STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

NARESH PATEL,

Plaintiff, **Case No: 19-008437-CB**

-v- **Hon. Annette J. Berry**

ASIAN AMERICAN HOTEL OWNERS ASSOCIATION, INC., a foreign [Georgia] non-profit corporation, and DILIPKUMAR PATEL a/k/a DIPAK PATEL, an individual,

Defendants.

OPINION AND ORDER

At a session of said Court held in the Coleman A. Young Municipal Center, Detroit, Wayne County, Michigan,
on this: 8/23/2023

PRESENT: Hon. Annette J. Berry
Circuit Judge

This civil matter is before the Court on a motion to revisit a renewed motion for summary disposition, the original renewed motion for summary disposition filed by Defendant Asian American Hotel Owners Association, Inc. ("AAHOA"), and a motion for summary disposition filed by Defendant Dilipkumar ("Dipak") Patel. This matter comes to the Court after remand from the Court of Appeals, *Patel v Asian American Hotel Owners Association Inc, et al,* Order of Court of Appeals issued on May 6, 2022 (Docket No. 360304), leave denied, *Patel v Patel*, 981 NW2d 496 (Mich, 2022), (also denying

conditional application for cross-appeal). For the reasons stated below, the Court grants the motions.

I. BACKGROUND

This case is now before its third judge. The two prior judges have since retired and the case was reassigned to this Court. The original judge assigned to this case was Hon. Lita M. Popke. The case was then reassigned to Hon. David A. Groner. Both Judge Popke and Judge Groner have entered orders affecting claims against certain defendants.

This case arises out of a complaint filed by Plaintiff Naresh ("Nick") Patel including a claim for breach of contract (Count I), a request for declaratory relief (Count II), a claim for defamation (Count III), a claim for fraud and misrepresentation (Count IV), a claim for civil conspiracy (Count V), a claim for conversion (Count VI), a claim for tortious interference with business relationship (Count VII), a claim for breach of fiduciary duty (Count VIII), a claim for unfair competition (Count IX),[1] and a request for equitable relief (Count X).[2]

Plaintiff Naresh Patel and Defendant Dilipkumar ("Dipak") Patel are members of both the AAHOA and the Samaj Social Club. They also held the same seat on the AAHOA'S Board of Directors. Plaintiff replaced Defendant Patel in that role in 2017. In October 2018, Defendant Dipak Patel submitted an "Ethics Complaint" to the AAHOA. The "Ethics Complaint" was based on allegations that Plaintiff obtained funds from AAHOA to pay for an event at the Samaj Hall. According to the "Ethics Complaint," "there was no event was (sic) organized by Samaj and requested $1200 for sponsorship and [a]ll info provided to AAHOA was not true. Totally lied to AAHOA."

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1 Plaintiff's complaint mistakenly names this as "Count IV."
2 Plaintiff's complaint mistakenly names this as "Count VII."

The AAHOA is headquartered in Georgia and the ethics dispute was submitted to arbitration in Georgia. The arbitration panel found the following:

ARBITRATION AWARD

...

Determination and Award

After careful consideration of the facts above and all submissions by the persons involved in this matter on behalf of AAHOA the Arbitrators hereby issue the following determination and "Award":

1. There is a lack of any evidence in the record confirming that a February 17, 2018 event occurred as a replacement for the December 23, 2017 event. There is an absence of primary evidence such as receipts, affidavits or other evidence proving that such an event occurred. There is insufficient evidence that the February 17, 2018 event occurred and it is undisputed that the sponsorship money has not been returned.

2. Nick signed the AAHOA Ethics & Enforcement Policy and by doing so, agreed to its terms.

3. By accepting $1200 from AAHOA for the sponsorship of an event for SV that did not occur, and by not returning or facilitating the return of these sponsorship funds:

a. Nick violated Sections 1. 2, 4, 5 and 13 of the AAHOA Code of Conduct set forth in the Ethics 8: Enforcement Policy which, according to AAHOA policy, constitutes an ethics violation; and

b. Nick violated the Conflict of Interest provision of the AAHOA Ethics & Enforcement Policy.

4. According to the binding procedures for arbitrators set forth in the AAHOA Ethics & Enforcement Policy, arbitrators considering ethics violations are only permitted to issue reprimands and then, only one of eight specific reprimands...

5. Accordingly, the Arbitrators conclude that Nick should be reprimanded by being removed from the Board of Directors and being suspended from committee participation or Board

> elections for a period of eighteen (18) months (Option "e" of available reprimands).
>
> [Plaintiff's Exhibit F] [Emphasis added].

Hence, the arbitration concluded that Plaintiff should be reprimanded by being removed from the AAHOA Board of Directors. The Board of Directors then adopted the recommendation and removed Plaintiff from the Board of Directors sometime in 2018. Plaintiff filed the instant lawsuit on June 17, 2019. The complaint alleged that Defendant Patel lied in the ethics complaint and that the ethics complaint was part of a conspiracy involving several individuals, many of whom seem to be AAHOA officers and/or board members.

Originally, there were numerous defendants named in this case, many of whom were dismissed from the case pursuant to orders entered by Judge Popke. The following defendants were dismissed by Judge Popke:

- Defendants Babu Patel and Vipul Patel (order dated September 20, 2019);
- Defendants Biran Patel, Nishant Patel, Vinay Patel, Jagruti Panwala, Rachel Humphrey, Kathryn Stone, Hitesh H.P. Patel or Chip Rodgers, and the Board of Directors of the Asian American Hotel Owners Association, Inc. (opinion and order dated November 5, 2019);
- Nayana Patel and Surat Valsad Samaj of Detroit (a/k/a Surat/Valsad Social Club of Michigan (order dated December 3, 2019).

Thereafter, the case was reassigned to Hon. David A. Groner. Judge Groner issued an Opinion and Order regarding Plaintiff's motion for reconsideration, Defendant Dilipkumar Patel's motion for summary disposition, and Defendant AAHOA'S motion for summary disposition. On January 25, 2022, Judge Groner issued his Opinion and Order, which addressed both Defendant Patel's and Defendant AAHOA's motions for summary disposition.

> Defendant Patel's invocation of the litigation privilege has merit, as the Court agrees that any statements made to an arbitration panel are privileged, at least for purposes of the theories of liability pled in the complaint.
>
> [Trial Court's Opinion and Order, p. 3] [Emphasis added].
>
> ...
>
> Defendant Patel's invocation of res judicata and collateral estoppel, on the other hand, has no merit. This is simply because those doctrines apply only when a prior ruling constitutes a final judgment, and it is undisputed that the Georgia arbitration award was never reduced to judgment. Thus, the arbitration award does not preclude any of the claims asserted in this case, at least not on grounds of res judicata or collateral estoppel.
>
> *Id.*
>
> ...
>
> Defendant AAHOA'S res judicata and collateral estoppel arguments are essentially identical to Defendant Patel's and, therefore, fail for the same reasons.
>
> *Id.*
>
> ...
>
> Defendant AAHOA's challenge to Plaintiff s defamation claim, on the other hand, has merit. The problem arises out of the fact that defamation must be pled with particularity, but Plaintiff s complaint offers no specifics of any kind as to what defamatory statements were made by the AAHOA, who made them, where and when, and who heard it.
>
> *Id.*

Thus, Judge Groner held that, because no final judgment was issued, res judicata and collateral estoppel do not apply to the arbitration panel's decision. He further held that Plaintiff's defamation claim against Defendant Patel to the extent that statements made outside of arbitration may be considered. He also held that the defamation claim against AAHOA must be dismissed for failure to plead with particularity.

Plaintiff's motion for reconsideration only addressed the exclusion of evidence after discovery had closed. Judge Groner held:

> … because any prejudice from the untimely production is largely mitigated by the fact that, due to the ongoing pandemic, trial in this matter is unlikely to commence soon. Thus, Plaintiff s motion for reconsideration is granted, and the evidence at issue shall not be excluded…

On February 15, 2022, AAHOA filed an application for leave to appeal. *Patel, supra.* The Court of Appeals issued an order in lieu of granting leave to appeal. In its order, the Court of Appeals has directed this Court to " reconsider appellant's motion for summary disposition in light of" its determination that "[t]he trial court erred by holding that neither res judicata nor collateral estoppel were applicable" and that a decision of an arbitration panel "'on matters of fact and law is conclusive, and all matters in the award are thenceforth res judicata, on the theory that the matter has been adjudged by a tribunal which the parties have agreed to make final, a tribunal of last resort for that controversy.'" *Patel, supra*, quoting *Lumbermen's Mut Cas Co v Bissell,* 220 Mich 352, 354; 190 NW 283 (1922). The Court of Appeals also ordered:

> In all other respects, leave to appeal is DENIED for failure to persuade this Court of the need for immediate appellate review.
>
> *Id.*

This Court must comply with the Court of Appeals' Order. "[W]hen a higher court has remanded a case, it is the duty of the lower court to comply with the remand order. *AFT v State*, 334 Mich App 215, 226; 964 NW2d 113 (2020), citing *Rodriguez v Gen Motors Corp (On Remand)*, 204 Mich App 509, 514; 516 NW2d 105 (1994). Thus, this Court will only consider whether res judicata or collateral estoppel is applicable to an

arbitration panel's determination, but will leave in place this Court's earlier decision. Accordingly, Counts III (defamation) and VI (conversion) are dismissed from the case. The remaining claims will be considered in light of the issue of res judicata and collateral estoppel.

II. STANDARDS FOR DETERMINING MOTIONS FOR SUMMARY DISPOSITION

AAHOA's motion is based on MCR 2.116(C)(7), (8), and (10). Under MCR 2.116(C)(7), summary disposition is appropriate if a claim is barred because of "an agreement to arbitrate[.]" *Altobelli v Hartmann*, 499 Mich 284, 295; 884 NW2d 537 (2016). A motion under MCR 2.116(C)(7) is appropriately granted when a claim is barred by an agreement to arbitrate. *Maiden v Rozwood*, 461 Mich 109, 118 n 3; 597 NW2d 817 (1999). "A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence." *Id.* at 119, 597 NW2d 817. However, "'a movant under MCR 2.116(C)(7) is not required to file supportive material, and the opposing party need not reply with supportive material. The contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant.'" *Id. Lebenbom v UBS Fin Servs., Inc*, 326 Mich App 200, 208; 926 NW2d 865 (2018).

MCR 2.116(C)(8) provides for summary disposition where "[t]he opposing party has failed to state a claim on which relief can be granted." A motion for summary disposition under (C)(8) tests the legal sufficiency of the complaint. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). The trial court may consider only the pleadings in rendering its decision. *Id.* All factual allegations in the pleadings must be accepted as true. *Dolan v Continental Airlines/Continental Express*, 454 Mich 373, 380-

381; 563 NW2d 23 (1997). "The motion should be granted if no factual development could possibly justify recovery." *Beaudrie*, *supra* at 130.

In reviewing a motion under MCR 2.116(C)(10), a court must consider the pleadings, admissions, affidavits, and other relevant documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). If no genuine issue of material fact is established, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

The moving party has the initial burden of supporting its position through documentary evidence. *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the opposing party to establish the existence of a genuine issue of material fact. *Id.* The non-moving party ". . . may not rest on the mere allegations or denials of his or her pleadings, but must, by affidavit or otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial." MCR 2.116 (G)(4). If the opposing party fails to do so, the motion for summary disposition is properly granted. Id.; *Quinto, supra* at 363. Finally, a "reviewing court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial. A mere promise is insufficient under our court rules." *Maiden, supra* at 121.

III. DISCUSSION

AAHOA first argues in its motion to revisit and in its renewed motion for summary disposition that all of Plaintiff's claims warrant dismissal under the doctrines of res judicata and collateral estoppel because they were conclusively decided in arbitration proceedings. It further asserts that the legal and factual decisions rendered by an arbitration panel preclude re-litigation of the claims.

In response, Plaintiff contends neither res judicata nor collateral estoppel apply because there was no final judgement in the arbitration proceedings. Plaintiff argues that "the AAHOA Rules clearly state that the Award is a recommendation and that the Arbitrators may choose from the recommendations..." [Plaintiff's Response to AAHOA's Renewed Motion for Summary Disposition, p. 12].

Preliminarily, as noted above, the claim for unfair competition (Count IX) in Plaintiff's complaint was mistakenly named as "Count IV" and the request for equitable relief (Count X) in Plaintiff's complaint was mistakenly named as "Count VII." Counts VII and IV (sic) were pled against individual defendants and the AAHOA Board of Directors. These defendants have been dismissed from the lawsuit. Hence, the remaining claims are for breach of contract, declaratory judgment determining that Plaintiff's removal from the Board of Directors was "ineffective, being contrary to the governance documents of AAHOA," [Complaint, p. 18], defamation as to Dipak Patel, fraud and misrepresentation, tortious interference with business relationship, and breach of fiduciary duty as to Dipak Patel. The civil conspiracy claim must be dismissed because all of the alleged co-conspirators have been dismissed from this case. AAHOA essentially argues that the remainder of Plaintiff's claims must be dismissed.

The burden of establishing the applicability of res judicata is on the party asserting it. *Baraga County v State Tax Comm*, 466 Mich 264, 269; 645 NW2d 13 (2002). The doctrine of res judicata, also referred to as "claim preclusion," "precludes relitigation of a claim when it is predicated on the same underlying transaction that was litigated in a prior case." *Duncan v Michigan*, 300 Mich App 176, 194; 832 NW2d 761 (2013). Specifically, res judicata bars a subsequent action when "(1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies." *Estes v Titus*, 481 Mich 573, 585; 751 NW2d 493 (2008).

Michigan courts have adopted "a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 418; 733 NW2d 755 (2007). "The test for determining whether two claims arise out of the same transaction and are identical for res judicata purposes is whether the same facts or evidence is essential to the maintenance of the two actions." *Schwartz v City of Flint*, 187 Mich App 191, 194-195; 466 NW2d 357 (1991).

Defendants also argue that Plaintiff's claims are barred by collateral estoppel. "Collateral estoppel, or issue preclusion, precludes re-litigation of an issue in a subsequent, different cause of action between the same parties or their privies when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding." *Ditmore v Michalik*, 244 Mich App 569, 577; 623 NW2d 642 (2001). The doctrine "requires (1) a question of fact essential to the

judgment was actually litigated and determined by a valid and final judgment, (2) the same parties had a full and fair opportunity to litigate the issue, and (3) there was mutuality of estoppel." *Estes*, *supra*. One of the elements of collateral estoppel is mutuality of estoppel. As explained by the Court in *Monat v State Farm Insurance Co*, 469 Mich 679, 682-684 (2004),

> [T]here must be mutuality of estoppel. Mutuality of estoppel requires that in order for a party to estop an adversary from relitigating an issue that party must have been a party, or in privy to a party, in the previous action. In other words, the estoppel is mutual if the one taking advantage of the earlier adjudication would have been bound by it, had it gone against him.

In the subsequent action, the ultimate issue to be concluded must be the same as that involved in the first action. *Detroit v Qualls*, 434 Mich 340, 357; 454 NW2d 374 (1990). The issues must be identical and not merely similar. *Keywell & Rosenfiield v Bithell*, 254 Mich App 300, 640; 657 NW2d 759 (2002). In addition, the common ultimate issues must have been both actually and necessarily litigated. *Qualls*, *supra.* Thus, "[c]ollateral estoppel applies only when the basis of the prior judgment can be clearly, definitely, and unequivocally ascertained." *Ditmore, supra* at 578.

As to the application of res judicata, there is no doubt that the claims made herein are identical to the claims made in arbitration, or at the least, stem from the ethics violation claims made in arbitration. They are predicated on the same underlying transaction that was litigated in a prior case, which was the Ethics Complaint made by Dipak Patel. *Duncan, supra.* The arbitration proceeding was decided on the merits of the Ethics Complaint involving the same parties and the first action was decided. *Estes, supra.* Plaintiff could have submitted his claims to arbitration because they all derive from the

same transaction. Hence, Plaintiff is precluded from "relitigation of a claim when it is predicated on the same underlying transaction that was litigated in a prior case." *Duncan, supra.*

Regarding the application of collateral estoppel, identical issues of fact were resolved in arbitration where the same parties had a fair opportunity to litigate the issue in the arbitration proceeding. *Estes, supra.* The remaining question is whether the "prior judgment can be clearly, definitely, and unequivocally ascertained." *Ditmore, supra.* It is clearly from the arbitration award that the panel "clearly, definitely, and unequivocally" issued a reprimand for removal of Plaintiff from the Board of Directors for an ethics violation.

Plaintiff asserts that neither res judicata nor collateral estoppel apply to the instant action for three reasons: (1) issues in the instant action were not adjudicated in arbitration; (2) Plaintiff was never afforded notice that any issue other than the claim for $1,200.00 was to be addressed in arbitration; and (3) the arbitration panel had no right to recommend removal of Plaintiff from the Board of Directors. The Court disagrees.

Arbitration is a matter of contract. *Altobelli v Hartmann*, 499 Mich 284; 884 NW2d 537 (2016). "Accordingly, when interpreting an arbitration agreement, we apply the same legal principles that govern contract interpretation. Our primary task is to ascertain the intent of the parties at the time they entered into the agreement, which we determine by examining the language of the agreement according to its plain and ordinary meaning." *Id* at 295. [Citations omitted]. "The burden is on the party seeking to avoid the agreement, not the party seeking to enforce the agreement." *Id* at 296. [Citation omitted].

The pertinent provisions of the arbitration contract herein provide:

> 1. ARBITRATION PROCESS. Arbitration is an adversarial procedure resulting in an Award by the Arbitrator(s).
>
> "The Arbitrators' opinions and Award SHALL be **BINDING** on all parties."
>
> [Plaintiff's Exhibit J, Arbitration Agreement, pp.1-2] [Emphasis in original].

Both Plaintiff and Defendant Dipak Patel signed the agreement. Thus, pursuant to the agreement, the arbitration panel's opinions are binding, whether advisory or not. The Award is also binding, which includes a recommendation that Plaintiff be removed from the Board of Directors. In addition, the procedures for Ethics Complaints are set forth in the AAHOA's Human Resources manual. The relevant portions of the manual are as follows:

> **6 ETHICS & ENFORCEMENT**
> ...
>
> **Arbitration**
> So as to provide for an unbiased review of any ethics complaint, a panel of three (3) arbitrators shall be the adjudicator of all breach complaints. ...
>
> **Procedures**
> 1. Any member, Board member, or management staff member shall have the right to submit an Ethics Complaint form, as provided by the President.
>
> 2. Complaints shall be submitted to the President. Complaints may not be anonymous.
> Complainants must submit substantial information and verifiable facts in the form of
> supporting documentation.
> ...
>
> 6. Arbitrators may recommend one of the recommendations below. If the arbitrators decide disciplinary action is necessary, the arbitrators may decide whether the recommendation is communicated to the Ambassadors and

> Past Chairmen, taking into consideration the effect on AAHOA's public image.
> ...
>
> The arbitrators (sic) reprimands will be limited to the following:
>
> a. No disciplinary action be taken
> ...
>
> d. Timed suspension from position
>
> e. Removal from position and timed ineligibility for committee participation or Board elections
>
> f. Removal from position and permanent revocation of committee participation or Board election privileges
> ...
>
> 7. The arbitration panel's determinations will be final and do not need to be confirmed or approved by the Board.
>
> [Plaintiff's Exhibit I, Human Resources, pp. 179-180] [Emphasis added].

Thus, under the arbitration procedures delineated in the AAHOA's Human Resources manual, arbitrators may recommend a variety of disciplinary actions, including removal of a board member from the Board of Directors. Furthermore, an arbitration panel's determinations are final. [Id]. Although the panel's determination was a recommendation, under both the agreement to arbitrate and the Human Resources' manual, the panel's determinations are final. The arbitration at issue here was decided on the merits and involves the same parties as the instant case. *Estes, supra.* Indeed, given the "broad approach to the doctrine of res judicata" that Michigan courts have adopted, "holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised

but did not," all of Plaintiff's claims in the instant case are barred by res judicata. *Washington, supra.*

In addition, collateral estoppel also bars Plaintiff's claims. A question of fact essential to the judgment was actually litigated and the same parties had a full and fair opportunity to litigate the issue. *Estes*, *supra*. The arbitration panel found the following facts:

- Nick signed the AAHOA Ethics & Enforcement Policy and by doing so, agreed to its terms.

- By accepting $1200 from AAHOA for the sponsorship of an event for SV that did not occur, and by not returning or facilitating the return of these sponsorship funds:

- Nick violated Sections 1. 2, 4, 5 and 13 of the AAHOA Code of Conduct set forth in the Ethics 8: Enforcement Policy which, according to AAHOA policy, constitutes an ethics violation; and

- Nick violated the Conflict of Interest provision of the AAHOA Ethics & Enforcement Policy.

Thus, the panel's findings of fact were essential to the panel's award, which was a recommendation that Plaintiff be reprimanded by removal from the Board. Plaintiff had the opportunity to make the claims made herein to the arbitration panel, but failed to do so. Therefore, Plaintiff's claims, which clearly emanate from an alleged ethics violation, are barred by collateral estoppel.

IV. CONCLUSION

Pursuant to the directive of the Court of Appeals in *Patel, supra*, this Court has concluded that res judicata and collateral estoppel bar Plaintiff's claims. Accordingly, the remainder of Plaintiff's claims are dismissed, Defendant AAHOA's renewed motion for

summary disposition, the motion to revisit the renewed motion, and Dipak Patel's motion for summary disposition are granted. MCR 2.116(C)(7); MCR 2.116(C)(8); and MCR 2.116(C)(10).

For the reasons stated in the foregoing Opinion,

IT IS ORDERED that the motion to revisit the renewed motion for summary disposition and renewed motion for summary disposition filed by Defendant Asian American Hotel Owners Association, Inc. is hereby **GRANTED;**

IT IS FURTHER ORDERED that the motion for summary disposition filed by Defendant Dilipkumar ("Dipak") Patel is hereby **GRANTED;**

IT IS FURTHER ORDERED that the complaint filed by Plaintiff Naresh Patel is hereby **DISMISSED** in its entirety;

IT IS FURTHER ORDERED that this resolves the last pending claim and **CLOSES** the case.

DATED: 8/23/2023

/s/ Annette J. Berry 8/23/2023

Circuit Judge