

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

EDWARD CASTLE, JR.,

Plaintiff,

vs.

Case No. 2014-3568-CB

MARCIA SHOHAM, JONATHAN
SHOHAM and MIDWEST AIR
FILTER, INC.,

Defendants.

OPINION AND ORDER

Defendants have filed a motion for dissolution. Plaintiff has filed a response and requests that the motion be denied. Defendants have also filed a reply brief in support of their motion.

I. Factual and Procedural History

Plaintiff Edward Castle, Jr. ("Plaintiff Castle") is a minority owner of Plaintiff Filter Depot, LLC ("Filter Depot"). Defendant Midwest Air Filter, Inc. ("MAF") is the majority owner of Filter Depot. Since 2013 Defendants Marcia and Jonathan Shoham (collectively, the "Shoman Defendants") have owned and operated MAF.

On September 12, 2014, Plaintiff Castle filed his original complaint in this matter. In his complaint, Plaintiff Castle alleged that MAF, at the direction of the Shoham Defendants, has engaged in various improper activities.

On January 21, 2015, Plaintiffs filed their first amended complaint ("Amended Complaint"). The Amended Complaint added Filter Depot as a plaintiff and contains the following claims: Count I- Member Oppression against MAF under MCL 450.4515, Count

II- Fraud, Fraudulent Omission, and Silent Fraud against MAF, Count III- Breach of Contract against MAF, Count IV- Unjust Enrichment against MAF, Count V- Attorney Fees pursuant to MCL 450.4503 against MAF, Count VI- Accounting, Count VII- Breach of Common Law Fiduciary Duties against MAF, Count VIII- Breach of Statutory Fiduciary Duties against MAF, Count IX- Statutory and Common Law Conversion against Defendants, Count X- Aiding and Abetting Breaches of Fiduciary Duty, Fraud, Conversion, Breach of Contract, Member Oppression, and Unjust Enrichment against Defendants, and Count XI- Civil Conspiracy against Defendants.

On January 16, 2015, Defendants filed their first motion for dissolution of Filter Depot. On February 11, 2015, the Court entered its Opinion and Order in which it, *inter alia*, denied Defendants' motion.

On October 19, 2015, Defendants filed their instant motion for partial summary disposition of dissolution. On November 5, 2015, Plaintiff filed his response to the motion and requests that the motion be denied. Defendants have subsequently filed a reply brief in support of their motion. On November 16, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Arguments and Analysis

Defendants' motion purports to be a motion for summary disposition of dissolution. However, neither side has filed a claim for dissolution in this case. While dissolution is a potential remedy in connection with Plaintiff's member oppression claim, the merits of that claim have yet to be determined. Accordingly, Defendants' motion is procedurally improper and is properly denied on that basis alone.

Notwithstanding the instant motion's procedural deficiencies, the Court will

address Defendants' request for a dissolution. In their motion, Defendants seeks dissolution pursuant to MCL 450.4802. MCL 450.4802 provides:

Upon application by or for a member, the circuit court for the county in which the registered office of a limited liability company is located may decree dissolution of the company whenever the company is unable to carry on business in conformity with the articles of organization or operating agreements.

Accordingly, pursuant to MCL 450.4802, the moving party must establish that the LLC at issue is unable to carry on business in conformity with the articles of organization or operating agreements. In this case, the only evidence Defendants have presented in support of their request is an income statement for the seven months prior to July 31, 2015 that shows that Filter Depot had operated at a loss for that period of time. (See Defendants' Exhibit 2.) While the income statement, if accurate, may evidence that Filter Depot was not profitable during that period of time, the income statement does not evidence that the Filter Depot was unable to be operated in compliance with its Operating Agreement. Consequently, Defendants have failed to satisfy their burden for obtaining an order of dissolution under MCL 450.4802. As a result, their motion must be denied.

III. Conclusion

For the reasons discussed above, Defendants' motion for dissolution is DENIED.

Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

Date: FEB 02 2016

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge