

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

JASON SOULLIERE,

Plaintiff,

Case No. 2014-294-CZ

vs.

LOUIE MCALPINE AND CINDY
MCALPINE,

Defendants,

and

LOUIE MCALPINE AND CINDY
MCALPINE,

Third Party Plaintiffs,

vs.

SLEEPER #3 TRACT 2, LLP, SECURE
OPERATIONS GROUP, MATTHEW
MURRAY, and DOUBLE M LAND
& MINERALS, LLC,

Third Party Defendants.

OPINION AND ORDER

Third Party Defendants Matthew Murray and Double M Land & Minerals, LLC (collectively, “Movants”) have filed a motion for summary disposition pursuant to MCR 2.116(C)(6), (8) and (10). Defendants/Third Party Plaintiffs Louie McAlpine and Cindy McAlpine (collectively, “Defendants”) have filed a response to the motion and request that the motion be denied. In addition, Movants have filed a reply brief in support of their motion.

Factual and Procedural History

This lawsuit stems from Plaintiff's purchase of a 20% fractional undivided oil and gas working interest with a 15% net revenue interest in "Sleeper #3, Tract 2" (the "Interests"). The investment was formally memorialized in a February 5, 2012 participation agreement (the "Agreement"). Plaintiff purchased the Interests from Secure Operations Group, LLC ("SOG"), an Oklahoma limited liability company.

On January 27, 2014, Plaintiff filed his complaint in this matter alleging that the Interests constitute securities under the Uniform Security Act, MCL 451.2101 et seq. (the "Act"), that Defendants' actions in issuing, offering for sale, promoting, and selling the Interests violated the Act, and that Defendants are liable for the violations as managers, members, officers, directors, agents and/or control persons of SOG. On March 14, 2014, the Defendants filed a motion for summary disposition in lieu of filing an answer. On May 8, 2014, the Court denied Defendants' motion.

Defendants have since filed their third party complaint ("Third Party Complaint"). The Third Party Complaint contains two claims against Movants: Contribution (Count II) and Indemnity (Count III). The Court has since dismissed Count III of the Third Party Complaint.

On February 13, 2015, Movants filed their instant motion for summary disposition. Defendants have filed a response and request that the motion be denied. Movants have also filed a reply brief in support of their motion.

On April 6, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

Standards of Review

Summary disposition under MCR 2.116(C)(6) is appropriate where "another action has been initiated between the same parties involving the same claim." Summary disposition may be

granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party has failed to state a claim upon which relief may be granted. *Radtke v Everett*, 442 Mich 368, 373-374; 501 NW2d 155 (1993). A motion under MCR 2.116(C)(10), on the other hand, tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

Arguments and Analysis

Defendants' claim for contribution is brought pursuant to the Michigan Uniform Security Act ("MUSA"). Specifically, Defendants claim is based on MCL 451.2509(8), which provides:

A person liable under this section has a right to contribution as in cases of contract against any other person liable under this section for the same conduct.

In their motion, Movants contend that they cannot be liable under MUSA in connection with the instant matter because they did not sell securities to Plaintiff and were not the agents, employees or associated with SOG, and were not paid compensation in connection with the sale(s) to Plaintiff. In support of their position, Movants rely on affidavits executed by Plaintiff and Third-Party Defendant Matthew Murray, in which they testify that Movants did not sell the Interests to Plaintiff, and did not participate in the sales to Plaintiff. *See* Movants' Exhibits A and B. In addition, Movants rely on the United States Securities and Exchange Commission

Regulation D filing in which Defendants did not list Movants as entities/individuals that were compensated for their sale of securities to Plaintiff. *See* Movants' Exhibit D.

In response, Defendants rely on the affidavit of Defendant Louie McAlpine in which he testified that SOG hired Movants as consultants to render services, including to promote and sell the Sleeper #3 Tract 2 securities to Plaintiff. *See* Defendants' Exhibit 11. While Movants contend that Louie McAlpine lacks credibility in light of his prior legal issues, a court reviewing a motion for summary disposition may not make credibility determinations. *Burkhardt v Bailey*, 260 Mich App 636, 647; 680 NW2d 453 (2004). Consequently, the Court may not make any determination with respect to Louie McAlpine's credibility, and based on the conflicting affidavits presented by the parties, the Court is convinced that Movants' motion must be denied.

Conclusion

In addition, for the reasons discussed above, Third Party Defendants Matthew Murray and Double M Land & Minerals, LLC's motion for summary disposition is DENIED. The Court states this Opinion and Order neither resolves all pending matters nor closes the case. MCR 2.602(A)(3).

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: May 4, 2015

JCF/sr

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