

**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 Defendants Greentech Engineering, Inc., Benedetto Sorrentino, Icon Development, Inc., and S&SR Investments, LLC's motions for summary disposition. The Court previously described the case as follows:

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

As stated, Defendants now move 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).¹⁰ And a (C)(10) motion tests the factual support for a plaintiff's claims. *Maiden*, 461 Mich at 120.¹¹

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.

¹⁰ 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).

Further, "[w]hen 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).

¹¹ 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

A. Greentech Engineering

Greentech argues that Plaintiffs have failed to state any claims against Greentech. Specifically, Greentech argues that Greentech is only referenced twice in Plaintiffs nine-count Complaint, and that these two allegations are not enough to support the claims Plaintiffs have made against Greentech. Further, Greentech 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. And, Greentech argues that despite Plaintiffs' assertion, Greentech is not owned, operated, or managed by Michael Bruce. Based on the same, Greentech argues that Plaintiffs' Complaint should be dismissed.

As Greentech indicated, Plaintiffs' Complaint references Greentech in two paragraphs, paragraphs 15 and 16, which provide:

Defendant entities Intrepid Investment Partners, Icon Development, SS&R, Heritage Preserve, LLC, Odawa Development, LLC, Greentech Engineering, Ojibway Development, LLC, and Endeavor Brothers, LLC, entities all owned, managed and controlled by the Defendant Sorrentino family and Defendant Bruce Michel, misappropriated hundreds of thousands of dollars of the Plaintiffs investment funds through unauthorized and fraudulent advances, and monthly draws negligently disbursed by Defendant Chirco Title, while representing such "services" to be authorized monthly expenses necessary, and related, to the advancement of the Heritage Preserve condominium Project. (Complaint, at ¶ 15).

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):

- b. Defendant Greentech Engineering (owned by Bruce Michael) - \$384,000 – (Ex. D – Greentech Engineering Invoice for Services); Defendant Bruce Michael billed Defendant Intrepid Investment Partners-Heritage Preserve, LLC, thereby effectively billing and paying himself, \$384,000 for unspecified "Civil Engineering" services of the Plaintiffs' escrowed investment funds. (Complaint, at ¶ 16).

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.

Based on these allegations, Plaintiffs allege that Greentech 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 Greentech acted in the same fraudulent manner as the other Defendants by arbitrarily submitting invoices to co-defendants for nearly \$300,000, effectively stealing from Plaintiffs. Although Plaintiffs do not dispute that Greentech is not owned by Michael, they allege that Greentech had a history of engaging in “unscrupulous” business practices with Michael. As such, Plaintiffs argue that based on Greentech’s conduct and history with Michael, 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.

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, possess, 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 Greentech 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 Greentech is that it billed for and received \$384,000. This allegation alone is not sufficient to state a claim for statutory conversion against Greentech.

In response to Greentech’s motion, Plaintiffs argue that the Complaint incorporated the foregoing paragraphs, and based on the same, Plaintiffs have “clearly alleged and pled facts that Greentech did at all times relevant conspire to receive, possess, conceal, or aid in the concealment of stolen, embezzled, or converted property . . .” (Plaintiffs’ Response, at 7). But, nothing in the two allegations against Greentech support, or even reference, a claim of conversion.

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 Greentech for statutory conversion, and the same is DIMISSED.

II. Count IV – Unjust Enrichment

Next, Greentech argues that Count IV should be dismissed because Greentech is not mentioned 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 Greentech. Plaintiff has taken the time to specifically list certain Defendants and have failed to include Greentech 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.

Again, Plaintiffs argue that their Complaint clearly alleged and pled facts that Greentech was unjustly enriched. And again, the Court disagrees. The two allegations simply state that

Greentech submitted an invoice to Defendant Intrepid Investment Partners-Heritage Preserve. And ultimately, Plaintiffs allege that Bruce Michael was unjustly enriched for the billing, not Greentech Engineering. Plaintiffs allege that through the Greentech invoice, Michael effectively billed and paid himself. Plaintiffs simply do not plead or provide any factual support that Greentech was unjustly enriched.

As such, Plaintiffs have failed to state a claim or created a question of fact as it relates to Plaintiffs' unjust enrichment claim against Greentech. Therefore, Greentech's motion for summary of the same is GRANTED, and Plaintiffs' claim for unjust enrichment is DISMISSED.

III. Count V – Intentional Fraud and Misrepresentation

For the same reasons, as more fully discussed above, Greentech 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 Greentech. Plaintiffs do not allege that Greentech made any representations to Plaintiffs or that Plaintiffs relied on any representations from Greentech. Further, Plaintiffs do not allege that they were damaged by Greentech’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 Greentech, 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 Greentech when stating their claim for an accounting. And again, Plaintiffs have specifically identified several Defendants and Greentech was not included. As such, Plaintiffs have failed to state a claim for an accounting against Greentech, and the same is DISMISSED.¹²

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

Finally, Greentech 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 Greentech in Count VII. Plaintiffs specifically allege that certain Defendants breached fiduciary duties owed to Plaintiffs. Plaintiffs do not include Greentech 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 Greentech.

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

¹² Further, accepting Plaintiffs' allegations as true, Plaintiffs are already aware that Greentech received monies for their invoiced services. 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 submitting an invoice for the \$384,000, Plaintiffs have failed to allege any circumstances to justify an accounting of Greentech.

516, 518; 23 NW 202 (1885).¹³ And, as more fully discussed above, Plaintiffs conversion claim against Greentech fails as a matter of law.

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

VI. Summary

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

Whenever the Court is inclined to grant a motion for summary disposition pursuant to (C)(8) or (C)(10), 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(I)(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 Greentech.

In its motion, Greentech asks the Court to award Greentech costs and fees incurred in having to file their motion for summary. Greentech may file a bill of costs for the same.

¹³ 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.

B. Benedetto Sorrentino, Icon Development, and S&SR Investment

I. Count I - Violation of MCL 570.151 Michigan Builders Trust Fund Act

Defendants B. Sorrentino, Icon Development, and S&SR Investment first seek summary of Plaintiffs' Builder's Trust Fund claim (MBTFA) pursuant to (C)(8) and (C)(10).

According to their Complaint, Plaintiffs allege that Defendants Intrepid Investment Partners-Heritage Preserve Project, (a division of S&SR and Icon Development), by and through its principals, M. Sorrentino, V. Sorrentino, B. Sorrentino, S. Sorrentino, and Bruce Michael conspired to violate the MBTFA by retaining control over the investment funds for purposes other than those provided for in the Act - citing MCL 570.151 *et seq.*¹⁴

Although the Builder's Trust Fund Act is a criminal statute, it has been construed to create a civil cause of action. *BF Farnell Co v Monahan*, 377 Mich 552, 555; 141 NW2d 58 (1966).

¹⁴ The Act's three sections provided:

In the building construction industry, the building contract fund paid by any person to a contractor, or by such person or contractor to a subcontractor, shall be considered by this act to be a trust fund, for the benefit of the person making the payment, contractors, laborers, subcontractors or materialmen, and the contractor or subcontractor shall be considered the trustee of all funds so paid to him for building construction purposes. MCL 570.151

Any contractor or subcontractor engaged in the building construction business, who, with intent to defraud, shall retain or use the proceeds or any part thereof, of any payment made to him, for any other purpose than to first pay laborers, subcontractors and materialmen, engaged by him to perform labor or furnish material for the specific improvement, shall be guilty of a felony in appropriating such funds to his own use while any amount for which he may be liable or become liable under the terms of his contract for such labor or material remains unpaid, and may be prosecuted upon the complaint of any persons so defrauded, and, upon conviction, shall be punished by a fine of not less than 100 dollars or more than 5,000 dollars and/or not less than 6 months nor more than 3 years imprisonment in a state prison at the discretion of the court. MCL 570.152.

The appropriation by a contractor, or any subcontractor, of any moneys paid to him for building operations before the payment by him of all moneys due or so to become due laborers, subcontractors, materialmen or others entitled to payment, shall be evidence of intent to defraud. MCL 570.153.

The prima facie elements of a civil cause of action brought under the act include (1) the defendant is a contractor or subcontractor engaged in the building construction industry, (2) a person paid the contractor or subcontractor for labor or materials provided on a construction project, (3) the defendant retained or used those funds, or any part of those funds, (4) for any purpose other than to first pay laborers, subcontractors, and materialmen, (5) who were engaged by the defendant to perform labor or furnish material for the specific project. *DiPonio Const Co, Inc v Rosati Masonry Co, Inc*, 246 Mich App 43, 49; 631 NW2d 59 (2001), citing MCL 570.151 *et seq.*¹⁵

Defendants B. Sorrentino, Icon Development, and S&SR Investments (Defendants) argue that Plaintiffs' MBTFA should be dismissed because they have no affiliation with Intrepid Investment Partners – Heritage Preserve, they were not a party to any referenced agreements, and were not involved in the construction project. Defendants argue that Plaintiffs are merely trying to tie Defendants in with the parties to the agreement, despite the lack of relationship between the same. Further, Defendants argue that Plaintiffs have failed to state a claim because they have failed to allege that Defendants were contractor or paid for labor or materials provided on the construction project.

In response, Plaintiffs argue that B. Sorrentino was complicit in the fraudulent conduct committed by his sons. M. and V. Sorrentino. Further, Plaintiffs argue that Icon Developments website holds itself out as a division of Intrepid Investment. (Plaintiffs' Response, Exhibit C). Plaintiffs also argue that B. Sorrentino held himself out to be an agent of Intrepid Investment Partners – Heritage Preserve by engaging in negotiations with Plaintiffs. With respect to Defendant S&SR, Plaintiffs allege that S. Sorrentino's signatures are forged on certain documents, which emphasizes Defendants dishonesty.

¹⁵ The Court of Appeals has reasoned "The MBTFA applies to funds paid to contractors and subcontractors for products and services provided to them under their construction contracts. Officers of a corporation may be held individually liable when they personally cause their corporation to act unlawfully." *Livonia Bldg Materials Co v Harrison Const Co*, 276 Mich App 514, 519; 742 NW2d 140 (2007). The *Livonia Bldg* Court held, "If a defendant personally misappropriates funds after they are received by the corporation, he or she can be held personally responsible under the MBTFA." *Livonia Bldg*, 276 Mich App at 519.

Noticeably absent from Plaintiffs' Complaint and response is any allegation that B. Sorrentino, Icon Development, or S&SR were contractors or subcontractors on the construction project. Plaintiffs rely heavily on the Icon Development's website, which states "Intrepid Investment Partners, LLC – A Division of ICON Development," for the proposition that B. Sorrentino and Icon Development violated MBTFA. (Defendants' Response, Exhibit C). This argument, however, is misplaced.

The parties to the Investor/Loan Agreement are Catalyst Development, LLC, and Intrepid Investment Partners – Heritage Preserve, LLC. Intrepid Investment Partners, LLC is not a party to the agreement, and is not the same entity as Intrepid Investment Partners – Heritage Preserve, LLC. Therefore, any relationship between Intrepid Investment Partners, LLC and Icon Development has no bearing on the present case.

As it relates to Defendant S&SR, Plaintiffs make an argument that somehow S&SR has violated the MBTFA by alleging that signatures are forged on certain documents. This allegation, however, do not state a claim, or provide any evidence to support a claim for violating MBTFA.

Plaintiffs do not allege and provide no evidence that Defendants were contractors on the project, parties to the agreement, or had any other relationship with parties to the agreement. Based on the same, Plaintiffs' claim that Defendant B. Sorrentino, Icon Development, and S&SR violated the MBTFA fail as a matter of law. As such, Defendants B. Sorrentino, Icon Development, and S&SR's motion for summary of Plaintiffs' Count I is GRANTED, and the same is DISMISSED.

II. Count II – Conversion

Next, Defendants argue that Plaintiffs conversion claim fails because, according to Plaintiffs' Complaint, Plaintiffs allege that Defendants Intrepid Investment Partners-Heritage Preserve Project, (a division of S&SR and Icon Development), by and through its principals, M. Sorrentino, V. Sorrentino, B. Sorrentino, S. Sorrentino, and Bruce Michael committed conspiracy. But as argued above, Defendants are not affiliated with Intrepid Investment Partners – Heritage Preserve. Further, Defendants argue that they received no financial benefit from Plaintiffs' investment in the project.

In response, Plaintiff again argues that Intrepid Investment Partners – Heritage Preserve Project is a division of Icon Development, and as such, Icon Development and its principle B. Sorrentino converted Plaintiffs' investment funds. Again, Plaintiffs' argument is misplaced as they are confusing two separate and distinct companies. Intrepid Investment Partners is a division of Icon Development. Intrepid Investment Partners-Heritage Preserve Project is not. And Plaintiffs' have provided no evidence to establish a relationship between Intrepid Investment Partners-Heritage Preserve Project and Defendants.

Further, Plaintiffs have not provided any evidence that Defendants received, possessed, concealed, or aided in the concealment of stolen, embezzled, or converted property. 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).

Based on the foregoing, Plaintiffs have failed to create a question of fact as it relates to their conversion claim against Defendants B. Sorrentino, Icon Development, and S&SR. As such, Defendants' motion for summary of Plaintiffs' conversion claim is GRANTED, and the same is DISMISSED.

III. Count III - Breach of Contract

Next, Defendants argue that Plaintiffs' breach of contract claim should be dismissed because they were not parties to any contract with Plaintiffs. Specifically, Defendants argue that they were not parties to the Investment Loan Agreement, the contract at issue in Plaintiffs' breach of contract claim.

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).

Michigan law is also well-established that "a court must construe and apply unambiguous contract provisions as written." *Rory v Cont'l Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). Further, "[a] contract must be interpreted according to its plain and ordinary meaning." *Holmes v Holmes*, 281 Mich App 575, 593; 760 NW2d 300 (2008).

For the same reasons more fully discussed above, Plaintiffs' breach of contract fails as it relates to B. Sorrentino, Icon Development, and S&SR. The Investor/Loan Agreement entered on November 2, 2015, by Catalyst Development, LLC and Intrepid Investment Partners – Heritage Preserve, LLC. The Agreement was signed by Vince Sorrentino, Intrepid Investment Partners – Heritage Preserve, LLC's member.

Again, B. Sorrentino and Icon Development were not parties to the Agreement, despite Plaintiffs' attempt to construe Icon Development as a related entity to the true contracting party. Further, Plaintiffs have provided no evidence that S&SR was involved in the Agreement or construction project in any way.

Therefore, based on the foregoing, Plaintiffs have failed to create a question of fact as it relates to their breach of contract claim against Defendants B. Sorrentino, Icon Development, and S&SR. As such, Defendants' motion for summary of Plaintiffs' breach of contract claim is GRANTED, and the same is DISMISSED.

IV. Unjust Enrichment

Next, Defendants argue that Plaintiffs' unjust enrichment claim fails because, again, Defendants are not affiliated with Intrepid Investment Partners – Heritage Preserve. Further, Defendants argue that they received no financial benefit from Plaintiffs' investment in the project.

Plaintiffs allege that Defendants Intrepid Investment Partners-Heritage Preserve Project, (a division of S&SR and Icon Development), by and through its principals, M. Sorrentino, V. Sorrentino, B. Sorrentino, S. Sorrentino, and Bruce Michael have been and will continue to be unjustly enriched should they be allowed to reap the fruits of converting Plaintiffs' investment monies.

For the same reasons above, Plaintiffs' unjust enrichment claim fails. Again, although subtle, Intrepid Investment Partners-Heritage Preserve Project and Intrepid Investment Partners, LLC are two separate and distinct companies. Intrepid Investment Partners, LLC may be a

division on Icon Development, but there is no evidence that Intrepid Investment Partners-Heritage Preserve Project is.

Further, there is no evidence that B. Sorrentino is a member of Intrepid Investment Partners-Heritage Preserve Project. Intrepid Investment Partners-Heritage Preserve Project's operating agreement identifies four members, Bruce Michael, Vince Sorrentino, Michael Sorrentino, and Lee Seiss. (Defendants' Exhibit D). Additionally, Plaintiffs have provided no evidence that Defendants received any benefit from the investment or construction project.

As such, Plaintiffs have failed to create a question of fact as it relates to their unjust enrichment claim against Defendants B. Sorrentino, Icon Development, and S&SR. As such, Defendants' motion for summary of Plaintiffs' unjust enrichment claim is GRANTED, and the same is DISMISSED.

V. Intentional Fraud and Misrepresentation

As previously stated, Michigan law is 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).

After a careful review of Plaintiffs' Complaint, Plaintiffs have failed to plead its claims of fraud with particularity against Defendants. Based on the same, Plaintiffs have failed to state a claim for fraud against Defendants. Additionally, Plaintiffs have not supported their claim for fraud with evidence sufficient to create a genuine issue of material fact.

Specifically, Plaintiffs do not identify any representations that B. Sorrentino, Icon Development, or S&SR made that were relied upon by Plaintiffs. Plaintiffs do submit an affidavit of Hitesh Upadhyay, Plaintiff's husband. (Plaintiffs' Response, Exhibit D). Upadhyay's affidavit does not, however, create a question of fact as it relates to Plaintiffs' fraud claim. The affiant states that He met with B. Sorrentino to discuss the return of his wife's investment. *Id.* Further, the affiant stated that B. Sorrentino said that the project his wife had loaned money for failed, and that his sons were not able to repay her. *Id.*

There is nothing in the attached affidavit that supports an intentional fraud or misrepresentation claim. Specifically, Plaintiffs do not allege that B. Sorrentino's statements were false. To the contrary, B. Sorrentino's statement appears to be truthful since Plaintiffs initiated suit to recover their investment.

Based on the foregoing, Plaintiffs have failed to state a claim for intentional fraud and misrepresentation and have failed to establish that a question of fact exists as to the same. As such, Defendants' motion for summary disposition pursuant to (C)(8) and (C)(10) of Plaintiffs' claim for fraud and misrepresentation is GRANTED, and the same is DISMISSED.

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).

But as with their other claims, Plaintiffs have failed to satisfy the elements of their claim for an accounting and there is no dispute that Defendants were not involved in the construction project or a party to the Agreement. As such, Plaintiffs claim for an accounting against Defendants fails as a matter of law.

Based on the foregoing, Defendants' motions for summary disposition pursuant to (C)(8) and (C)(10) of Plaintiffs' claim for an accounting is GRANTED, and the same is DISMISSED.

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

The parties agree that, “[t]o establish a breach of fiduciary duty, the plaintiff must demonstrate a fiduciary relationship between himself and defendants.” *Holland v Jobete Music Co.*, 1999 WL 33446487. “A fiduciary relationship arises from the reposing of faith, confidence, and trust and the reliance of one upon the judgment and advice of another. Relief is granted when such position of influence has been acquired and abused, or when confidence has been reposed and betrayed.” *Vicencio v Ramirez*, 211 Mich App 501, 508; 536 NW2d 280 (1995).

Here, for the same reason as Plaintiffs other claims, Plaintiffs fails to establish any relationship with Defendants. Certainly, Plaintiffs have not plead or supported any allegation that they had a fiduciary relationship with B. Sorrentino, Icon Development, or S&SR.

And as previously stated, “[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).¹⁶ And, as more fully discussed above, Plaintiffs conversion claim against Defendants fails as a matter of law.

¹⁶ Again, 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, Plaintiffs have failed to state a claim for breach of fiduciary duty, larceny, and/or embezzlement and have failed to establish that a question of fact exists as to the same. As such, Defendants' motion for summary disposition pursuant to (C)(8) and (C)(10) of Plaintiffs' claim for breach of fiduciary duty, larceny, and/or embezzlement is GRANTED, and the same is DISMISSED.

VIII. Piercing Corporate Veil

Finally, Defendant B. Sorrentino argues that Plaintiffs claim to pierce the corporate veil fails as a matter of law. The Court agrees.

A corporation—or other artificial entity—is a legal fiction. It is an artificial being, invisible, intangible, and existing only in contemplation of law. Absent some abuse of corporate form, courts honor this fiction by indulging a presumption—often referred to as the corporate veil—that the entity is separate and distinct from its owner or owners. Courts will honor this presumption even when a single individual owns and operates the entity. However, the fiction of a distinct corporate entity separate from the stockholders is a convenience introduced in the law to subserve the ends of justice. When this fiction is invoked to subvert justice, it is ignored by the courts. As such, a court sitting in equity may look through the veil of corporate structure—that is, pierce the corporate veil—to avoid fraud or injustice. *Green v Ziegelman*, 310 Mich App 436, 450-51; 873 NW2d 794 (2015).

In order to successfully pierce the corporate veil, a Plaintiff must establish:

(1) the entity was the mere instrumentality of the owner, (2) the owner exercised his or her control in such a manner as to defraud or wrong the complainant in some way, and (3) the complainant would suffer an unjust loss or injury unless the court disregards the existence of the entity as separate from its owner. *Id.* at 454.

For the reasons more fully, and repeatedly discusses above, Plaintiffs have failed to state a claim or establish a question of fact as it relates to their claim to pierce the corporate veil against B. Sorrentino. As such, Defendant's motion for summary of the same is GRANTED, and Plaintiffs' claim is DISMISSED.

IX. Summary

Defendants Benedetto Sorrentino, Icon Development, Inc., and S&SR Investments, LLC's motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10) is GRANTED in its entirety, Plaintiffs' Complaint against said Defendants is DISMISSED. Defendants may file a bill of costs related to their motion for summary disposition.

IT IS SO ORDERED.

September 25, 2019
Date

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