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

GLOBAL CONSULTING DM FENTON ASSOCIATES, LLC.,
Plaintiff,

v.

Case No. 19-177134-CB
Hon. James M. Alexander

THE DHTE GROUP, LLC., DHTE GLOBAL, INC., LIANYU HAUNG, and DONNA M. MELONIO
Defendants.

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OPINION AND ORDER RE: SUMMARY DISPOSITIONS

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

According to Plaintiff's Complaint, on November 12, 2015, Plaintiff entered into an employment agreement with non-party Alternative Energy Systems, Inc. (AES), wherein Plaintiff was retained as an independent contractor to provide engineering services. By October 1, 2018, Plaintiff had not been paid $29,249.13 for services rendered pursuant to the contract. On October 2, 2018, the parties agreed to terminate the employment agreement by executing a Contractor's Termination Confidentiality Agreement.

On October 14, 2018, Plaintiff field a complaint against AES (case no. 2018-170539-CK) alleging breach of contract and unjust enrichment for the services. AES did not file an answer to the complaint, and on February 6, 2019, a Default Judgement in the amount of $29,504.38 was entered against AES. On February 20, 2019, AES filed a Certificate of Dissolution.

Plaintiff claims that Defendant Huang induced Plaintiff into extending its employment contract with AES based on the representations that AES was a viable company and that Plaintiff would be promptly paid for the services rendered. Further, Plaintiff alleges that upon signing the Termination Agreement, Huang assured and promised Plaintiff that he would be personally liable for Plaintiff's outstanding invoices.

On these general claims, Plaintiff filed its Complaint claims titled (Count I) fraud/detrimental reliance; (Count II) breach of contract (QCS); (Count III) piercing the corporate veil – misuse of corporate entities; (Count IV) unjust enrichment; (Count V) conversion; and (Count VI) exemplary damages.

As stated, Defendants now move for summary disposition under MCR 2.116(C)(7) and (C)(8). A (C)(7) motion determines whether a claim is barred, among other grounds, by the statute of frauds."[1] And a (C)(8) motion tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).[2]

I. Count I - Fraud/Detrimental Reliance

First, Defendants argue that Plaintiff's fraud claim fails because Plaintiff does not alleged that DHTE Group, DHTE Global, or Melonio engaged in any fraudulent conduct. Further, Defendants argue that Plaintiff's claim fails against Defendant Huang because any

[1] When analyzing a (C)(7) motion, the Court accepts the plaintiff's well-pleaded allegations as true and construes them in the plaintiff's favor unless the allegations are contradicted by documentary evidence. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999); *Huron Tool & Eng'g Co v Precision Consulting Services, Inc*, 209 Mich App 365, 376-77; 532 NW2d 541 (1995).

[2] 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) (emphasis added). 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).

representations Huang made because they were future promises, which are contractual and do not constitute fraud.

Plaintiff argues that it has established a claim for fraud because Huang made a material representation that AES was a viable company, when Huang knew it was not. Plaintiff claims it extended its contract with AES based on Huang's assurances and that he would continue to be paid for its services.

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 Plaintiff's Complaint, Plaintiff has failed to plead its claim of fraud with particularity against Defendants DHTE Group, DHTE Global, and Melonio. Plaintiffs do not allege that DHTE Group, DHTE Global, and Melonio made any representations to Plaintiff or that Plaintiff relied on any representations these Defendants. Further, Plaintiff does not allege that they were damaged by DHTE Group, DHTE Global, or Melonio's conduct.

To the contrary, Plaintiff allege that "Plaintiff relied on the representations made by Defendant Lianyu Huang and suffered damages by not receiving payment for services rendered totaling $29,249.13 (Complaint, at ¶ 25). As a result, Plaintiff has failed to state a claim for fraud against Defendants DHTE Group, DHTE Global, and Melonio.

As it relates to Huang, Plaintiff alleges that, "Huang claim[ed] that [AES] was an ongoing and viable entity thus assuring that prompt payment would be made for services rendered by the Plaintiff." (Complaint, at ¶ 21). And that "Huang then promised that such payment would be forthcoming and induced the Plaintiff to continue providing services through September 30, 2018 without receiving payment as promised." (Complaint, at ¶ 22). Plaintiff alleges that he relied on these representations and suffered damages by not receiving payment for the services it rendered.

Here, after a review of Plaintiff's Complaint, it is evident to the Court that Plaintiff's allegations to support an action for fraud are based entirely on future promises. Plaintiff signed a contract on the assurances that he would, in the future, be paid for the services it rendered by a viable company. As stated, a claim for fraud must be predicated on a past or existing fact. Future promises, as is the case here, are contractual in nature and do not constitute an action for fraud. As such, for the foregoing reasons and accepting all well-pled factual allegations as true, Plaintiffs claim for fraud/detrimental reliance must fail.

II. Count II – Breach of Contract

Next, Defendants argue that Plaintiff's breach of contract claim fails because (1) Plaintiff has not plead any facts showing that DHTE Group, DHTE Global, or Melonio breached a contract with Plaintiff, and (2) the alleged contract between Plaintiff and Haung violates the statue of frauds pursuant to MCL 566.132(1)(b).

In response, Plaintiff argue that it had an oral contract with Huang that Huang would be personally responsible for payment of Plaintiff's outstanding invoices. Plaintiff alleges that Huang breached the oral contract by failing to pay Plaintiff. Further, Plaintiff argues that even if Plaintiff's breach of contract claim is ultimately barred by the statute of frauds, Defendants are not entitled to summary disposition in accordance with MCR 2.116(C)(8).

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).[3]

MCL 566.132 provides (in relevant part):

> (1) In the following cases an agreement, contract, or promise is void unless that agreement, contract, or promise, or a note or memorandum of the agreement, contract, or promise is in writing and signed with an authorized signature by the party to be charged with the agreement, contract, or promise:
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> * * *
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> (b) A special promise to answer for the debt, default, or misdoings of another person.

In Plaintiff's Complaint, Plaintiff alleges that Huang promised that he would be personally responsible for payment of AES's outstanding debt owed to Plaintiff. What Plaintiff

[3] Further, "[i]f a claim or defense is based on a written instrument, a copy of the instrument or its pertinent parts must be attached to the pleadings as an exhibit . . ." MCR 2.113(C)(1). The requirement that the exhibit be attached is mandatory. *Stocker v Clark Refining Corp*, 41 Mich App 161, 165; 199 NW2d 862 (1972). And as previously stated, the contract becomes part of the pleadings, which the Court can review for purposes under MCR 2.116(C)(8).

alleges is that Huang made "[a] special promise to answer for the debt, default, or misdoings of another person." As such, MCL 566.132(1)(b) requires that this agreement be in writing and signed by the party to be charge with the agreement. Plaintiff has admitted that there is no written contract between the parties. As such, Plaintiff's breach of contract fails pursuant to MCR 2.116(C)(7) as it violates the statute of frauds and MCL 566.132(1)(b).

Plaintiff argues that summary disposition based on the statute of frauds is no appropriate pursuant to MCR 2.116(C)(8), but here Defendants have moved under both (C)(7) and (C)(8). Plaintiff has provided no authority that prohibits the Court from dismissing its claim pursuant to (C)(7).[4]

Similar to its fraud claim, Plaintiff failed to allege any facts as it relates to the remaining Defendants including the existence of a contract between the parties. For the foregoing reasons and accepting all well-pled factual allegations as true, the Court finds that Plaintiff's breach of contract claim is so clearly unenforceable as a matter of law that no factual development could justify a right of recovery. As a result, Defendants' motion for summary disposition of said claim is GRANTED, and the same is DISMISSED.

III. Count III – Piercing the Corporate Veil – Misuse of Corporate Entities

Next, Defendants argue that Plaintiff's claim to pierce the corporate veil should be denied because it does not allege an injustice related to a misuse of corporate form. Further, Defendants argue that Plaintiff makes conclusory statements that the entities at issue were used to commit a wrong and Plaintiff was harmed as a result but does not support the same with any factual allegations. And Defendants argue that Plaintiff cannot maintain an action to pierce the

[4] 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).

corporate veil and collect the Default Judgment against AES because Plaintiff has failed to allege any harm that was caused by Defendants' disregard of AES's corporate form.

In response, Plaintiff argues that Huang and Melonio are seeking cover under the corporate veil of AES. Plaintiff further argues that AES was a mere instrumentality of Huang and Melonio. And Plaintiff argues that the manipulation of corporate entities has unjustly precluded Plaintiff from collecting its default judgment against AES.

> As has been said many times before today, Michigan law respects the corporate form, and our courts will usually recognize and enforce separate corporate entities. But "usually" means not *always*, and when the requisite evidence establishes that the corporate form has been abused, the corporate form will be pierced so that creditors (and sometimes others) can seek payment of a corporate debt (like the judgment in this case) from a responsible corporate shareholder. Consequently, piercing the veil of a corporate entity is an equitable remedy sparingly invoked to cure certain injustices that would otherwise go unredressed in situations "where the corporate entity has been used to avoid legal obligations...." It is therefore a remedy, and not a separate cause of action. *Gallagher v Persha*, 315 Mich App 647, 653-54; 891 NW2d 505 (2016)(internal citations omitted).
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> In order to successfully pierce the corporate veil, a Plaintiff must establish:
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> (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. *Green v Ziegelman*, 310 Mich App 436, 454; 873 NW2d 794 (2015).

It appears based on Plaintiff's Complaint and response in opposition to summary disposition that Plaintiff is attempting to pierce the corporate veil of AES in an effort to collect on its default judgment against Huang and Melonio. AES, however, is not a party to this lawsuit. Beyond that, Plaintiff has failed to allege that Huang and Melonio misused the corporate entities of DHTE Group or DHTE Global such that Plaintiff is entitled to collect its default judgment against AES from Huang and Melonio personally.

Additionally, piercing the corporate veil is an equitable remedy available to the Court to allow creditors to seek payment of a debt from responsible shareholders. Here, as has been and will be more fully explained, Plaintiff is not entitled to recover in this lawsuit against any of the named Defendants, and therefore, piercing the corporate veil is not a viable remedy to collect on a default judgment in a prior action against a nonparty.

IV. Count IV – Unjust Enrichment

Next, Defendants argue that Plaintiff cannot maintain an unjust enrichment claim because it has not alleged any facts that it conferred a benefit upon Defendants. Defendants further argue that the only services that Plaintiff provided were to AES, a nonparty. Additionally, Defendants argue that the relationship between Plaintiff and AES was governed by an express contract, and therefore, Plaintiff cannot maintain an action for unjust enrichment.

In response, Plaintiff argues that Defendants have been unjustly enriched by receiving $29,249.1 worth of services without paying for the same. Plaintiff also argue that Defendants were unjustly enriched by the development and delivery of a powertrain project, which was largely attributable to Plaintiff's work at AES.

Plaintiff's Complaint, however, simply states:

> That all Defendants named herein received the benefits from Plaintiff's endeavors, but have not exchanged satisfactory value for them nor paid for them as agreed by and between the parties. (Complaint, at ¶ 49).
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> That if the Defendants are permitted to retain the benefits without exchanging satisfactory and agreed upon value for them, then Defendants are unjustly enriched at Plaintiff's expense ni the amount of at least Twenty Five Thousand ($25,0000 Dollars plus interest, costs and attorney fees. (Complaint, at ¶ 50).

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.

Here, Plaintiff has made two conclusory statements without any factual support. "Conclusory statements, unsupported by factual allegations, are insufficient to state a cause of action." *Churella v Pioneer State Mut Ins Co*, 258 Mich App 260, 272; 671 NW2d 125 (2003). Further, as argued in its response, any alleged benefit would be been received by AES, not the named Defendants in this litigation. And finally, the work Plaintiff performed for AES was governed by an express employment agreement. Based on the foregoing and accepting all well-pled allegations as true, Plaintiff cannot maintain an action for unjust enrichment.

V. Count V – Conversion

Next, Defendants argue that Plaintiff's conversion claim fails because Plaintiff has failed to allege that DHTE Group, DHTE Global, or Melonio converted any property from Plaintiff. Further, Defendant Huang argues that Plaintiff's claim arises solely out of the nonperformance of the alleged personal guaranty, and as such, Plaintiff's claim lies in contract, not tort.

Plaintiff argues that it is has stated a claim for conversion based on Huang's failure to pay Plaintiff for services rendered in the amount of $29,249.13, seeking treble damages for the same.

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).

In its Complaint, Plaintiff alleges that Huang breached the agreement between the parties and by failing to pay for Plaintiff's services and has retained and used the money without justification knowing that it belongs to Plaintiff. (Complaint, at ¶ 53). Plaintiff, however, has failed to identity for allege that Huang had an obligation to return specific money entrusted to his care. As such, Plaintiff's claim for conversion of money fails.

VI. Count VI – Exemplary Damages

Finally, Plaintiff seeks exemplary damages as compensation for Defendants' "outrageous and/or extreme conduct." (Complaint, at ¶ 57). However, since the remainder of Plaintiff's Complaint fails, its claim for exemplary damages also fails, and the same is dismissed.

VII. Conclusion

To summarize, Defendants' motion for summary disposition pursuant to MCR 2.116(C)(7) and (C)(8) is GRANTED and Plaintiff's Complaint 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 if justice so requires. MCR 2.116(I)(5). In the present case, the Court finds that there is no evidence before the Court that would justify an amendment, and any such amendment would be futile. Although leave to amend should be freely given, the Court finds that, even if amended, no factual development could possibly justify recovery on Plaintiff's claim against the named Defendants. Rather, after reviewing Plaintiff's Complaint and the parties' briefing, it is evident that Plaintiff is trying to improperly collect on a judgment to which the named Defendants are not parties.

This is a final order that resolves the last pending claim and closes the case.

IT IS SO ORDERED.

January 22, 2020
Date

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