

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

**HALAAL INVESTMENTS, INC., ET AL.,
Plaintiffs,**

v.

**Case No. 18-170219-CB
Hon. James M. Alexander**

**HARUN ALI, ET AL.,
Defendants,**

and

**TVC FUNDING I, LLC,
Counter-Plaintiff/Cross-Plaintiff,**

v.

**HALAAL INVESTMENTS, INC., ET AL.,
Counter-Defendants,**

and

**HARUN ALI, ET AL.,
Cross-Defendants.**

_____ /

**OPINION AND ORDER RE: TVC FUNDING I, LLC'S MOTION
FOR SUMMARY DISPOSITION**

This matter is before the Court on Defendant/Counter-Plaintiff/Cross-Plaintiff TVC Funding I, LLC's Motion for Summary Disposition. The Court dispenses with oral argument pursuant to MCR 2.119(E)(3).

Factual Background

By way of background, Plaintiff Halaal Investments, Inc. ("Halaal") purchased property in Bloomfield Hills, Michigan on February 21, 2018. Thereafter, on August 20, 2018, Defendant

Harun Ali (“Ali”), then-president of Plaintiff Halaal, secured a Commercial Interest-Only Balloon Promissory Note on behalf of Halaal and in relation to the Bloomfield property in the amount of \$420,000.00. Defendant Ali subsequently secured the Bloomfield Hills Note with a mortgage on the Bloomfield Hills property on behalf of Halaal that same day. In addition, on August 20, 2018, Defendant Ali separately obtained a Construction Loan Agreement on certain property in Saline, Michigan on behalf of Halaal and in the amount of \$501,250.00. Finally, Ali secured the Saline Note with a Purchase Money Construction Mortgage on the property in Saline on behalf of Halaal. The Notes and Mortgages were executed by Defendant TVC Funding I, LLC and Defendant Ali in his capacity as president on behalf of Halaal.

It is Plaintiffs’ contention that Defendant Ali had no authority to enter into these contractual obligations and he did so without the knowledge or consent of Halaal’s shareholders or board members. What is more, Plaintiffs allege that Ali absconded with \$115,000.00 from the Bloomfield Note and Mortgage as well as \$170,972.27 from the Saline Note and Mortgage. Additionally, Plaintiffs assert that Ali utilized \$95,012.89 in corporate funds to purchase real property in Hazel Park, Michigan and he also stole approximately \$290,000.00 of company funds. On October 9, 2018, Halaal removed Ali as president of the corporation for cause.

On these general allegations, Halaal and its two majority shareholders and directors, namely Suhaib Salman and Fares Alsakkaf, filed their original Complaint against Defendants on November 30, 2018. In response, TVC filed a Counterclaim and Cross-claim on February 13, 2019.

Thereafter, Plaintiffs filed a First Amended Complaint on April 23, 2019 and a subsequent Second Amended Complaint on September 12, 2019 on claims titled: (Count One) Breach of Fiduciary Duty Under Common Law and MCL 450.1541 Against Defendant Ali; (Count Two)

Fraud and Misrepresentation Against Defendant Ali; (Count Three) Declaratory Relief Against Defendant TVC; (Count Four) Common Law and Statutory Conversion Pursuant to MCL 600.2919a Against Defendant Ali; (Count Five) Violation of MCL 450.1489 Against Defendant Ali; (Count Six) Rescission of Notes and Mortgages Against TVC; (Count Seven) Action for Accounting Against Defendant Ali; (Count Eight) Claim and Delivery Against Defendant Ali; (Count Nine) Quiet Title Against Defendant Farha; (Count Ten) Civil Conspiracy Against Defendants Farha and Ali in Regard to the Hazel Park Property; (Count Eleven) Common Law and Statutory Conversion; and, (Count Twelve) Quiet Title Pursuant to MCL 600.2932 Against TVC Funding I, LLC.

On May 15, 2019, Defendant Ali filed a Counter Complaint against Plaintiffs and on June 21, 2019, TVC filed its First Amended Counterclaim and First Amended Cross-claim. TVC's First Amended Counterclaim against Plaintiffs raises the following claims titled: (Count One) Breach of the Bloomfield Note; (Count Two) Breach of the Saline Note; (Count Three) Judicial Foreclosure as to the Bloomfield Property; (Count Four) Judicial Foreclosure as to the Saline Property; (Count Five) Equitable Mortgage as to the Bloomfield Property; and, (Count Six) Equitable Mortgage as to the Saline Property. Defendant TVC simultaneously filed its First Amended Cross-Claim against Defendant Ali and Defendant Farha on the following claims titled: (Count One) Fraud and Intentional Misrepresentation (against Ali only); (Count Two) Equitable Mortgage as to the Bloomfield Property (as to Ali only); (Count Three) Equitable Mortgage as to the Saline Property (as to Ali only); and, (Count Four) Equitable Lien as to the Hazel Park Property; (Count Five) Constructive Trust as to the Hazel Park Property; and, (Count Six) Indemnification (as to Ali only).

Subsequently, and in relation to Plaintiffs' Second Amended Complaint and its own First Amended Counterclaim, TVC filed its Motion for Summary Disposition pursuant to MCR 2.116(C)(8) and (C)(10). A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817. When analyzing such a motion, all well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dept of Corrections*, 439 Mich 158, 162-163; 483 NW2d 26 (1992). A (C)(8) motion may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* And, when deciding such a motion, the Court considers only the pleadings. MCR 2.116(G)(5). "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). (Citations omitted).

"A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In 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...in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Maiden, supra* at 120; *Quinto v Cross & Peters Co.*, 451 Mich 358, 362; 547 NW2d 314 (1996).

In its motion, TVC notes that only three of the twelve counts in Plaintiffs' Second Amended Complaint are directed toward it. Those counts are: (Count Three) Declaratory Relief Against Defendant TVC; (Count Six) Rescission of Notes and Mortgages Against TVC; and, (Count Twelve) Quiet Title Pursuant to MCL 600.2932 Against TVC Funding I, LLC.

Consequently, TVC is seeking summary disposition of these three claims in Plaintiffs' Second Amended Complaint as well as summary disposition in relation to its Counts One and Two, namely "Breach of the Bloomfield Note" and "Breach of the Saline Note," in its First Amended Counterclaim.

1. *Breach of the Bloomfield Note (Count One of the First Amended Counterclaim)*
Breach of the Saline Note (Count Two of the First Amended Counterclaim)

Relative to its breach of contract claims, TVC maintains that Halaal has not tendered the outstanding balances on the defaulted mortgage loans. TVC presents the Affidavit of Justin Wenk, Vice President of TVC, who attests that "Halaal defaulted on the Bloomfield Loan and the Saline Loan. The Bloomfield Loan and the Saline Loan both matured on September 1, 2019." See Exhibit 6 of TVC's Motion. TVC also offers the Affidavit of Melissa Cantu, the Assistant Vice President of Servis One, Inc. d/b/a BSI Financial Services, who attests that Halaal has defaulted on the Bloomfield and Saline loans, both of which matured on September 1, 2019. See Exhibit 7 of TVC's Motion.

Whereas Plaintiffs allege that Halaal should not be obligated to pay the subject loans, notes, and mortgages, TVC maintains that Ali had actual and apparent authority to bind Halaal to the loans, notes, and mortgages. Specifically, Ali had actual and apparent authority pursuant to the company's Articles of Incorporation, Bylaws, and Certificate of Resolution. Moreover, TVC argues that Ali acted with full authority and with permission from Halaal as the president¹ to obtain and enter into the mortgage loans.

¹ "Where the president is given power as general manager of the business with full direction and charge thereof, he has the power to do any act or make any contract that the president and general managing agent of such a corporation could do or make in the ordinary transaction of the corporate business, and *prima facie* has power to do any act which the directors could authorize or ratify, unless special limitations or restrictions are put upon such power, of which the party dealing with him has notice, or unless power to do the particular act is expressly given to another officer or agent." *Binkowski v Tech Plaza, Inc.*, 369 Mich 333, 336; 119 NW2d 589 (1963).

Under the July 31, 2017 Articles of Incorporation, TVC points out that Ali is listed as Halaal's director and resident agent. See Exhibit 1 of TVC's Motion. TVC highlights the fact that the Articles of Incorporation, which were filed with the Michigan Department of Licensing on August 28, 2017, also identify Ali as Halaal's director and resident agent. See Exhibit 12 of Plaintiffs' Response.

In addition, the July 24, 2017 Bylaws of Halaal Investments, Inc. granted Ali the following authority as president:

58. Subject to the control and supervisory powers of the Board and its delegate, the powers and duties of the President will be: (f) [t]o put the signature of the Corporation to all deeds, conveyances, mortgages, guarantees, leases, obligations, bonds, certificates and other papers and instruments in writing which have been authorized by the Board or which, in the opinion of the President, should be executed on behalf of the Corporation; to sign certificates for the Corporation's shares; and, subject to the instructions of the Board, to have general charge of the property of the Corporation and to supervise and manage all Officers, agents and employees of the Corporation.

62. Without authorization by a resolution of the Board, the Corporation is prohibited from making or accepting loans in its name or issuing evidences of indebtedness in its name. The authorization of the Board for the Corporation to perform these acts can be general or specific.

63. All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation must be signed by a designated Officer or Officers, agent or agents of the Corporation in a manner as will from time to time be determined by resolution of the Board. See Exhibit 2 of TVC's Motion.

Pursuant to paragraph 58, Ali had the authority as president to sign all deeds, conveyances, mortgages, guarantees, leases, obligations, bonds, certificates and other papers and instruments on behalf of Halaal that should be executed, in his opinion, on the company's behalf. While Halaal adopted its Bylaws on May 29, 2018, TVC notes that those Bylaws contain the identical language in paragraph 58 of the 2017 Bylaws that authorized its president to execute the mortgage loans on Halaal's behalf. See Exhibit 14 of Plaintiffs' Response.

Prior to the execution of the Bloomfield Loan, TVC maintains that Ali presented a Certificate of Resolution and Authorization of Agent, dated August 10, 2018, indicating that Ali represented 100% of Halaal's outstanding shares as the president, secretary, and treasurer of the company. The Certificate also provides that Halaal granted Ali "full authority to act as the Corporation's agent and is hereby authorized on behalf of the Corporation to incur any type of debt and bind the Corporation to any said debt regardless of the amount or type of debt incurred and can sign and submit all required documents necessary to effectuate and bind the debt being incurred" on behalf of Halaal. See Exhibit 6 of TVC's Motion.

TVC asserts further that the Certificate of Resolution is valid since Ali, as president, had full authority under Section 58 of the Bylaws to execute the mortgage loans on behalf of Halaal. TVC also argues that Ali presented that Resolution to TVC before it issued both mortgage loans on the properties. TVC offers the Affidavit of Justin Wenk, in which he attests that "[b]efore issuing any loans to Halaal Investments, Inc. ('Halaal'), its President Harun Ali presented TVC with an August 10, 2018 'Certificate of Resolution and Authorization of Agent.'" See Exhibit 6 of TVC's Motion. In his Affidavit, Justin Wenk attests that "[b]ased upon the Resolution and Halaal's Bylaws, TVC reasonably believed that Ali, as Halaal's President, had actual and apparent authority to enter into the Bloomfield and Saline Loans on behalf of Halaal [sic] there was nothing indicating that Ali could not act on behalf of Halaal."

What is more, TVC contends that it acted reasonably and was justified in believing that Ali had apparent authority to execute the loans on the company's behalf. That is, Ali was the president of Halaal who was responsible for the day to day operations. He was also a director and sole signatory on Halaal's corporate bank accounts. The mortgage and construction loans were consistent with Halaal's business as it bought, rehabilitated, and then sold real property.

Additionally, TVC asserts that Halaal ratified Ali's actions by using \$70,500.14 of the cash from the closing of the Saline Loan to purchase a property in Hazel Park, Michigan at a foreclosure/sheriff's sale. See Exhibit 9 of TVC's Motion; Purchase Agreement.

Moreover, TVC relies on Ali's Verified Counter-Complaint wherein he states that he was hired as Halaal's president on August 30, 2017 and as such, he was authorized "to act on behalf of the Corporation in order to fulfill the corporate mission, that being to buy, rehabilitate and sell properties for the benefit of the corporation giving him full authority to sign any and all documents required to fulfill the corporate mission." See Exhibit 3 of TVC's Motion. Essentially, Ali asserts that he was given the authority to buy and flip houses on behalf of Halaal. TVC also points to Ali's verified answer to Halaal's interrogatory number 8 in which Ali indicates that as president of Halaal, he "was granted the authority to represent the shareholders based on the agreement of the shareholders and as noted in the By-Laws" and pursuant to his job duties that were delegated to Ali as the president.

Based upon the foregoing, TVC argues that Halaal is bound by the Bloomfield Loan and the Saline Loan and has failed to make the mortgage loans' scheduled payments. As such, TVC asserts that Halaal is in default under both the Bloomfield Loan and the Saline Loan and it has not cured those defaults. TVC also contends that the mortgage loans' notes and mortgages provide that in the event of a default, TVC has the discretion to declare the principal amount, along with interest, to be due and TVC may pursue other remedies such as foreclosure. TVC acknowledges that the Court has already ordered the Bloomfield and Saline properties to be sold.

Accordingly, TVC contends that the Court should grant summary disposition in its favor on its breach of contract claims under MCR 2.116(C)(10). TVC maintains that it is entitled to \$1,008,155.44, plus interest, as the amount due and owing by Halaal. Additionally, TVC is

requesting recovery of its attorney fees and costs as provided by the subject mortgage loans and the applicable case law. “Contractual provisions for payment of reasonable attorney fees are judicially enforceable. In other words, a contractual clause providing that in the event of a dispute the prevailing party is entitled to recover attorney fees is valid. And attorney fees awarded under [such] contractual provisions are considered damages, not costs.” *Fleet Bus. Credit v Krapohl Ford Lincoln Mercury Co.*, 274 Mich App 584, 589; 735 NW2d 644 (2007). (Citations omitted).

In opposition, Plaintiffs argue that TVC was negligent in relying upon documents that did not grant Ali the authority to act on behalf of Halaal. That is, TVC relied on an unsigned Bylaws document, dated July 31, 2017, that was missing multiple pages and that did not have a timestamp of receipt from LARA. Assuming that TVC can reasonably rely upon these Bylaws, Plaintiffs contend that the July 31, 2017 Bylaws still reserve general oversight to the Board. Specifically, Section 26 provides that “[t]he business and affairs of [Halaal] will be managed by or under the direction of the Board.” Additionally, Paragraph 31 provides that “[a]ny action to be taken at any meeting of the Board or of any committee of the Board may be taken without a meeting if all members of the Board or committee, as the case may be, consent to it in writing...” Plaintiffs also rely on Section 58, which states that the powers and duties of the President are subject to the control and supervisory powers of the Board and its delegates. See Exhibit 10 of Plaintiffs’ Response.

Furthermore, Plaintiffs maintain that Ali was prohibited from accepting loans or issuing evidence of indebtedness without Board approval. For example, Section 62 of the July 31, 2017 Bylaws provides that “[w]ithout authorization by a resolution of the Board, the [Halaal] is prohibited from making or accepting loans in its name or issuing evidences of indebtedness in its name. The authorization of the Board for [Halaal] to perform these acts can be general or specific.”

Additionally, “[a]ll checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of [Halaal] must be signed by a designated Officer or Officers, agent or agents of [Halaal] and in a manner as will from time to time be determined by resolution of the Board.” See Section 63 of the July 31, 2017 Bylaws.

It is also Plaintiffs’ contention that TVC required a Resolution of the Board of Directors authorizing the corporation to borrow the \$420,000.00 amount on behalf of Halaal. See Schedule B of the Alta Commitment Form/Commitment for Title Insurance; Exhibit 16 of Plaintiffs’ Response. Here, Plaintiffs maintain that the Certificate of Resolution was not authorized by the Board and it relates to the Saline property only. Furthermore, Plaintiffs contend that TVC has not produced any documents to show that Ali had any interest in Halaal.

Next, Plaintiffs contend that TVC relied upon a fraudulent “List of Shareholders as of July 24, 2017” document that predates Halaal’s existence by more than one month. Plaintiffs attach the Affidavit of Fares Alsakkaf, a current shareholder of Halaal, who attests that “[n]either I nor any other person associated with Halaal Investments, Inc. approved or signed the document entitled ‘List of Shareholders as of July 24, 2017’ which is attached to TVC’s Motion as Exhibit 2, p. 19 and attached hereto as Exhibit A.” See Exhibit 14 of Plaintiffs’ Response. Plaintiffs also present as Exhibit 16 a copy of the List of Shareholders as of July 24, 2017 document, which is notarized without any signatures.

What is more, Plaintiffs contend that the \$170,972.27 in cash from the closing of the Saline Loan was withdrawn by Ali and deposited into his personal account. As a result, Plaintiffs never received a benefit from TVC or Ali. Based upon these arguments, Plaintiffs assert that there is no question of fact that Ali did not have the authority to bind Halaal to the Bloomfield Hills loan, note, and mortgage. Plaintiffs do maintain, however, that there are genuine issues of material fact

as to whether Ali had authority to bind Halaal for the Saline loan, note, and mortgage. “A court may not make a finding of fact or weigh credibility when ruling on a motion for summary disposition.” *Anzaldua v Neogen Corp.*, 292 Mich App 626, 637; 808 NW2d 804 (2011).

Not only has the Court considered the parties’ respective arguments and supporting documentation, but the Court also takes note of the case law concerning the actual or apparent authority of an agent.

“An agent's authority may be actual or apparent. An agent acts with actual authority when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act. Restatement (Third) of Agency: Actual Authority § 2.01 (2006). By contrast, [a]pparent authority is the power held by an agent or other actor to affect a principal's legal relations with third parties when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations. Restatement (Third) of Agency: Apparent Authority § 2.03 (2006).” *Mais v Allianz Life Ins. Co. of N. Am.*, 34 F Supp 3d 754, 762 (WD Mich 2014).

“In determining whether an agent possesses apparent authority to perform a particular act, the court must look to all surrounding facts and circumstances. The question here is whether an ordinarily prudent person, conversant with mortgage lending, would be justified in assuming [the agent] had the authority to accept prepayment of the mortgage.” *Meretta v Peach*, 195 Mich App 695, 699; 491 NW2d 278 (1992). (Citations omitted). “When an agent purporting to act for his principal exceeds his actual or apparent authority, the act of the agent still may bind the principal if he ratifies it.” *David v Serges*, 373 Mich 442, 443–44; 129 NW2d 882 (1964).

Here, it is uncontested that Defendant Harun Ali was the president of Halaal at the time the subject contracts were executed. To prove that he had the authority to enter into these loans, notes, and mortgages on Halaal's behalf, Ali presented various documents to TVC. First, Ali offered the July 26, 2017 Articles of Incorporation to TVC to demonstrate that he was the resident agent as well as the director of Halaal. It appears that these Articles of Incorporation were submitted for filing on August 28, 2017. See Exhibit 12 of Plaintiffs' Response. Next, Ali submitted a notarized document entitled the List of Shareholders as of July 24, 2017, which includes signatures of the incorporators as well as Harun Ali. Within this document, Ali is identified as having 100% ownership of 60,000 shares of Halaal.

Ali also provided TVC with a Certificate of Resolution and Authorization of Agent, which designates Ali as the president, secretary, and treasurer of Halaal. In the Certificate of Resolution, Ali is "granted full authority to act as the Corporation's agent" and "is hereby authorized on behalf of the Corporation to incur any type of debt and bind the Corporation to any said debt regardless of the amount or type of debt incurred and can sign and submit all required documents necessary to effectuate and bind the debt being incurred." See Exhibit 1 of TVC's Motion. Finally, Ali submitted the July 31, 2017 Bylaws, which outlines the powers and duties of the president of Halaal, namely Harun Ali. In Paragraphs 58 and 62 of the Bylaws, Ali was given the power to put the signature of the Corporation to all deeds, conveyances, mortgages, guarantees, leases, obligations, bonds, certificates and other papers and instruments in writing which have been authorized by the Board *or which, in the opinion of the President, should be executed on behalf of the Corporation.* Further, authorization of the Board to perform the act of making and accepting loans can be general or specific. While Plaintiffs argue that its Bylaws were not implemented until May 29, 2018, the

Court observes that the above provisions in the 2017 version are identical to those in the 2018 document.

In relation to the List of Shareholders as of July 24, 2017 document in Exhibit 2 of the motion, TVC does not specifically address the List within the text of its motion. In contrast, Plaintiffs raise the issue that there is an existing copy of the notarized List of Shareholders as of July 24, 2017 without signatures. As such, Plaintiffs argue that the List supplied to TVC was fraudulent. Irrespective of whether the signatures were fraudulent, TVC would have reasonably relied on the signed, notarized List that it received from Ali to believe that he had authority to bind Halaal to these contracts. Plaintiffs contend further that TVC required a copy of a Resolution of the Board of Directors authorizing the corporation to borrow the funds for both properties. Yet, the Certificate of Resolution provides that it was adopted by the owner and it represented that Harun Ali owns 100% of the corporation's ownership shares. Considering the submitted documentation in total, the Court finds that TVC was provided with sufficient documentation, indicating that Ali was the director, agent, secretary, treasurer, sole shareholder, and president of Halaal who had, at a minimum, apparent authority under the Bylaws to execute deeds, mortgages, obligations, and other instruments in writing on behalf of the corporation.

The Court recognizes the dispute between the parties as to whether Ali had actual authority to bind Halaal to these loans, notes, and mortgages. That is, whether Harun Ali reasonably believed that he had actual authority to act as an agent of Halaal. In his Affidavit, Fares Alsakkaf, a current shareholder of Halaal, attests that Harun Ali never received any authority from the Board of Directors to obtain any loans against Halaal or issue any notes or mortgages to TVC. As such, there is a question of fact as to whether Ali reasonably believed that he had actual authority to bind Halaal to these loans, notes, and mortgages.

With that said, however, there is no question of material fact that Ali had apparent authority to act on behalf of Halaal and that belief is traceable to his position as president, the List of Shareholders as of July 24, 2017, the Bylaws, the Articles of Incorporation, and the Certificate of Resolution, all of which were presented to TVC by Harun Ali. As stated previously, Justin Wenk attests in his Affidavit that “TVC reasonably believed that Ali, as Halaal’s President, had actual and apparent authority to enter into the Bloomfield and Saline Loans on behalf of Halaal [sic] there was nothing indicating that Ali could not act on behalf of Halaal.” The Court observes further that no attestations are made by Fares Alsakkaf in his Affidavit that contradict or create a question of material fact with regard to Ali’s apparent authority.

Under fundamental agency law, a principal is bound by an agent's actions within the agent's actual or apparent authority. *James v Alberts*, 464 Mich 12, 15; 626 NW2d 158 (2001). “Accordingly, liability may be imposed on a principal under an apparent authority theory irrespective of whether the agent acted for his own purposes, rather than those of his principal.” *Mais, supra* at 762. In addition, TVC contends that Halaal ratified Ali’s actions when Halaal paid Adam Farha \$95,012.89 to acquire the Hazel Park property at the foreclosure sale. Even if ownership of the Hazel Park property was transferred to Halaal at a late date, this property is currently in the name of Halaal.

Considering the affidavits, pleadings, and other documentary evidence submitted by the parties in a light most favorable to Plaintiffs, the Court finds that the proffered evidence fails to establish a genuine issue regarding any material fact that Harun Ali had apparent authority to bind Halaal to the Bloomfield Loan and the Saline Loan that are now due and owing to TVC. As such, the Court grants summary disposition in favor of TVC with respect to its Counts One and Two in the First Amended Counterclaim.

2. *Rescission*

With respect to Count Six of Plaintiffs' Second Amended Complaint, TVC argues that rescission of the mortgage loans cannot occur unless TVC is restored to the position that it was in prior to the execution of those loans. To do this, TVC asserts that Halaal must tender the outstanding amounts of the mortgage loans to TVC. Conversely, Plaintiffs maintain that TVC cannot prove that Halaal actually retained a benefit as a result of the transactions. Plaintiffs also claim that the Hazel Park property was not placed in Halaal's name until litigation was commenced.

“To rescind a contract is not merely to terminate it, but to abrogate and undo it from the beginning; that is, not merely to release the parties from further obligation to each other in respect to the subject of the contract, but to annul the contract and restore the parties to the relative positions which they would have occupied if no such contract had ever been made. Rescission necessarily involves a repudiation of the contract and a refusal of the moving party to be further bound by it. But this by itself would constitute no more than a breach of the contract or a refusal of performance, while the idea of rescission involves the additional and distinguishing element of a restoration of the *status quo*.’ 1 Black on Rescission and Cancellation (2d ed), § 1.” *Cunningham v Citizens Ins. Co. of Am.*, 133 Mich App 471, 479; 350 NW2d 283 (1984).

“[T]he remedy of rescission returns the parties to the status quo, i.e., it places the parties in the position they occupied before the transaction in question.” *McMullen v Joldersma*, 174 Mich App 207, 218; 435 NW2d 428 (1988). “[R]escission is permissible when there is failure to perform a substantial part of the contract or one of its essential items, or where ‘the contract would not have been made if default in that particular had been expected or contemplated.’” *Adell Broad. v Apex Media Sales*, 269 Mich App 6, 13–14; 708 NW2d 778 (2005).

“Under Michigan law, the party seeking rescission of a contract must prove three elements: (1) a reasonable assertion of the rescission right; (2) tender of the consideration and benefits received; and, (3) demand for repayment of any price paid. The party seeking rescission must first return the other party to the pre-contract status quo, and rescission is not available to a party who has failed to make payments required by a contract and is thus in default.” *Two Men & a Truck/Int'l Inc. v Two Men & a Truck/Kalamazoo, Inc.*, 949 F Supp 500, 507 (WD Mich 1996).

Upon review of the parties’ arguments and supporting exhibits, the Court finds that there is no factual dispute that Halaal has not returned TVC to the pre-contractual status quo. Moreover, the Court has found in favor of TVC with regard to Halaal’s breach and default of the Bloomfield and Saline Loans. As such, rescission is not available as a claim for Plaintiffs. Therefore, TVC is entitled to summary disposition on Plaintiffs’ rescission claim, namely Count Six of the Second Amended Complaint, under MCR 2.116(C)(10).

3. *Declaratory Relief*

Regarding Count Three of the Second Amended Complaint, TVC argues that declaratory relief is a remedy and not a cause of action unless it supports a separate cause of action. “Declaratory relief is a remedy (equitable in nature, because it is not a damages remedy).” *Mettler Walloon, L.L.C. v Melrose Twp.*, 281 Mich App 184, 221; 761 NW2d 293 (2008). Since Plaintiffs’ rescission claim fails, TVC contends that Plaintiffs’ claim for declaratory relief also fails pursuant to MCR 2.116(C)(10). In Paragraph 81 of the Second Amended Complaint, Plaintiffs allege that “Defendant TVC failed to complete any reasonable investigation or due diligence in determining Defendant ALI’S authority to execute the aforementioned Note and Mortgages or his authority to receive any funds on behalf of Plaintiff Corporation.” As stated previously, the Court finds that Ali had apparent authority to act on behalf of Halaal and TVC reasonably relied upon this apparent

authority of Ali as president to execute the loans, notes, and mortgages in question. As such, TVC is entitled to summary disposition of Plaintiffs' Declaratory Relief claim.

4. *Quiet Title*

In relation to Plaintiffs' Count Twelve of the Second Amended Complaint, TVC maintains that this quiet title claim fails for the same reasons as it is entirely reliant on Plaintiffs' other claims discussed herein. In Count Twelve of the Second Amended Complaint, Plaintiffs allege that TVC has no legitimate interest in the Bloomfield Hills property and so Halaal is entitled to a judgment quieting any ownership rights or title that TVC may claim in the property. In this Opinion and Order, the Court has granted summary disposition to TVC with respect to its breach of contract claims as well as Plaintiffs' rescission and declaratory relief claims. Thus, Plaintiffs are not entitled to quiet title and so summary disposition of Count Twelve is granted in TVC's favor.

Based on the foregoing analysis, TVC's Motion for Summary Disposition pursuant to 2.116(C)(10) is GRANTED. Consequently, Plaintiffs' claims against TVC in the Second Amended Complaint are hereby dismissed.

It is further ordered that Plaintiffs' request for summary disposition under MCR 2.116(I)(2) is DENIED.

IT IS SO ORDERED.

August 27, 2020
Date

/s/ James M. Alexander
Hon. James M. Alexander,
Circuit Court Judge