Case No. 19-176181-CB (“prior action”).

⁴ Opinion and Order Denying Plaintiff’s Motion for Summary Disposition dated 3/31/2022.

⁵ *Id.*

⁶ *Id.*

Based upon the admissible evidence presented, the Court concludes that an issue of fact exists as to whether the \$50,000 paid to White was in fact repayment of a loan and, therefore, Defendant is not entitled to judgment in its favor under MCR 2.116(1)(2). *See Michelson v Voison*, 254 Mich App 691, 697-698; 658 NW2d 188 (2003).⁷

Court having presided over the bench trial in this matter now adopts the following findings of fact and conclusions of law below as its factual and legal findings in this action under MCR 2.517:

FINDINGS OF FACT

1. The Court had the opportunity to witness the demeanor, credibility, vocal tone, and expression of Defendant White and does not find him to be credible. The Defendant's testimony was ever evolving to serve his needs. At times Mr. White was argumentative with counsel or evasive in answering questions. Mr. White was never able to provide consistent or compelling testimony as to the \$275,000 deposit. At trial, Mr. White testified that the \$275,000 deposit was a minimum amount required to be in the account to utilize the line of credit for the company. The Court does not find that the \$275,000 was a loan and agrees with Plaintiff's position that the \$275,000 was a capital contribution.
2. Pinnacle North owns the real property commonly known as Pinnacle North Office Centre, 41850 West Eleven Mile Road, Novi, MI (the "Property"). (Trial Ex. 1; the "Lease").⁸

⁷ *Id.* at 5-6.

⁸ The trial exhibits referenced in these proposed findings of fact and conclusions of law were admitted on stipulation of the parties. (Trial Tr. 1:22). The references to the Exhibit numbers and letters are the same exhibit numbers and letters that were used at trial.

3. Marketplace Home Mortgage, LLC (“MHM”) was a tenant of Pinnacle North’s sister office building (Pinnacle South) beginning in September 2016. The parties signed an initial three-year lease. (Trial Tr. I:23). Sometime thereafter, MHM expressed that its business was growing, and it had an interest in expanding its leasehold and moving to the Pinnacle North building. (Trial Tr. at I:23-24).
4. In 2018, Pinnacle North signed a lease with MHM to move to the Pinnacle North building, using more space and benefitting from an upgraded suite with a more prominent location off the lobby. (*Id.*). The new lease was entered into on April 27, 2018; it was a three-year lease that began in June 2018 (Ex. 1). The Lease was signed by defendant Keith White (“White”) as President of MHM. (*Id.*).
5. In late 2018, White found a buyer for MHM, Broker Solutions, Inc., d/b/a New American Funding (“New American Funding”). (Trial Tr. at I:141-42). The sale with New American Funding moved quickly; MHM was introduced to New American Funding in late-2018 and the sale closed in January 2019. (*Id.*).
6. White claimed that he put even more money into MHM in late-November or early-December 2018. However, the transaction appears as both a capital contribution (in the books and records of the company) and a loan (on a stand-alone “loan” document and “security agreement”). *Compare* (Trial Ex. 6: Balance Sheet and Trial Ex. 7: Capital Contribution Details- indicating the transaction was a capital contribution made on November 30, 2018 *with* Trial Ex. 4; Promissory Note and Trial Ex. 5: Security Agreement-indicating the transaction was a secured loan made on December 3, 2018;⁹

⁹ White testified that it was not the case that he made a capital contribution of \$275,000 on November 30, 2018, and then a separate \$275,000 loan on December 3, 2018. (Trial Tr. at I:109-10).

see also Trial Tr. at I:90-94-White testifying that the transaction was both a loan and a capital contribution).

7. To the extent this is allegedly a “loan,” MHM’s balance sheet, which was submitted to the Internal Revenue Service as a part of MHM’s partnership tax returns for 2018, 2019, or 2020, does not identify this as being a liability owed to any shareholder. (Trial Ex. A, page 9, Line 19a: MHM’s 2018 Partnership Tax Return, Schedule L; Trial Ex. B, page 9, Line 19a: MHM’s 2019 Partnership Tax Return, Schedule L; and Trial Ex. C, page 8, Line 19a: MHM’s 2018 Partnership Tax Return, at Schedule L; *see also* Trial Tr. at I:111-16). White, who signed the tax returns on behalf of MHM, declared “[u]nder penalty of perjury” that he had examined the returns and the schedules and that the statements in the tax returns (including the balance sheet in Schedule L) were “true, correct, and complete” statements for the calendar year to which the statements related (i.e., 2018, 2019, and 2020). (Trial Exs. A and B, page 5 and Trial Ex. C, page 4 ; *see also* Trial Tr. I:84).
8. To the further extent this was a loan, it was signed by White as both the lender (individually) and the borrower (on behalf of MHM); there is no repayment schedule for the loan; the security agreement is signed by White as both the secured party (individually) and the debtor (on behalf of MHM); and the alleged security interest was not perfected until after this action was filed. (Trial Ex. 4; Trial Ex. 5; Trial Ex. 7 Minnesota Secretary of State UCC Search Results).
9. Likewise, the balance sheets of MHM, in which White testified he had input, show no loan listed as a liability of MHM to White. (Trial Ex. 6; Trial Tr. I:103-04).

10. The books and records of MHM unambiguously evidence that the \$275,000, about which White testified he paid MHM in late-November 2018, was a “capital contribution” from White to MHM. (Trial Ex. 7; *see also* Trial Tr. at I:109).
11. On January 1, 2019, New American Funding¹⁰ acquired certain of the assets of MHM. (Trial Tr. at I:68-69). By closing on the sale, White caused the transfer of MHM’s assets, knowing that MHM would not have sufficient assets or business operations to pay its outstanding debts. (Trial Tr. at I:69).
12. MHM told Pinnacle North that it (a) ceased operations effective 12/31/2018; (b) had no employees; and (c) had no revenues; (Trial Ex. 9 at p. 2).
13. MHM’s general ledger, however, reveals that it had revenues in 2019 and 2020, making several credits in the form of payments from outside sources. (*See* Trial Ex. 9; General Ledger).¹¹ It also reveals payments from MHM to other outside entities, including payroll expense payments. (*Id.*). White admitted that revenues were paid to MHM in 2019 and 2020 in the form of profits earned on loans made by MHM to its clients prior to its sale of assets to New American Funding, which were sold to third parties after the sale of MHM’s assets. (*Id.*); *see also* (Trial Tr. at I:74-76; 79-80). At trial, the tax returns of MHM indicate that it had employees in 2019 to whom it paid over \$180,000 in wages and salary. (Trial Ex. B, page 5 at Line 9; *see also* Trial Tr. at I:82-86).

¹⁰ Broker Solutions Inc dba New American Funding was a named Defendant in this case; however, a Stipulated Order of Dismissal was entered on October 29, 2021.

¹¹ The general ledger appears to have some systemic error in that the credits are labeled as debits and the debits are labeled as credits. In any event, MHM received revenue in 2019 and 2020.

14. Regarding MHM allegedly not having any revenue, the tax returns admitted at trial evidence that in 2019 it had \$284,418 in gross revenue for the year. (Trial Ex. B. page 5 at Line 1a; *see also* Trial Tr. at II:86).
15. Despite advising Pinnacle North that it had no operations or revenue effective 12/31/2018, on December 26, 2019, White wrote a check from MHM to himself in the amount of \$50,000. (Trial Tr. at I:89; *see also* Trial Ex. 10, page 9: General Ledger; Trial Ex. 11: Bank Statement-showing \$50,000 check cashed on Dec. 30, 2019). Neither the general ledger nor the bank statement offers any reason for the payment. (*Id.*; *see also* Trial Tr. at I:89-90). MHM's capital contribution records state it was a capital contribution paid back to White. (Ex. 7).
16. MHM ceased filing income tax returns in 2017, and subsequently did not file its tax returns until late-2021, which was after this suit was initiated (Trial Tr. at I:111-12) and which "recharacterized" several payments to and from White. (*Id.* at I:90-91).
17. Pinnacle North filed the prior action against MHM¹² and obtained a default judgment against MHM on October 17, 2019, in the amount of "\$52,548.24, plus interest, costs, and attorney fees from the date of this judgment going forward." (Trial Tr. at I:28-30). The award of attorney fees and costs was based on the language of the Lease, which provided that in the event of default MHM would be liable to Pinnacle North for "reasonable attorney fees, costs and expenses in any suit or action instituted by or involving Landlord to enforce the provisions of, or the collection of the rentals due Landlord under this Lease[.]" (Trial Ex. 1 at ¶28).

¹² Oakland County Circuit Court Case No. 19-176181-CB ("prior action").

18. Pinnacle North attempted to garnish MHM but could not obtain any money to satisfy the garnishment. (Trial Tr. at I:88).
19. Since entry of the default judgment against MHM, and through July 31, 2022, Altior Law has charged Pinnacle North \$69,915.82 in attorney fees and costs for the work performed as described in the Altior Law invoices. (Trial Tr. at I:32-38); (Ex. 12).¹³
20. Since entry of the default judgment in the prior action and through the first day of trial (August 18, 2022) the parties stipulated that, consistent with the money judgment interest rate, the interest on the judgment was \$2,998.59 (Trial Tr. at I:38-40).
21. Pinnacle North then filed this instant matter against White, seeking judgment against him for the amount and conditions awarded to Pinnacle North under the default judgment entered in case no. 2019-176181-CB.
22. This Court now must now determine whether the \$50,000 check MHM issued to White was repayment of a “loan” White allegedly made to MHM or a distribution.

CONCLUSION OF LAW

1. The Michigan Uniform Voidable Transactions Act, (“MUVT”) MCL § 566.35, provides, in relevant part:
 - (1) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.
 - (2) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was

¹³ This exhibit was admitted into evidence. (Trial Tr. at I:37).

insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

2. The MUVTA further provides that, as relief, a creditor may ask a court to: (1) treat the transfer as voidable to the extent necessary to satisfy the creditor's claim; or (2) allow the creditor to execute against the transferred asset or its proceeds that may be in the possession of any transferee (except a good faith transferee for value). MCL § 566.37.

APPLICATION OF THE LAW TO THE FACTS

The Court finds by a preponderance of the evidence that the December 26, 2019, \$50,000 payment from MHM to White was not a repayment of the \$275,000 "loan" White allegedly made to MHM. Rather, it was a distribution.

This \$50,000 check: (a) was made to the sole shareholder-White; (b) was made at the end of the calendar year; (c) was made without identifiable consideration for the payment; (d) does not correspond to any loan repayment schedule; (e) does not correspond to any loan payable on the books of MHM; (f) contains no identifiable description of the payment; and (g) was described as a return of a capital contribution on the books and records of MHM. Further, White swore to the IRS in MHM's tax returns that there were no outstanding loans from any officers to MHM in 2018, 2019, or 2020.

Pinnacle North's claim arose before the December 26, 2019, transfer was made (Pinnacle had a judgment against MHM in October 2019). (Trial Tr. at I:28-29).

At the time of the transfer, MHM was insolvent, given that its debts and obligations exceeded its assets and income. (Trial Tr. at I:69).

The \$50,000 payment from MHM to White was a distribution, so it is voidable as a transfer made without an exchange of reasonably equivalent value made while the debtor was insolvent.

JUDGMENT

Considering the foregoing Findings of Fact and Conclusions of Law, the Court finds that the \$50,000 payment was a capital contribution and therefore voidable under MCL § 566.35 and MCL § 566.37. Plaintiff claims \$69,915.82 in attorney fees and costs for the work performed as described in the Altior Law invoices (Trial Tr. at I:32-38); (Ex. 12).

The Court finds that White is liable for the entire amount of the default judgment against MHM, plus costs, attorney fees and interest. Plaintiff's counsel shall provide additional invoices for attorney fees in this case to the extent that they exceed what it requested at Trial in Exhibit 12. Defendant's counsel shall have 14 days to object to the reasonableness of any of the fees.

If Defendant objects, a motion for the settlement of attorney fees shall be filed by Plaintiff along with the Defendant's objections. If the Court determines that a hearing is necessary, it will provide notice of the hearing date to counsel.

Plaintiff is entitled to interest as provide by law.

THIS RESOLVES THE LAST PENDING CLAIM AND CLOSES THE CASE EXCEPT AS TO THE AMOUNT OF ATTORNEY FEES.



DATED: 3/27/23