

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

**SAM PATTAH,  
Plaintiff,**

v.

**Case No. 13-134936-CZ  
Hon. James M. Alexander**

**GLENN BEDNARSH, ET AL,  
Defendants.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Defendants Glenn Bednarsh and Michigan Gold & Diamond Exchange’s motion for summary disposition.<sup>1</sup> This case arises out of Plaintiff’s claim that he purchased a 50% interest in a Toledo Cash for Gold store for \$60,000 from Mr. Bednarsh – who was to be the other 50% partner.

Unbeknownst to Plaintiff, however, the Toledo store was owned by Defendant National Gold and Diamond Exchange. Plaintiff also claims that he was never actually received his 50% ownership interest in the store.

On these allegations, Plaintiff filed a multi-count Complaint on claim of: (1) Shareholder Oppression, (2) Breach of Fiduciary Duty, (3) Unjust Enrichment, (4) Breach of Contract, (5) Promissory Fraud/Fraud in the Inducement, and (6) Conversion against Bednarsh, Michigan Gold, and National Gold.

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<sup>1</sup> To the extent that Plaintiff argues that Defendants’ motion is untimely, the Court rejects this argument. Judge Anderson accepted the motion for filing and scheduled the same for hearing before transferring this case to the Court’s business docket.

Defendants Bednarsh and Michigan Gold now move for summary disposition of Plaintiff's claims against them under MCR 2.116(C)(8) and (C)(10). In response, Plaintiff seeks summary disposition under (I)(2).

A (C)(8) motion tests the legal sufficiency of the complaint when "the opposing party has failed to state a claim on which relief can be granted." *Radke v Everett*, 442 Mich 368, 373 (1993). All well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dept of Corrections*, 439 Mich 158; 483 NW2d 26 (1992). A motion under this subrule 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." *Id.* When deciding such a motion, the court considers only the pleadings. MCR 2.116(C)(G)(5).

A (C)(10) motion tests the factual support for a cause of action. *Maiden v Rozwood*, 461 Mich 109, 119-20 (1999). Summary judgment is proper, and the movant is entitled to judgment as a matter of law, if the evidence proffered by the non-moving party fails to establish a genuine issue of material fact. *Id.*

### **1. Shareholder Oppression.**

Defendants first claim that, "while Bednarsh is a shareholder in Ohio Gold, there is no genuine issue of material fact that Michigan Gold is not a shareholder of member of Ohio Gold." Because Michigan Gold is not a shareholder, it could not have oppressed Plaintiff. Therefore Defendants seek dismissal of Plaintiff's Shareholder Oppression claim against Michigan Gold.

Plaintiff makes no real argument in response to Michigan Gold's summary request. As a result, the Court finds that Plaintiff concedes that Count I of Plaintiff's Complaint is properly dismissed as to Defendant Michigan Gold.

Defendants next claim that, with respect to Plaintiff's shareholder oppression claim against Bednarsh, Plaintiff cannot bring said claim in Oakland County against an Ohio LLC. As alleged in Plaintiff's Complaint, Defendant National Gold is "an Ohio limited liability company . . . operating a gold and diamond exchange business at 1387 W. Sylvania Avenue, Toledo, Ohio."

Under Michigan's Limited Liability Company Act, MCL 450.4515(1):

A member of a limited liability company may bring an action **in the circuit court of the county in which the limited liability company's principal place of business or registered office is located** to establish that acts of the managers or members in control of the limited liability company are illegal or fraudulent or constitute willfully unfair and oppressive conduct toward the limited liability company or the member. (emphasis added).

Because National Gold is an Ohio LLC doing business in Ohio, Defendants argue that Plaintiff cannot bring his shareholder oppression claim in Oakland County.

In his Response, Plaintiff completely ignores Defendants' argument on this issue, and thereby, concedes Defendants' entitlement to dismissal of Plaintiff's shareholder oppression claim.

For the foregoing reasons and viewing all evidence in the light most favorable to Plaintiff, the Court concludes that there are no material questions of fact in dispute and Defendants are entitled to Judgment as a matter of law. As a result, Defendants' motion for summary disposition under MCR 2.116(C)(10) is GRANTED, and Plaintiff's Count I is DISMISSED as to Defendants Bednarsh and Michigan Gold.

## **2. Breach of Fiduciary Duty.**

Defendants next seek dismissal of Plaintiff's Breach of Fiduciary Duty claim because: (1) Michigan Gold was never a shareholder in National Gold, and (2) Plaintiff admitted that he was

also never a member of National Gold. As a result, there is no question of material fact that Defendants owe no duty to Plaintiff.

In support, Defendants cite to Plaintiff's Answer to Defendant's First Set of Request for Admissions. In said Answers, Plaintiff "denied" that he was a 50% shareholder or owner of Defendant National Gold. Plaintiff also testified at deposition that he didn't own any portion of National Gold or the Toledo store.

In response, Plaintiff only presents an unsigned operating agreement that he claims forms the basis for his breach of fiduciary duty claim. But Plaintiff presents no authority in support of this argument.

Michigan law is clear that "[a] party may not merely announce a position and leave it to [the] Court to discover and rationalize the basis for the claim." *National Waterworks, Inc v International Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007).

For the foregoing reasons, the Court finds that Defendants are entitled summary disposition of Plaintiff's breach of fiduciary duty claim under (C)(10), and Plaintiff's Count II is DISMISSED as to Defendants Bednarsh and Michigan Gold.

### **3. Unjust Enrichment.**

Defendants next seek summary disposition of Plaintiff's unjust enrichment claim (Count III) because they claim that they received no benefit from Plaintiff.

"[I]n order to sustain a claim of quantum meruit or unjust enrichment, a plaintiff must establish (1) the receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant." *Morris Pumps*

*v Centerline Piping, Inc*, 273 Mich App 187, 195; 729 NW2d 898 (2006); citing *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993).

The Morris Pumps Court further reasoned:

[a] third party is not unjustly enriched when it receives a benefit from a contract between two other parties, where the party benefited has not requested the benefit or misled the other parties . . . . Otherwise stated, the mere fact that a third person benefits from a contract between two other persons does not make such third person liable in quasi-contract, unjust enrichment, or restitution. *Morris Pumps*, 273 Mich App at 196; quoting 66 Am Jur 2d, Restitution and Implied Contracts, § 32, p 628.

Defendants claim that the only benefactors of the \$60,000 that Plaintiff provided to become a member of National Gold were nonparties Corey Fischer and John Gugliotta – the former owners of National Gold.

But, on this issue, the parties offer wildly differing accounts. Plaintiff claims that he provided the \$60,000 to Bednarsh – who was supposed to provide a 50% ownership interest in National Gold in exchange. In his deposition, Bednarsh admitted that he received \$60,000 from Plaintiff, and he deposited \$10,000 of that money into Michigan Gold’s bank account.

Further, Gugliotta testified at deposition that he did not sell his interest to Plaintiff, nor received any money from Bednarsh as payment to sell a portion of his interest in National Gold. A reasonable trier-of-fact could determine that this testimony establishes sufficient evidence that Defendant “misled” the other parties such that Plaintiff is entitled to recover in unjust enrichment.

As a result, the Court finds that resolution of this issue is so substantially intertwined with fact-finding and credibility determinations as to render summary disposition on Plaintiff’s unjust enrichment claim wholly inappropriate. For the foregoing reasons, Defendants’ motion as to Plaintiff’s Count III is DENIED.

#### **4. Promissory Fraud.**

Defendants next argue that Plaintiff fails to state a claim for fraud (Count V). 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).

With respect to Defendant Michigan Gold, Plaintiff again fails to argue that it is liable for and fraudulent misrepresentations, and as a result, concedes that summary disposition of this claim is appropriate as to Defendant Michigan Gold only.

With respect to Defendant Bednarsh, however, the Court again finds that resolution of this issue is so substantially intertwined with fact-finding and credibility determinations as to render summary disposition wholly inappropriate.

#### **5. Conversion.**

Defendants next claim that they are entitled to summary disposition of Plaintiff's conversion claim. "The 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).

On this issue, Defendants again argue facts to support their summary request. Defendants claim “neither Bednarsh nor Michigan Gold ever exerted domain over [Plaintiff’s] money inconsistent with [his] rights.”

In Response, Plaintiff claims that his funds “were delivered and entrusted to Bednarsh for the express purpose of delivering to Plaintiff a 50% membership interest in National Gold.” Because Plaintiff never received said interest, Bednarsh admitted depositing some of this money into Michigan Gold’s account, and Gugliotta denies ever receiving any money from Bednarsh for purchase of said interest, Plaintiff argues that Defendants are liable under this theory.

The Court again finds that there are simply too many factual questions to render summary disposition on this issue.

#### **6. Breach of Contract / Fraud in the Inducement.**

Finally, the Court notes that, with respect to Defendants’ request for summary of Plaintiff’s breach of contract and fraud in the inducement claims,<sup>2</sup> Plaintiff has failed to respond and thereby concedes dismissal of said claims is appropriate.

#### **7. Summary.**

To summarize, Defendants’ motion for summary disposition is GRANTED IN PART. Plaintiff’s claims for: Shareholder Oppression (Count I), Breach of Fiduciary Duty (Count II), Breach of Contract (Count IV); and Fraud in the Inducement (*part* of Count V) are DISMISSED as to both Defendants Bednarsh and Michigan Gold.

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<sup>2</sup> Plaintiff’s Count V states claims for both Fraudulent Misrepresentation and Fraud in the Inducement – which are two separate claims.

Plaintiff's claim for Fraudulent Misrepresentation (*part* of Count V) is DISMISSED only as to Defendant Michigan Gold.

Defendants' motion, however, with respect to Plaintiff's claims for: Unjust Enrichment (Count III), Fraudulent Misrepresentation as to Defendant Bednarsh (Count V), and Conversion (Count VI) is DENIED.

Plaintiff's summary request under (I)(2) is likewise DENIED.

**IT IS SO ORDERED.**

December 17, 2014  
Date

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