

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

MIDWEST AIR FILTER, INC.,

Plaintiff/Counter-Defendant,

vs.

Case No. 2018-1242-CB

EDWARD CASTLE, JR.,

Defendant/Counter-Plaintiff.

OPINION AND ORDER

Plaintiff/Counter-Defendant Midwest Air Filter, Inc. ("Plaintiff") has filed a motion for summary disposition of Defendant/Counter-Plaintiff Edward Castle, Jr.'s ("Defendant") counterclaim. Defendant has filed a response and requests that the motion be denied.

I. Factual and Procedural History

Plaintiff and Defendant are the two members of the Filter Depot, LLC ("Filter Depot"), with Plaintiff holding a majority interest. Plaintiff has allegedly sent Defendant notices for additional contributions instructing Defendant to contribute funds. Plaintiff alleges that Defendant has failed to make the contributions as purportedly required by Section 3.2 of the Filter Depot's operating agreement. Based on that alleged failure, on March 27, 2018 Plaintiff filed its complaint in this matter ("Complaint") asserting a claim for breach of contract.

On May 17, 2018, Defendant filed his counterclaim in this matter ("Counterclaim"). The Counterclaim contains the following counts: Count I-

Membership Oppression, Count II- Fraud, Fraudulent Omission, Silent Fraud, Count III- Breach of Contract, Count IV- Unjust Enrichment, Count V- Violation of MCL 450.4503, and Count VI- Accounting.

On March 29, 2018, Plaintiff filed its instant motion for summary disposition of Counts I-V of the Counterclaim. Defendant has since stipulated to the dismissal of Counts II-IV of the Counterclaim. On October 1, 2018, Defendant filed his response requesting that Plaintiff's motion be denied as it relates to Counts I and V. On October 9, 2018, the Court held a hearing in connection with the motion. At the hearing, the Court denied, without prejudice, Plaintiff's motion for summary disposition of Count I of the Counterclaim and took Plaintiff's request for summary disposition of Count V of the Counterclaim under advisement.

II. Standard of Review

Plaintiff's motion as it relates to Count V is brought pursuant to MCR 2.116(C)(8). 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.

III. Arguments and Analysis

In its motion, Plaintiff argues that Defendant has failed to state a claim under MCL 450.4503 because he has not identified specific requests for documents that were improperly denied. However, in order to sufficiently state a claim the pleading party merely is required to plead "allegations necessary to reasonably inform the adverse party of the nature of the claims the adverse party is called on to defend." MCR 2.111(B)(1). In the Counterclaim, Defendant alleges that he had properly requested copies of all "accounting records, all documents related to interested party transactions, the Company Minute Book, numerous other documents related to interested party transactions for the proper purpose of performing an accounting." (See Counterclaim, at ¶35.) Further, Defendant alleges that Plaintiff has failed to produce the documents requested. (Id. at ¶36.) MCL 450.4503 provides:

(1) Upon written request of a member, a limited liability company shall send a copy of its most recent annual financial statement and its most recent federal, state, and local income tax returns, and any other returns or filings the limited liability company has submitted or is required to submit to any federal, state, local, or other governmental taxing authority, to the member by mail or electronic transmission.

(2) Upon reasonable request, a member may obtain true and full information regarding the current state of a limited liability company's financial condition.

(3) Upon reasonable written request and during ordinary business hours, a member or the member's designated representative may inspect and copy, at the member's expense, any of the records a limited liability company is required to maintain under section 213,1 at the location where the records are kept.

(4) Upon reasonable written request, a member may obtain other information regarding a limited liability company's affairs or may inspect, personally or through a representative and during ordinary business hours, other books and records of the limited liability company, as is just and reasonable.

(5) A member may have a formal accounting of a limited liability company's affairs, as provided in an operating agreement or whenever circumstances render it just and reasonable.

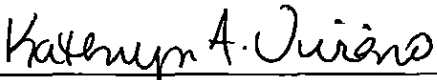
Without deciding the merits of Defendant's claim, as that is outside the scope of the instant motion, this Court is convinced that Defendant has sufficiently stated a claim under the statute to notify Plaintiff of the nature of the claim it will be required to defend. As a result, Plaintiff's motion for summary disposition of Count V pursuant to MCR 2.116(C)(8) must be denied.

IV. Conclusion

Based upon the reasons set forth above, Plaintiff's motion for summary disposition of Count V of the Counterclaim is DENIED. In compliance with 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: NOV 27 2018



Hon. Kathryn A. Viviano, Circuit Court Judge