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

ROSE NEVADA INC., Trustee of the
JONATHAN ROSE EXEMPT TRUST II and the
JONATHAN ROSE DISTRIBUTION TRUST,
Plaintiffs,

Case No. 2022-196766-CB

Hon. Victoria A. Valentine

v.

ROSE CASH MANAGEMENT II, LLC, and
WARREN ROSE.
Defendants.

_____/

OPINION AND ORDER REGARDING DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

At a session of said Court, held in the
County of Oakland, State of Michigan
July 31, 2024

HONORABLE VICTORIA A. VALENTINE

This matter is before the Court on Defendants' Motion for Summary Disposition. This Court has reviewed the pleadings as well as the motion, response, and reply brief. Oral argument was held on the motion. The Court also requested supplemental briefing with regarding to this Court's jurisdiction to hear the claims made in this action. The Court has reviewed the parties' Supplemental Brief, Response Brief, and Reply Brief on jurisdiction.

OPINION

I.

Overview

This case arises out of a series of family-owned business entities and trusts that were established many years ago to benefit Sheldon Rose's descendants. There are three Rose siblings

involved in the allegations in this matter: Warren, Jonathan, and Laurie. The business entities are generally held under the umbrella of Edward Rose & Sons ("ERS"), of which Warren Rose has been CEO since approximately 2005.

The family businesses enjoyed much success over the years. As a result, Sheldon Rose employed extensive and complex estate planning to ensure that this wealth would be passed on for generations (Motion, p 2). The Plaintiff Trusts were established as part of that estate planning, with similar trusts established for Plaintiff's brother and sister.

In 2013, Henry Grix became the successor Trustee of the various family Trusts. In 2015, Mr. Grix appointed Warren Rose to serve as Co-Trustee on each of the Trusts to achieve a tax benefit for the Trusts. Notice of that appointment was provided to Plaintiff and is not disputed.

Defendant Rose Cash Management, II, LLC ("RCM II") was created in 2016. RCM II has, as its members, all of the siblings' Trusts, as well as trusts benefiting Laurie's direct family (Motion, p 3). Warren Rose has been and remains the sole Manager of RCM II.

RCM II was formed for the exclusive purpose of investing its capital in promissory notes with an entity called Edward Rose Company ("ERC") (Response, p 1). "[RCM II] was established to serve as the operating account for all of the Rose family's businesses and provides a revolving line of credit to fund activities of the ERS companies" (First Amended Complaint, ¶ 18). The various Trusts provided contributions to RCM II. The various Trusts would then receive interest payments based upon an "inter-company rate" (Response, p 4).

Warren Rose, as manager, would direct RCM II to lend money to ERC (as contemplated by the business structure). ERC was managed solely by Warren Rose, who would then loan the money from ERC to various family companies that were owned by some or all of the family Trusts,

but not the Plaintiff Trusts. Plaintiffs allege that these loans to the entities owned only by the other family Trusts caused Plaintiffs harm.

Plaintiffs filed this action against RCM II and Warren Rose alleging claims of Membership Oppression (Count I); Fraudulent Concealment (Count II); Breach of Fiduciary Duties (Count III); Unjust Enrichment (Count IV); and Accounting (Count V). Defendants move for dismissal of all of Plaintiff's claims under MCR 2.116(C)(7) and (10). Plaintiffs oppose summary disposition.

II.

Standard of Review

MCR 2.116(C)(7) provides for summary disposition where a claim is barred by the statute of limitations. The Court of Appeals has explained the standard of review:

> 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 (2008) (citations omitted.)

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 (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 (1999); MCR 2.116(C)(10); MCR 2.116(G)(4); *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 (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 121-120 (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 (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 (1999). 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 (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

Jurisdictional Issues

This Court requested briefing as follows:

> (i) whether this Court has jurisdiction to adjudicate the pending claims in this litigation; (ii) whether this Court has jurisdiction to adjudicate (in the first instance) claims concerning breach of trust and breach of fiduciary duty by a trustee of the trusts at issue in this matter; and (iii) if the Court concludes that it lacks jurisdiction to adjudicate certain pending claims in this litigation, or additional claims concerning breach of trust and breach of fiduciary duty by a trustee, the mechanism by which it should address its lack of jurisdiction.

Order regarding Motions in Limine; Supplemental Briefing, and Adjourning Trial and Related Dates, entered June 10, 2024.

To the extent arguments were made in the supplemental briefs by either Plaintiff or Defendants that seemed to support or oppose the already pending summary disposition motion, those arguments are not considered in the Court's ruling on summary disposition. The Court requested briefing on jurisdictional questions only. Use of that request to make supplemental dispositive motion arguments is not appropriate and those arguments are not considered with respect to the summary disposition analysis below.

The Allegations and Parties

This action is brought by the Trustee of two Trusts against one entity and its manager. The Trust brings the claims as member of the Defendant entity against the entity and the entity's manager. There are no allegations that any of the entities are alter egos of other entities and there is no request to pierce any corporate veils. Plaintiffs' allegations are limited to the actions taken

by Warren Rose while acting as manager of RCM II. Decisions outside of that role or actions taking place in other entities are outside the scope of this case.

Plaintiffs are Trusts, which are controlled by Trustees. Prior to Plaintiff Rose Nevada, Inc. ("RNI") being appointed Trustee, the Plaintiff Trusts were controlled by Co-Trustees, Henry Grix and Warren Rose.

The parties agree that the claims, as alleged in the Complaint, are properly before the business court. Plaintiff has not requested to add claims relating to Mr. Rose's role as Trustee. Under MCL 600.8035(3) and MCL 600.8031(1)(c)(ii), actions between a business enterprise and its members that arise out of that relationship must be assigned to the business court. The Court agrees that the claims as alleged are properly before this Court.

Motion for Summary Disposition

Count I - Member Oppression

Statute of Limitations

Under MCL 450.4515(1)(e), a claim for member oppression must be "commenced within 3 years after the cause of action under this section has accrued or within 2 years after the member discovers or reasonably should have discovered the cause of action."

Defendants argue that the "flow of funds" that support the claims was established with the company's formation in 2016, thereby barring Plaintiffs' claims. Plaintiffs do not challenge that the "flow of funds" set up for the organization began at its creation. Plaintiff argues that the statute of limitations for its claims did not begin to accrue until it became Trustee of the Trusts (Response, p 1). Plaintiffs provide no authority for the proposition that a change in Trustee of a long-established Trust creates a new accrual date for claims. If that were the case, Plaintiffs would be

limited to claims of wrongdoing taking place after RNI became Trustee, or after 2021. Plaintiffs' First Amended Complaint does not appear to be so limited.

The statute does allow for claims within 2 years of discovery of the claim, but this is limited to 2 years from when one should reasonably have discovered a cause of action. Plaintiff's prior Trustee (and Co-Trustee with Warren Rose) testified regarding his knowledge of RCM II's business and the loans in question:

> Q. So the trusts, other than the initial assets that were placed in there when the trusts were created by Sheldon Rose, the trusts from 2016 forward were invests in Rose Cash Management, II, correct?
> A. Correct.
> Q. And as trustee or co-trustee, you were aware that that is where the trust was investing its assets?
> A. I was.
> Q. Did you ever discuss with Warren Rose the moneys going into Rose Cash Management II?
> A. Yes. Because we prepared annual reports that show that.

Deposition Transcript, Henry Grix, 27:22-28:7

> Q. You never learned whether Cash Management II loaned money to Edward Rose Company?
> A. Well, I believe my understanding was Cash Management II effectively loaned money to Edward Rose, which paid interest on the amount loaned.

Deposition Transcript, Henry Grix, 82:18-22.

> Q. Do you have any understanding as to what the funds loaned to Edward Rose Company were used for?
> A. For the reasonable needs of the business, as I understood it, but the business being broadly defined. Because the idea was, again, to preserve all of these family entities.

Deposition Transcript, Henry Grix, 83:6-11.

> Q. Did the members of Rose Cash Management II engage in deciding what investments Rose Cash Management II would make?
> A: No.
> Q: As a member of Rose Cash Management II, management of the company was entrusted to its manager, Warren Rose, correct?
> A: That's correct.

> Q: Did you as co-trustee of these trusts ever have information you sought from Mr. Rose as manager of cash management that he refused to provide?
> A: No.
> Q: Did you as a member ever have questions about the operations of Rose Cash Management II that Mr. Rose refused to answer?
> A. No.
> Q. Did Warren Rose ever conceal from you as the trustee of the Exempt Trust II and the Distribution Trust what Rose Cash Management II was investing in?
> A. No.

Deposition Transcript, Henry Grix, 55:15-56:9.

> Q. When you were co-trustee of the Exempt Trust II and the Jonathan Rose Distribution Trust, you had a fair and current understanding of the investments those trusts had in Rose Cash Management II?
> A. Yes.

Deposition Transcript, Henry Grix, 57:6-10.

Given that the Trusts are the members, and the Trusts' agent was aware of the business structure, there can be no claim that the Plaintiffs did not know and should not have reasonably discovered the loans to ERC were used to fund businesses owned by certain other Trusts. Plaintiffs' own allegations in the First Amended Complaint indicate that money is to be used for all of the Rose family's businesses and to fund activities of the ERS companies (Complaint, ¶ 18).

The Co-Trustees acted on behalf of the Trust. It is their knowledge that is analyzed in determining whether there was concealment to extend the statute of limitations. Henry Grix knew the general structure of the business and the loans. When asked whether anything was concealed, the Trustee answered no.

Based on the foregoing, any allegations relating to member oppression occurring prior to October 19, 2019 are barred by the statute of limitations.

Plaintiffs have failed to Establish Member Oppression

Under MCL 450.4515, a member of a limited liability company may bring an action to establish that a manager or member of that company is acting in a way that is willfully unfair or

oppressive to the member. *See*, MCL 450.4515(1). The statute defines willfully unfair and oppressive conduct as a continuing course of conduct or significant action or series of actions that substantially interfere with the member's interests as a member. *See*, MCL 450.4515(2). The statute excludes from willfully unfair and oppressive conduct any conduct or actions that are permitted by consistently applied written company policy or procedure. *Id*.

Plaintiffs' claim for member oppression is premised on a chain of events, as described above, that began with the company's creation in 2016. Plaintiffs allege that Warren Rose used RCM II as a personal piggy bank and engaged in self-dealing, which served as oppression on Plaintiffs' membership interests. Both parties agree that the flow of funds through the companies began in 2016 and was the consistent practice throughout RCM II's existence. Because the allegations are based upon consistently applied company procedure, under MCL 450.4515(2), the actions are excluded from a claim for member oppression.

Even if the claims were not excluded as consistent company practice, they would still fail. Plaintiffs repeatedly make the argument that Warren Rose had an obligation, as manager of RCM II, to disclose to RCM II's members and the trust beneficiaries about investments ERC made with third parties. But Plaintiffs fail to provide any authority to support this position. "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 (2008). To whom did Warren Rose have the requirement to disclose the transactions? He was, himself, the Co-Trustee and knew of all transactions. Henry Grix, the other Co-Trustee, was aware of the business structure broadly. Plaintiffs offer no authority for the requirement of disclosure to the Trust's beneficiaries.

Plaintiffs allege that Warren Rose "prevented the Trusts from investing their funds elsewhere," but such actions would appear to be in line with company policy since inception. RCM

II was established to collect money and loan it to ERC through Promissory Notes (Defendants' Motion, p 1). This allegation is supported by Plaintiffs' own allegations, as set forth above.

Plaintiffs do not allege that they were prohibited from voting. Plaintiffs do not allege that they were denied information, documents, or financial records. Plaintiffs do not allege that distributions were made unevenly, or that the Plaintiffs did not receive the appropriate returns based upon their capital contributions. Finally, Plaintiffs do not assert they were denied distributions when requested. Plaintiffs do assert they were never offered distributions, but that alone does not equate to oppression.

The potential conflict between Warren Rose acting as Co-Trustee over the Plaintiffs and acting as Manager over RCM II is not sufficient to support a claim for oppression. Particularly when there was a Co-Trustee serving with Mr. Rose. Both were aware of the company's purpose and its actual lending practices. That Jonathan Rose was unaware is not relevant to a member oppression claim, as he is not a member. Plaintiffs' reliance upon non-binding Sixth Circuit law is not persuasive because they speak to informing members, not beneficiaries of those members.

Defendants' Motion for Summary Disposition as to Count I is granted, and the claims for member oppression are dismissed.

Count II – Fraudulent Concealment

Statute of Limitations

The statute of limitations for a claim of fraudulent concealment is 2 years from the time the person asserting the claim discovers, or should have discovered, the existence of the claim.

Again, it is undisputed that the prior Co-Trustee, Henry Grix, knew generally of RCM II's business activities and its loans made to ERC. Mr. Grix testified that he knew the money in ERC

was used to support family businesses. Plaintiffs provided no authority to support their contention that this claim begins anew when a new Trustee is appointed over the Trust.

Based on the foregoing, any allegations relating to fraudulent concealment occurring prior to October 19, 2019 are barred by the statute of limitations.

Plaintiffs have Failed to Establish Fraudulent Concealment

Plaintiffs allege that Defendants, RCM II and Rose, failed to disclose what ERC did with the money lent by RCM II to ERC. This is a claim for silent fraud.

To maintain an action for silent fraud, "the plaintiff must show that the defendant suppressed the truth with the intent to defraud the plaintiff and that the defendant had a legal or equitable duty of disclosure. A plaintiff cannot merely prove that the defendant failed to disclose something; instead, a plaintiff must show some type of representation by words or actions that was false or misleading and was intended to deceive." *Lucas v. Awaad,* 299 Mich App 345, 363–364, (2013) (quotation marks and citations omitted). Thus, "[w]hile duty is irrelevant in a fraud claim, it is relevant in a silent fraud claim" and "in order for the suppression of information to constitute silent fraud there must exist a legal or equitable duty of disclosure." *Id.* at 364, 830 N.W.2d 141 (quotation marks and citations omitted).

Here, Plaintiffs repeatedly assert that Defendant Warren Rose had a legal duty to disclose to Jonathan Rose, the beneficiary of the Trusts. Plaintiffs argue that under MCL 450.4409 a self-interested transaction is required to be disclosed and also be approved by the members entitled to vote. Plaintiffs misconstrue the statute. MCL 450.4409 states:

> (1) Except as otherwise provided in an operating agreement, a transaction in which a manager or agent of a limited liability company is determined to have an interest shall not, because of the interest, be enjoined, be set aside, or give rise to an award of damages or other sanctions, in a proceeding by a member or by or in the right of the company, if the manager or agent interested in the transaction establishes any of the following:

(a) The transaction was fair to the company at the time entered into.
(b) The material facts of the transaction and the manager's or agent's interest were disclosed or known to the managers and the managers authorized, approved, or ratified the transaction.
(c) The material facts of the transaction and the manager's or agent's interest were disclosed or known to the members entitled to vote and they authorized, approved, or ratified the transaction.

MCL 450.4409 protects against liability for a self-interested transaction where certain disclosures are made and the transaction is ratified. The statute does not create mandatory liability where those disclosures are not made, nor does it contain any type of requirement for those disclosures to be made. Furthermore, the statute speaks to disclosures to other managers and to members. There is nothing in the statute that speaks to disclosures to beneficiaries of members of an entity, which is the requirement Plaintiffs seek to assert in this action.

Plaintiffs do not offer any affirmative statements made that were false or intended to deceive. Plaintiffs' allegations speak only to Plaintiffs' impressions from discussions surrounding the Trusts' investments. But the impression that "withdrawing the Trusts' investment would be akin to 'pulling the rug' and could cripple other ERS businesses, or negatively impact other Rose family members" (Response Brief, p 8) belies the argument that Defendants were hiding investments in other family members' companies.

In viewing the facts in the light most favorable to the Plaintiffs, there is simply no evidence that Warren Rose, in his capacity as Manager of RCM II, concealed investments that ERC made in third party companies from himself or from Henry Grix, the Trustees of the Trusts who were members in RCM II.

Defendants' Motion for Summary Disposition as to Count II is granted, and the claims for fraudulent concealment are dismissed.

Count III – Breach of Fiduciary Duty

Statute of Limitations

For the reasons set forth relating to the claims for member oppression and fraudulent concealment, the statute of limitations for claims relating to breach of fiduciary duty is three years. *See Prentis Family Foundation v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 47 (2005), *citing* MCL 600.5805.

Based on the foregoing, any allegations relating to breach of fiduciary duty occurring prior to October 19, 2019 are barred by the statute of limitations.

Questions of Fact Exist relating to Fiduciary Duty Claims

Plaintiffs allege that the flow of money from RCM II to ERC works as a benefit to Warren Rose, who was also the Co-Trustee of the family Trusts. Plaintiffs argue that his position as Co-Trustee and Manager allowed him to engage in self-dealing through the entities, which violated his duties to RCM II's members. Plaintiffs allege a unique injury because the flow of money to ERC benefited companies owned by only some of RCM II's members and excluded the Plaintiff Trusts.

Plaintiffs rely upon *Meathe v Ret*, 547 Fed Appx 683, 689 (CA 6 2013) to support their allegations, noting that the court held that a fiduciary duty claim against a manager can be brought by a member "where (1) the individual shareholder has sustained a loss separate and distinct from the other stockholders generally, and (2) if the individual can show a violation of a duty directly to the individual that is independent of the corporation."

First, and most importantly, if the *Meathe* case is applicable to this matter, the duties are owed to a member, and not to a beneficiary of a member. Plaintiffs argue that they satisfy the first prong because they are the only Members to not benefit from the self-interested transactions (Brief,

p 19). Plaintiffs argue that they satisfy the second prong because Warren Rose violated his duty to disclose to the Trusts that he was engaging in self-interested transactions using the Trusts' funds. Plaintiffs also argue that Defendants violation of their duty to act in good faith under MCL 450.4404(1) also satisfies the second prong.

Focusing on the second prong, Plaintiffs' have failed to establish a requirement to disclose self-interested transactions to the beneficiary of a member under the statute or any binding Michigan precedent. Even assuming there is a requirement to disclose a self-interested transaction, it would be owed only to the members and managers of the company, not to the beneficiaries of the members of the company. Failure to disclose to Jonathan Rose cannot support a breach of fiduciary duty claim. Henry Grix, the Co-Trustee, testified as to an understanding of the business structure. Warren Rose was aware of the structure.

Plaintiffs also argue that the failure to disclose is a violation of Warren Rose's duty to act in good faith, citing MCL 450.4404. Under MCL 450.4404, a manager is required to discharge his or her duties in good faith "in a manner the manager reasonably believes to be in the best interests of the limited liability company." The duty is owed to the corporation, and therefore, cannot support a claim by a member because it is not an independent duty owed only to the members. *Meathe*, 547 Fed Appx at 689.

Because Plaintiffs have failed to articulate a duty owed independently to Plaintiffs that is not also owed to the corporation, we need not determine whether Plaintiffs had a unique injury apart from the other members.

Defendants' Motion for Summary Disposition as to Count III is granted, and the claims for breach of fiduciary duty are dismissed.

Count IV – Unjust Enrichment

Statute of Limitations

Plaintiff argues that the statute of limitations for unjust enrichment is 6 years "because unjust enrichment claims are closely related to breach of contract claims" (Response, p 13). Plaintiffs rely upon an unpublished Michigan Court of Appeals Opinion from 2007 that was premised on a contract between the parties. Plaintiffs ignore the holding and reasoning in *Miller-Davis Co v Ahrens Constr*, 489 Mich 355, 365 (2011):

> The Michigan Supreme Court's decision 34 years ago in *Huhtala v. Travelers Ins. Co*… addressed how to determine whether a claim is subject to MCL 600.5805 or MCL 600.5807. It clarified that the nature and origin of a cause of action determine which limitations period applies. MCL 600.5805, it held, is applicable to actions to recover damages for injuries to person or property, whereas MCL 600.5807 is applicable to actions to recover damages for breach of contract.
>
> Under *Huhtala,* if an action is founded on a "consensual" duty or obligation or the breach of an "express promise," the action is not for personal injury. It is an action to recover damages for breach of contract and is governed by the six-year statute of limitations in MCL 600.5807. By contrast, when an action is founded on a "non-consensual" duty or one "imposed by law," the action is generally governed by the three-year statute of limitations in MCL 600.5805.[16]

Miller-Davis Co. v. Ahrens Const., Inc., 489 Mich. 355, 364–65, 802 N.W.2d 33, 38–39 (2011).

The Michigan Supreme Court held that when the action is based upon a duty imposed by the law, the action is generally governed by the three-year statute of limitations in MCL 600.5805. *Id*. Because Plaintiffs premise their claims on duties Warren Rose owed to the Trusts, and not on any breach of contract claims, the three-year statute is applicable.

Based on the foregoing, any allegations relating to unjust enrichment occurring prior to October 19, 2019 are barred by the statute of limitations.

Plaintiffs have Failed to Provide Evidence to Substantiate their Claims

A claim for unjust enrichment requires a plaintiff to establish a defendant's receipt of a benefit from plaintiff and an inequity resulting to plaintiff because of the retention of that benefit. *Belle Isle Grill Corp v City of Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003).

Plaintiffs argue that Warren Rose, through his respective trusts, received a benefit when Plaintiffs provided capital to RCM II (First Amended Complaint, ¶ 70). However, those Trusts (the rightful owners of those claims) are not parties to this litigation. There is no testimony to substantiate Warren Rose, individually, or RCM II, benefitting from transactions that took place in ERC and beyond. Plaintiffs' Response merely indicates that "the facts show that Warren received a benefit based on his fraudulent scheme" (Response, p 19). If any benefit was received, it was received by Trusts and not by Warren Rose. There are no allegations that RCM II benefited from the transactions.

Defendants' Motion for Summary Disposition as to Count IV is granted, and the claims for breach of unjust enrichment are dismissed.

Count V – Accounting

Plaintiffs argue that there is still a need for accounting from the Discovered Entities, none of which are parties to this case. Defendants argue that the accounting has been completed through discovery. This Court finds that the accounting through discovery has been sufficient and there remains no legal basis for a claim of accounting.

Defendants' Motion for Summary Disposition as to Count V is granted, and the claims for accounting are dismissed.

ORDER

Based upon the foregoing Opinion:

IT IS HEREBY ORDERED that Defendants' Motion for Summary Disposition is **GRANTED** as to all Counts in the First Amended Complaint.

IT IS SO ORDERED.

This Order resolves the last pending matter and closes the case.

/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
CIRCUIT COURT JUDGE

Dated: 7/31/24