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

MARY E. NICHOLSON TRUST U/A/D JANUARY 14, 1994, MICHAEL NICHOLSON ITS TRUSTEE, MICHAEL NICHOLSON TRUST U/A/D MARCH 17, 1997, MICHAEL NICHOLSON ITS TRUSTEE INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF ETON STREET BREWERY REAL ESTATE LLC,

Plaintiffs,

Case No. 24-210897-CB
v **Hon. Michael Warren**

ETON STREET BREWERY REAL ESTATE LLC, BONNE J. LEPAGE TRUST U/A/D MARCH 17, 1997, BONNIE J. LEPAGE ITS TRUSTEE, ROGE BEAR LLC, AND JP MORGAN CHASE BANK,

Defendants.

OPINION AND ORDER GRANTING
DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

At a session of said Court, held in the County of Oakland, State of Michigan September 22, 2025

PRESENT: HON. MICHAEL WARREN

OPINION

I
Overview

The Plaintiffs' Complaint addresses two parcels of real estate, both owned 100% by the Defendant Eton Street Brewery Real Estate, LLC ("ESBRE"), a Michigan limited

liability company; one parcel located in Birmingham, Michigan and the other parcel in Rochester Hills, Michigan. The Plaintiffs, The Mary Nicholson Trust and the Michael Nicholson Trust, allege to collectively hold a 50% membership interest in ESBRE with the Defendant Roge Bear, LLC as the other 50% member. In their First Amended Complaint, the Plaintiffs ask the Court: (1) to partition the two parcels of real estate (Count I); and (2) dissolve the Defendant ESBRE pursuant to MCL 450.4802 (Count II). The Defendant Eton Street Brewery Real Estate, LLC ("ESBRE") is a Michigan limited liability company, which holds and manages two parcels of improved real estate at issue in this case: (i) 575 S. Eton St., Birmingham, Michigan 48009; and (ii) 2265 and 2273 Crooks Rd., Rochester Hills, Michigan 48309 ("the Properties").[1] The Defendant Bonnie J. LePage Trust U/A/D March 17, 1997 (Trustee Bonnie LePage), is a managing member of ESBRE.[2]

Before the Court is the Defendants' Motion for Summary Disposition as to Count I (Partition by Sale of Land) and Count II (Dissolution of ESBRE). Oral argument is dispensed as it would not assist the Court in its decision-making process.[3]

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[1] First Amended Complaint, ¶ 14. In their Motion for Summary Disposition, the Defendants properly note that the Plaintiffs inclusion of ESBRE as a Plaintiff was improper because the Plaintiffs do not allege that they made any derivative demand on ESBRE, as required by MCL 450.4510.

[2] *Id*. ¶ 5.

[3] MCR 2.119(E)(3) provides courts with discretion to dispense with or limit oral argument and to require briefing. MCR 2.116(G)(1) specifically recognizes application of MCR 2.119(E)(3) to summary disposition motions. Subrule (G)(1) additionally authorizes courts to issue orders establishing times for raising and asserting arguments. This Court's Scheduling Order clearly and unambiguously set the time for asserting and raising arguments, and legal authorities to be in the briefing – not to be raised and argued for the first time at oral argument. Therefore, all parties have been afforded due process as they each had notice of the arguments and an opportunity to be heard by responding and replying in writing, and this Court has considered the submissions to be fully apprised of the parties' positions before ruling. Because due process simply requires parties to have a meaningful opportunity to know and respond to the arguments and submissions which has occurred here, the parties have received the process due.

At stake is whether summary disposition of the Plaintiffs' two claims is warranted because the Plaintiffs have failed to plead the required elements of the claims? Because the Plaintiffs have not sufficiently pled the respective claims, the answer is "yes" and summary disposition under MCR 2.116(C)(8) is warranted.

II
Background

In 2019, the Bonnie J. LePage Trust ("LePage Trust") assigned its fifty (50%) percent membership interest in ESBRE to Defendant Roge Bear, LLC ("Roge Bear").[4] Accordingly, the current membership of ESBRE is Plaintiff Mary E. Nicholson Trust (40%), Plaintiff Michael Nicholson Trust (10%), and Defendant Roge Bear (50%).[5]

Non-party Eton Street Brewery, LLC ("ESB") is a Michigan limited liability in which the Plaintiff Mary Nicholson Trust owns a 40% interest, Pale Ale owns a 50% interest, and Plaintiff Michael A. Nicholson Trust owns a 10% interest.[6] ESB leases the Properties from ESBRE.[7] ESB also operates a brewery, restaurant and tap room at the Properties pursuant to leases with ESBRE.[8]

[4] *Id*. ¶ 6. The Members of Roge Bear are the Bonnie J. LePage Trust AD 3/17/1997 and the Scott LePage Trust dated November 11, 2016. Id. ¶ 8.
[5] *Id*. ¶ 15.
[6] *Id*. ¶ 12.
[7] *Id*. ¶ 16.
[8] *Id*. They operate the businesses under the name Griffin Claw.

Defendant JP Morgan Chase Bank, N.A. ("Chase") currently holds mortgages on the Properties.[9]

There is a related matter pending before this Court, Case No. 2023-198285-CB, in which the parties have been unable to reach a resolution.[10]

Furthermore, on July 26, 2024, while the above case was pending with this Court, Bonnie LePage, Manager and President of ESB, petitioned for bankruptcy.[11] The Mary E. Nicholson Trust and the Michael Nicholson Trust, both members of ESB,[12] objected to the bankruptcy petition, and moved to dismiss, arguing that unanimous member consent was required to file bankruptcy. The Court agreed, and on September 30, 2024, THE Honorable Mark A. Randon dismissed the Chapter 11 bankruptcy petition.[13]

Considering the "history between the parties, failure to reach an amicable resolution in the concurrent matter pending in Oakland County Circuit Court, the dismissal of the Chapter 11 Bankruptcy proceeding, and the lack of any deadlock provisions in the ESBRE Operating Agreement," the Plaintiffs filed their First Amended

[9] *Id*. ¶ 17.
[10] *Id*. ¶ 18. Michael Nicholson Trust U/A/D March 17, 1997 (Trustee Michael Nicholson) and Mary E. Nicholson Trust U/A/D January 14, 1994 (Trustee Michael Nicholson) v Eton Street Brewery, LLC, Eton Street Brewery Real Estate, LLC, Bonnie J. LePage Trust U/A/D March 17, 1997 (Trustee Bonnie J. LePage), and Scott E. LePage Trust U/A/D November 11, 2016 (Trustee Scott LePage).
[11] United States Bankruptcy Court for the Eastern District of Michigan, Case No. 24-47188. See Notice of Filing of Bankruptcy Petition and Automatic Stay of Proceedings filed on July 26, 2024, in Case No. 2023-198385-CB.
[12] Who hold a combined 50 percent equity interest in Debtor, ESB.
[13] Complaint, Exhibit C, p 16.

Complaint on December 13, 2024, seeking judgment for partition by sale of the Properties and dissolution of ESBRE, contending it is the only practical solution.[14]

III
The Arguments

A
Count I – Partition by Sale of the Properties

The Defendants argue that under MCL 600.3304 and Michigan common law, partition is only available when land is owned by two or more persons "holding land as joint tenants or tenants in common."[15] The Defendants contend that neither the Birmingham nor the Rochester Hills parcels are owned by joint tenants or by tenants in common. Rather, both parcels of land are owned by a single owner, ESBRE. Accordingly, Michigan law does not allow partition where, as here, land is owned by a single owner and not by joint tenants or tenants in common. Therefore, the Defendants avow that Count I of the First Amended Complaint fails to state any viable legal claim.

In response, the Plaintiffs argue that their First Amended Complaint sufficiently states a claim for partition because the Plaintiffs and Defendants are essentially joint tenants of ESBRE whose only assets are the pieces of improved real property in Birmingham and Rochester Hills, and therefore, can be viewed as such for purposes of the Plaintiffs' allegations.

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[14] Complaint ¶ 22.
[15] *In re Temple Marital Tr*, 278 Mich App 122, 143 (2008).

B
Count II – Statutory Dissolution of ESBRE

The Defendants argue that the First Amended Complaint is totally devoid of any allegation as to why ESBRE cannot continue owning and managing the two respective properties. Count II seeks statutory dissolution of ESBRE under MCL 450.4802. The First Amended Complaint acknowledges that ESBRE was formed for the purpose of holding and managing the two parcels of real estate, specifically, the Birmingham and the Rochester Hills properties. The Defendants assert that the Plaintiffs' conclusory allegations relate solely to a different company, ESB, which has different owners and different assets than ESBRE, the Company for which dissolution is sought. Because the Plaintiffs have not alleged that ESBRE is unable to carry on business in conformity with its articles of organization or operating agreement, and have only offered vague, conclusory assertions related to a distinct legal entity, ESB, the Defendants argue that Count II should be summarily dismissed under MCR 2.116(C)(8).

In response, the Plaintiffs argue that it sufficiently states a claim for the statutory dissolution of ESBRE because the Parties are deadlocked as to the operation and liquidation of both ESB and ESBRE, ESBRE's Operating Agreement is silent as to member deadlock, and absent a deadlock provision, statutory dissolution is the appropriate remedy.

IV
Standard of Review

A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, not whether the complaint can be factually supported. *El-Khalil v Oakwood Healthcare, Inc,* 504 Mich 152, 159-160 (2019); *Pawlak v Redox Corp*, 182 Mich App 758 (1990). 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. *Bailey v Schaaf,* 494 Mich 595, 603 (2013); *Parkhurst Homes, Inc* v *McLaughlin*, 187 Mich App 357 (1991). Exhibits attached to pleadings may be considered under MCR 2.116(C)(8) because they are part of the pleadings pursuant to MCR 2.113(C). *El-Khalil*, 504 Mich at 163. Matters of public record may also be considered. MCR 2.113(C)(1)(a). See also *Dalley v Dykema Gossett,* 287 Mich App 296, 301 n 1 (2010) (court documents are matters of public record that may be considered on a motion under MCR 2.116(C)(8)).

"All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Maiden v Rozwood*, 461 Mich 109, 119 (1999); *Wade v Dep't of Corrections*, 439 Mich 158, 162 (1992). 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. *Parkhurst Homes*, 187 Mich App at 360; *Spiek v Dept of Transportation*, 456 Mich 331, 337 (1998).

"[T]he mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to state a cause of action." *ETT Ambulance Serv Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395 (1994).

V
The Plaintiffs' Claim for Partition by Sale (Count I) Has Not Been Properly Pled

A
The Allegations

In their First Amended Complaint, the Plaintiffs allege as follows:

> 24. No persons or entities other than Plaintiff and Defendants have any interest in or title to the Property or any part of it, in possession, remainder, reversion, or otherwise.
>
> 25. Both Plaintiffs and Defendant Roge Bear, LLC own an undivided one-half interest in the Property with the concomitant right to enjoy and possess the whole.
>
> 26. For all practical purposes, it has become impossible for Plaintiffs and Defendant Roge Bear, LLC to jointly possess and enjoy the whole of the Property.
>
> 27. The two parcels of improved real estate that make up the Property are of unequal value, and their division in kind would be impractical, as partition cannot occur without substantial prejudice to the parties' respective interests.
>
> 28. The members of ESBRE are deadlocked on the disposition and management of the Property. Despite efforts to reach a resolution, including a prior concurrent action filed in this Court, the parties have been unable to agree upon any course of action.
>
> 29. Additionally, a recent bankruptcy filing by ESB involving essentially the same parties and the matter was dismissed; Judge Randon ruling ESB did not have the authority to file.

30. The ESBRE Operating Agreement, Exhibit "D" contains no deadlock provisions, leaving the parties with no contractual mechanism to resolve their impasse.

31. Under these circumstances, partition by sale of the Property is the only equitable remedy available to allow the parties to realize the value of their respective interests without undue prejudice.

32. Therefore, the Property should be sold under the order and direction of this Court, with the proceeds, after payment of the mortgages balance, expenses and costs, divided between the parties according to their respective rights and interests in the Property. That Plaintiffs recover its costs, including attorney fees, incurred for filing this action and in obtaining a judgment for partition by sale of the Property.

B
The Law of Partition by Sale

In Michigan, there are five common types of concurrent ownership that are recognized relative to the ownership of real property: tenancies in common, joint tenancies, joint tenancies with full rights of survivorship, tenancies by the entireties, and tenancies in partnership. *Wengel v Wengel*, 270 Mich App 86, 93 (2006).

In deciding whether or how to partition real property, a court exercises its equitable powers. See MCL 600.3301 (stating that actions containing claims for the partition of lands are equitable in nature); *Schaaf v Forbes*, 338 Mich App 1, 19 (2021).

Notably, MCL 600.3304 provides that only "persons holding lands as joint tenants or . . . as tenants in common may have those lands partitioned."[16] As the Court of Appeals explained in *DeVries v Brydges*, 57 Mich App 36, 42-43 (1974):

> MCL 600.3304 provides that tenants in common may have their land partitioned. In *Swan v Ispas*, 325 Mich 39, 44 (1949), the Court stated:
>
> > Courts of equity have jurisdiction, both under and independent of the statute (citation omitted), to decree partition of property held by co-tenants, the right of a co-tenant to partition is absolute, and when the character of the property is such as to be insusceptible of partition among the co-tenants, as is manifestly the case here, the court may order a sale of the property and distribution of the proceeds. *Henkel v Henkel*, 282 Mich. 473 (1937).

See also *In re Temple Marital Trust*, 278 Mich App 122, 143 (2008) ("Then, as now, the statutory right of partition was limited to joint tenants and tenants in common"); *Albro v Allen*, 434 Mich 271, 284 (1990) ("Michigan's partition statute provides that "[a]ll persons holding land as joint tenants or tenants in common may have those lands partitioned").[17]

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[16] The statute also provides that those subject to Chapter 34, the Uniform Partition of Heirs Property Act may have lands partitioned. However, the parties in this case are not subject to that chapter and therefore it is inapplicable.

[17] See also *In re Carini Estate,* unpublished opinion per curiam of the Court of Appeals, issued June 21, 2012 (Docket No. 302849) p 5 ("The right to partition is limited to joint tenants and tenants in common"); *Kulinski v Kulinski,* unpublished opinion per curiam of the Court of Appeals, issued December 9, 2014 (Docket No. 318091) p 5 ("All persons holding lands as joint tenants or as tenants in common may have those lands partitioned"); *Parr v Kemnitz*, unpublished opinion per curiam of the Court of Appeals, issued February 15, 2002 (Docket No. 226678) p 2 ("Persons holding lands as tenants in common may seek to have the land partitioned"); *Brewer v Middleton,* unpublished opinion of the United States Court of Appeals for the Sixth Circuit, issued August 18, 1995 (Case No. 94-cr-01196), p 2; 64 F3d 662 (Table) ("Michigan's partition statute provides that "[a]ll persons holding lands as joint tenants or as tenants in common may have those lands partitioned"). Although unpublished opinions of the Court of Appeals are not binding precedent, MCR 7.215(C)(1), they may, however, be considered instructive or persuasive and are so in the instant case. *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 145 n 3 (2010); *In re Application of Indiana Michigan Power Co*, 275 Mich App 369, 380 (2007).

The Michigan Limited Liability Company Act unambiguously provides that "[a] member has no interest in specific limited liability company property." MCL 450.4504(2). See also *VanderWerp v Plainfield Charter Tp*, 278 Mich App 624, 630 (2008) (finding that a member has no interest in the real property now owned by the limited liability company).

C
Analysis

In their First Amended Complaint, the Plaintiffs acknowledge that both Properties are owned by ESBRE, a Michigan limited liability company that holds and manages the two parcels of real estate at issue in this case. Both the Birmingham and Rochester Hills properties have a single owner, ESBRE, and neither are owned by joint tenants or tenants in common. Indeed, ESBRE is listed as the single and sole owner of both parcels on the respective mortgages.[18] Given the property ownership by one entity, partition is not permitted. See, e.g., MCL 600.3304; *In re Temple Marital Trust*, 278 Mich App at 143. Furthermore, the Plaintiffs have failed to properly recognize that ESB and ESBRE are separate and distinct legal entities, with different ownership, different assets, and different operations.[19]

In addition, the specific membership interests and percentages of ESBRE are irrelevant to the sole ownership of the Properties by the limited liability company.

[18] The Plaintiffs' original complaint, Exhibit B.
[19] The corporate purpose of ESBRE is to own and operate the two parcels of real estate at issue in this case. Non-party ESB operates a brewery, restaurant and tap room.

Pursuant to Michigan's Limited Liability Company Act, the members of ESBRE do not have any ownership in ESBRE's real estate or other assets. See MCL 450.4504(2).

Because MCL 600.3304 and corresponding Michigan jurisprudence provide that partition is only available when land is owned by two or more persons or entities "holding the lands as joint tenants or tenants in common," and the Plaintiffs have not (and cannot) pled that the Parties are truly joint tenants of the Properties, summary dismissal of this claim is warranted,

VI
The Plaintiffs' Claim for Statutory Dissolution (Count II) Has Not Been Properly Pled

A
The Allegations

In their First Amended Complaint, the Plaintiffs state as follows:

> 34. ESBRE was formed for the primary purpose of holding and managing specific real estate properties, i.e. the Properties, which constitute its only asset.
>
> 35. The continuing Oakland County Circuit Court litigation and the Bankruptcy matter by Defendant Bonnie LePage Trust on behalf of ESB (now on appeal after it being dismissed) has jeopardized ESBRE, created an untenable situation between Plaintiffs and Defendant Roge Bear, LLC - the only Members of ESBRE.
>
> 36. Because of Defendant LePage Trust's actions in filing the Bankruptcy of ESB as the Managing Member of ESBRE, it is no longer possible to continue ESBRE.

37. Sale of the Property owned by ESBRE by judicial order is the only practical solution, as the parties are deadlocked, and the proceeds should be distributed among its members in accordance with the Operating Agreement.

38. As a result, ESBRE will no longer hold any real property or engage in any business activities, rendering its continued existence without purpose.

39. The dissolution of ESBRE is therefore proper and in the best interest of the members, as it will facilitate the orderly wind-up of its affairs and terminate the entity's legal existence.

40. Dissolution will not prejudice the rights or interests of any parties, as all material assets will have been disposed of, and liabilities, if any, will be settled in accordance with the Michigan Limited Liability Company Act and the terms of the Operating Agreement.

41. That pursuant to the Michigan Limited Liability Company Act, MCL 450.4802, ESBRE should be dissolved by a judgment of this Honorable Court.

B
The Law of Statutory Dissolution

Regarding dissolution, the Michigan Limited Liability Company Act ("LLCA") provides,

> A limited liability company is dissolved and its affairs shall be wound up when the first of the following occurs:
>
> > (a) Automatically, if a time specified in the articles of organization is reached.
> >
> > (b) If a vote of the members or other event specified in the articles of organization or in an operating agreement takes place.
> >
> > (c) The members entitled to vote unanimously vote for dissolution.

(d) Automatically, if a decree of judicial dissolution is entered.

(e) A majority of the organizers of the limited liability company vote for dissolution, if the limited liability company has not commenced business; has not issued any membership interests; has no debts or other liabilities; and has not received any payments, or has returned any payments it has received after deducting any amount disbursed for payment of expenses, for subscriptions for its membership interests.

[MCL 450.4801]

The LLCA continues:

Upon application by or for a member, the circuit court for the county in which the registered office of a limited liability company is located may decree dissolution of the company whenever the company is unable to carry on business in conformity with the articles of organization or operating agreements.

[MCL 450.4802.]

C
Analysis

While the LLCA provides for dissolution upon certain conditions, see MCL 450.4801 and MCL 450.4802, the Plaintiffs have not sufficiently asserted that any of the requisite conditions occurred.[20]

[20] See *BSA Mull, LLC v Garfield Inv Co,* unpublished opinion per curiam of the Court of Appeals, issued September 30, 2014 (Docket No. 310989) p 15 (the Court of Appeals affirmed the trial court's denial of dissolution due to the plaintiff's failure to assert that any of the conditions in MCL 450.4801 and MCL 450.4802 occurred).

First, regarding the limited liability company ("LLC") dissolution criteria specified in MCL 450.4801, the Plaintiffs have failed to allege any of the statutory conditions have occurred. See MCL 450.4802(a)-(e). The Plaintiffs have not alleged that a time specified in the Articles of Organization has been reached. MCL 450.4802(a). A judicial decree of dissolution has not been entered. MCL 450.4802(d). Nor do the Plaintiffs allege that any type of vote has occurred. MCL 450.4802(b), (c), and (e).

Second, regarding the grounds for LLC dissolution set forth in MCL 450.4802, the Plaintiffs have failed to allege that ESBRE is unable to carry on business in conformity with the respective Articles of Organization or Operating Agreement. The Plaintiffs acknowledge that the Defendant ESBRE exists for the purpose of owning and operating two pieces of real estate – namely, the Birmingham and Rochester Hills parcels of land. Markedly, the Plaintiffs do not allege that ESBRE cannot continue its corporate function of owning and operating the two Properties. Likewise, the Plaintiffs do not plead any facts in their First Amended Complaint that indicate ESBRE is unable to continue its corporate function of owning and operating the two Properties. In addition, the Plaintiffs have failed to specify its purported basis for the dissolution – the alleged "deadlock" among the members – and have also failed to allege that the alleged deadlock renders ESBRE unable to carry on its business. Moreover, the Plaintiff's allegations seemingly focus on ESB, a separate and distinct legal entity that is not a party to this case. The dealings and operations of non-party ESB cannot be substituted for the Defendant ESBRE, so as to lend credence or viability to the Plaintiffs' claim for dissolution of ESBRE. Even

accepting the allegations regarding ESB as true, the Plaintiffs fail to sufficiently allege how ESB's actions render ESBRE unable to carry on its respective business of owning and operating the two real estate properties at issue in this case.

In sum, the Plaintiffs have not alleged that ESBRE is unable to carry on business in conformity with its purpose of owning and operating the two parcels of land in Birmingham and Rochester Hills.

Based on the foregoing, the Plaintiffs have failed to state a viable claim for dissolution. As such, the Defendants' motion pursuant to (C)(8) is GRANTED, and the Plaintiffs' dissolution of ESBRE claim (Count II) is DISMISSED.

ORDER

In light of the foregoing Opinion, the Defendants' Motion for Summary Disposition is **GRANTED**. All other requests for relief are denied. Any request to further amend the complaint must be made by motion no later than October 10, 2025 or be deemed abandoned.

/s/ Michael Warren

HON. MICHAEL WARREN
CIRCUIT COURT JUDGE