

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

TONY ZAYA, and
ANGELA DALLO,

Plaintiffs,

Case No. 23-199955-CB
Hon. Victoria A. Valentine

v

ROCKY NORTH, LLC,
938 E. 10 MILE LLC,
ROCKY DENHA, and
BRUCE KELLO,

Defendants.

OPINION AND ORDER REGARDING
PLAINTIFF TONY ZAYA’S MOTION FOR SUMMARY DISPOSITION
and
DEFENDANTS’ MOTION FOR SUMMARY DISPOSITION
PURSUANT TO MCR 2.116(C)(7) AND (10)

At a session of said Court, held in the
County of Oakland, State of Michigan
April _08, 2025

HONORABLE VICTORIA A. VALENTINE

This matter is before the Court on Plaintiff Tony Zaya’s Motion for Summary Disposition and Defendants’ Motion for Summary Disposition Pursuant to MCR 2.116(C)(7) and (C)(10). This Court has reviewed the pleadings filed by the parties, and the motions, response, and reply brief. Oral argument was held on the above-entitled motions on March 12, 2025.

OPINION

I.

Overview

Plaintiff Tony Zaya (“Zaya”) alleges that he assisted Defendants Rocky Denha (“Denha”) and Bruce Kello (“Kello”) in completing applications in connection with their efforts to obtain marijuana licenses in the City of Hazel Park in 2021.¹ Zaya also alleges that he provided funds toward the purchase of real property owned by Defendant 938 E. 10 Mile, LLC (“938 E. 10 Mile”), which property directly relates to the marijuana licenses.²

Zaya further alleges that he is a member of 938 E. 10 Mile, and that Denha and Kello are members who manage 938 E. 10 Mile.³ In his Third Amended Complaint, Zaya brings a single claim against 938 E. 10 Mile, Denha, and Kello (collectively the “Defendants”) for member oppression under MCL 450.4515. Zaya claims that the Defendants have “engaged in continuing and ongoing illegal, fraudulent and/or willfully unfair and oppressive conduct” toward Zaya.⁴

Among other things, Zaya alleges that the Defendants have:

- Failed to inform Zaya of any decision making on behalf of 938 E. 10 Mile and failed to provide information on the day-to-day operations of 938 E. 10 Mile.⁵
- Failed to permit Zaya to participate in voting on the business matters of 938 E. 10 Mile.⁶
- Failed to permit Zaya to enter the premises of the properties associated with 938 E. 10 Mile by changing the locks and not providing Zaya with keys or access.⁷

¹ Plaintiff Tony Zaya’s Third Amended Complaint (filed May 2, 2024) ¶¶ 10-11.

² *Id.* ¶¶ 18-24.

³ *Id.* ¶¶ 37-38.

⁴ *Id.* ¶ 54.

⁵ *Id.* ¶ 55.

⁶ *Id.* ¶ 56.

⁷ *Id.* ¶ 58.

- Failed to provide books and records to Zaya pursuant to MCL 450.4503.⁸
- Failed to provide the operative contracts and leases to Zaya pursuant to MCL 450.4503.⁹
- Failed to permit Zaya to receive distributions, proceeds and/or profits from 938 E. 10 Mile, which Zaya alleges other members (Kello and Denha) have received.¹⁰
- Failed to account for Zaya’s capital contributions to 938 E. 10 Mile.¹¹
- Failed to permit Zaya to account for profits and losses in 938 E. 10 Mile by not providing Zaya with Schedule K-1s for tax filings and returns.¹²

In 2021, Zaya filed a prior action against Rocky North, LLC, Denha, and Kello.¹³ The prior action was dismissed under MCR 2.116(C)(8) on February 25, 2022. Defendant 938 E. 10 Mile was not a party to the lawsuit.

Both sides now move for summary disposition on the remaining claim of member oppression. The Defendants move for summary disposition under MCR 2.116(C)(7) and (C)(10), while Zaya moves for summary disposition under MCR 2.116(C)(10).

II.

Standards of Review

A. MCR 2.116(C)(7)

MCR 2.116(C)(7) provides for summary disposition where a claim is barred by a prior judgment.

⁸ *Id.* ¶ 59.

⁹ *Id.* ¶ 60.

¹⁰ *Id.* ¶¶ 62-64.

¹¹ *Id.* ¶ 65.

¹² *Id.* ¶ 66.

¹³ *Tony Zaya v. Rocky North, LLC, et al.*, Oakland County Circuit Court Case No. 2021-190761-CK, Hon. Denise Langford Morris.

Under MCR 2.116(C)(7) . . . this Court must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties. The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. This Court must consider the documentary evidence in the light most favorable to the nonmoving party. If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. If a factual dispute exists, however, summary disposition is not appropriate.

[*RDM Holdings, LTD v Continental Plastics Co*, 281 Mich App 678, 687; 762 NW2d 529 (2008) (citations omitted)]

B. MCR 2.116(C)(10)

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim or defense. See, e.g., MCR 2.116(G)(3)(b); *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Accordingly, “[i]n evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion.” *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999); *Quinto*, 451 Mich at 358.

The moving party “must specifically identify the issues” as to which it “believes there is no genuine issue” of material fact and support its position as provided in MCR 2.116. MCR 2.116(G)(4). Under Michigan law, the moving party may satisfy its burden of production under MCR 2.116(C)(10) by demonstrating to the court that the non-moving party’s evidence is insufficient to establish an essential element of the non-moving party’s claim. *Quinto*, 451 Mich at 361. If the moving party properly supports its motion, the burden “then shifts to the opposing party to establish that a genuine issue of disputed fact exists.” *Id.* at 362. If the moving party fails to properly support its motion for summary disposition, the non-moving party has no duty to respond and the trial court should deny the motion. MCR 2.116(G)(4). See also *Meyer v City of*

Center Line, 242 Mich App 560, 575; 619 NW2d 182 (2000) (concluding that the trial court erred when it granted an improperly supported motion for summary disposition under MCR 2.116(C)(10)).

In all cases, MCR 2.116(G)(4) squarely places the burden on the parties, not the trial court, to support their positions. A reviewing court may not employ a standard citing mere possibility or promise in granting or denying the motion, *Maiden*, 461 Mich at 120-121 (citations omitted), and may not weigh credibility or resolve a material factual dispute in deciding the motion. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). Rather, summary disposition pursuant to MCR 2.116(C)(10) is appropriate if, and only if, the evidence, viewed most favorably to the non-moving party fails to establish any genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362, citing MCR 2.116(C)(10) and (G)(4); *Maiden*, 461 Mich at 119-120. A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152,160; 934 NW2d 665 (2019) (citation omitted). Granting a motion for summary disposition under MCR 2.116(C)(10) is warranted if the substantively admissible evidence shows that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362-363.

III.

Res Judicata

Defendants Kello and Denha argue that the present cause of action is barred by res judicata because this case arises from the same transactions and operative facts that were the basis of the 2021 lawsuit.

A. The Law of Res Judicata

The doctrine of res judicata bars a second action when “(1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first.” *Mecosta Cnty Med Ctr v Metro Grp Prop & Cas Ins Co*, 509 Mich 276, 282–83; 983 NW2d 401 (2022) (quoting *Foster v Foster*, 509 Mich 109, 120; 983 NW2d 373 (2022)). To determine whether the claims in the second case could have been raised in the first, a court must ask “whether the claims in the instant case arose as part of the same transaction as did the claims” in the prior case. *Adair v State*, 470 Mich 105, 125; 680 NW2d 386 (2004). “Whether a factual grouping constitutes a transaction for purposes of res judicata is to be determined pragmatically, by considering whether the facts are related in time, *space, origin or motivation*, [and] whether they form a convenient trial unit. . . .” *Id.*, quoting 46 Am. Jur. 2d, Judgments 533, p. 801 (emphasis in original).

There is an exception to the doctrine of res judicata, however, where the alleged wrongful conduct is ongoing. “If a continuing course of wrongful conduct gives rise to a new cause of action, however, res judicata does not apply. Similarly, claims that could not have been brought at the time of the first action are not barred.” *Jones v. Westminster, LLC*, unpublished per curiam opinion of the Court of Appeals, issued May 24, 2018 (Docket No. 334447), p 1. Indeed, “[r]es judicata has very little applicability to a fact situation involving a continuing series of acts, for generally each act gives rise to a new cause of action.” *Id.* at 5 (quoting *Crowe v Leeke*, 550 F2d 184, 187 (CA 6, 1977)). In such a case, allegations that the defendants committed additional wrongful acts after the prior case concluded would not be barred by res judicata. *Id.* at 5. However, “a plaintiff may only bring a second suit when the defendant continues in his or her tortious *act*, but not where the plaintiff experiences ‘continual harmful effects from an original, completed act.’” *Id.* at 6 (emphasis in original).

B. Analysis

In this Court's Opinion and Order dated March 4, 2024, the Court analyzed each of the elements of res judicata and found that they were satisfied. Consequently, the Court concluded that res judicata barred Zaya's claims in the Second Amended Complaint against Rocky North,¹⁴ Denha, and Kello. However, Zaya moved for reconsideration of this Court's opinion, arguing that the wrongdoing was continuing in nature, and therefore, res judicata did not bar his claims. The Court then granted Zaya leave to file a Third Amended Complaint.

For the reasons stated in the Court's March 4, 2024, Opinion and Order, at least some of the allegations in the claim for member oppression against Denha and Kello are barred by res judicata. The decision in the 2021 litigation, which dismissed the case under MCR 2.116(C)(8) on February 25, 2022, was a decision on the merits. *ABB Paint Finishing, Inc v Nat'l Union Fire Ins Co*, 223 Mich App 558, 563 (1997). Additionally, the Defendants state that "the instant Motion pursuant to MCR 2.116(C)(7) pertains only to Tony's claims against the same Defendants in both lawsuits,"¹⁵ so the prior action involved the same parties as those at issue in the Defendants' Motion under MCR 2.116(C)(7). Finally, at least some of the factual allegations in the Third Amended Complaint could have been raised in the prior action because both lawsuits are related in time, space, origin, and motivation. Specifically, both lawsuits relate to the same marijuana licenses in Hazel Park,¹⁶ the same dispute, and the same parties.

However, in Zaya's Third Amended Complaint, he alleges that Kello and Denha continued their wrongful conduct after the 2021 lawsuit was dismissed, so the claims arising from conduct

¹⁴ Rocky North, LLC was named as a Defendant in prior versions of the complaint, but this entity was not included as a Defendant in the Plaintiff Tony Zaya's Third Amended Complaint (filed May 2, 2024).

¹⁵ Defendants' Motion for Summary Disposition Pursuant to MCR 2.116(C)(7) and (C)(10), p 13.

¹⁶ The 2021 Complaint references three marijuana permits in Hazel Park not only for a dispensary, but also for a grow and processing facility. Defendant's Motion for Summary Disposition Pursuant to MCR 2.116(C)(7) and (C)(10), Exhibit 13, 2021 Complaint ¶ 13.

that occurred after the termination of the prior litigation could not have been brought in the earlier suit. Specifically, Zaya alleges, “Tony’s claims against Defendants Kello and Denha arise from any and all conduct after February 25, 2022, as well as any and all conduct initiated by Kello and Denha prior to February 25, 2022, that is continuing and ongoing subsequent to February 25, 2022.”¹⁷

Consequently, as the Court already concluded in its prior Opinion and Order, the doctrine of res judicata mandates summary disposition of the member oppression claim against Denha and Kello to the extent that it is based on conduct and acts that predate the dismissal of the 2021 lawsuit. However, summary disposition is not warranted for the alleged ongoing wrongful conduct that occurred after the dismissal of the 2021 lawsuit. Those new acts allegedly created fresh violations, and so they could not have been addressed in the prior lawsuit. Accordingly, summary disposition in favor of Denha and Kello is warranted pursuant to MCR 2.116(C)(7) only as to the allegations of member oppression that predate the dismissal of the 2021 lawsuit.¹⁸

IV.

Zaya’s Alleged Membership in 938 E. 10 Mile LLC

The Defendants also argue that Zaya’s member oppression claim fails under MCR 2.116(C)(10) for the simple reason that Zaya cannot demonstrate that he is a member of 938 E. 10

¹⁷ Plaintiff Tony Zaya’s Third Amended Complaint (filed May 2, 2024) ¶ 48.

¹⁸ The Defendants also argue that res judicata bars Zaya from litigating the issue of whether he became a member of 938 E. 10 Mile because “[t]he 2021 lawsuit was Tony’s opportunity to establish any membership interest in the entities flowing from his venture (and his licensing efforts) with Defendants Denha and Kello. . . .” Defendants’ Response to Plaintiff Tony Zaya’s Motion for Summary Disposition, pp 2-3. This argument conflates res judicata with collateral estoppel. “The doctrine of collateral estoppel precludes relitigation of an issue in a different, subsequent action between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue in question was *actually and necessarily determined in that prior proceeding*.” *Dearborn Heights Sch. Dist. No. 7 v Wayne Cnty. MEA/NEA*, 233 Mich App 120, 124, 592 NW2d 408, 411 (1998). Here, the Defendants have not established that the issue of membership of 938 E. 10 Mile was actually litigated and necessarily determined in the 2021 lawsuit. Thus, the Defendants have not established that collateral estoppel bars litigation of the issue of Zaya’s membership in 938 E. 10 Mile.

Mile under the Michigan Limited Liability Company Act.

A. MCL 450.4501

Since 938 E. 10 Mile does not have an operating agreement, the default provisions of the LLC Act govern the conditions under which a person may be admitted as a member of the LLC.

MCL 450.4501(1)-(2) provides:

(1) A person may be admitted as a member of a limited liability company in connection with the formation of the limited liability company in any of the following ways:

(a) If an operating agreement includes requirements for admission, by complying with those requirements.

(b) If an operating agreement does not include requirements for admission, if either of the following are met:

(i) The person signs the initial operating agreement.

(ii) The person's status as a member is reflected in the records, tax filings, or other written statements of the limited liability company.

(c) In any manner established in a written agreement of the members.

(2) A person may be admitted as a member of a limited liability company after the formation of the limited liability company in any of the following ways:

(a) If the person is acquiring a membership interest directly from the limited liability company, by complying with the provisions of an operating agreement prescribing the requirements for admission or, in the absence of provisions prescribing the requirements for admission in an operating agreement, upon the unanimous vote of the members entitled to vote.

(b) If the person is an assignee of a membership interest, as provided in section 506.

(c) If the person is becoming a member of a surviving limited liability company as the result of a merger or conversion

approved under this act, as provided in the plan of merger or plan of conversion.

[MCL 450.4501(1)-(2)]

B. Analysis

The Defendants argue that Zaya has not satisfied the requirements of MCL 450.4501, and therefore, he was never admitted as a member of 938 E.10 Mile. Although Zaya did not directly address this argument in his written submissions, during oral argument his counsel argued that he was admitted pursuant to MCL 450.4501(1)(b)(ii), which provides a person may be admitted in connection with the formation of the company where the operating agreement does not include requirements for admission but the person's status as a member is reflected in the records, tax filings, or other written statements of the limited liability company. This case is factually similar to the unpublished case of *Bartosiewicz v A2Q, LLC*, unpublished per curiam opinion of the Court of Appeals, issued Mar. 17, 2020 (Docket No. 17-000428-CB); 2020 WL 1286227. In *Bartosiewicz*, the plaintiff argued that she was a member of the defendant LLC. The LLC did not have an operating agreement, and the plaintiff argued that she was admitted after its formation by unanimous vote pursuant to MCL 450.4501(2)(a). To determine whether the plaintiff was admitted by unanimous vote, it was necessary to identify the current members of the LLC and confirm whether they had voted in favor of her admission. The parties agreed that another defendant, Jayakar, was admitted to the LLC at its formation. Although the LLC did not have an operating agreement, Jayakar provided start-up funding with the apparent understanding that he would receive an ownership interest in the business, and his status as a member was reflected in the LLC's tax filings. *Id.* at 4. Consequently, the Court agreed that "it is not disputed that Jayakar's 'status as a member [was] reflected in the . . . tax filings' of A2Q" pursuant to MCL 450.4501(1)(b)(ii). *Id.* See also *Branch v Rudolph*, unpublished per curiam opinion of the Court of Appeals, issued March

19, 2025 (Docket No. 368071), p 4; 2025 WL 8687398 (holding that, because the parties had not presented evidence of an operating agreement, the plaintiff could not establish that the defendant, Kevin Rudolph, acquired membership in the LLC under any of the provisions of MCL 450.4501 that require an operating agreement. However, the Court also found that the plaintiff could potentially prove that Rudolph was a member of the LLC under MCL 450.4501(1)(b)(ii) by using the records or written statements of the limited liability company itself).

Here, Zaya alleges that he became a member of 938 E. 10 Mile at its formation on April 19, 2021.¹⁹ Two days after the formation, 938 E. 10 Mile entered into a Land Contract with 938 Hazel Park, LLC, a non-party, to purchase properties located at 938 and 950 E. 10 Mile Road in Hazel Park.²⁰ Zaya signed the Land Contract as the “authorized member” of 938 E. 10 Mile. On the same day, Zaya, along with Denha and Kello, signed a Joinder, which states that the undersigned, referred to as “Guarantors,” who have a direct or indirect interest in the Buyer (938 E. 10 Mile), agree to join in the execution of the Land Contract and jointly and severally assume and guarantee the Buyer’s obligations under the Land Contract.²¹

Indeed, the day before, Mike Bahoura, the resident agent of 938 E. 10 Mile LLC²² and an attorney representing 938 E 10 Mile, LLC,²³ Denha and Kello, confirmed that “Tony is the Assignor’s brother *and is a member of 938 E 10 Mile, LLC.*”²⁴ As a result, the execution of the Land Contract on behalf of 938 E. 10 Mile, with Zaya acting as the “authorized member” shortly after the LLC’s formation, along with execution of the Guaranty by Denha, Kello and Zaya and

¹⁹ Plaintiff Tony Zaya’s Third Amended Complaint (filed May 2, 2024) ¶¶ 4, 45. See also Defendants’ Motion for Summary Disposition Pursuant to MCR 2.116(C)(7) and (C)(10), Exhibit 3, pp 66-67.

²⁰ Plaintiff Tony Zaya’s Motion for Summary Disposition, Exhibit F.

²¹ *Id.*

²² Plaintiff, Tony Zaya’s Reply to Defendants’ Response to Plaintiff Tony Zaya’s Motion for Summary Disposition, Exhibit B.

²³ Defendants’ Response to Plaintiff Tony Zaya’s Motion for Summary Disposition, Exhibit B, Kello Dep p 26.

²⁴ Plaintiff, Tony Zaya’s Reply to Defendants’ Response to Plaintiff Tony Zaya’s Motion for Summary Disposition, Exhibit B. (Emphasis added).

Mr. Bahoura’s statement—who served as both the resident agent and attorney for 938 E. 10 Mile LLC—raise a question of fact regarding whether Zaya has met the requirements of MCL 450.4501(1)(b)(ii) as applied in *Bartosiewicz*.

However, the Defendants dispute whether Zaya was actually authorized to execute the Land Contract on behalf of 938 E. 10 Mile. Specifically, Rocky Denha and Bruce Kello both testified that Zaya was not a member of 938 E. 10 Mile and that they never authorized Zaya to sign the Land Contract on behalf of the LLC.²⁵In the end, the parties have submitted conflicting evidence regarding whether Zaya was authorized to sign the Land Contract. This evidence is directly at issue because it relates to Zaya’s admission to the LLC pursuant to MCL 450.4501(1)(b)(ii). Accordingly, because there is a genuine issue of material fact regarding Zaya’s authority to sign the Land Contract, summary disposition is not warranted pursuant to MCR 2.116(C)(10).^{26,27}

²⁵ Defendants’ Response to Plaintiff Tony Zaya’s Motion for Summary Disposition, Exhibit A, p 50 and Exhibit B, pp 19-20, 27.

²⁶ Zaya’s Motion for Summary Disposition focuses on the merits of the member oppression claim, arguing that there is no genuine issue of material fact that Zaya was, in fact, oppressed in violation of MCL 450.4515. In response to Zaya’s Motion, the Defendants argue that Zaya has not demonstrated oppression under MCL 450.4515. Because the Court has determined that the threshold issue of membership in 938 E. 10 Mile depends on the resolution of a genuine issue of material fact, the Court need not reach Zaya’s arguments regarding whether he has demonstrated oppression in violation of MCL 450.4515.

²⁷ In response to Zaya’s Motion, the Defendants argue that 938 E. 10 Mile should be dismissed because it is not a proper defendant in a claim under MCL 450.4515. However, MCL 450.4515(1)(d) expressly authorizes the Court to issue an order providing for the purchase of the member’s interest “either by the company or by any members responsible for the wrongful acts.” The Defendants have not cited any caselaw for the proposition that 938 E. 10 Mile is not a proper defendant. Michigan jurisprudence is clear that an argument must be supported by citation to appropriate authority and analysis otherwise the argument is abandoned. See, e.g., *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003) (a party “may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims . . . nor may he give issues cursory treatment with little or no citation of supporting authority” (citations omitted)). Conclusion without authority is insufficient to warrant dispositive relief or even to bring an issue before the Court for review, especially where, as here, the plaintiff bears the ultimate burden of proof. *Mitcham v City of Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959) (“It is not enough . . . to simply announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and rationalize the basis for his arguments, and then search for authority either to sustain or reject his position”); *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) (“A mere statement without authority is insufficient to bring an issue before this Court”). “Trial Courts are not the research assistants of the litigants; the parties have a duty to fully present legal arguments for its resolution of their dispute.” *Walters v Nadell*, 481 Mich 377, 388; 751 NW2d 431 (2008).

ORDER

Based upon the foregoing Opinion:

IT IS HEREBY ORDERED that the Defendants' Motion for Summary Disposition pursuant to MCR 2.116(C)(7) with respect to Defendants Denha and Kello is GRANTED as to any allegations that predate the conclusion of the 2021 lawsuit and DENIED as to the allegations and/or continuing wrongful conduct that arose after the dismissal of the 2021 lawsuit.

IT IS FURTHER ORDERED that the Defendants' Motion for Summary Disposition pursuant to MCR 2.116(C)(10) with respect to all Defendants is DENIED.

IT IS FURTHER ORDERED that the Plaintiff's Motion for Summary Disposition is DENIED.

This Order DOES NOT resolve the last pending matter and DOES NOT close the case.



HON. VICTORIA A. VALENTINE
CIRCUIT COURT JUDGE

Dated: 4/8/2025