

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

**INFINITY ASSET GROUP, LLC, a Michigan
limited liability company,**

Plaintiff,

Case No. 24-211692-CB

Hon. Victoria A. Valentine

v.

**23968 SHERWOOD, LLC, a Michigan limited
liability company, ABC 123 BUSINESS VENTURES
LLC, EUGENE BOLIS, RITA BOLIS, and
ALISHOE BOLIS,**

Defendants.

and

**23968 SHERWOOD, LLC and ABC 123 BUSINESS
VENTURES, LLC,**

Counter and Third-Party Plaintiffs,

v

INFINITY ASSET GROUP, LLC

Plaintiff/Counter-Defendant,

and

**AXON PROPERTIES, LLC, and CHRISTOPHER
YATOOMA,**

Third-Party Defendants.

_____ /

**At a session of said Court held
on the 11th day of July 2025
in the County of Oakland, State of Michigan**

PRESENT: HON. VICTORIA A. VALENTINE

**OPINION AND ORDER ON INFINITY ASSET GROUP, LLC, AXON PROPERTIES,
LLC, and CHRISTOPHER YATOOMA’S MOTION FOR SUMMARY DISPOSITION
AS TO DEFENDANTS/COUNTER and THIRD-PARTY PLAINTIFFS’ AMENDED
COUNTERCLAIM and THIRD-PARTY COMPLAINT**

This matter is before the Court on Infinity Asset Group, LLC, Axon Properties, LLC, and Christopher Yatooma’s Motion for Summary Disposition as to Defendants/Counter and Third-Party Plaintiff’s Amended Counterclaim and Third-Party Complaint. This Court has reviewed the motion, response, and reply and has heard oral argument.

OPINION

I.

Overview

On July 1, 2020 Defendant/Counter-Plaintiff 23968 Sherwood LLC (“Sherwood”) as “Maker” and Third-Party Defendant Axon Properties, LLC (“Axon”) as “Holder” executed a promissory note (the “Note”) for the principal sum of \$2,500,000 payable over 24 months plus \$15,000 each month in interest.¹ The Note was secured by a mortgage on the real property located at 23968 Sherwood, Centerline (the “Property”) and an Unconditional Continuing Guaranty (the “Guaranty”) executed by Defendants Eugene and Rita Boles.²

¹ Complaint, Exhibit 1, the Note.

² *Id.*; Exhibit 2, the Guaranty. The Mortgage attached to the Complaint as Exhibit 4 is dated June 28, 2021, and is between Sherwood as “Mortgagor” and Luke Samona as “Mortgagee.” Mr. Samona’s relationship to this matter is not

Sherwood apparently defaulted on the Note and Axon commenced a foreclosure by advertisement on the Property in November 2023.³ The Notice of Mortgage Foreclosure Sale dated November 10, 2023 (the “Notice”) stated that “[t]he amount due on the Mortgage on the date of this Notice is the sum of Two Million Nine Hundred Forty Three Thousand Three Hundred Seventy Two and 48/100 (\$2,943,372.48) Dollars.⁴ A foreclosure sale was held on December 15, 2023 and Axon made a credit bid of \$2,500,000 for the Property.⁵ The bid was accepted as the highest bid and Axon acquired the Property through a Sheriff’s Deed. In the Affidavit as to Amounts Needed for Redemption, an agent of Axon, stated that “the Property may be redeemed from the sale at any time until June 15, 2024, by paying the amounts described below.”⁶ The amount was listed as the amount bid at the foreclosure sale, \$2,500,000 plus interest in the amount of \$1,250 per day from the date of the sale to the date of redemption and other fees and costs.⁷ It is not disputed that Sherwood did not redeem the Property within the redemption period.

In October 2024, the rights under the Note and the Guaranty were assigned from Axon to Plaintiff/Counter-Defendant Infinity Asset Group, LLC (“Infinity”).⁸

In December 2023, Infinity filed the instant action alleging that Bolis, on behalf of the Guarantors on the Note “represented and promised to plaintiff that if plaintiff were to credit bid \$2,500,000, defendants would secure financing on the Property and purchase the Property from plaintiff for \$2,500,000.”⁹ Infinity alleged that the actual value of the Property was \$1,700,000

clear. The Mortgage attached to Counter-Plaintiffs’ Motion as Exhibit A is dated July 1, 2020, and is between Sherwood as “Mortgagor” and Axon as “Mortgagee.”

³ Complaint, Exhibit 5, Notice of Mortgage Foreclosure Sale.

⁴ *Id.*

⁵ Complaint, Exhibit 6, Sheriff’s Deed.

⁶ *Id.*

⁷ *Id.*

⁸ Complaint, Exhibit 3; the Assignment.

⁹ Complaint, ¶ 19.

and that “[a]s a result of defendant Bolis’s promises and representations, plaintiff credit bid \$2,500,000 as opposed to the value of \$1,700,000 to its detriment.”¹⁰ Infinity alleges that the parties negotiated a purchase agreement and scheduled a closing but that Defendants did not appear at the closing and failed to purchase the Property. Infinity alleges that after application of credits and set-offs a “Deficiency Amount” of \$448,298.48 remains and that further, Defendants owe \$190,000 in unpaid rent.¹¹ Infinity alleges the following claims: Breach of Promissory Note-Sherwood (Count I); Breach of Guaranty Agreement – Eugene and Rita Bolis (Count II); Fraud in the Inducement – Eugene and Rita Bolis (Count III); Breach of Contract – All Defendants (Count IV); and Unjust Enrichment – All Defendants (Count V).

Sherwood and ABC123 filed a counterclaim/third-party complaint and then an amended counterclaim/third-party complaint seeking Declaratory Relief/Cancellation of Sheriff’s Sale-Sherwood against Axon and IAG (Count I); Quiet Title (Count II); alleging Tortious Interference with Business Relationship or Expectancy – Sherwood against Third-Party Defendant Yatooma (Count III); Tortious Interference with Contract and Business Relationship/Expectancy – ABC123 against Yatooma (Count IV); and Fraud – Counter-Plaintiffs against Third-Party Defendant Yatooma (Count V). Sherwood and ABC allege that Chris Yatooma is the principal and owner of Axon.¹²

¹⁰ Complaint, ¶ 21.

¹¹ *Id.* ¶¶28-29. Defendant ABC123 Business Ventures, LLC (“ABC”) allegedly owns and operates a retail cannabis facility on the Property. ABC is allegedly owed by defendant Alishoe Bolis. Complaint ¶ 10. Infinity asserts in its motion that in December 2024, summary proceedings were filed in the 37th district court to recover possession of the Property from ABC123. Infinity also asserts that the district court has stayed those proceedings pending this Court’s ruling on this Motion.

¹² Counterclaim/Third Party Complaint, ¶ 18.

In lieu of an answer, Infinity, Axon, and Yatooma now move under MCR 2.116(C)(7) and (C)(8) for summary disposition as to all counts of the Amended Counterclaim and Third-Party Complaint.

II.

Standard of Review

MCR 2.116(C)(7)

Summary disposition is proper under MCR 2.116(C)(7) where a claim is barred by the statute of limitations. In determining whether summary disposition is properly granted under MCR 2.116(C)(7), the court “considers all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict them.” *Carmichael v Henry Ford Hosp*, 276 Mich App 622, 624; 742 NW2d 387 (2007).

MCR 2.116(C)(8)

A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of a claim based on the factual allegations in the Complaint. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160; 934 NW2d 665 (2019). A motion for summary disposition based on the failure to state a claim upon which relief may be granted is to be decided on the pleadings alone. MCR 2.116 (G)(5) (“Only the pleadings may be considered when the motion is based on subrule (C)(8) or (9)”); *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999) (“When deciding a motion brought under [MCR 2.116(C)(8)] a court considers only the pleadings”); *Bailey v Schaaf*, 494 Mich 595, 603; 835 NW2d 413 (2013) (“A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the claim on the basis of the pleadings alone. . . .”)

“All well-pleaded factual allegations are accepted as a true and construed in a light most favorable to the nonmovant.” *Maiden v Rozwood*, 461 Mich at 119. *See also El-Khalil* 504 Mich at 160 (when considering a motion under MCR 2.116(C)(8) a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone.) Summary disposition is proper when the claim is so clearly unenforceable as a matter of law that no factual development can justify a right to recovery. *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

MCR 2.605(A)(1)

In Count I Counter-Plaintiffs seek a declaratory judgment that the foreclosure is void *ab initio*. MCR 2.605 (A)(1) empowers the Court to issue a declaratory judgment. The Court Rule provides:

In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted. [MCR 2.605(A)(1).]

In a declaratory action, the plaintiff generally has the burden to prove each fact alleged. *Shavers v. Attorney General*, 402 Mich. 554, 589, 267 N.W.2d 72 (1978).

III.

Analysis

A.

Declaratory Relief to Rescind/Cancel Sheriff’s Sale (Count I)

Counter-Plaintiffs allege that the Notice of Foreclosure “fraudulently inflated the amount of indebtedness by over \$429,990.81 or nearly 15%.”¹³ It is also alleged that the amount was inflated in bad faith and “as part of Yatooma and Axon’s scheme to defraud Counter-Plaintiffs and induce them to ‘refinance’ or redeem the Property for more than the true indebtedness.”¹⁴ Further, it is alleged that the inflated Alleged Indebtedness constitutes “a material fraud in the foreclosure procedure.” Counter-Plaintiffs assert that had Axon not fraudulently inflated the indebtedness in the Notice of Foreclosure and acted in bad faith, Sherwood would have been in a better position to preserve its interest in the Property. Counter-Plaintiffs ask the Court to declare that the foreclosure is *void ab initio*, set aside the Sheriff’s Deed, and restore title to Sherwood.

Infinity and Axon argue that any claim contesting the validity of the Foreclosure is time-barred because Counter-Plaintiffs waited until after the redemption period expired to raise their challenge.¹⁵

After a sheriff’s sale, a mortgagor may redeem the property by paying the required amount within the prescribed time limits. MCL 600.3240(1). Under MCL 600.3240(2):

The amount required to be paid under subsection (1) is the amount that was bid for the entire premises sold, interest from the date of the sale at the interest rate provided for by the mortgage, the amount of the sheriff’s fee paid by the purchaser under section 2558(2)(q), and an additional \$5.00 as a fee for the care and custody of the redemption money if the payment is made to the register of deeds. Except as

¹³ Counter-Complaint, ¶ 49.

¹⁴ Counterclaim, ¶ 54.

¹⁵ Counter-Defendants seek summary disposition under MCR 2.116(C)(7) on the basis of the statute of limitations. However, it is not clear that MCL 600.3240 or MCL 600.3236, the statutes relied on by Counter-Defendants, provide a statute of limitations. “A statutory limitations period represents a legislative determination of that reasonable period of time that a claimant will be given in which to file an action.” *Lothian v City of Detroit*, 414 Mich 160, 165; 324 NW2d 9 (1982). The statutes cited above discuss the time limit for redemption, not the time for filing a cause of action. Case law indicates that the expiration of the redemption period is properly analyzed as an issue of standing and therefore, this Court will consider summary disposition on Count I under MCR 2.116(C)(8) rather than (C)(7). *See Bryan v JPMorgan Chase Bank*, 304 Mich App 708, 714-715; 848 NW2d 482 (2014) (The Court of Appeals in affirming summary disposition under MCR 2.116(C)(8) stated “[w]e hold that by failing to redeem the property within the applicable time, plaintiff lost standing to bring her claim.”)

provided in subsection (14), the register of deeds shall not determine the amount necessary for redemption. The purchaser shall provide an affidavit with the deed to be recorded under this section that states the exact amount required to redeem the property under this subsection, including any daily per diem amounts, and the date by which the property must be redeemed shall be stated on the certificate of sale. The purchaser may include in the affidavit the name of a designee responsible on behalf of the purchaser to assist the person redeeming the property in computing the exact amount required to redeem the property. The designee may charge a fee of not more than \$250.00 as stated in the affidavit and may be authorized by the purchaser to receive redemption money. The purchaser shall accept the amount computed by the designee.

The redemption period for a mortgage on commercial property is “6 months from the date of the sale.” MCL 600.3240(7). “If a mortgagor fails to avail him or herself of the right of redemption, all the mortgagor’s rights in and to the property are extinguished.”¹⁶ *Bryan v JP Morgan Chase Bank*, 304 Mich App 708, 713; 848 NW2d 482 (2014). “However, a party may obtain an ‘equitable extension’ of the redemption period by a ‘clear showing of fraud, or irregularity.’” *TCF Nat’l Bank v Decker*, unpublished per curiam opinion of the Court of Appeals, issued Nov 9, 2021 (Docket No. 355580) citing *Bryan*, 304 Mich App at 714. The fraud alleged must be related to the foreclosure procedure itself.¹⁷ See *Heimerdinger v Heimerdinger*, 299 Mich 149, 154; 299 NW 844 (1941) (“Where a valid legislative act has determined the conditions on

¹⁶ MCL 600.3236 provides:

Unless the premises described in such deed shall be redeemed within the time limited for such redemption as hereinafter provided, such deed shall thereupon become operative, and shall vest in the grantee therein named, his heirs or assigns, all the right, title, and interest which the mortgagor had at the time of the execution of the mortgage, or at any time thereafter, except as to any parcel or parcels which may have been redeemed and canceled, as hereinafter provided; and the record thereof shall thereafter, for all purposes be deemed a valid record of said deed without being re-recorded, but no person having any valid subsisting lien upon the mortgaged premises, or any part thereof, created before the lien of such mortgage took effect, shall be prejudiced by any such sale, nor shall his rights or interests be in any way affected thereby.

¹⁷ Any allegations of false statements or promises by Yatooma in regard to providing financing are not related to the foreclosure proceeding itself and would not be a basis for an “equitable exemption.”

which rights shall vest or be forfeited, and there has been no fraud in conducting the legal measures, no court can interpose conditions or qualifications in violation of the statute.”)

In this case there is no dispute that Sherwood did not redeem the Property within the statutorily required period. There are no indications that Counter-Plaintiffs made efforts to redeem the Property and in fact it is alleged that Yatooma coerced Sherwood to forego redemption. There is also no dispute that there was no legal challenge to the foreclosure sale prior to the filing of the Counterclaim and no dispute that the Counterclaim was filed after the expiration of the redemption period. However, Sherwood argues that it alleges fraud and irregularity which permits it to challenge the foreclosure sale after the expiration of the redemption period.

Sherwood, citing *Sweet Air Inv, Inc v Kenney*, 275 Mich App 492; 739 NW2d 656 (2007), states that “Michigan Courts have ruled that an excessive claim for the amount owed on a mortgage warrants setting aside the foreclosure sale if it is ‘significantly excessive or in bad faith.’” In *Sweet Air* the notice of foreclosure allegedly contained a 6% overstatement. The court in *Sweet Air* stated that “an excessive claim for the amount due warrants setting aside a foreclosure sale only if it is significantly excessive or in bad faith *and* an attempt was made to redeem the property.” *Id.* at 504 (emphasis added). The court concluded that even if the allegations of a significantly excessive claim for amounts due were true, “[i]t would not warrant setting aside the foreclosure sale because no effort was made to redeem, as required by our Supreme Court in [*Flax v Mut Bldg & Loan Ass’n of Bay Co*, 198 Mich 676, 691; 165 NW 835 (1917)].” *Sweet Air*, 275 Mich App at 504. In this case there was no effort to redeem the Property. Rather, Sherwood claims that the fraud of the Third-Party Defendants influenced and coerced it to forego redemption in favor of “refinancing.” Under *Sweet Air* any overstatement in the amount of indebtedness in the foreclosure notice does not warrant setting aside the foreclosure sale.

Moreover, the Court agrees with Counter-Defendants that the case of *TCF Nat'l Bank v Decker*, unpublished per curiam opinion of the Court of Appeals, issued Nov 9, 2012 (Docket No. 355580) is factually similar to this case and is persuasive as to determination of whether Counter-Plaintiffs are permitted to challenge the foreclosure.¹⁸ In *Decker* the plaintiff bank purchased the foreclosed property at a sheriff's sale. The defendant did not redeem the property during the redemption period. After the redemption period expired, the plaintiff bank filed a complaint to recover possession of the property. The defendant in *Decker* filed counterclaims asserting that the foreclosure process included fraud and irregularities and sought to have the foreclosure and sheriff's sale set aside. The trial court determined that the defendant did not have standing to contest the foreclosure because the redemption period had expired, thereby extinguishing her rights in the property.

The Court of Appeals affirmed, explaining:

“Pursuant to MCL 600.3240, after a sheriff's sale is completed, a mortgagor may redeem the property by paying the requisite amount within the prescribed time limit” *Bryan v JPMorgan Chase Bank*, 304 Mich App 708, 713; 848 NW2d 482 (2014). Generally, “[i]f a mortgagor fails to avail him or herself of the right of redemption, all the mortgagor's rights in and to the property are extinguished.” *Id.* However, a party may obtain an “equitable extension” of the redemption period by a “clear showing of fraud, or irregularity.” [*Decker*, at * 2.]

The Court of Appeals agreed with the trial court that the defendant lost all rights in and to the property because she had failed to redeem the property during the redemption period. *Id.*

The defendant in *Decker* made the same argument as Sherwood makes in this case, that the expiration of the redemption period does not preclude the setting aside of the foreclosure because

¹⁸ Unpublished decisions of the Michigan Court of Appeals are not binding but may be considered as persuasive authority. *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 145 n 3; 783 NW2d 133 (2010).

there was fraud and irregularity in the foreclosure process. The Court of Appeals rejected the argument:

This argument misses the mark. The equitable “fraud or irregularity” exception to the redemption period applies to extend the redemption period when the foreclosed-upon property owner files an action *within* the redemption period. See *El-Seblani*, 510 Fed App'x at 428. See also *Jackson v Bank of Am, NA*, 67 F Supp 3d 828, 837 n. 8 (EDMI, 2014) . . . In other words, while courts may equitably extend the redemption period, they may not *revive* a redemption period that has already been extinguished. Here, defendant did not file her counterclaims until 2020, several months after the six-month redemption period expired. *Thus, regardless of whether defendant showed fraud or irregularity, the trial court did not possess the equitable authority to revive the redemption period, and it correctly ruled that defendant had no rights in and to the subject property.* [*Decker* at * 3 (emphasis added).]

In this case there is no dispute that the redemption period had expired by the time Sherwood brought its counterclaims. Thus, it is not seeking an equitable extension of the period. Rather, as was explained in *Decker*, Sherwood is seeking revival of the redemption period. However, as was explained in *Decker* regardless of whether it has alleged fraud or irregularity in the foreclosure proceeding, this Court does not possess the equitable authority to revive the period.¹⁹

Based on the foregoing, the Court concludes that summary disposition under MCR 2.116(C)(8) is proper as to Count I of the Counterclaim.

B.

Quiet Title (Count II)

Under MCL 600.2932(1):

¹⁹ The Court agrees with Counter-Defendants that the Michigan case law cited by Sherwood on page 11 of its brief does not support its position that “a party can challenge a foreclosure sale after the redemption period where there is clear evidence of fraud or irregularity in the foreclosure proceedings.” In *Senters v Ottawa Savings Bank*, 443 Mich 45; 503 NW2d 639 (1993) the property was redeemed before expiration of the redemption period and no fraud was alleged. In *Manufacturers Hanover Mortg Corp v Snell*, 142 Mich App 548; 370 NW2d 401 (1985) the defendant held over after a summary eviction proceeding and raised a “mortgage servicing defense” applicable to FHA lenders. In *Schulties v Barron*, 16 Mich App 246; 167 NW2d 784 (1969), the court determined that there was no equitable extension based upon mistake. Additionally, the federal case cited by Sherwood, *US v Garno*, 974 F Supp 628 (ED Mich, 1997), simply states that the issues raised by the defendants did not constitute fraud or irregularity and does not address whether the defendants could challenge the foreclosure after the expiration of the redemption period.

Any person, whether he is in possession of the land in question or not, who claims any right in, title to, equitable title to, interest in, or right to possession of land, may bring an action in the circuit courts against any other person who claims or might claim any interest inconsistent with the interest claimed by the plaintiff, whether the defendant is in possession of the land or not.

The party asserting a quiet title claim bears the initial burden of establishing a prima facie case to title. *Newman v Real Time Resolutions, Inc*, 342 Mich App 405, 412; 994 N.W.2d 852 (2022). If they do so, the burden shifts to the opposing party to prove “superior right or title in itself,” *Fed. Home Loan Mortg. Corp. v Werme*, 335 Mich App 461, 470; 966 N.W.2d 729 (2021).

In this case, Sherwood cannot establish a prima facie case to title because any rights it had in or to the Property were extinguished by its failure to exercise the right of redemption and this Court is without authority to revive the expired redemption period. *Bryan*, 304 Mich App at 713; *Decker*, at * 3. Summary disposition is proper as to Count II.

C.

Tortious Interference with Business Relationship or Expectancy – Sherwood against Yatooma (Count III)

Sherwood alleges that it “had a valid business and contractual relationship with Axon pursuant to the Note and Mortgage” and “had a valid business expectancy to be able to redeem the Property during the redemption period for the amount actually owed on the Note, not some fictitious, grossly inflated amount concocted by Chris Yatooma.”²⁰ It is further alleged that:

Chris Yatooma tortiously interfered with Sherwood’s business expectancy, as described herein, including but not limited to fraudulently inflating the redemption amount, fraudulently misrepresenting to Sherwood that it (or its principal) owed Chris Yatooma \$800,000.00 for some unspecified “debt,” and that the “loan” allegedly offered to Sherwood to redeem the Property was “refinancing.”

Chris Yatooma’s fraudulent statements and tortious misconduct induced Sherwood to delay redeeming the Property during the redemption period and instead entertain

²⁰ Counterclaim/Third-Party Complaint, ¶¶ 71-72.

taking out a separate loan or “refinancing” the Property through Citizens State Bank, which ultimately resulted in Sherwood being unable to redeem the Property during the redemption period despite its best efforts and attempts to do so.²¹

“To succeed on a claim of tortious interference with a business expectancy a plaintiff must establish the existence of a valid business relationship or expectancy, knowledge of the relationship or expectancy on the part of the defendant, an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy and resulting damage to the plaintiff.” *Puetz v Spectrum Health Hosp*, 324 Mich App 51, 78; 919 NW2d 439 (2018) (quotation marks and citation omitted).

(1)

Existence of Business Relationship/Expectancy

Counter-Defendants first argue that this claim fails as a matter of law because Sherwood has not alleged the existence of a valid business expectancy where the right to redeem the property is a statutory right.²² However, Counter-Defendants cite no authority for their position. They do not explain what constitutes a “valid business expectancy” and do not explain why the expectancy claimed here does not qualify. Accordingly, the Court will not consider their assertion that summary disposition is proper under MCR 2.116(C)(8) because there is no business expectancy

²¹ *Id.* at ¶¶ 75-76. It is alleged that Citizens State Bank is owned by Yatooma and that Yatooma “used his ownership and control over Citizens State Bank to influence and coerce Sherwood to forego redeeming the Property and instead take out a new loan from Citizens State Bank (which Chris Yatooma falsely called “refinancing”). . . . *Id.* at ¶¶ 33-34.

²² In their Reply brief Counter-Defendants also argue that just as the challenge to the foreclosure is time barred, the tort claims are time barred as well. The Court will not consider this argument because it appears to have been raised for the first time in the Reply. *See* MCR 2.116(G)(1)(a)(iii); *Equity Funding, Inc v Village of Milford*, 342 Mich App 342, 348; 994 NW2d 859 (2022). Additionally, as was explained, the redemption issue relates more to standing than the statute of limitations and finally, Counter-Defendants do not cite legal authority or provide analysis as to why the tort claims are time-barred. *See Walters v Nadell*, 481 Mich 377, 388; 751 NW2d 431 (2008) (“[t]rial 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.”). *See also Moses, Inc v Southeast Mich Council of Governments*, 270 Mich App 401, 417; 716 NW2d 278 (2006) (“If a party fails to adequately brief a position, or support a claim with authority, it is abandoned.”)

alleged. *See Walters v Nadell*, 481 Mich 377, 388; (2008) (“[t]rial 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.”). *See also Moses, Inc v Southeast Mich Council of Governments*, 270 Mich App 401, 417; 716 NW2d 278 (2006) (“If a party fails to adequately brief a position, or support a claim with authority, it is abandoned.”)

(2)

Acts for Yatooma’s own benefit

Counter-Defendants next argue that Yatooma cannot be liable for tortious interference because he is the principal of both Axon and Infinity Asset. It is argued that Yatooma was not a third-party to the transaction between Sherwood and Axon/Infinity Asset because he was acting solely in furtherance of the entities’ interests. “It is now settled law that corporate agents are not liable for tortious interference with the corporation’s contracts unless they acted solely for their own benefit with no benefit to the corporation.” *Reed v Michigan Metro Girl Scout Council*, 201 Mich App 10, 13; 506 NW2d 231 (1993). Accepting the factual allegations in the Counterclaim as a true and construing the allegations in a light most favorable to Sherwood, *Maiden v Rozwood*, 461 Mich at 119, the Court concludes that that Counter-Plaintiff has sufficiently alleged that Yatooma was acting for his own benefit.²³ Accordingly, this argument is not a basis for granting Counter-Defendants motion under MCR 2.116(C)(8).

(3)

Duty Separate and Distinct from Contractual Duty

²³ *See e.g.* Counterclaim, ¶¶ 31-37.

Lastly, Counter-Defendants argue that the claim for tortious interference fails because the alleged duty owed to Sherwood was based on the contract between Axon and Sherwood. Michigan law is well-settled that “a tort action will not lie when based solely on the nonperformance of a contractual duty.” *Crews v General Motors Corp*, 400 Mich 208, 226; 253 NW2d 617 (1977) citing *Hart v Ludwig*, 347 Mich 559; 79 NW2d 895 (1956) *See also Smith Living Trust v Erickson Retirement Communities*, 326 Mich App 366, 395; 928 NW2d 227 (2018) (the Court of Appeals addressing a conversion claim stated, “the failure to perform a contractual duty cannot give rise to a tort action unless the plaintiff alleges a violation of a duty separate and distinct from the underlying contractual obligation.”)²⁴

Here the Counterclaim alleges a valid business relationship/expectancy and Yatooma’s interference with the expectancy.²⁵ Thus, Sherwood is not relying only on allegations based upon nonperformance of a contract and Counter-Defendants cite no legal authority that “a separate and distinct duty does not underlie a claim for tortious interference with a business relationship.” *Brooklyn Outdoor, LLC v Vanderbush*, unpublished per curiam opinion of the Court of Appeals, Issued April 25, 2024 (Docket No. 363387) at n 5.

Based on the foregoing, the Court denies Counter-Defendants’ motion for summary disposition under MCR 2.116(C)(8) as to Count III.

D.

Tortious Interference with Contract and Business Relationship/Expectancy-ABC123 against Yatooma (Count IV)

²⁴ Counter-Defendants rely on the “economic loss doctrine” to argue that summary disposition is proper. However, recently the Michigan Court of Appeals determined that an argument such as that made by Counter-Defendants is more properly analyzed under the “separate and distinct” argument. *See 1-800 Bathtub, LLC v ReBath, LLC*, unpublished per curiam opinion of the Court of Appeals, issued April 18, 2024 (Docket No. 357932).

²⁵ *See e.g.* Counterclaim, ¶¶ 71-75.

Counter-Defendants argue that Count IV fails because ABC123 “makes no assertion that the lease between ABC123 and Sherwood was breached or its ‘business expectancy’ was disrupted, let alone based on any conduct of Yatooma.” However, it is alleged in the Counterclaim that:

Chris Yatooma’s tortious interference caused or is likely to cause the breach of ABC123’s lease and cause ABC123 to lose possession of the Property, which will in turn cause ABC123 to lose the ability to operate its business entirely because ABC123 is only permitted by the state and municipality to operate its cannabis business from the Property.²⁶

Again, accepting the allegations in the Counterclaim as true and construing such allegation in the light most favorable to Counter-Plaintiff’s this Court rejects the argument that Count IV fails to state a claim. Accordingly, summary disposition under MCR 2.116(C)(8) is denied as to Count IV.

E.

Fraud-Counter-Plaintiffs against Yatooma (Count V)

“The general rule is that to constitute actionable fraud it must appear: (1) That defendant made a material representation; (2) that it was false; (3) that when he made it he knew that it was false, or made it recklessly, without any knowledge of its truth, and as a positive assertion; (4) that he made it with the intention that it should be acted upon by plaintiff; (5) that plaintiff acted in reliance upon it; and (6) that he thereby suffered injury.” *Hi-Way Motor Co v Int’l Harvester Co.*, 398 Mich 330, 336; 247 NW2d 813 (1976) (quotation marks and citation omitted). The Court concludes that the Counterclaim sufficiently alleges the elements of fraud.²⁷

²⁶ Counterclaim, ¶ 85. *See also* ¶¶ 83-84.

²⁷ *See e.g.* Counterclaim, ¶¶ 87-97.

Counter-Defendants argue that the fraud claim fails because Counter-Plaintiffs had the ability to determine the amount of the indebtedness allegedly misrepresented by Yatooma but chose not to. However, the fraud claims are not based solely on the alleged overstatement of the amount owed. Moreover, Counter-Plaintiffs have alleged that their reliance on Yatooma's representation was reasonable.²⁸ The question of whether Counter-Plaintiffs had the "means of knowledge regarding the truthfulness of the representation available [to them] and the degree of their utilization has not been prohibited by the defendant" and thus, whether their reliance was reasonable is a question more properly presented in a motion for summary disposition under MCR 2.116(C)(10). *See DBD Kazoo, LLC v Western Michigan, LLC*, __ Mich App __ ; __ NW3d __ (Docket No. 361299, issued Feb 8, 2024), at * 7.

Based on the foregoing, summary disposition under MCR 2.116(C)(8) is denied as to Count V.

ORDER

Based upon the foregoing opinion, the Court hereby orders that:

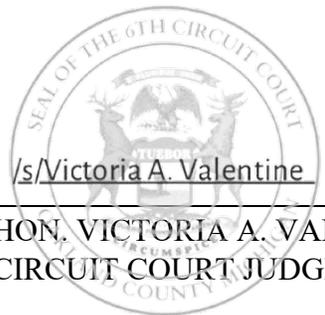
Counter-Defendants/Third-Party Defendants' Motion for Summary Disposition under MCR 2.116(C)(7) is hereby **DENIED**.

Counter-Defendants/Third-Party Defendants' Motion for Summary Disposition under MCR 2.116(C)(8) is hereby **GRANTED** on Count I (Declaratory Relief to Rescind/Cancel Sheriff's Sale) and Count II (Quiet Title) of the Counterclaim and is otherwise **DENIED**.

IT IS SO ORDERED.

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

²⁸ *Id.*, ¶ 96.



/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
CIRCUIT COURT JUDGE

Dated: 7/11/25