

STATE OF MICHIGAN  
SIXTEENTH JUDICIAL CIRCUIT COURT

BCB RENTALS, LLC,  
Plaintiff,

vs.

Case No. 2024-003264-CB

AMERICAN REAL PROPERTY INVESTMENTS, LLC,  
JOHN LARSON, SCS GREATLAKES, INC.  
(d/b/a KELLER WILLIAMS REALTY – GREAT LAKES,  
and INTEGRATED PROPERTY SERVICES, LLC  
(d/b/a PROPEL PROPERTY MANAGEMENT).

Defendants.

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OPINION AND ORDER

This matter is before the Court on Defendant SCS Greatlakes, Inc. d/b/a Keller Williams Realty – Great Lakes' (SCS) motion for summary disposition and Plaintiff, BCB Rentals, LLC's (BCB), motion for leave to file an amended complaint.

I. Background

BCB alleges that in July 2023 Defendant John Larson (Larson), a licensed real estate agent with SCS, contacted BCB to see if it was interested in purchasing property on Stewart Avenue in Warren, Michigan. According to BCB, the property was owned by Defendant American Real Property Investments (ARPI) who had purchased it in April 2023 for \$52,500. On July 28, 2023, BCB entered a purchase agreement with ARPI to purchase the property for \$115,000. The purchase agreement provided, "Seller to provide passed certificate of occupancy prior to closing." (Compl., Ex. A, ¶41.) According to BCB, ARPI failed to obtain a certificate of occupancy before closing. Despite the lack of a certificate of occupancy, BCB and ARPI closed on the property on August 25, 2023.

BCB alleges Larson and ARPI induced it to enter the purchase agreement by

representing to BCB on July 23, 2023 that the property had been completely renovated and would have a certificate of occupancy prior to closing. BCB maintains Larson failed to inform it that ARPI is owned by Larson's business partners. BCB further alleges it "has been unable to rent the Stewart Property because of the absence of a certificate of occupancy," and claims it lost approximately \$1,400 per month. (Compl., ¶32.)

On August 21, 2024, BCB filed suit against ARPI, Larson, SCS, and Defendant Integrated Property Services, LLC d/b/a Propel Property Management (Propel).<sup>1</sup> Against SCS and Larson, BCB appears to allege claims of silent fraud (Count II), fraudulent misrepresentation (Count III), and breach of fiduciary duty (Count IV). As against ARPI, BCB only alleged a claim of breach of contract (Count I). On February 12, 2025, after ARPI moved for summary disposition on the breach of contract claim against it, the Court dismissed that claim against ARPI.

On June 10, 2025<sup>2</sup>, SCS filed a motion for summary disposition under MCR 2.116(C)(8) seeking summary disposition on the four claims asserted against it. BCB filed its response on July 7, 2025. Three days later, on July 10, 2025, BCB filed a motion for leave to amend its complaint. ARPI filed a response to BCB's motion for leave to amend on July 16, 2025.<sup>3</sup> In the meantime, the Court held oral arguments on SCS's motion for summary disposition on July 14, 2025. During oral argument, BCB's counsel agreed that its breach of contract claim in Count I was not alleged against SCS. Accordingly, the Court

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<sup>1</sup> BCB alleged overlapping claims against the other Defendants, and Propel has filed a counterclaim against Plaintiff. Those other claims and counterclaims are not germane to SCS's motion.

<sup>2</sup> On July 14, 2025, SCS filed a corrected brief to its motion for summary disposition. The Court has accepted that brief and will rely on it as the operative brief on SCS's motion.

<sup>3</sup> Propel filed a response to BCB's motion for leave to amend. It did not object to the motion, but requested extending the deadline to file motions for summary disposition.

that claim on the record. The Court took the remaining issues in SCS's motion under advisement. The Court then held a hearing on BCB's motion for leave to amend on July 21, 2025. It took that motion under advisement and granted BCB leave to file a limited supplemental brief within seven days and gave ARPI seven days thereafter to file a supplemental response. BCB filed its supplemental brief on July 24, 2025, and ARPI filed its supplemental response on July 30, 2025. The Court has reviewed both supplemental filings.

## II. SCS's Motion for Summary Disposition

### A. Standard of Review

SCS seeks summary disposition under MCR 2.116 (C)(8). A motion for summary disposition under MCR 2.116(C)(8) that the opposing party "has failed to state a claim upon which relief can be granted" must be granted "if the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Simko v Blake*, 448 Mich 648, 654; 532 NW2d 842 (1995). It tests the legal sufficiency of the complaint based on the pleadings alone. *Beaudrie v Henderson*, 465 Mich 124, 129-130; 631 NW2d 308 (2001). "In a contract-based action, however, the contract attached to the pleading is considered part of the pleading." *Liggett Rest Group v City of Pontiac*, 260 Mich App 127, 133; 676 NW2d 633 (2003); see MCR 2.113(C). All factual allegations in the complaint are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Carter*, Mich App at 427. "A party may not support a motion under subrule (C)(8) with documentary evidence such as affidavits, depositions, or admissions." *Dalley v Dykema Gossett*, 287 Mich App 296, 305; 788 NW2d 679 (2010); see *Blair v Checker Cab Co*, 219 Mich App 667, 670; 558 NW2d 439 (1996) ("MCR

2.116(G)(5) provides that the trial court may not consider documentary evidence when considering summary disposition motions brought pursuant to MCR 2.116(C)(8).”). Because the Court’s analysis of a (c)(8) motion is limited to the allegations in the complaint and the contracts attachments to it, the Court will not consider the 31 exhibits relied on by BCB in its response.

## B. Law and Analysis

### 1. Silent Fraud (Count II)

SCS argues that BCB’s silent fraud claim fails because it does not plead the elements of silent fraud, nor does it plead them with sufficient particularity. It further argues this claim fails as a matter of law because it is barred by two paragraphs in the Purchase Agreement.

A claim of silent fraud requires a plaintiff to plead and prove “that the defendant knew of a material fact but concealed or suppressed the truth through false or misleading statements or actions and with the intent to deceive,” *Roberts v Saffell*, 280 Mich App 397, 405; 760 NW2d 715 (2008), and that the plaintiff relied on the statements or actions, *Hamade v Sunoco*, 271 Mich App 145, 171; 721 NW2d 233 (2006). He must also plead and prove that the defendant had a duty to disclose the material fact. *Roberts*, 280 Mich App at 404; *Lucas v Awaad*, 299 Mich App 345, 363–64; 830 NW2d 141 (2013). Mere non-disclosure is not enough, “a plaintiff must show some type of representation by words or actions that was false or misleading and was intended to deceive.” *Lucas*, 299 Mich App at 363-64.

Additionally, MCR 2.112(B)(1) requires that a plaintiff must also state with particularity “the circumstances constituting fraud.” Federal courts have interpreted this

requirement to mandate that a plaintiff plead who, what, when, where and how of the alleged fraud.<sup>4</sup> *United States ex rel Ge v Takeda Pharm Co*, 737 F3d 116, 123 (CA 1, 2013); *State ex rel Gurganus v CVS Caremark*, 496 Mich 45, 70-71; 852 NW2d 103 (2014) (Cavanagh, J., concurring). In other words, the plaintiff must allege “(1) the precise statements, documents, or misrepresentations made; (2) the time, place, and person responsible for the statement; (3) the content and manner in which these statements misled the [p]laintiff[]; and (4) what the defendants gained by the alleged fraud.” *Am. Dental Ass’n v Cigna Corp*, 605 F3d 1283, 1291 (CA 11, 2010) (internal quotations omitted).

In the silent fraud claim, SCS is never identified. All the allegations only identify Larson. It alleges “Larson represented to BCB that the Stewart Property was worth \$110k to \$115k and was a ‘good deal’ [and he] assured BCB that the Seller would obtain a certificate of occupancy prior to closing.” (Compl., ¶43.) It also alleges “Larson did not disclose that the Stewart Property had been purchased by ARPI three months earlier for less than half that amount, [and he] did not disclose his business relationship with the owners of ARPI.” (Id., ¶44.) It further alleges “Larson had actual knowledge of these facts,” and knew that failure to disclose them to BCB would leave BCB with a false impression. (Id., ¶¶45.) Finally, it alleges “Larson intended that BCB rely on the resulting false impression” and that BCB “relied on the false impression.” (Id., ¶¶45-46.)

The failure to identify SCS in any of the allegations related to the silent fraud is sufficient to warrant dismissal of this claim against SCS. Additionally, the allegations in

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<sup>4</sup> “In the absence of Michigan precedent, courts of this state routinely seek guidance from federal cases construing a similar federal rule.” *Alberto v Toyota Motor Corp*, 289 Mich App 328, 336-337; 796 NW2d 490 (2010).

the silent fraud claim are not pled with particularity. BCB does not plead any details about when and where Larson made the alleged misrepresentations and what “facts” Larson knew of. Nor does not specify in what way Larson’s representations and non-disclosures were intended to deceive BCB. It also fails to specify what false impression BCB took from, and in what ways it relied on, Larson’s representations and non-disclosures. Finally, BCB has failed to allege SCS and Larson had a duty of disclosure.

To the extent BCB argues SCS is liable for Larson’s silent fraud, other than alleging Larson is a real estate agent of SCS, (Compl. ¶10), the Complaint does not contain any allegations asserting a vicarious liability theory. Moreover, BCB has not cited any legal authority that supports its assertion that a real estate broker is vicariously liable for a real estate agent’s silent fraud. Though it cites *Hammond v Matthes*, 109 Mich App 352; 311 NW2d 357 (1981), that case is inapposite. There, the Court of Appeals explained the different standards for actionable fraud by principals and agents. *Id.* at 359. It did not address the standard by which a principal may be liable for the silent fraud of its agent.

In addition to these pleading deficiencies, SCS also argues the silent fraud claim fails as a matter of law because it is barred by two paragraphs in the Purchase Agreement.

The primary goal in interpreting contracts is to honor the parties' intent. *UAW-GM Human Res Ctr v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). The parties’ intent is determined “by interpreting the language of the contract according to its plain and ordinary meaning.” *Bank of America v First American Title Ins.*, 499 Mich 74, 85-86; 878 NW2d 816 (2016). “When contract language is clear, unambiguous, and has a definite meaning, courts do not have the ability to write a different contract for the parties, or to consider extrinsic testimony to determine the parties’ intent.” *Kyocera Corp*

*v Hemlock Semiconductor*, 313 Mich App 437, 446; 886 NW2d 445 (2015).

The first provision in the Purchase Agreement that SCS relies on is paragraph 34, titled “Disclaimer of Broker(s) and Release.” That paragraph states,

Broker(s) and Broker(s) agents specifically disclaim responsibility for the condition of the Property and/or for performance of Agreement by the parties. *Parties acknowledge that they are not relying on any representation or warranties that may have been made other than those in writing, and the parties waive and release and relinquish any and all claims or causes of action against the Broker(s) their officers, directors, employees and/or their agents for the condition of the Property or the performance of this Agreement by the parties.* Broker(s) and its agents are not experts in the areas of law, tax, financing, surveying, structural conditions, hazardous conditions, or engineering, and Buyer acknowledges that Buyer has been advised to seek professional advice from experts in these areas. [Compl., Ex. A, ¶34] (emphasis added).

Under the ambiguous language of this paragraph, BCB disclaimed any reliance on any oral representations by SCS or Larson, and it waived any claims it may have against SCS or Larson for the condition of the property or the performance of Purchase Agreement by the parties.

Concerning the disclaimer language, the complaint does not provide any indication whether any of Larson’s alleged misrepresentations were in made orally or in writing. To the extent they were oral representations, they are barred by the disclaimer provision. As for the waiver of claims language, the heart of BCB’s silent fraud claim is that Larson overstated the value of the property and misrepresented that ARPI would obtain a certificate of occupancy before closing. This claim is based on the condition of the property and the parties’ performance of the Purchase Agreement. As such, it is waived in paragraph 34 of the Purchase Agreement.

In its response, BCB does not dispute that the waiver provision, on its face, is a waiver of its silent fraud claim. Instead, it argues the waiver provision is unenforceable as

to fraud claims. It bases this argument on the following quote from *Lamp v Reynolds*, 249 Mich App 591, 594; 645 NW2d 311 (2002): “It is well established in this jurisdiction that, although a party may contract against liability for harm caused by his ordinary negligence, a party may not insulate himself against liability for gross negligence or willful and wanton misconduct.” *Lamp*, however, did not involve a fraud claim, and BCB has not cited any authority that extends this holding to fraud-based claims.

The second provision in the Purchase Agreement that SCS relies on is the integration clause in paragraph 36. That provision states that the Purchase Agreement “supersedes any and all agreements and constitutes the entire agreement between the parties and that no oral representations or statements shall be considered a part thereof.” (Compl., Ex. A, ¶36.) In its response, BCB does not appear to dispute that the integration clause, if enforceable, would preclude it from relying on Larson’s alleged representations. Instead, BCB argues the integration clause is unenforceable because its allegations of fraud render the entire Purchase Agreement unenforceable. This argument is unavailing.

An express merger clause (also called an “integration clause”) nullifies any prior written or oral representations or agreements that are not contained in the written contract. *UAW-GM*, 228 Mich App at 494. Thus, a party cannot rely on statements or representations outside of the written contract (i.e., parol evidence) to vary the terms of contract. *Id.* Nor can the party rely on such parole evidence to establish a fraud claim, except in limited circumstances. *Hamade*, 271 Mich App at 169-71. One such limited circumstance is “fraud relating to the merger clause or fraud that invalidates the entire contract including the merger clause.” *Id.* at 169–70, quoting *UAW-GM*, 228 Mich App at 503.

Here, BCB's complaint does not make any allegations concerning fraud relating to the integration clause. Moreover, BCB has not explained how any alleged fraud by Larson and SCS, who are not parties to the Purchase Agreement, would invalidate the Purchase Agreement. Additionally, the merger clause the made it unreasonable for BCB to rely on any representations not included Purchase Agreement, thus undermining BCB's fraud-based claims. *Id.* at 170, citing *UAW-GM*, 228 Mich App at 504.

Based on the pleading deficiencies and the disclaimer, waiver, and merger provisions in the Purchase Agreement, SCS's request for summary disposition on BCB's silent fraud claim must be granted.

## 2. Fraudulent Misrepresentation (Count III)

SCS argues that BCB's fraudulent misrepresentation claim fails for the same reasons its silent fraud claim fails—namely, that it does not plead the elements of fraud, does not plead them with sufficient particularity, and fails as a matter of law because it is barred by the Purchase Agreement.

BCB has clarified that this claim is for fraudulent in the inducement. To prevail on a claim of fraud in the inducement, a party must plead and prove

(1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth and as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage. [*Custom Data Sols. v Preferred Capital*, 274 Mich App 239, 243; 733 NW2d 102 (2006).]

As with other fraud claims, MCR 2.112(B)(1) requires that a plaintiff must also state with particularity “the circumstances constituting fraud.”

In its fraudulent inducement claim, BCB alleges “Larson represented to BCB that the Stewart Property was worth \$110k to \$115k and was a ‘good deal’ [and he] assured

BCB that the Seller would obtain a certificate of occupancy prior to closing.” (Compl., ¶¶50.) It alleges these representations were false, that Larson either knew they were false or made them recklessly without knowledge of their truth, and that he made them with the intention that BCB would act upon them and enter the Purchase Agreement. (Id., ¶¶52-54.) It further alleges BCB acted in reliance on Larson’s representations by entering the Purchase Agreement. (Id., ¶55.) Finally, it alleges Larson made these representations as agent of SCS. (Id., ¶51.)

Other than identifying Larson as an agent of SCS, none of the allegations attribute the misrepresentations to SCS. And like the silent fraud claim, BCB has not cited any legal authority that supports its assertion that a real estate broker is vicariously liable for a real estate agent’s fraud. This alone is sufficient to dismiss this claim against SCS.

Moreover, while the fraud in the inducement allegations contain more detail than the silent fraud claim, it still fails to satisfy the particularity requirement of MCR 2.112(B)(1). It does not provide any detail about when and where Larson made the alleged misrepresentations. Nor does it indicate how his representations were false, how he knew they were false or were made them recklessly without knowledge of their truth. Consequently, BCB has failed to state a claim for fraudulent misrepresentation.

Like its challenge to the silent fraud claim, SCS also argues the fraudulent inducement claim fails as a matter of law because it is barred by the two paragraphs in the Purchase Agreement that contain the disclaimer, waiver, and merger provisions. For the same reasons those provisions bar the silent fraud claim, they also bar the fraudulent inducement claim.

As with the silent fraud claim, the pleading deficiencies and the disclaimer, waiver,

and merger provisions in the Purchase Agreement warrant dismissal BCB's fraudulent inducement claim.

### 3. Breach of Fiduciary Duty (Count III)

Finally, SCS argues BCB's breach of fiduciary duty claim must be dismissed because the complaint does not allege any facts that establish a fiduciary relationship between SCS or Larson and BCB. In response, BCB argues that because BCB was Larson and SCS's client, they owed BCB a fiduciary duty.

"To establish a claim for breach of fiduciary duty, a plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty and (3) damages caused by the breach of duty." *Highfield Beach at Lake Michigan v Sanderson*, 331 Mich App 636, 666; 954 NW2d 231 (2020). Michigan courts have repeatedly held that real estate agents and brokers owe a fiduciary duty to their clients. *Mackey v Baker*, 327 Mich 57, 65; 41 NW2d 331 (1950); *Brotman v Roelofs*, 70 Mich App 719, 729; 246 NW2d 368 (1976). BCB has not cited, nor is the Court aware of, any authority that imposes on an agent or broker a fiduciary duty to the party on the other side of the transaction.

The Purchase Agreement clearly identifies SCS as "Selling Broker" and Larson as "Selling Agent." (Compl., Ex. A.) As the selling broker and agent, SCS and Larson, respectively, were the agents of the seller, ARPI. See MCL 339.2517(11) ("Seller's agent' means a licensee acting on behalf of the seller in a real estate transaction who undertakes to accept the responsibility of serving the seller consistent with those fiduciary duties existing under common law.") SCS was not the purchaser's broker and Larson was not the purchaser's agent. As such neither owed a fiduciary duty to the purchaser, BCB. BCB's breach of fiduciary duty claim against SCS and Larson fails as a matter of law.

In sum, the pleading deficiencies and provisions in the Purchase Agreement require dismissal of BCB's silent fraud (Count II) fraudulent inducement (Count III) claims. And because SCS and Larson did not owe a fiduciary duty to BCB, BCB's breach of fiduciary duty claim (Count IV) fails as a matter of law and must be dismissed.

### III. BCB's Motion for Leave to File Amended Complaint

#### A. Standard of Review

MCR 2.118(A)(2) provides that leave to amend a pleading shall be freely given when justice so requires. A motion to amend ordinarily should be granted, unless one of the following reasons exists: (1) undue delay, (2) bad faith or dilatory motive on the part of the movant, (3) repeated failure to cure deficiencies by amendments previously allowed, (4) undue prejudice to the opposing party by virtue of allowance of the amendment, and (5) futility of amendment. *Sands Appliance Services v Wilson*, 463 Mich 231, 239-240; 615 NW2d 241 (2000).

#### B. Law and Analysis

BCB seeks leave to file an amended complaint that adds claims against two new Defendants, American PM Services, LLC d/b/a American Real PM Services (ARPM) and Top 1% Brokers, LLC, d/b/a The Monzo Group (Monzo). It adds ARPM and Monzo to the silent fraud (Count II), fraudulent misrepresentation (Count III), and breach of fiduciary duty (Count IV) claims. The proposed first amended complaint also provides additional factual allegations and attempts to plead the fraud claims with more specificity. Finally, though BCB does not mention it in its motion, the proposed amended complaint also adds ARPI to the silent fraud and fraudulent misrepresentation claims.<sup>5</sup>

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<sup>5</sup> The original complaint only asserted a breach of contract claim against ARPI.

In response, ARPI<sup>6</sup> argues the motion should be denied because, among other things, the proposed claims are futile. This argument has merit.

### 1. Futility

While a trial court should freely grant leave to amend when justice so requires, leave should be denied where amending the complaint would be futile. *Jenks v Brown*, 219 Mich App 415, 420; 557 NW2d 114 (1996). “An amendment is futile where, ignoring the substantive merits of the claim, it is legally insufficient on its face.”<sup>7</sup> *Hakari v Ski Brule*, 230 Mich App 352, 355; 584 NW2d 345 (1998); see *Lane v KinderCare Learning Centers*, 231 Mich App 689, 697; 588 NW2d 715 (1998) (“An amendment is futile if it merely restates the allegations already made or adds allegations that still fail to state a claim.”)

#### a. Proposed Claims Against Monzo

BCB’s basis for adding Monzo to the silent fraud, fraudulent misrepresentation, and breach of fiduciary duty claims is the allegation that Larson was an agent of Monzo in 2022 when BCB purchased the Stewart Property. With respect to the silent fraud and fraudulent misrepresentation claims, the allegations in those claims never reference Monzo. They occasionally reference Larson, but otherwise only reference “Defendants,” and in doing so fail to specifically identify who made the alleged misrepresentations or who failed to disclose material information. These generic references to “Defendants” combined with unspecified allegations regarding the who, what, when, where and how of the alleged fraud is insufficient to meet the particularity requirements for pleading claims

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<sup>6</sup> None of the other Defendants filed a substantive response to the motion for leave to amend.

<sup>7</sup> Given the limited scope the Court’s futility analysis, it cannot consider the evidence attached to ARPI’s response and supplemental response to determine whether the proposed first amended complaint is futile.

of fraud. MCR 2.112(B)(1). Additionally, the silent fraud claim again fails to allege that any of the Defendants had a duty to disclose. *Roberts*, 280 Mich App at 404. And other than identifying Larson as an agent of Monzo and SCS, none of the allegations attribute the misrepresentations or non-disclosures to either broker. As explained earlier, BCB has not cited any legal authority that makes a real estate broker vicariously liable for a real estate agent's fraud. These pleading deficiencies render the proposed silent fraud and fraudulent misrepresentation claims futile not only as to Monzo but as to all Defendants.

As for the breach of fiduciary duty claim, given the Court's prior determination that Larson is identified in the Purchase Agreement as the "Selling Agent," it follows, that to the extent Larson was an agent of Monzo, Monzo was, at most, the "Selling Broker." Consistent with the Court's earlier determination that selling agents and brokers only owe a fiduciary duty to the seller, as a selling broker, Monzo would not have owed a fiduciary duty to BCB, the buyer; and neither did Larson or SCS. See *Mackey*, 327 Mich at 65; *Brotman*, 70 Mich App at 729; MCL 339.2517(11). Accordingly, the proposed breach of fiduciary duty claim is futile as to Monzo as well as Larson and SCS.

#### b. Proposed Claims Against ARPM

BCB also seeks to add ARPM as a defendant and include it in the silent fraud, fraudulent misrepresentation, and breach of fiduciary duty claims. Its basis for doing so is the allegation that ARPI is an alter ego of ARPM and that ARPM was BCB's property manager.

Given the Court's findings above that the proposed silent fraud and fraudulent misrepresentation claims are deficiently pled, those claims are futile as to ARPI. As explained below, those proposed claims are futile as against ARPI also because BCB

fails to adequately plead an alter-ego theory of liability.

The proposed amended complaint alleges ARPI is an alter ego of ARPM. (Mot. Ex. 1, ¶14.) In doing so, BCB appears to be attempting to pierce the corporate veil of ARPI and ARPM to make ARPM or ARPI (or both) vicariously liable for the other's alleged misrepresentations or nondisclosures.

For the corporate veil to be pierced, the plaintiff *must aver facts that show* (1) that the corporate entity is a mere instrumentality of another entity or individual, (2) that the corporate entity was used to commit fraud or a wrong, and (3) that, as a result, the plaintiff suffered an unjust injury or loss. [*Dutton Partners, LLC v CMS Energy Corp*, 290 Mich App 635, 643; 802 NW2d 717 (2010)] (emphasis added).

Other than the conclusory allegation that “ARPI is an alter ego of ARPM,” (Mot., Ex. 1, ¶14), BCB has not pled any facts supporting its alter ego theory in the proposed silent fraud and fraudulent misrepresentation claims. Because those claims are based on an inadequately pled alter ego theory liability as to ARPM, they are futile.<sup>8</sup> See *id.* at 642 (“Plaintiff never pleaded facts supporting its alter-ego theory in its complaint and never moved to amend to add such facts; thus, plaintiff’s complaint likely could have been dismissed for failure to state a claim.”)

BCB also adds ARPM to the breach of fiduciary duty claim alleging that as BCB’s property manager, ARPM owed BCB a fiduciary duty. (Mot. Ex. 1, ¶84.) It further alleges that “Defendants breached their fiduciary duties to Plaintiff by, amongst other things, making material misrepresentations to Plaintiff and failing to disclose material information regarding the condition of the Stewart Property and the certificate of occupancy and acting in their own self-interest.” (Id., ¶84.)

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<sup>8</sup> To the extent BCB is alleging the breach of fiduciary duty claim against ARPI based on an alter ego theory, the claim likewise fails for inadequately pleading that theory.

The elements of a breach of fiduciary duty claim are (1) the existence of a fiduciary duty, (2) a breach of that duty, (3) proximately causing damages. *Highfield*, 331 Mich App at 666. A fiduciary relationship arises from the reposing of faith, confidence, and trust, along with the reliance of one upon the judgment and advice of another. *First Public Corp v Parfet*, 246 Mich App 182, 191; 631 NW2d 785 (2001), vacated in part on other grounds, 468 Mich 101 (2003). “When a fiduciary relationship exists, the fiduciary has a duty to act for the benefit of the principal regarding matters within the scope of the relationship.” *Prentis Family Found v Barbara Ann Karmanos Cancer Inst*, 266 Mich App 39, 43; 698 NW2d 900 (2005). “Whether a duty exists is a question of law for the court to decide.” *Id.* at 43-44.

BCB generally alleges ARPM was its property manager, but the allegations in the proposed complaint only indicate ARPM was BCB’s property manager for three properties BCB purchased in 2022. (Mot. Ex. 1, ¶¶10-11.) The Stewart Property was not purchased until August 2023. (*Id.*, ¶38.) So even construing the allegations in a light most favorable to BCB, ARPM was not BCB’s property manager for the Stewart Property. The Court fails to see how ARPM was in a position of faith, confidence, and trust with BCB concerning a property that it was not managing for ARPM. The Stewart Property was not a matter within the scope of ARPM’s relationship with BCB. As such, ARMP did not owe a fiduciary duty to BCB. See *Prentis*, 266 Mich App, 43 (“a fiduciary has a duty to act for the benefit of the principal regarding matters within the scope of the relationship.”) BCB proposed breach of fiduciary duty claim against ARMP fails to state a claim and is futile.

c. Proposed New Claims Against Defendant ARPI

Finally, the proposed amended complaint also seeks to add ARPI to the silent fraud

and fraudulent misrepresentation claims. Because the Court has already determined that allegations in the proposed silent fraud and fraudulent misrepresentation claims do not meet the particularity requirements in MCR 2.112(B)(1), those proposed claims are futile as to all Defendants, including ARPI.

In sum, BCB's proposed amended complaint is futile with respect to its addition of claims against Monzo, ARPM, and ARPI. Moreover, its proposed amended claims for silent fraud, fraudulent misrepresentation, and breach of fiduciary duty are futile. None of the parties challenge the three remaining claims (Counts V, VI, and VII)<sup>9</sup> alleged against Propel in the proposed amended complaint.

#### IV. Conclusion

For the reasons set forth above:

1. SCS's motion for summary disposition as to the silent fraud (Count III), fraudulent misrepresentation (Count III), and breach of fiduciary duty (Count IV) claims in the original complaint is GRANTED. Those claims in the original complaint are DISMISSED.

2. BCB's motion for leave to file an amended complaint is DENIED

This Opinion and Order neither resolves the last pending claim nor closes this case. See MCR 2.602(A)(3).

IT IS SO ORDERED.

Date: 08/13/2025



*Kathryn A. Viviano*

Signed by KATHRYN VIVIANO 08/13/2025 04:27:15 KQDxZFvO

Hon. Kathryn A. Viviano, Circuit Court Judge

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<sup>9</sup> Those claims are for breach of contract (Count V), breach of fiduciary duty (Count VI), and negligence (Count VII). Those claims were alleged in the original complaint.