STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DAVID H. MARTIN,

Plaintiff,

v

Case No. 2013-135024-CZ
Hon. Wendy Potts

OTHMAN KADRY,

Defendant.
_____/

OPINION AND ORDER RE: DEFENDANT'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(7), (8) AND/OR (10)

At a session of Court
Held in Pontiac, Michigan
On
FEB 13 2014

The matter is before the Court on Defendant Othman Kadry's motion for summary disposition of Plaintiff David Martin's claims under MCR 2.116(C)(7), (C)(8), and (C)(10). A motion under (C)(7) tests whether a claim is barred as a matter of law, (C)(8) tests the legal sufficiency of the complaint, and (C)(10) tests the factual support for the claims. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).

Kadry first asserts that Martin's Count I alleging breach of contract and Count III alleging promissory estoppel fail because the claims are barred by the statute of frauds. Kadry argues that Martin's contract theories are based on Kadry's alleged promise to pay the debts of Summit Professional Baseball, LLC, and the promises are unenforceable because they are not in writing or signed by Kadry. MCL 566.132(1)(b). Kadry also claims that the promises as stated in text messages exchanged between Martin and Kadry do not contain sufficient specificity to

satisfy the statute of frauds. See *Commercial Factors Corp v Zephyr Awning Corp*, 353 Mich 251, 256-259; 91 NW2d 511, 514-515 (1958). However, Martin asserts that Kadry did not promise to repay a loan Martin made to Summit. Instead, he claims that Kadry personally promised to repay Martin for advances to or expenditures made for the London Rippers baseball team. Martin also claims that Kadry promised Martin ownership interest in Summit and London Professional Baseball Corp in exchange for Martin's investments. As support for his theory, Martin presents an affidavit of George Shaieb who confirms that Kadry promised both him and Martin ownership interest in the companies and also promised to repay expenditures they made for the team. Based on the allegations and evidence presented, there appears to be a question of fact whether Martin had an agreement with Kadry to repay Martin's expenses or to give Martin increased ownership interest in exchange for his investment. At this stage in the proceedings, the Court cannot conclude as a matter of law that Martin's contract claims are premised solely on an oral promise by Kadry to pay a debt Summit owed Martin. Kadry is not entitled to summary disposition on this ground, however, Kadry may renew the motion after discovery is concluded.

Kadry also asserts that Martin's unjust enrichment and quantum meruit claims fail because Martin cannot demonstrate that Kadry benefitted from money Martin spent on behalf of the team. In order to prevail on his claim, Martin must show that Kadry received a benefit from him, and it would be inequitable for Kadry to retain that benefit. *B&M Die Co v Ford Motor Co*, 167 Mich App 176, 181; 421 NW2d 620 (1988). Kadry argues that because the venture failed, he received no benefit from Martin's expenses. However, Martin notes that Kadry was the majority owner of Summit and the sole owner of LBP and argues that Kadry benefitted because the funds Martin paid on behalf of the team relieved Kadry of the obligation to invest capital in the companies. Based on the allegations and evidence, the Court cannot conclude as a matter of law

that Kadry received no benefit from Martin's expenses. Kadry's motion is denied, however, he may renew his motion after discovery is completed.

Kadry also argues that Martin's negligence claim fails because Kadry did not owe Martin a duty regarding theft of or damage to Martin's personal property. Whether a duty exists is a generally question of law for the Court. *Fultz v Union-Commerce Associates*, 470 Mich 460, 463; 683 NW2d 587 (2004). Martin claims that Kadry owed him a duty because the local police needed Kadry's permission to conduct an investigation. Martin further claims that without a police report, filing an insurance claim would have been futile. However, Martin presents no evidence supporting his claim that the police would not investigate without Kadry's permission. Martin also cites no case law holding that the majority owner of an LLC would owe a minority owner a duty under these circumstances. Duty generally depends on the nature of the legal relationship between parties. See *Clark v Dalman*, 379 Mich 251, 260; 150 NW2d 755 (1967). Because Martin fails to explain how his relationship with Kadry would give rise to duty, the negligence claim fails as a matter of law and Kadry is entitled to summary disposition of that claim.

For all of these reasons, the Court grants Kadry summary disposition of Martin's Count V alleging negligence. In all other respects, the motion is denied without prejudice.

IT IS SO ORDERED.

Dated: FEB 13 2014

Hon. Wendy Potts