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

MARCO EADIE, an individual,

Plaintiff/Counter-Defendant,

Case No. 23-199709-CB
Hon. Victoria A. Valentine

v

BOULEVARD AND CO, LLC, a Michigan Limited Liability Company, and
ALOIS GERLACH, an individual,

Defendants/Counter-Plaintiffs.

_____/

OPINION AND ORDER REGARDING PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10) SEEKING JUDGMENT ON AND DISMISSING DEFENDANT'S COUNTERCLAIMS IN THEIR ENTIRETY AND AWARDING JUDGMENT IN FAVOR OF PLAINTIFF ON COUNT IV OF PLAINTIFF'S COMPLAINT

At a session of said Court, held in the
County of Oakland, State of Michigan
May 8, 2024

HONORABLE VICTORIA A. VALENTINE

This matter is before the Court on Plaintiff's Motion for Summary Disposition Pursuant to MCR 2.116(C)(10) Seeking Judgment On and Dismissing Defendant's Counterclaims in Their Entirety and Awarding Judgment in Favor of Plaintiff on Count IV of Plaintiff's Complaint. This Court has reviewed the pleadings filed by the parties and the motion, response, and reply briefs. Oral argument was held on the above-entitled motion.

OPINION

I.

Overview

Plaintiff Marco Eadie ("Eadie") and Defendant Alois Gerlach ("Gerlach") formed Boulevard and Co, LLC ("Boulevard") in 2015 to provide investment banking services. Eadie and Gerlach each own 50% of the company and serve as managers of Boulevard. The parties operated Boulevard together until approximately 2020 when each expressed an interest in moving on. The parties disagree as to the facts and legal consequences of that decision, however.

Eadie argues that his and Gerlach's emails in January 2020 expressing a desire to terminate and dissolve Boulevard fulfilled the contractual provision for termination under Article 2 of Boulevard's Operating Agreement:

> **Article 2**
> **Term of Company**
>
> The term of the Company shall be for the period of years beginning on the effective date of this Agreement and ending upon the occurrence of certain specific events as follows:
>
> (a) the termination of the Company under any provision contained elsewhere herein;
>
> (b) *a written agreement to dissolve* the Company signed by all Members whose combined Membership Interests equal 51 % or more of all of the Membership Interests; […]

Consequently, Eadie argues that everything that occurred between the parties after their agreement to dissolve Boulevard in January 2020 was in furtherance of winding up the company. During the period of winding up the company, they were no longer bound by the non-compete provision in the Operating Agreement, and they were free to seek other employment opportunities.

Gerlach, however, disagrees with this interpretation, and argues that although the parties expressed an interest in dissolving the company, they did not formally vote to do so and were still bound by the provisions in the Operating Agreement. Thus, according to Gerlach, Eadie's decision to seek other employment was a breach of the non-compete provision of the Operating Agreement.

In addition to the disagreement about whether the January 2020 emails constituted a written agreement to dissolve Boulevard, the parties disagreed about the payments they were entitled to from Boulevard in 2020 and 2021. Eadie claims that the payments Gerlach received from Boulevard constituted conversion because he made distributions to himself without Eadie's approval in contravention of Article 4.1 of the Operating Agreement. Gerlach believed that he was still entitled to receive his salary from Boulevard because he continued to do work for Boulevard. The parties have also each claimed that they were defamed by their former business partner. The instant suit seeks to resolve these and other issues.

II.

Standards of Review

Defendants move for partial summary disposition pursuant to 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 N.W.2d 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 nonmoving 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 nonmoving 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.

Analysis

A. Count I – Eadie's Conduct as a Member Manager is Illegal, Fraudulent, and Constitutes Willfully Unfair Oppressive Conduct Toward Boulevard and Gerlach

Eadie moves for summary disposition of all counts in the First Amended Countercomplaint, including Count I ("Eadie's Conduct as a Member Manager is Illegal, Fraudulent, and Constitutes Willfully Unfair Oppressive Conduct Toward Boulevard and Gerlach"). Eadie fails to provide any argument about Count I, however. "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). "A party abandons a claim when it fails to make a meaningful argument in support of its position." *Berger v Berger*, 277 Mich App 700, 712 (2008). Michigan jurisprudence is well-settled that this trial court need not divine the intentions, search for arguments, or otherwise make conclusions on a party's behalf. *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"); *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003) ("failure to properly address the merits of [one's] assertion of error constitutes abandonment of the issue. . . . nor may he give issues cursory treatment with little or no citation of

supporting authority"); *People v Jones* (On Rehearing), 201 Mich App 449, 456-457; 506 NW2d 542 (1993) (failure to provide cogent argument or supporting authority constitutes abandonment of the issue on appeal). In the end, Eadie has failed to sufficiently support the relief sought and his Motion for Summary Disposition of Count I –Illegal, Fraudulent, and Willfully Unfair Oppressive Conduct is DENIED.

B. Count II: Breach of Fiduciary Duties

Eadie's motion for summary disposition does not include any support for his motion as to Count II – Breach of Fiduciary Duties. Consequently, Eadie's Motion for Summary Disposition of Count II – Breach of Fiduciary Duties is DENIED for the same reasons noted above.

C. Count III: Breach of Contract

Under Michigan law "[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 to the party claiming breach." *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich 161, 178; 848 NW2d 95 (2014). A court's "goal in contract interpretation is to give effect to the intent of the parties, to be determined first and foremost by the plain and unambiguous language of the contract itself." *Wyandotte Elec Supply Co v Electrical Technology Sys, Inc*, 499 Mich 127, 143-144; 881 NW2d 95 (2016). "[I]t has long been the law in this state that courts are not to rewrite the express terms of contracts." *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 199-200; 747 NW2d 811 (2008). See also *Kendzierski v Macomb County*, 503 Mich 296, 311-312; 931 NW2d 604 (2019) (emphasis in original) ("A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be *enforced as written*" and a court "will not create ambiguity where the terms of the contract are clear.").

Under Michigan law, contracts are subject to the parol evidence rule which prohibits the use of extrinsic evidence to interpret unambiguous language within the contract. *Shay v Aldrich*, 487 Mich 648, 667; 790 NW2d 629 (2010). See also *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 492; 579 NW2d 411 (1998) ("[P]arol evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary the written contract, is not admissible to vary the terms of a contract which is clear and unambiguous.") (citation omitted).

The question of whether contract language is ambiguous is a question of law. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). A contract is ambiguous if there is an irreconcilable conflict between provisions in the contract or "when a term is equally susceptible to more than a single meaning." *Bodnar v St John Providence, Inc*, 327 Mich App 203, 220; 933 NW2d 363 (2019). Under such circumstances, the ambiguous contract language presents a question of fact. *Klapp*, 468 Mich at 469. "[I]f a contract is ambiguous, then extrinsic evidence is admissible to determine the actual intent of the parties." *Shay*, 487 Mich at 667 (quotation marks and citation omitted). See also *Klapp*, 468 Mich at 469 ("In resolving such a question of fact, i.e., the interpretation of a contract whose language is ambiguous, [trier of fact] is to consider relevant extrinsic evidence").

In the case at bar, Count III of Gerlach's First Amended Counter-Claim alleges that Eadie had no contractual right to receive fees from Boulevard while secretly working for O'Keefe. Eadie argues that the non-compete provision of the Operating Agreement was no longer binding because the parties agreed to dissolve Boulevard in January 2020.

The parties disagree as to whether the January 2020 emails constitute "*a written agreement to dissolve* the Company *signed by all Members*" under Article 2 of the Operating Agreement.

Eadie argues that the electronic block signatures in the January 2020 emails were the basis of a valid and binding agreement to terminate Boulevard. Both parties cite to the Michigan Uniform Electronic Transactions Act ("UETA") which broadly provides that electronic signatures are binding:

> (1) A record or signature shall not be denied legal effect or enforceability solely because it is in electronic form.
> (2) A contract shall not be denied legal effect or enforceability solely because an electronic record was used in its formation.
> (3) If a law requires a record to be in writing, an electronic record satisfies the law.
> (4) If a law requires a signature, an electronic signature satisfies the law. [MCL 450.837]
> …
>
> An electronic record or electronic signature is attributable to a person if it is the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable. [MCL 450.839].

However, the UETA also states that it "applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct." MCL 450.835(2). Even if a party may agree to conduct one transaction by electronic means, that party "may refuse to conduct other transactions by electronic means." MCL 450.835(3). Additionally, the application of the UETA "may be varied by agreement," such as a contract. MCL 450.835(4).

Here, the Operating Agreement is silent as to whether such electronic signatures are sufficient, and even implies that physical documents may be required:

> **Section 11.2 Notices**
>
> Unless expressly provided otherwise in this Agreement, all waivers, requests, notices, consents, approvals, offers, acceptances, elections, certifications, objections or other official communications permitted or required by this Agreement shall be in writing, duly signed by the person making the official act or request, and *delivered personally or by U.S. mail to the Member or Company receiving the writing at the most current address provided by the Member to the Company*. Correspondence sent by mail shall be deemed to have been delivered on the third day after depositing the correspondence in the mail.

Because the Court finds that the method of written agreement and the signatures required by Article 2 in the Operating Agreement is ambiguous, the Court looks to the conduct of the parties to determine whether they acted as though the January 2020 emails, *in and of themselves*, constituted a dissolution of Boulevard. The parties' course of conduct after January 2020 seems to demonstrate that both parties intended or anticipated that a dissolution would eventually take place. However, there is conflicting evidence as to whether a dissolution had already taken place as of January 2020 and the company was simply "winding up" its affairs, or whether the parties were continuing on with business as usual. Specifically:

- **Discussion of Need for Formal Dissolution Documents**: In the January 2020 emails, both Eadie and Gerlach mention the need for drafting formal dissolution documents. Gerlach asks "please let me know if you want me to develop the first draft of the dissolution plan. I hope to have a plan established by Friday of this week." Eadie replies "[p]lease draft the initial proposal to dissolve."[1] Thus, it appears that both parties anticipated that formal dissolution documents would follow this email.

- **New Analyst**: Boulevard hired a new consultant in April 2020.[2]

- **Exploration of Merger/Acquisition**: Eadie emailed Pat O'Keefe in June 2020 (five months after the dissolution emails) and touted the benefits of Boulevard's

[1] Plaintiff's Response in Opposition to Defendants' Motion for Summary Disposition, Ex. 4.
[2] Plaintiff's Response in Opposition to Defendants' Motion for Summary Disposition, Ex. 13.

services in connection with a discussion about O'Keefe & Associates Consulting, LLC merging with or acquiring Boulevard.[3] If Boulevard was already legally dissolved as of this date, the discussion of a potential merger would make little sense.

- **Took on New Clients**: Gerlach stated in his affidavit that Boulevard not only continued operations in 2020 but signed new retainers in both 2020 and 2021.[4]

- **Offer to Divest**: On November 16, 2020, Eadie sent an email to Gerlach in which he said "My choice would be to shut [Boulevard] down completely but happy to divest my interest if it benefits you."[5]

Consequently, there appear to be material issues of fact as to whether the Operating Agreement was terminated and Boulevard legally dissolved as of January 2020. Thus, Eadie's obligations under the Operating Agreement are also subject to dispute. Because there are material issues of fact underlying Count III – Breach of Contract, Eadie's request for summary disposition pursuant to MCR 2.116(C)(10) is DENIED.[6]

D. Count IV: Silent Fraud

In Gerlach's claim for silent fraud, he argues that Eadie had a duty under the Operating Agreement to disclose that he was working for O'Keefe while receiving a salary from Boulevard. In his Response, Gerlach further argues that it was not a secret that Eadie had accepted a position

[3] Defendants' Response to Plaintiff's Motion for Summary Disposition, Exhibit 9.
[4] Defendants' Response to Plaintiff's Motion for Summary Disposition, Exhibit 7.
[5] Defendant's Motion for Partial Summary Disposition, Exhibit 3.
[6] Eadie also argues that Gerlach waived the right to pursue an action based on the non-compete provision in the Operating Agreement by agreeing to terminate the Operating Agreement in January 2020. The Operating Agreement contains a nonwaiver clause: "Unless otherwise provided by the terms of this Agreement, no waiver, modification, or termination of this Agreement shall be effective, unless it is made in writing, duly executed by the one making the writing, and delivered personally or by U.S. mail… In the absence of such a writing, no act shall be deemed to be a waiver of any right or obligation required by this Agreement." Section 11.5. Because there are material issues of fact about whether the January 2020 emails constituted a valid dissolution under Article 2 of the Operating Agreement, there are similar issues as to whether the email constituted a waiver of Gerlach's right to enforce the non-compete provision of the Operating Agreement. See *Quality Prod & Concepts Co v Nagel Precision, Inc*, 469 Mich. 362, 374; 666 NW2d 251 (2003) (holding that "the significance of [non-waiver] clauses regarding the parties' intent to amend is heightened where a party relies on a course of conduct to establish modification").

at O'Keefe, but he created "a false impression that he was beginning work on January 1, 2021." Thus, Gerlach claims he was misled during the fall of 2020 about Eadie's employment with O'Keefe.

"The suppression of a material fact, which a party in good faith is duty-bound to disclose, is equivalent to a false representation and will support an action in fraud." *M&D, Inc v WB McConkey*, 231 Mich App 22, 29: 585 NW2d 33 (1998) (citation omitted). However, it is also true that "there cannot be any fraud if the party allegedly defrauded had the means to determine for him- or herself the truth of the matter." *Alfieri v Bertorelli*, 295 Mich App 189, 194–95; 813 NW2d 772 (2012).

As noted above, Gerlach argues that he believed Eadie was beginning his employment with O'Keefe in January 2021. That is not supported by the documentary evidence, however. It is undisputed that Gerlach knew Eadie had received an offer of employment from O'Keefe in September because he told Eadie that he was "happy to learn today that you received a job offer from O'Keefe" on September 16, 2020.[7] Nine days later, Gerlach asked "Btw, are you rebuilding [O'Keefe's] banking group? I need to know what to eventually tell people u r doing,"[8] which implies that he knew Eadie intended to accept O'Keefe's offer. In an October text exchange between Eadie and Gerlach, Gerlach made several comments that make clear he knew that Eadie had already started working for O'Keefe and was being paid by both O'Keefe and Boulevard, including:

- "Pay for my DAC dues while I refer all deals to O'Keefe. Give me a break"
- "Unbelievable disrespect is expecting to take a paycheck and expenses while u work for a competitor"
- "go work for your new employer full time"

[7] Plaintiff's Motion for Summary Disposition, Exhibit 21.
[8] Plaintiff's Motion for Summary Disposition, Exhibit 25.

- "People think I'm crazy for paying u while u work for a competitor."[9]

Thus, Gerlach knew as of September that Eadie had received an offer of employment from O'Keefe, and he knew in October that Eadie was already working for O'Keefe. Because the record does not support Gerlach's claim that Eadie misled him with the impression that he was beginning work for O'Keefe in January 2021, the Court grants Eadie's Motion for Summary Disposition of Count IV – Silent Fraud.

E. Count V: Defamation[10]

Gerlach alleges that Eadie made a false and defamatory statement in April 2023 in which he allegedly told Brian Vargason, a former Boulevard analyst who went to O'Keefe, that Gerlach stole money from Boulevard's bank account.

To support a claim for defamation, a plaintiff must prove the following:

> (1) A false and defamatory statement concerning the plaintiff, (2) an unprivileged communication to a third party, (3) fault amounting at least to negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special harm (defamation per se) or the existence of a special harm caused by the publication (defamation per quod). [*Burden v Elias Bros Big Boy Restaurants*, 240 Mich App 723, 726; 613 NW2d 378 (2000).]

"These elements must be specifically pleaded, including the allegations with respect to the defamatory words, the connection between the plaintiff and the defamatory words, and the publication of the alleged defamatory words." *Gonyea v Motor Parts Fed Credit Union*, 192 Mich App 74, 77; 480 NW2d 297 (1991).

"A communication is defamatory if it tends so to harm the reputation of another as to lower [her] in the estimation of the community or to deter third persons from associating or dealing with

[9] Plaintiff's Motion for Summary Disposition, Exhibit 28.
[10] The First Amended Counterclaim includes two Count IVs. For the sake of clarity, the Court will refer to the second Count IV – Defamation as Count V – Defamation.

[her]." *Smith v Anonymous Joint Enterprise*, 487 Mich 102, 113; 793 NW2d 533 (2010). In determining whether an alleged defamatory statement[s] implies a defamatory meaning, the statement[s] must be analyzed in context. *Id.* at 129. Failure to do so "could potentially elevate form over substance." *Id.*

"To be considered defamatory, statements must assert facts that are 'provable as false.'" *Ghanam v Does*, 303 Mich App 522, 545; 845 NW2d 128 (2014) quoting *Milkovich v Lorain Journal Co*, 497 US 1, 19 (1990). To avoid liability, it is not necessary for "defendants to prove that a publication is literally and absolutely accurate in every minute detail." *Rouch v Enquirer & News of Battle Creek Michigan*, 440 Mich 238, 258; 487 NW2d 205 (1992). "Rather, substantial truth is an absolute defense to a defamation claim." *Collins v Detroit Free Press, Inc*, 245 Mich App 27, 33; 627 NW2d 5 (2001). "Slight inaccuracies of expression are immaterial provided that the defamatory charge is true in substance." *Rouch*, 440 Mich at 258-259 (quotation marks and citation omitted).

"[A] statement of 'opinion' is not automatically shielded from an action for defamation because 'expressions of 'opinion' may often imply an assertion of objective fact." *Smith*, 487 Mich at 128. "[A] statement of opinion that can be proven to be false may be defamatory because it may harm the subject's reputation or deter others from associating with the subject." *Id.*

A court may decide as a matter of law whether a statement is capable of defamatory meaning. *Ireland v Edwards*, 230 Mich App 607, 619; 584 NW2d 632 (1998). Summary disposition is appropriate where no defamatory meaning is possible. *Id.*

A. Truth of the Statement

Eadie argues that the statement that is the basis for Gerlach's defamation claim is true, and therefore the truth of the statement is an absolute defense to a claim for defamation. Namely,

Vargason testified: "He just told me that there was a fallout between him and Mac; that Mac was – that Mac took some money from the account."[11] Eadie argues that this cannot be defamatory because it is undisputed that Gerlach did in fact take money from the Boulevard account. This, however, is not an accurate reading of the record. Vargason makes clear that Eadie told him Gerlach *took money he was not entitled to take*:

> Q: You said he told you that he filed a lawsuit; that he had a falling out with Mac, and that Mac took money. So the implication is that Mac took money that he was not entitled to take. Is that correct?
>
> A: Correct.[12]

Because, as noted above, there are genuine issues of fact about whether the Operating Agreement was terminated in January 2020, there are also genuine issues about what each party's obligations were under that Agreement and what amounts they were entitled to under the Operating Agreement. Consequently, the truth of the statement that Eadie made to Vargason is not an undisputed fact and summary disposition would be inappropriate on this basis under MCR 2.116(C)(10).

B. Privileged Judicial Proceeding

To the extent that Eadie argues that the defamation claim must be dismissed because the alleged defamatory statements were made in a judicial proceeding and therefore, were absolutely privileged, this argument is rejected.

"Certain statements are absolutely privileged. An absolutely privileged communication is one for which no remedy is provided for damages in a defamation action because of the occasion on which the communication is made." *Oesterle v Wallace*, 272 Mich App 260, 264; 725 NW2d

[11] Plaintiff's Motion for Summary Disposition, Exhibit 32 (Vargason Dep. 45: 15-18).
[12] Plaintiff's Motion for Summary Disposition, Exhibit 32 (Vargason Dep. 46: 12-16).

470 (2006) (quotation marks and citation omitted). "Statements made by judges, attorneys, and witnesses during the course of judicial proceedings are absolutely privileged if they are relevant, material, or pertinent to the issues being tried." *Id.* However,

> [T]he privilege does not extend to slanderous expressions against counsel, parties or witnesses, when the expressions have no relation to or bearing upon the issue or subject matter before the court. Nor are statements privileged if they are not uttered in the course of a judicial proceeding. A repetition of privileged words uttered in the course of judicial proceedings, when no public or private duty requires an attorney to repeat them, may place him on the same footing as anyone else who utters defamatory statements concerning another. [*Timmis v Bennett*, 352 Mich 355, 364-365; 89 NW2d 748 (1958) quoting 33 Am Jur, pp 172, 173.]

Here the alleged defamatory statement was not "uttered in the course of judicial proceedings." Rather, the statement was made in Eadie's office at O'Keefe to his co-worker, who is not a party to this case. Accordingly, the judicial proceedings privilege is not applicable.

C. Shared Interest Privilege

Eadie also claims that the statement he made to Vargason is protected by the shared interest privilege because "Eadie and Vargason had a shared interest in whether Gerlach took money from Boulevard's bank account."

"The defense of privilege is a matter of public policy that some communications are so necessary that, even if defamatory, they should be made. Therefore, the publisher is protected from liability by the privilege defense." *Postill v Booth Newspapers, Inc*, 118 Mich App 608, 619-620; 325 NW2d 511 (1982). One such privilege, the shared interest privilege, "extends to all bona fide communications concerning any subject matter in which a party has an interest or a duty owed to a person sharing a corresponding interest or duty." *Rosenboom v Vanek*, 182 Mich App. 113, 117, 451 NW2d 520 (1989). This privilege extends not just to legal duties but also "moral and social obligations." *Id.* "The elements of a qualified privilege are (1) good faith, (2) an interest to be

upheld, (3) a statement limited in its scope to this purpose, (4) a proper occasion, and (5) publication in a proper manner and to proper parties only." *Prysak v RL Polk Co*, 193 Mich App 1, 15, 483 NW2d 629 (1992).

In this case, Eadie argues that he and Vargason have "a shared interest in whether Gerlach took money from Boulevard's bank account" because Vargason was an independent contractor for Boulevard who worked with both Eadie and Gerlach. But Vargason no longer works for Boulevard, and there is no allegation that Boulevard or Gerlach owes him money from his time as a contractor. Thus, Eadie and Vargason no longer have a "shared interest in whether Gerlach took money from Boulevard's bank account" because it no longer matters to Vargason. The Court finds that the shared interest privilege is not applicable. Consequently, summary disposition is not warranted for Count V – Defamation.

F. Judgement of Dissolution

In addition to Eadie's request to dismiss the Counterclaims in their entirety, Eadie also requests judgment in his favor on Count IV of Plaintiff's Complaint which was a request for dissolution pursuant to MCL 450.4801 and MCL 450.4802. MCL 450.4801 states that a limited liability company is dissolved and its affairs shall be wound up:

> (a) Automatically, if a time specified in the articles of organization is reached.
>
> (b) If a vote of the members or other event specified in the articles of organization or in an operating agreement takes place.
>
> (c) The members entitled to vote unanimously vote for dissolution.
>
> (d) Automatically, if a decree of judicial dissolution is entered.
>
> (e) A majority of the organizers of the limited liability company vote for dissolution, if the limited liability company has not commenced business; has not issued any membership interests; has no debts or other liabilities; and has not received any

> payments, or has returned any payments it has received after deducting any amount disbursed for payment of expenses, for subscriptions for its membership interests.

Eadie does not specify in his argument which subsection he believes is applicable here. Presumably, because he believes that a valid dissolution has taken place under the terms of the Operating Agreement, he would argue that MCL 450.4801(b) is appropriate. However, for the reasons noted above, there are material issues of fact as to whether Boulevard was properly dissolved under Article 2 of the Operating Agreement in the January 2020 emails. Accordingly, summary disposition is not appropriate under MCL 450.4801(b).

MCL 450.4802 allows a circuit court to decree dissolution "whenever the company is unable to carry on business in conformity with the articles of organization or operating agreements." Plaintiff did not provide any argument or factual support for his assertion that this standard is met. The Court finds that Eadie has not met his burden under MCR 2.116(C)(10), and summary disposition is DENIED.

ORDER

Based upon the foregoing Opinion:

IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Disposition of Count I – Illegal, Fraudulent, and Willfully Unfair Oppressive Conduct is **DENIED**;

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Disposition of Count II – Breach of Fiduciary Duties is **DENIED**;

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Disposition of Count III – Breach of Contract is **DENIED**;

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Disposition of Count IV – Silent Fraud is **GRANTED**;

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Disposition of Count V – Defamation is **DENIED**;

IT IS FURTHER ORDERED that Plaintiff's Motion for Judgment in his favor on Count IV of Plaintiff's Complaint (Dissolution) is **DENIED**.

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

/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
CIRCUIT COURT JUDGE

Dated: 5/8/24