

STATE OF MICHIGAN

IN THE 3<sup>RD</sup> CIRCUIT COURT FOR THE COUNTY OF WAYNE

Alicia D. Walker, Individually and as a Personal  
Representative of the Estate of Rukiya Shabazz

Plaintiff,

CASE NO.: 21-005765-CH  
HON.: DAVID J. ALLEN

-vs-

Wayne County Community, LLC, Monroe Street  
Group, LLC, Menachem Cohen AKA Zev Cohen,  
Harvey D. Moorner, Cordia Pennington and  
Duchin Realty, LLC

Defendants

AND

Duchin Realty, LLC,

Defendant/Counter-Plaintiff

-vs-

Alicia Walker, Individually, and as Personal  
Representative of Estate of Rukiya Shabazz

Plaintiff/Counter-Defendant

AND

Duchin Realty, LLC

Defendant/Cross-Plaintiff

-vs-

Wayne County Community, LLC

Defendant/Cross-Defendant

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**OPINION AND ORDER GRANTING IN PART AND DENYING IN PART  
DUCHIN’S MOTION FOR SUMMARY DISPOSITION**

Pending before the Court is Defendant/Counter-Plaintiff/Cross-Plaintiff Duchin Realty, LLC’s (“Duchin”) Motion for Summary Disposition pursuant to MCR 2.116(C)(5), (7), (8) and (10). Duchin requests this court dismiss Ms. Walker’s Complaint individually and as the Representative of the Estate of Shabaaz.

After having reviewed the Motions, Responses and Replies, and otherwise being fully advised in the premises, the Court issues the following Opinion and Order.

**BACKGROUND**

This case arises out of conflicting interests in a property located in Detroit, Michigan (“Property”). According to Plaintiff Walker’s Complaint, in 1985, Ms. Shabazz and her four siblings received a 1/5 interest in the Property through a probate court order (“1985 Order”). Ms Shabazz then allegedly obtained 4/5 interest rights in the Property through a quit claim deed signed in 2009 and recorded in 2013 (“2009 Deed”). In May 2013, Ms. Walker became Ms. Shabazz’s conservator through a Letter of Conservatorship which restricted Ms. Walker’s authority to sell or dispose of real estate (“Conservatorship Letter”). Disregarding this restriction, Ms. Walker transferred the Property multiple times from 2013 through 2015. Through three separate quit claim deeds executed by Plaintiff Walker in 2015, Ms. Shabaaz and Plaintiff Walker owned the Property as joint tenants with full rights of survivorship (“2015 Deeds”). Ms. Shabaaz passed away in May 2016.

In 2019, (after her death) Ms. Shabaaz allegedly transferred the Property to Defendant Monroe Street Group, LLC through a quit claim deed (“2019 Monroe Deed”) and Plaintiff Walker transferred her interest in the Property to Defendant Wayne County Community, LLC through a quit claim deed (“2019 WCC Deed”). Shortly after that, in December 2019,

Monroe Street Group transferred its interest in the Property to Wayne County Community (“2019 Monroe/WCC Deed”). Then in January 2020, Wayne County Community sold the property to Duchin Realty via Warranty Deed for the sum of fifty-thousand dollars (\$50,000) (“2020 Duchin Deed”).

Ms. Walker filed suit individually and as the Personal Representative of the Estate of Ms. Shabaaz requesting interest in the Property as the transfers from 2019 were fraudulent and any further transfer would be null and void. While this litigation was ongoing, Walter Sakowski replaced Plaintiff Walker as Personal Representative for the Estate of Ms. Shabazz.

Defendant Duchin argues it purchased the Property through a Warranty Deed and made substantial and expensive improvements and now has tenants staying at the Property. Even further, Defendant Duchin alleges Plaintiff Walker obtained the Property illegally, and before that, her mother, Ms. Shabaaz did the same.

#### **STANDARD OF REVIEW**

A motion for summary disposition brought pursuant to MCR 2.116(C)(5) requires the moving party to show that the “party asserting the claim lacks the legal capacity to sue.” To preserve a motion under subrule (C)(5), a party must raise the issue in its “first responsive pleading or in a motion filed prior to that pleading.” *Glen Lake-Crystal River Watershed Riparians v. Glen Lake Ass’n*, 264 Mich. App. 523, 528; 695 N.W.2d 508 (2004) (citing MCR 2.116(D)(2)).

A motion under MCR 2.116(C)(7) requires the Court determine if summary disposition is appropriate pursuant to a release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate or litigate in a different forum, infancy or disability of the moving party or disposition of the claim prior to

the commencement of the action. *Clay v Doe*, 311 Mich App 359, 362; 876 NW2d 248 (2015); MCR 2.116(C)(7). “[A] trial court should examine all documentary evidence submitted by the parties, accept all well-pleaded allegations as true, and construe all evidence and pleadings in the light most favorable to the nonmoving party.” *Id.*

A motion brought under MCR 2.116(C)(8) “tests the legal sufficiency of the complaint on the basis of the pleadings alone.” *Beaudrie v Henderson*, 465 Mich 124, 129 (2001). “All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the non-movant.” *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999); *Wade v Dep’t of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). “A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are ‘so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.’” *Wade* at 163. When deciding a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5).

A motion brought under MCR 2.116(C)(10) tests the factual support for a plaintiff’s claim. *Skinner v Square D Co*, 445 Mich 153, 161, 516 NW2d 475 (1994); *Babula v Robertson*, 212 Mich App 45, 48, 536 NW2d 834 (1995). Summary disposition under MCR 2.116 (C)(10) is available when “[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” MCR 2.116(C)(10); *see also Coblentz v City of Novi*, 475 Mich 558, 719 NW2d 73 (2006); *Haliw v City of Sterling Heights*, 464 Mich 297, 627 NW2d 581 (2001); *Veenstra v Washtenaw Country Club*, 466 Mich 155, 645 NW2d 643 (2000). When reviewing a motion brought under MCR 2.116 (C)(10), the court must consider the pleadings, affidavits, depositions, admissions, and any other admissible

evidence in favor of the nonmoving party. MCR 2.116(G)(5); *Maiden v Rozwood*, 461 Mich 109, 120, 597 NW2d 817 (1999); *Radtko v Everett*, 442 Mich 368, 374, 501 NW2d 155 (1993); *Miller v Farm Bureau Mut Ins Co*, 218 Mich App 221, 233, 553 NW2d 371 (1996).

### Analysis

#### **I. Duchin Realty's MSD as to Plaintiff Walker, individually**

Duchin alleges Plaintiff Walker does not have standing to bring her claims as she obtained interest in the Property through fraud and invalid deeds. This Court acknowledges Plaintiff Walker acted outside the scope of her authority under the Conservatorship Letter in transferring the Property through the 2015 Deeds. Therefore, pursuant to MCR 2.116(C)(5), Plaintiff Walker does not have standing to sue as to any individual interests in the Property because, as a matter of law, any transfer of the Property during the tenure of the Conservatorship Letter is invalid. Plaintiff Walker may have standing to sue Defendants as to her personal property; however, she does not raise any such claim in her Complaint. Therefore, this Court shall GRANT Duchin's Motion for Summary Disposition as to Plaintiff Walker's claims against Duchin brought in her individual capacity pursuant to MCR 2.116(C)(5) and MCR 2.116(C)(10).

#### **II. Duchin Realty's Motion for Summary Disposition as to the Estate of Shabaaz**

This section shall only address the parts of Duchin's Motion for Summary Disposition relevant to the Plaintiff Estate of Shabaaz.

##### **A. Validity of the 2009 Deed Remains a Question of Fact**

Pursuant to the 2009 Deed, the Estate of Shabaaz only claims a 4/5 interest in the Property as it recognizes the other 1/5 interest belongs to the heirs of the single interest holder who was not a party to the quitclaim deed. Defendant Duchin alleges Ms. Shabaaz

procured the 2009 Quit Claim Deed through fraud. The Court cannot presume fraud, the party alleging fraud has the burden of proving the fraud. *Richeson v Wagar*, 267 Mich 79, 84; 282 NW 909 (1938).

At this time, Defendant Duchin did not successfully allege fraud as to the 2009 Deed. Instead, it depended upon Sandra Parm's affidavit alleging she did not sign the 2009 Deed which was contested by the conflicting affidavit of the notary of the 2009 Deed. Therefore, a question of fact exists as to the validity of the 2009 Deed. Accordingly, summary disposition cannot be granted based upon the above argument and claims related thereto.

B. Conspiracy

A conspiracy is an agreement among two or more persons by some concerted action "to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means. *Urbain v Beierling*, 301 Mich App 114, 131-32; 835 NW2d 455 (2013). A party alleging civil conspiracy must show "a separate, actionable tort" and that "defendants acted tortuously pursuant to a common design" causing harm to the plaintiff. *Early Detection Center PC v New York Life Ins Co*, 157 Mich App 618, 632; 403 NW2d 830 (1986); *Abel v Eli Lilly & Co*, 418 Mich 311, 338; 343 NW2d 164 (1984).

Here, the only allegation connecting Duchin to the alleged conspiracy is an address on the 2019 Deed wherein Duchin was neither a party nor a signor. Such a connection is not enough to establish the elements of civil conspiracy against Duchin. Therefore, summary disposition as to Count VI of the Complaint is granted as to Duchin.

C. Unjust Enrichment

Duchin has not provided evidentiary support for its expenditures nor has it shown it did not benefit from its improvements to the Property. Therefore, it is premature to grant summary disposition on Plaintiff Estate's claim for unjust enrichment.

**CONCLUSION**

**IT IS ORDERED** that Defendant Duchin's Motion for Summary Disposition is **GRANTED IN PART** as to Plaintiff Walker's claims brought in her capacity as an individual and Count VI (Civil Conspiracy) and **DENIED IN PART** as to the Estate of Shabaaz's remaining claims.

**IT IS SO ORDERED**

**THIS IS NOT A FINAL ORDER AND THIS CASE REMAINS OPEN.**

7/13/2022  
Date

/s/ David J. Allen  
Hon. David J. Allen