

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

**CHRIS WATSON, and  
THE MALE CENTER, LLC  
Plaintiffs,**

**v.**

**Case No. 18-169710-CB  
Hon. James M. Alexander**

**FADY FAYAD,  
Defendant.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Defendant's motion for summary disposition.

According to the Amended Complaint, Plaintiff Watson began engaging in discussions to purchase a medical clinic on behalf of Plaintiff The Male Center, LLC on October 3, 2018. Watson claims that on or about October 4, 2018, he and Defendant entered into a verbal business agreement whereby the parties would form and operate The Male Center as a partnership/joint venture. Watson claims he was to receive 40% of the profits and a monthly salary of \$8000, while Defendant would receive 60% of the profits.

On October 10, 2018, The Male Center purchased the Male Method of Detroit and took over the clinic the following day. Plaintiffs claim that the parties operated the business together until Defendant forcibly removed Watson from the business on October 22, 2018. Watson claims that although he was a joint owner of The Male Center and a necessary signatory to the Purchase Agreement, Defendant unilaterally and improperly conducted a self-help ouster of

Watson from his business and wrongfully separated Watson from his business property, interests, income, and profit.

On these general allegations, Plaintiffs filed their Amended Complaint on claims titled (Count I) breach of contract, (Count II) request for accounting, (Count III) breach of fiduciary duty, (Count IV) conversion, (Count V) equitable conversion, (Count VI) statutory conversion, (Count VII) promissory estoppel/unjust enrichment, (Count VIII) dissolution, and (Count IX) intentional infliction of emotional distress.

Defendant now moves for summary disposition under MCR 2.116(C)(8) and (C)(10). A (C)(8) motion tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).<sup>1</sup> And a (C)(10) motion tests the factual support for a plaintiff's claims. *Id.*<sup>2</sup>

In his motion, Defendant argues that Watson is not and has never been an owner, member, or manager of The Male Center. As such, Watson has no authority to bring suit against Defendant on behalf of The Male Center. Defendant further argues that since Watson is not a member, he is precluded from bringing most of his claims.

In support of his motion, Defendant attaches (in relevant part): (1) LARA records for the Male Method of Detroit; (2) Fady Fayad's affidavit; (3) discovery responses; (4) the Purchase of Business Agreement; (5) checks and bank deposit slips; (6) correspondence between Plaintiffs and Defendant's attorneys; and (7) The Male Center, LLC Articles of Organization

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<sup>1</sup> Such a 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." *Wade v Dept of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992). When considering such a motion, all well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade*, 439 Mich at 162-163. Additionally, when considering such motions, the court considers only the pleadings. MCR 2.116(G)(5).

<sup>2</sup> In such a motion, the moving party must specifically identify the issues that he believes present no genuine issue of material fact. *Maiden*, 461 Mich at 120. The opposing party may not rest on mere allegations or denials in his pleadings, but must, by affidavits or as otherwise provided in the rule, set forth specific facts showing a genuine issue for trial. *Id.* at 120-121. Where the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* at 120.

## I. Count I – Breach of Contract

First, Defendant argues that Plaintiffs' breach of contract claim should be dismissed.

Defendant argues that the count makes no mention of any contract between The Male Center and Defendant. As is relates to The Male Center, Defendant argues the claim should be dismissed for failure to state a claim. The Court agrees.

In Plaintiffs' amended complaint, Watson states that he and Defendant entered into a contract. Further, Watson alleges that he has been damaged as a result of Defendant's breach. There is no mention of The Male Center. Based on the same, Defendant's motion as it relates to The Male Center's breach of contract claim is GRANTED and the same is DISMISSED.

Next, Defendant argues that Watson cannot maintain his breach of contract claim. Defendant argues that Watson has not submitted any evidence of an oral contract. In his reply, Defendant argues that Watson has not filed an affidavit supporting any of his claims against Defendant.<sup>3</sup> As such, Defendant argues that Watson has not created a question of fact regarding the alleged verbal contract.

In response, Watson argues that the parties entered into a joint venture or partnership to operate The Male Center. Watson argues that although the contract was never reduced to

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<sup>3</sup> On April 29, 2019, Plaintiffs, without leave of the Court, filed a supplemental brief and Affidavit of Christopher Errick Watson.

By way of background, this case was originally assigned to the Hon. Cheryl A. Matthews. Pursuant to the February 1, 2019 Order, Plaintiffs were required to file a response to Defendant's motion by February 20, 2019. The case was then transferred to this Court.

This Court then issued its own briefing schedule. Under the Court's March 11, 2019 Order, Plaintiffs were required to file a response to Defendant's motion by April 17, 2019. In its response, Plaintiff, failed to file an affidavit contradicting Defendant's motion.

The Michigan Supreme Court has held that a trial court may enforce its summary disposition scheduling order, and enter judgment against a party who fails to follow the same. *Edi Holdings v Lear Corp*, 469 Mich 1021; 678 NW2d 440 (Table) (2004).

Plaintiffs had two opportunities to submit an affidavit contradicting Defendant's claims. Watson's affidavit does not contain any facts that were not known at the time of filing his response. Certainly, Watson could have filed his own affidavit at the time of his response, but failed to do the same. Based on the foregoing, the Court will uphold its scheduling order, strike Plaintiffs' supplemental brief and affidavit submitted on April 29, 2019, and not consider the same.

writing, a partnership was formed by operation of law. Watson claims that Defendant breached the “implied at law contract partnership agreement” when Defendant locked Watson out of the building, denied access to business records, changed the locks, and diverted funds.

In support of his position, Watson attaches (in relevant part): (1) The Male Center, LLC Articles of Organization; (2) Purchase of Business Agreement; (3) text messages; (4) various emails; and (5) Defendant’s discovery responses.

In order to prove breach of contract, a plaintiff must establish: (1) the existence of a contract; (2) a breach of that contract; and (3) damages resulting from that breach. *Stoken v JET Electronics & Technology, Inc*, 174 Mich App 457, 463; 436 NW2d 389 (1988).

Further, The Michigan Court of Appeals has held that:

A party opposing a motion brought under C(10) may not rest upon the mere allegations or denials in that party’s pleadings, but must by affidavit, deposition, admission, or other documentary evidence set forth specific facts showing that there is a genuine issue for trial. . . . [W]here the opposing party fails to come forward with evidence, beyond allegations or denials in the pleadings, to establish the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass’n*, 202 Mich App 233, 237; 507 NW2d 741 (1993) (internal citations omitted).

In his response, Watson relies heavily on text messages with Defendant. In the messages, the parties do discuss business matters. Further, Watson asserts that since he signed the purchase agreement, he was necessarily an owner and in a contract with Defendant to operate the business. This evidence, however, does not support the allegations of the purported verbal contract; such as Watson’s claim that he was entitled to 40% of the business profits or that Watson and Defendant would be co-owners of The Male Center.

Watson fails to present any evidence that he and Defendant entered into a verbal contract or partnership agreement. Indeed, Watson did not even submit an affidavit setting forth specific

facts showing that there is a genuine issue for trial. It is well established that a party may not reset upon the mere allegations or denials in their pleading, which is exactly what Watson has done.

Since Watson fails to present any evidence contradicting Defendant's motion, he fails to establish a question of fact regarding Defendant's entitlement to judgment as a matter of law. The Court, therefore, GRANTS Defendant's motion for summary disposition for breach of contract under (C)(10) and DISMISSES the same.

## **II. Counts II – VIII**

Next, Defendant argues that since Watson was not a member of The Male Center, LLC, he cannot maintain counts II – VIII as all are predicated on the false assertion of Watson's status as a member. Defendant argues that since Watson was an employee, not a member, of The Male Center, LLC, he is not entitled to an accounting and was not owed a fiduciary duty. Further, Defendant argues that Plaintiffs' conversion and unjust enrichment claims fail as Defendant, owner and sole member of The Male Center, LLC, cannot steal from himself. Finally, Defendant argues that since he is not a member, Watson has no authority to seek dissolution of The Male Center, LLC.

In response, Watson argues that he was the one who negotiated the purchase of The Male Center, LLC, he signed the Purchase of Business Agreement with Defendant, and he is listed as an Organizer on the Articles of Organization.<sup>4</sup> Watson also claims it was he who approached Defendant and invited Defendant to participate in the partnership. Watson also claims that text messages with Defendant verify that Watson is a "business partner." (Plaintiff's Resp. Exhibit 9).

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<sup>4</sup> Plaintiffs do not provide any legal authority to support their position that signing a business purchase agreement grants an individual the status of a member in a limited liability company. It is well established that "[t]rial courts are not the research assistants of the litigants; the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute." *Walters v Nadell*, 481 Mich 377, 388; 751 NW2d 431 (2008).

The Michigan Limited Liability Company Act outlines how an individual may become a member in a limited liability company. *See* MCL 450.4501.

MCL 450.4501 provides:

- (1) A person may be admitted as a member of a limited liability company in connection with the formation of the limited liability company in any of the following ways:
  - (a) If an operating agreement includes requirements for admission, by complying with those requirements.
  - (b) If an operating agreement does not include requirements for admission, if either of the following are met:
    - (i) The person signs the initial operating agreement.
    - (ii) The person's status as a member is reflected in tax filings, or other written statements of the limited liability company.
  - (c) In any manner established in a written agreement of the members.

In the present case, there is no operating agreement. Although Watson is named on the Articles of Organization as an organizer, this is not evidence of his status as a member of The Male Center, LLC. MCL 450.4202 provides that an organizer of a limited liability *may or may not* become a member. Further, Watson has not presented any evidence that his member status was reflected on any tax filings, business records, or other written statements of the limited liability company.

Assuming *arguendo*, Watson was able to establish that he was a member of The Male Center, LLC; his claims would still fail as he did not comply with MCR 450.4510. There is no evidence that Plaintiffs made a written demand on Defendant to correct his actions. Further, Plaintiffs did not wait ninety days between the written demand and filing suit. Pursuant to the Articles of Organization, The Male Center, LLC was formed on October 10, 2018. On October

22, 2018, Watson was removed from the business. Fourteen days later, on November 5, 2018, Watson and The Male Center, LLC filed suit against Defendant.

Based on the foregoing, Watson has failed to present evidence creating a genuine issue of fact as to his status as a member of The Male Center, LLC. As such, he cannot maintain counts II-VIII individually, and cannot bring the same on behalf of The Male Center, LLC. Therefore, the Court GRANTS Defendant's motion as to counts II-VIII of Plaintiffs' amended complaint and DISMISSES the same.

### **III. Count IX – Intentional Infliction of Emotional Distress**

Defendant next claims that Watson cannot prevail on his claim for intentional infliction of emotional distress. A claim for Intentional Infliction of Emotional Distress requires Watson to allege and prove that Defendant engaged in intentional or reckless conduct that was extreme and outrageous and that caused Plaintiff to suffer severe emotional distress. *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 602; 374 NW2d 905 (1985).

The threshold for showing extreme and outrageous conduct is high. No cause of action will necessarily lie even where a defendant acts with tortious or even criminal intent. Rather, liability is imposed only where “the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *VanVorous v Burmeister*, 262 Mich App 467, 481-482; 687 NW2d 132 (2004) quoting *Roberts, supra* at 602-603, and Restatement Torts, 2d, § 46, comment d pp 72-73.

Defendant argues that Watson has failed to allege any conduct that is extreme and outrageous. The Court agrees. Watson only alleges that Defendant's conduct was intentional, extreme, outrageous, and of such character as to not be tolerated by a civilized society, and was for an ulterior motive or purpose. Plaintiff, however, fails to support these allegations with any evidence. And even if he could, his allegations simply do not rise to being “so extreme in

degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *VanVorous*, supra at 481-482.

For the foregoing reasons, the Court finds that there are no material facts in dispute and Defendant is entitled to judgment as a matter of law. Therefore, Defendant’s motion for summary disposition of Plaintiffs’ Intentional Infliction of Emotional Distress claim (Count IX) is GRANTED, and said claim is DISMISSED.

**IV. Summary**

To summarize, Defendant’s motion for summary disposition of Plaintiff’s amended complaint is GRANTED in its entirety, and the same is DISMISSED.

This is not a final order and does not close the case.

**IT IS SO ORDERED.**

May 1, 2019  
Date

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