

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

**KINDIG-IT DESIGN, INC,
Plaintiff,**

v.

**Case No. 16-156345-CB
Hon. James M. Alexander**

**CREATIVE CONTROLS, INC, ET AL,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant Creative Mobility Group, Inc's motion to dismiss for failure to state a claim and alternative motion for a more definite statement. The Court dispenses with oral argument pursuant to MCR 2.119(F)(2).

Plaintiff is in the business of manufacturing and selling automotive customization products. In a prior, Federal Court action, Plaintiff claimed that Defendant Creative Controls Inc. (CCI) was selling a door-handle kit that infringed on Plaintiff's patents. This federal case is pending with Plaintiff obtaining a default against CCI.

Plaintiff then filed this case – generally on claims that, following the default entry, Defendants acted in concert to dissolve CCI and fraudulently transfer its assets into related entities controlled by the same individuals. This was done, Plaintiff argues, in an attempt to avoid collection on any potential default judgment.

As it relates to Creative Mobility, Plaintiff brings two claims: Count I for fraudulent transfer and Count III for conspiracy. Specifically, Plaintiff claims that Creative Mobility now sells at least two CCI products and advertises that its team includes relatives of CCI's officer.

In the present motion, Creative Mobility argues that Plaintiff's Complaint should be dismissed because it fails to plead fraud with the required particularity and said claim improperly relies on unsupported conclusory allegations.

Creative Mobility so moves under MCR 2.116(C)(8), which tests the legal sufficiency of the complaint. All well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dept of Corrections*, 439 Mich 158; 483 NW2d 26 (1992). A motion under this subrule 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." *Id.* When deciding such a motion, the court considers only the pleadings. MCR 2.116(C)(G)(5).

As stated, Creative Mobility argues that it is entitled to dismissal of Plaintiff's fraudulent transfer and conspiracy claims.

It appears that said claims are based on Michigan's Uniform Fraudulent Transfer Act, whereby a purported creditor can bring a claim alleging a fraudulent transfer under either MCL 566.34 or MCL 566.35. Under Section 35,

A transfer made or obligation incurred by a debtor is fraudulent 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.

Further, and the basis for Creative Mobility's motion, "fraud must be pleaded with particularity." *Cooper v Auto Club Ins Ass'n*, 481 Mich 399, 414; 751 NW2d 443 (2008), citing

MCR 2.112(B)(1). But, Creative Mobility argues, Plaintiff merely pleads conclusory statements – rather than factual allegations – to support the claim. The Court disagrees.

Plaintiff’s Amended Complaint alleges that it has a default against CCI. (Amended Complaint at ¶ 29). It also alleges that CCI held the patent for an “Armstrong Lift,” which is now being sold by Creative Mobility – despite no assignment of the patent from CCI to Creative Mobility. (¶¶ 43-46, 56-58). Plaintiff alleges that Creative Mobility uses the same address as CCI and is managed by Mr. Stowers’ (CCI’s officer’s) relatives. (¶¶ 53-55).

Plaintiff also alleges that CCI previously sold another product (“Pedal Mates”), which is now sold by Creative Mobility. (¶ 59). And, Plaintiff alleges, CCI’s web page for Pedal Mates is now directly linked to Creative Mobility’s web page for Pedal Mates. (¶ 60). Plaintiff further claims that both CCI’s and Creative Mobility’s websites indicate that Stowers’ relatives run both companies. (¶ 61-63). And, Plaintiff alleges, all of the above things happened shortly after the default judgment against CCI was obtained.

When considering a (C)(8) motion, the Court must accept the above-pled allegations as true. Based on the same, the Court finds that Plaintiff has sufficiently pled allegations supporting its fraudulent transfer and conspiracy claims such that summary under (C)(8) is inappropriate and DENIED.

Additionally, with respect to Creative Mobility’s motion for a more definite statement, the Court finds that Creative Mobility has been sufficiently put on notice of the claims alleged, against which, it must defend. As a result, this request is also DENIED.

IT IS SO ORDERED.

March 28, 2017
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge