

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

**CATALYST DEVELOPMENT, LLC,
and JAMANA GOSWAMI,
Plaintiff,**

v.

**Case No. 19-171809-CB
Hon. James M. Alexander**

**MICHAEL SORRENTINO, ET AL,
Defendants.**

_____ /

OPINION AND ORDER RE: SUMMARY DISPOSITION

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

According to Plaintiffs' Complaint, Plaintiffs loaned Defendants Intrepid Investment Partners, Inc./Heritage Preserve Project (a division of S&SR and Icon Development) \$1,025,000. At all relevant times, Plaintiffs allege the above-referenced Defendants were owned, managed, and controlled by Defendants Michael Sorrentino, Vincent Sorrentino, Benedetto Sorrentino, Sherry Sorrentino, and Bruce Michael (Individual Defendants).

Plaintiffs allege that the Defendants fraudulently represented that the investment would be used to develop a single-family condominium project. Instead, Plaintiffs allege that Defendants misappropriated the funds for the purpose of returning investments of other individual investors. Specifically, Plaintiffs allege that Defendants engaged in a conspiracy to defraud Plaintiffs through a Ponzi scheme.

On these general allegations, Plaintiffs sued on claims of (Count I) violation of MLC 570.151 Michigan Builders Trust Fund Act;¹ (Count II) statutory conversion;² (Count III) breach of contract;³ (Count IV) unjust enrichment;⁴ (Count V) intentional fraud and misrepresentation;⁵ (Count VI) accounting;⁶ (Count VII) breach of fiduciary duty, larceny and/or embezzlement;⁷ (Count VIII) negligence/breach of fiduciary duty;⁸ and (Count IX) piercing the corporate veil.⁹

Defendant HLS Capital Corp (HLS) now moves for summary disposition under MCR 2.116(C)(8), which tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). 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

¹ Count I is against Defendants Michael Sorrentino, Vincent Sorrentino, Benedetto Sorrentino, Sherry Sorrentino, Bruce Michael, Intrepid Investment Partners, Icon Development, S&SR, Heritage Preserve, LLC, Odawa Development, Ojibway Development, and Endeavor Brothers, LLC.

² Count II is against Defendants Michael Sorrentino, Vincent Sorrentino, Benedetto Sorrentino, Sherry Sorrentino, Bruce Michael, Intrepid Investment Partners, Icon Development, S&SR, Heritage Preserve, LLC, Odawa Development, Ojibway Development, HLS Capital Corp, Greentech Engineering, and Endeavor Brothers, LLC.

³ Count III is against Defendants Michael Sorrentino, Vincent Sorrentino, Benedetto Sorrentino, Sherry Sorrentino, Bruce Michael, Intrepid Investment Partners, Icon Development, S&SR, Heritage Preserve, LLC, and Chirco Title.

⁴ Count IV is against Defendants Michael Sorrentino, Vincent Sorrentino, Benedetto Sorrentino, Sherry Sorrentino, Bruce Michael, Intrepid Investment Partners, Icon Development, S&SR, Heritage Preserve, LLC, Odawa Development, Ojibway Development, HLS Capital Corp, Greentech Engineering, and Endeavor Brothers, LLC.

⁵ Count V is against Defendants Michael Sorrentino, Vincent Sorrentino, Benedetto Sorrentino, Sherry Sorrentino, Bruce Michael, Intrepid Investment Partners, Icon Development, S&SR, Heritage Preserve, LLC, Odawa Development, Ojibway Development, HLS Capital Corp, Greentech Engineering, and Endeavor Brothers, LLC.

⁶ Count VI is against Defendants Michael Sorrentino, Vincent Sorrentino, Benedetto Sorrentino, Sherry Sorrentino, Bruce Michael, Intrepid Investment Partners, Icon Development, S&SR, Heritage Preserve, LLC, Odawa Development, Ojibway Development, HLS Capital Corp, Greentech Engineering, and Endeavor Brothers, LLC.

⁷ Count VII is against all Defendants.

⁸ Count VIII is against Defendant Chirco Title.

⁹ Count IX is against Defendants Michael Sorrentino, Vincent Sorrentino, Benedetto Sorrentino, Sherry Sorrentino, and Bruce Michael.

considering such motions, the court considers only the pleadings. MCR 2.116(G)(5) (emphasis added).¹⁰

HLS argues that Plaintiffs have failed to state any claims against HLS. Specifically, HLS argues that HLS is only referenced one time in Plaintiffs nine-count Complaint, and that this single allegation is not enough to support the claims Plaintiffs have made against HLS. Further, HLS argues that it was not involved and did not participate in any of the alleged acts and/or omissions which form the factual basis for the Plaintiffs' Complaint. Based on the same, HLS argues that Plaintiffs' Complaint should be dismissed.

As HLS indicated, Plaintiffs' Complaint references HLS in a single paragraph, paragraph 16, which provides:

To illustrate the self-dealing of the Plaintiffs \$1.025 Million investment, at the hands of the Defendant Sorrentinos and Bruce Michael, the following are representative examples, however are not exclusive, of disbursements of the Plaintiffs investment to their own companies (i.e. Defendant entities):

- a. Defendant HLS Capital Corp - \$10,000 – (Ex. C – HLS Capital Corp Invoice for Services); Billed and was paid \$10,500 for “Financial Services” of the Plaintiffs' escrowed investment funds (Complaint, at ¶ 16).

Based on this allegation, Plaintiffs allege that HLS has engaged in or committed statutory conversion (Count II); unjust enrichment (Count IV); intentional fraud and misrepresentation (Count V); failed to account (Count VI); and breach of fiduciary duty, larceny, and/or embezzlement (Count VII).

In response, Plaintiffs argue that HLS acted in the same fraudulent manner as the other Defendants by arbitrarily submitting an invoice for \$10,500, effectively stealing from Plaintiffs.

¹⁰ “When an action is based on a written contract, it is generally necessary to attach a copy of the contract to the complaint. Accordingly, the written contract becomes part of the pleadings themselves, even for purposes of review under MCR 2.116(C)(8).” *Laurel Woods Apts v Roumayah*, 274 Mich App 631, 635; 734 NW2d 217 (2007); citing MCR 2.113(F) and *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2d 633 (2003).

Plaintiffs argue that based on HLS's conduct, one could draw a reasonable inference that HLS's acted with a fraudulent intent and in concert with the other co-defendants. Further, Plaintiffs argue that they should be permitted to engaged in discovery prior to dismissal to explore the "terse raiding of the escrowed loan funds."

I. Count II – Statutory Conversion

In the Complaint, Plaintiffs allege that Defendants Intrepid Investment Partners-Heritage Preserve Project, LLC, (a division of SS&R and Icon Development, by and through the Individual Defendants, conspired to receive, posses, conceal, or aid in the concealment of stolen, embezzled, or converted property by converting Plaintiffs' funds and through a violation of the Michigan Builders Trust Fund Act. (Complaint, at ¶ 35).

Michigan law provides that "[t]he tort of conversion is 'any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein.'" *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 111; 593 NW2d 595 (1999), quoting *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992).

"Statutory conversion, by contrast, consists of knowingly "buying, receiving, or aiding in the concealment of any stolen, embezzled, or converted property." *Head*, 234 Mich App at 111; quoting MCL 600.2919a.

In *Lawsuit Fin, LLC v Curry*, 261 Mich App 579, 591; 683 NW2d 233 (2004), the Court of Appeals reasoned, "[t]o support an action for conversion of money, the defendant must have obtained the money without the owner's consent to the creation of a debtor-creditor relationship and must have had an obligation to return the specific money entrusted to his care." *Lawsuit Fin*, 261 Mich App at 591 (internal quotations and citations omitted).

As it relates to the claim of statutory conversion, Plaintiffs have not alleged, or stated any facts, that HLS knowingly bought, received, or aided in the concealment of any stolen, embezzled, or converted property as required by MCL 600.2919a. The only allegation against HLS is that it billed for and received \$10,500. This allegation alone is not sufficient to state a claim for statutory conversion against HLS.

Based on the foregoing, accepting all well-plead allegations as true and in a light most favorable to Plaintiffs, Plaintiffs have failed to state a claim against HLS for statutory conversion, and the same is dismissed.

II. Count IV – Unjust Enrichment

Next, HLS argues that Count IV should be dismissed because HLS's name does not appear in Plaintiffs' claim for unjust enrichment. Plaintiffs state that Defendants Intrepid Investment Partners-Heritage Preserve Project, LLC, (a division of SS&R and Icon Development, by and through the Individual Defendants, will be unjustly enriched should they be allowed to "reap the fruits of converting Plaintiffs \$1.025 Million investment of a phantom real estate project" (Complaint, at ¶ 47).

To establish a claim for unjust enrichment, a plaintiff must show: (1) receipt of a benefit by the defendant from the plaintiff, and (2) an inequity resulting to the plaintiff because of the defendant's retention of the benefit. *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003). Where an express contract exists between the parties, a contract cannot be implied in law which covers the same subject matter. *Cascade Elec Co v. Rice*, 70 Mich App 420, 426; 245 NW2d 774 (1976). However, if Plaintiff claims that there is a verbal agreement and that is disputed by Defendants, Plaintiff is "not required to elect to proceed under one theory

or the other, but could seek recovery on the basis either of an express verbal contract, or an implied contract if the jury found the express verbal contract did not exist.” *Id.* at 427.

As with Plaintiffs’ claim for statutory conversion, their claim for unjust enrichment does not mention HLS. Plaintiff has taken the time to specifically list certain Defendants and have failed to include HLS in the list of Defendants that have been unjustly enriched. The doctrine of *expressio unius est exclusio alterius* provides that the expression of one thing excludes the other.

As such, Plaintiffs have failed to state a claim for unjust enrichment against HLS, and the same is dismissed.

III. Count V – Intentional Fraud and Misrepresentation

For the same reasons, as more fully discussed above, HLS moves to dismiss Plaintiffs’ claim for intentional fraud and misrepresentation.

It is well-established that “fraud must be pleaded with particularity.” *Cooper v Auto Club Ins Ass’n*, 481 Mich 399, 414; 751 NW2d 443 (2008), citing MCR 2.112(B)(1).

The Michigan Court of Appeals has held:

To establish a claim of fraudulent misrepresentation, plaintiff was required to prove that: (1) defendant made a material representation; (2) the representation was false; (3) defendant knew, or should have known, that the representation was false when making it; (4) defendant made the representation with the intent that plaintiff rely on it; (5) and plaintiff acted on the representation, incurring damages as a result. Plaintiff must also show that any reliance on defendant’s representations was reasonable. *Foreman v Foreman*, 266 Mich App 132, 141-142; 701 NW2d 167 (2005). *Hi-Way Motor Corp v Int’l Harvester Co*, 398 Mich. 330, 336; 247 N.W.2d 813 (1976), citing *Candler v Heigho*, 208 Mich. 115, 121; 175 N.W. 141 (1919).

Michigan law is also clear that “to sustain a fraud claim, the party claiming fraud must *reasonably* rely on the material misrepresentation.” *Zaremba Equip, Inc v Harco Nat’l Ins Co*,

280 Mich App 16, 39; 761 NW2d 151 (2008) (emphasis in original), citing *Foreman v Foreman*, 266 Mich App 132, 141-142; 701 NW2d 167 (2005); and *Bergen v Baker*, 264 Mich App 376, 389; 691 NW2d 770 (2004). Further, “an action for fraudulent misrepresentation must be predicated upon a statement relating to a past or an existing fact. Future promises are contractual and do not constitute fraud.” *Hi-Way Motor Corp v Int'l Harvester Co*, 398 Mich 330, 336; 247 NW2d 813 (1976).

After a careful review of Plaintiffs’ Complaint, Plaintiffs have failed to plead their claim of fraud with particularity against HLS. Plaintiffs do not allege that HLS made any representations to Plaintiffs or that Plaintiffs relied on any representations from HLS. Further, Plaintiffs do not allege that they were damaged by HLS’s conduct. To the contrary, Plaintiffs allege that “as a direct and proximate result of Defendant Intrepid Investment Partner, Inc./Heritage Preserve Project (a division of Defendants SS&R and Icon Development and its identified principals), fraudulent conduct, acts or omissions,” Plaintiff suffered damages (Complaint, at ¶ 55).

Based on the foregoing, Plaintiffs have failed to state a claim for intentional fraud and misrepresentation against Defendant HLS, and the same is dismissed.

IV. Count VI – Accounting

Next, Plaintiffs allege that Defendant Intrepid Investment Partner, Inc./Heritage Preserve Project (a division of Defendants SS&R and Icon Development) and the Individual Defendants failed to maintain accurate records of financial activities and have engaged in self-dealing and fraud (Complaint, at ¶ 60). Based on the same, Plaintiffs seek to compel the above-referenced

Defendants to prepare an accounting of all financial activity related to the real estate project at issue (Complaint, at ¶ 63).

Again, as with Plaintiffs' other claims, Plaintiffs do not mention HLS when stating their claim for an accounting. And again, Plaintiffs have specifically identified several Defendants and HLS was not included. As such, Plaintiffs have failed to state a claim for an accounting against HLS, and the same is dismissed.¹¹

V. Count VII – Breach of Fiduciary Duty, Larceny, and/or Embezzlement

Finally, HLS argues that Plaintiffs' Count VII should be dismissed for the same reasons as discussed.

Again, after a review of Plaintiffs' Complaint, Plaintiff fails to mention HLS in Count VII. Plaintiffs specifically allege that certain Defendants breached fiduciary duties owed to Plaintiffs. Plaintiffs do not include HLS in the allegation. The same is true with Plaintiffs' claims for larceny and embezzlement. Plaintiffs specifically identify certain Defendants that they allege engaged in larceny and embezzlement, but, again, do not identify HLS.

Further, “[w]here an individual’s withholding of another person’s money has criminal implications, an action for conversion of money will lie,” citing *Monroe Tp v Whipple*, 56 Mich 516, 518; 23 NW 202 (1885).¹² And, as more fully discussed above, Plaintiffs conversion claim against HLS fails as a matter of law.

¹¹ Further, accepting Plaintiffs allegations as true, Plaintiffs are already aware that HLS received \$10,500. An accounting would not show any new information. As such, an accounting would be duplicative. Further, an accounting from the Defendants specifically identified would show the financial activity of the funds at issue. Aside from receiving the \$10,500, Plaintiffs have failed to allege any circumstances to justify an accounting of HLS.

¹² Consistently, Michigan Civil Jurisprudence’s section on conversion reasons “Where one’s withholding of another’s money has criminal implications, as, for example, larceny, an action for conversion of the money will lie.” 6 Mich. Civ. Jur. Conversion § 14.

Based on the foregoing, Plaintiff have failed to state a claim for breach of fiduciary duty, larceny, or embezzlement against HLS, and Count VII is dismissed.

VI. Summary

In conclusion, HLS's motion for summary of Plaintiffs' Complaint is GRANTED, and the same is DISMISSED.

Whenever the Court is inclined to grant a (C)(8) motion, the Court Rules require that a plaintiff be provided an opportunity to amend to properly allege sufficient facts to support its claim, unless the evidence before the Court shows that an amendment would not be justified MCR 2.116(D)(5). There is no evidence before the Court that would justify an amendment, and the Court finds that any such amendment would be futile. Although leave to amend should be freely given when justice so requires, the Court finds that, even if amended, no factual development could possibly justify recovery on Plaintiffs' claims against HLS.

In its motion, HLS asks the Court to award sanctions arguing that Plaintiffs' complaint against HLS was frivolous. The Court declines to do the same, and HLS's request for sanctions is DENIED.

IT IS SO ORDERED.

July 24, 2019
Date

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