

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

THOMAS E. SANDON, JR.,

Plaintiff/Counter-Defendant,

Case No. 23-203933-CB
Hon. Victoria A. Valentine

v

MICHELLE W. LEIST,

Defendant/Counter-Plaintiff.

**OPINION AND ORDER REGARDING DEFENDANT/COUNTER-PLAINTIFF
MICHELLE LEIST’S MOTION FOR SUMMARY DISPOSITION**

At a session of said Court, held in the
County of Oakland, State of Michigan
October 25, 2024

HONORABLE VICTORIA A. VALENTINE

This matter is before the Court on the Defendant/Counter-Plaintiff Michelle Leist’s Motion for Summary Disposition. This Court has reviewed the pleadings filed by the parties and the motion, response, and reply. Oral argument was held on the above-entitled motion on October 2, 2024.

OPINION

I.

Overview

This case arises out of the sale of an accounting firm and the subsequent disagreement among the former partners as to how the purchase price should be allocated. Thomas E. Sandon, Jr. (“Sandon”) and Michelle W. Leist (“Leist”) formed Sandon, Leist & Company, PLLC (the

“PLLC”) in January 1999.¹ Sandon made an initial contribution of \$9,000 and had a 75% capital interest, whereas Leist contributed \$3,000 and had a 25% capital interest.² Sandon alleges that he and Leist agreed that Sandon’s retained goodwill from his prior accounting firm would be valued at \$270,000, and goodwill exceeding the base of \$270,000 would be allocated between the members of the new PLLC in accordance with their ownership interests.³

In January 2021, Sandon and Leist entered into an Asset Purchase Agreement for the sale of their accounting practice and business assets.⁴ The purchase price of \$375,000 was to be allocated as follows:

\$40,000	Personal Property (Sandon, Leist & Company, PLLC)
\$10,000	Covenant Not to Compete (Sandon and Leist)
\$325,000	Goodwill (Sandon and Leist)

Upon the closing of the sale, the parties opened a joint checking account with the intention that the funds from the sale payable to Sandon and Leist personally would be deposited into the account.⁵ Sandon alleges that Leist unilaterally withdrew \$105,748.64 from the joint account and retained the funds from October 2022 to March 2023.⁶ When Sandon discovered the withdrawal, he withdrew an additional \$102,998.93 and \$2,750 and escrowed the funds with counsel.⁷

Sandon filed his First Amended Complaint in December 2023 alleging breach of contract (Count I), violation of MCL 450.4515 (Count II), unjust enrichment (Count III), and conversion (Count IV). In turn, Leist filed a Counterclaim that also alleges breach of contract (Count I), includes a request for declaratory relief (Count II), and also alleges defamation (Count III). Leist now moves for summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10)

¹ First Amended Complaint, Exhibit A.

² *Id.*

³ First Amended Complaint ¶ 9.

⁴ *Id.* ¶ 11.

⁵ *Id.* ¶ 15.

⁶ *Id.* ¶ 17.

⁷ *Id.* ¶ 18.

seeking a dismissal of Sandon’s First Amended Complaint in its entirety and declaratory relief that she is entitled to 50% of the proceeds of the sale.

II.

Standards of Review

A. MCR 2.116(C)(8)

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; 934 NW2d 665 (2019); *Pawlak v Redox Corp*, 182 Mich App 758, 763; 453 NW2d 304 (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; 835 NW2d 413 (2013); *Parkhurst Homes, Inc v McLaughlin*, 187 Mich App 357, 360; 466 NW2d 404 (1991).

“All well-pleaded factual allegations are accepted as a true and construed in a light most favorable to the nonmovant.” *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999); *Wade v Dep’t of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (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 Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

B. MCR 2.116(C)(10)

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; 547 NW2d 314 (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*, 461 Mich at 119-120; *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; 619 NW2d 182 (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 120-121 (citations omitted). Likewise, it may not weigh credibility or resolve a material factual dispute in deciding the motion. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (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. A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. *El-Khalil*, 504

Mich at 160 (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

A. Breach of Contract

i. The Law of Contract

Under Michigan law “[a] party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach.” *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich 161, 178; 848 NW2d 95 (2014). A court’s “goal in contract interpretation is to give effect to the intent of the parties, to be determined first and foremost by the plain and unambiguous language of the contract itself.” *Wyandotte Elec Supply Co v Electrical Technology Sys, Inc*, 499 Mich 127, 143-144; 881 NW2d 95 (2016). “[I]t has long been the law in this state that courts are not to rewrite the express terms of contracts.” *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 199-200; 747 NW2d 811 (2008). See also *Kendzierski v Macomb County*, 503 Mich 296, 311-312; 931 NW2d 604 (2019) (emphasis in original) (“A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be *enforced as written*” and a court “will not create ambiguity where the terms of the contract are clear”).

“The rights and duties of parties to a contract are derived from the terms of the agreement.” *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 62; 664 NW2d 776 (2003). “A party’s expectations do not supersede the language of an unambiguous contract.” *Zwiker v Lake Superior State Univ*,

340 Mich App 448, 478; 986 NW2d 427 (2022), appeal denied, 10 NW3d 456 (Mich 2024). Accordingly, courts will “enforce only those obligations actually assented to by the parties.” *Wilkie*, 469 Mich at 63.

Under Michigan law, contracts are subject to the parol evidence rule which prohibits the use of extrinsic evidence to interpret unambiguous language within the contract. *Shay v Aldrich*, 487 Mich 648, 667; 790 NW2d 629 (2010). See also *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 492; 579 NW2d 411 (1998) (quotation marks and citation omitted) (“[p]arol evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary the written contract, is not admissible to vary the terms of a contract which is clear and unambiguous.”)

The question of whether contract language is ambiguous is a question of law. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). A contract is ambiguous if there is an irreconcilable conflict between provisions in the contract or “when a term is equally susceptible to more than a single meaning.” *Bodnar v St John Providence, Inc*, 327 Mich App 203, 220; 933 NW2d 363 (2019). Under such circumstances the ambiguous contract language presents a question of fact. *Klapp*, 468 Mich at 469. “[I]f a contract is ambiguous, then extrinsic evidence is admissible to determine the actual intent of the parties.” *Shay*, 487 Mich at 667 (quotation marks and citation omitted). See also *Klapp*, 468 Mich at 469 (“In resolving such a question of fact, i.e., the interpretation of a contract whose language is ambiguous, [trier of fact] is to consider relevant extrinsic evidence”).

ii. *Sandon’s Claim for Breach of Contract Relies on an Agreement Not Attached*

As a preliminary matter, where a cause of action is based on a written agreement, “a copy of the instrument or its pertinent parts must be attached to the pleading” unless an exception to this

rule applies. MCR 2.113(C). If the written instrument is “inaccessible to the pleader,” the pleading must state this and give the reason why the instrument is inaccessible. MCR 2.113(C)(1)(c).

The requirement to attach the written instrument to the complaint is mandatory. *Stocker v Clark Ref Corp*, 41 Mich App 161, 165; 199 NW2d 862 (1972) (interpreting an identical provision of former GCR 1963, 113.4). Where the complaint fails to attach the relevant agreement upon which a claim is based, the claim is insufficient as a matter of law, and summary disposition is appropriate under MCR 2.116(C)(8). See *Woodward Nursing Home, Inc v Med Arts, Inc*, unpublished per curiam opinion of the Court of Appeals, issued Jan. 24, 2006 (Docket No. 262794), p 3 (holding that because the plaintiff did not attach a copy of the written contract to the complaint, the pleadings were legally insufficient to state a claim for breach of contract).

Here, in the affidavit submitted by Sandon in support of his Response, Sandon states that on October 6, 2000, he and Leist “met to discuss the drafting and execution of a buy-sell agreement or stock redemption agreement preserving the first \$270,000 of professional goodwill to myself consistent with the agreement we made in November 1998.”⁸ According to Sandon, after the October 6, 2000 meeting, he wrote up a summary of the proposed agreement and he and Leist both signed the agreement.⁹ Although he retained the signed copy in his desk drawer, Sandon says his copy went missing and he only has access to the unsigned original in the permanent company file.¹⁰ Sandon argues that it is this separate agreement that governs the retention of goodwill because the Operating Agreement makes no reference to goodwill.¹¹

⁸ Plaintiff/Counter-Defendant’s Response to Defendant/Counter-Plaintiff’s Motion for Summary Disposition, Affidavit of Thomas E. Sandon Jr. ¶ 7.

⁹ *Id.* ¶ 8.

¹⁰ *Id.* ¶ 9.

¹¹ Plaintiff/Counter-Defendant’s Response to Defendant/Counter-Plaintiff’s Motion for Summary Disposition, p 11.

To the extent that Sandon argues there was an oral agreement regarding his retained goodwill prior to the formation of the PLLC, this agreement would be superseded by the Operating Agreement. The Operating Agreement contains an integration clause:

10.4 Entire Agreement. This Operating Agreement constitutes the entire agreement among the parties hereto and contains all of the agreements among said parties with respect to the subject matter hereof. This Operating Agreement supersedes any and all other agreements, either oral or written, between said parties with respect to the subject matter hereof.¹²

Here, however, Sandon has alleged that there was a separate written agreement executed by both parties in October 2000 that forms the basis for his breach of contract claim. As such, he was required to attach it to his complaint by MCR 2.113(C) or comply with one of the exceptions to that rule. Because he has failed to do so, his breach of contract claim is deficient as a matter of law and summary disposition is warranted under MCR 2.116(C)(8).

iii. Leist's Request for Declaratory Relief Depends on Issue of Fact

Leist separately seeks declaratory relief, arguing that she is entitled to 50% of the proceeds of the asset sale of Sandon, Leist & Company PLLC. According to Leist, because the Operating Agreement does not provide for any allocation for distribution among members, the Limited Liability Company Act fills in the gap. The version of MCL 450.4303(1)(b) that was in effect at the relevant time provides that “If an operating agreement does not provide for an allocation, distributions shall be allocated as follows: [. . .] (b) on or after the effective date of the amendatory act that added subsection (2), except as otherwise provided in subsection (2), *in equal shares to all members.*” (emphasis added).

This argument is without merit. The Operating Agreement that both parties signed in January 1999 provides the following regarding allocations and distributions:

¹² First Amended Complaint, Exhibit A § 10.4.

4.1 ALLOCATIONS. Except as may be required by the Internal Revenue Code of 1986, as amended, or this Operating agreement, net profits, net losses and other items of income, gain, loss, deduction and credit of the COMPANY shall be allocated among the MEMBERS according to their respective interest.

4.2 DISTRIBUTIONS. The MANAGERS may make distributions to the MEMBERS from time to time. Distributions may be made only after the MANAGERS determine in their reasonable judgment, that the COMPANY has sufficient cash on hand which exceeds the current and the anticipated needs of the COMPANY to fulfill its business purposes.

Exhibit A to the Operating Agreement includes the following initial contribution and capital interest:

<u>MEMBER</u>	<u>INITIAL CONTRIBUTION</u>	<u>CAPITAL INTEREST</u>
Thomas E. Sandon, Jr.	\$ 9000	75%
Michelle Waibel Leist	3000	25%

Thus, because Section 4.1 of the Operating Agreement specifies that distributions made to members must be allocated according to the capital interests outlined in Exhibit A, the default terms in MCL 450.4303 do not apply.

Leist next argues that if the capital interest allocations in Exhibit A of the Operating Agreement apply, the parties adjusted the ownership interests as shown in the Company's tax filings. For example, the most recent K-1 reflects a split of 56% capital interest allocation to Sandon, and 44% interest to Leist. The Operating Agreement, however, provides that it may only be amended by a written agreement signed by all parties:

10.6 AMENDMENT. This Operating Agreement may be amended or revoked at any time by a written agreement executed by all of the parties to this Operating Agreement. No change or modification to this Operating Agreement shall be valid unless in writing and signed by all of the parties to this Operating Agreement.

Here, the parties do not allege that there was an explicit written agreement to amend Exhibit A in the Operating Agreement. Rather, Leist argues that the K-1s altered the ownership interests in the PLLC and were signed by the parties. Sandon, in response, argues that these K-1s do not qualify as an amendment pursuant to Section 10.6. Section 10.6 of the Operating Agreement requires simply a written agreement signed by all parties. There is no evidence that the K-1s alter the Operating Agreement as the K-1 percentages changed throughout the years, and specifically state “Current year allocation percentage,” further, they K-1’s were not in fact signed by both parties. Accordingly, summary disposition is warranted.

B. MCL 450.4515

At the hearing on October 2, 2024, Leist stipulated to the dismissal of Count II to the extent that it alleges member oppression under MCL 450.4515 because the claim is no longer viable but sought to keep the claim alive to the extent that it alleges breach of an oral agreement regarding funds in the joint account.

Michigan is a notice-pleading jurisdiction in which “the primary function of a pleading in Michigan is to give notice of the nature of the claim or defense sufficient to permit the opposite party to take a responsive position.” *Stanke v State Farm Mut Auto Ins Co*, 200 Mich App 307, 317; 503 NW2d 758 (1993). MCR 2.111(B)(1) requires that a complaint contain “the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend.”

In the present matter, Count II of the First Amended Complaint is labeled “Violation of MCL 450.4515 as to Defendant Leist,” referencing the statutory provision that outlines a cause of action for member oppression. To the extent that Count II is viewed as a claim for minority oppression under MCL 450.4515, it is dismissed by stipulation of the parties. To the extent that

this claim was intended to be a breach of contract claim relating to the alleged oral agreement regarding the joint account, it does not contain the allegations necessary to inform Sandon of the claim he is being called upon to defend, and it is deficient under MCR 2.111(B)(1). Accordingly, summary disposition is warranted.

C. Unjust Enrichment

i. The Law of Unjust Enrichment

Under the equitable doctrine of unjust enrichment, the law “indulges in the fiction of a quasi or constructive contract, with an implied obligation to pay for benefits received to ensure that exact justice is obtained.” *Kammer v Asphalt Paving Co, Inc v East China Twp Schs*, 443 Mich 176, 185-186; 504 NW2d 635 (1993) (quotation marks and citations omitted). “Because this doctrine vitiates normal contract principles, the courts employ the fiction with caution. . . .” *Id.* at 186.

“A claim of unjust enrichment requires the complaining party to establish (1) the receipt of a benefit by the other party from the complaining party and (2) an inequity resulting to the complaining party because of the retention of the benefit by the other party.” *Karaus v Bank of NY Mellon*, 300 Mich App 9, 22-23; 831 NW2d 897 (2012). “Courts may not imply a contract under an unjust-enrichment theory if there is an express agreement covering the same subject matter.” *Zwiker*, 340 Mich App at 482, citing *Belle Isle Grill Corp v Detroit*, 256 Mich App 463 478; 666 NW2d 271 (2003).

While the question of whether a claim for unjust enrichment can be maintained is a question of law, the question of whether a specific party has been unjustly enriched is generally a question of fact. *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 195; 729 NW2d 898 (2006).

ii. Sandon’s Unjust Enrichment Claim Fails Because of the Express Contracts

In the instant case, the First Amended Complaint alleges the following in support of Sandon's unjust enrichment claim:

46. Leist wrongfully removed funds in excess of those she was entitled to receive, to the detriment of Sandon who was entitled to the funds.

47. An inequity would result if Leist was allowed to profit from money taken from Sandon her professional partner who had trusted her to act with integrity in the sale of their accounting firm and the receipt of the Goodwill.¹³

Sandon alleges that there are three separate agreements that govern the allocation of the funds from the sale and the joint bank account: (1) the Operating Agreement that was signed by both parties, (2) the written agreement regarding Sandon's retained goodwill which was allegedly signed by both parties but lost, (3) the oral contract entered into between Sandon and Leist when they established the joint bank account to hold the goodwill payments.

The Operating Agreement, which was signed by both parties in January 1999, outlines the initial contributions and capital interest of each member of the PLLC and provides that distributions would be allocated in accordance with the capital interest. Additionally, the Operating Agreement provides that it was "the entire agreement among the parties hereto and contains all of the agreements among said parties with respect to the subject matter hereof."¹⁴ Thus, to the extent that any oral agreement existed prior to the execution of the Operating Agreement that related to the formation of the PLLC, it would be superseded by the integration clause.

Sandon maintains that a separate signed contract was created in October 2000 which memorialized the parties' agreement that Sandon retained \$270,000 in goodwill. To the extent that this agreement exists, it would vary the terms of the Operating Agreement. If it does not, the

¹³ First Amended Complaint ¶¶ 46-47.

¹⁴ First Amended Complaint, Exhibit A § 10.4.

proceeds would be allocated according to the Operating Agreement. In either scenario, the distribution of the sales proceeds would be determined by the parties' written agreement. Therefore, the Court cannot imply a contract under an unjust enrichment theory where a written agreement exists covering the same subject matter. Accordingly, summary disposition of the claim for unjust enrichment is warranted.

D. Common Law and Statutory Conversion

i. The Law of Conversion

Common law conversion is defined as “any distinct act of dominion wrongfully exerted over another’s personal property in denial of or inconsistent with his rights therein.” *Aroma Wines & Equip, Inc v Columbian Distrib Servs, Inc*, 497 Mich 337, 351-352; 871 NW2d 136 (2015) (quotation marks and citation omitted). Statutory conversion under MCL 600.2919a is similar but includes the added element that property was converted to the defendant's “own use.” *Id.* at 354-357.

Where money is withdrawn from a joint account that belongs equally to both parties, the mere fact of withdrawing the money from the account cannot be considered conversion because “a person cannot convert his or her own property as a matter of law.” *Peppler v Peppler Agency, Inc*, unpublished per curiam opinion of the Court of Appeals, issued Dec. 13, 2011 (Docket No. 300194), p 8. See also *Dep’t of Treasury v Comerica Bank*, 201 Mich App 318, 325; 506 NW2d 283 (1993). However, “it is the realities of ownership that govern the respective rights of the parties to a particular joint account.” *Estate of Lewis by Lewis v Rosebrook*, 329 Mich App 85, 105; 941 NW2d 74 (2019).

Under Michigan law, a “defendant’s failure to perform a contractual duty cannot give rise to a tort action, unless a separate-and-distinct duty exists separate from the contractual

obligations.” *1-800 Bathtub, LLC v. ReBath, LLC*, unpublished per curiam opinion of the Court of Appeals, issued Apr. 18, 2024 (Docket No. 357932), p 9. In other words, a conversion claim cannot lie when the alleged duty not to convert is the same as the party’s duty under a contract. *Id.* Fundamentally, where the “ability or opportunity” for conversion arose by virtue of the contractual relationship between the parties, and there is no separate duty distinct from that existing under the contractual obligations, any action must be based on the contract and not in tort. *Id.*

ii. *Conversion is Possible from Joint Account, but Sandon’s Claim Sounds in Contract, not Tort*

In the instant case, Leist argues that the Sandon’s conversion claim fails as a matter of law because the funds were withdrawn from a joint account, and as such, there can be no conversion claim. The Court of Appeals recently addressed this argument in *Estate of Lewis by Lewis v Rosebrook*, 329 Mich App 85, 107; 941 NW2d 74 (2019). In that case, Robert Lewis and Carol Rosebrook lived together as a couple for approximately 24 years but never married. *Id.* at 89. They held a number of joint bank accounts, three of which were relevant in the lawsuit. When the parties ended their relationship in January 2017, Rosebrook transferred approximately \$255,000 from the three joint accounts (essentially all the funds in the joint accounts) to accounts solely in her name. Lewis sued Rosebrook for, among other things, conversion of the funds in the joint bank account. The Court of Appeals held that although Rosebrook had the right to withdraw all of the funds in the three joint accounts, “the probate court erred by conflating the right to withdraw with the right to retain and use the funds for her own benefit despite Lewis’s coownership rights.” *Id.* at 107. Accordingly, the Court held that each party’s proportional share could be determined, and Rosebrook was “liable under a conversion theory to return the funds taken in excess of her 50% proportional share.” *Id.*

Thus, even though the funds at issue in the instant case were withdrawn from a joint account, a conversion claim is not precluded as a matter of law.

Unlike in *Estate of Lewis*, however, the amount that Leist is entitled to receive from the sale of the PLLC's assets will be determined by the terms of an express contract between the parties. Specifically, the Operating Agreement and the alleged agreement regarding Sandon's retained goodwill determine the allocation of the funds due to each party. To the extent that Leist withdrew funds from the joint account in excess of what she was entitled to, this would be a breach of the distribution and allocation provisions in the agreements between the parties and not a separate tort claim.

In his response, Sandon argues that he and Leist were "partners" and independent fiduciary duties arose by virtue of that partnership. In the case cited by Sandon, however, the Court of Appeals clarified that:

If it were to be assumed that a partner's breach of his fiduciary duty or appropriation of partnership equipment and business contracts to his own use and profit are torts, it is clear that the duty breached arises from the partnership contract. One acquires the property interest of a cotenant in partnership only by the contractual creation of a partnership; one becomes a fiduciary in partnership only by the contractual undertaking to become a partner. There is no tortious conduct here existing independent of the breach of the partnership contract.

[*Urbain v Beierling*, 301 Mich App 114, 125; 835 NW2d 455, 460 (2013), citing *Gilroy v Conway*, 151 Mich App 628; 391 NW2d 419 (1986)]

Here, the allocation of funds from the sale of the PLLC's assets will be determined by the parties' agreements. Accordingly, the conversion claim fails as a matter of law because there is no duty separate from the duties arising from the contractual agreements. Accordingly, summary disposition is warranted.

ORDER

Based upon the foregoing Opinion:

IT IS HEREBY ORDERED that the Defendant's Motion for Summary Disposition of Count I (Breach of Contract) is GRANTED.

IT IS FURTHER ORDERED that the Defendant's request for declaratory relief declaring that she is entitled to 50% of the proceeds of the asset sale is DENIED. The allocation of the Goodwill is pursuant to the Operating Agreement.

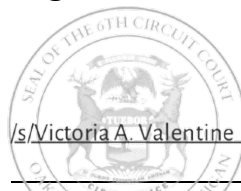
IT IS FURTHER ORDERED that the Defendant's Motion for Summary Disposition of Count II (Violation of MCL 450.4515) is GRANTED.

IT IS FURTHER ORDERED that the Defendant's Motion for Summary Disposition of Count III (Unjust Enrichment) is GRANTED.

IT IS FURTHER ORDERED that the Defendant's Motion for Summary Disposition of Count IV (Common Law Conversion and Statutory Conversion Pursuant to MCL 600.2919a) is GRANTED.

The only remaining Count is Defendant's Counterclaim for Defamation.

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

The seal of the 6th Circuit Court is circular, featuring an eagle with spread wings perched on a shield. The text "SEAL OF THE 6TH CIRCUIT COURT" is inscribed around the perimeter. Below the eagle, the name "VICTORIA A. VALENTINE" is written.

/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
CIRCUIT COURT JUDGE

Dated: 10/25/24