

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ON GO, LLC, et al,

Plaintiffs,

Case No. 13-135312-CB

v

Hon. Wendy Potts

NASER INVESTMENTS, LLC, et al,

Defendants.

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OPINION AND ORDER RE:  
NASER INVESTMENTS, LLC AND AZIZ NASER'S MOTION FOR SUMMARY  
DISPOSITION AS TO COUNTS II-VIII IN PLAINTIFFS' AMENDED COMPLAINT

At a session of Court  
Held in Pontiac, Michigan

On

AUG 08 2014

The matter is before the Court on Defendants Naser Investments, LLC and Aziz Naser's second dispositive motion. Defendants bring the motion under MCR 2.116(C)(10), which tests the factual support for the claims. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).

Defendants assert that Naser Investments held a first-priority security interest in all of the tangible and intangible assets of Plaintiffs On Go, LLC and On Go Holdings, LLC. Because the On Go entities defaulted on their loan obligations, Naser Investments exercised its right under the security agreement to conduct a UCC sale, where it purchases the On Go entities' secured assets. Defendants assert that the assets purchased included the On Go entities' interest in the claims asserted this action and thus the On Go entities no longer have standing to pursue those

claims. Specifically, Defendants claim that the On Go entities no longer have the right to pursue their claims in Count II (tortious interference against Aziz Naser), Count III (breach of duty of good faith under UCC against Aziz Naser and Naser Investments), Count IV (fraudulent inducement to enter into loan documents against Aziz Naser, Judy Naser, and Naser Investments), Count V (rescission of the loan documents against Naser Investments), Count VI and VII (breach of contract against Naser Investments), and Count VIII (breach of fiduciary duty against Aziz Naser and Naser Investments).

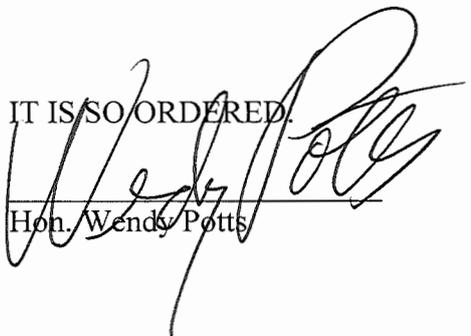
Plaintiffs contend that the validity of the UCC sale is in question because Naser Investments did not act in good faith and a commercially reasonable manner. Defendants had a general, nonwaivable obligation to perform their duties and enforce their rights under UCC in “good faith.” MCL 440.1304; MCL 440.1304(2). Naser Investments also had a duty to conduct the UCC sale and dispose of the collateral in a commercially reasonable manner. See MCL 440.9610(2). However, most of the “bad faith” conduct alleged in Plaintiffs’ response refers to conduct of Mr. Naser that occurred before a default was declared or the UCC sale occurred. Plaintiffs cite no authority that conduct occurring before the debtor’s default and before the UCC sale would somehow invalidate the sale or render the creditor’s conduct in bad faith or commercially unreasonable. Further, these arguments appear to be a disguised motion for reconsideration of the Court’s December 2013 decision granting Defendants’ motion for summary disposition, and the Court has already denied reconsideration. Thus, the Court rejects Plaintiffs’ attempt to revisit its complaints about Defendants’ conduct before the On Go entities defaulted on their loan obligations.

As to the conduct of the UCC sale, Plaintiffs assert that Defendants improperly conducted a private sale and failed to allow the On Go entities credit for the value of the assets that

exceeded Naser Investments credit bid. However, Plaintiffs present no evidence of their claim that the sale was private. As Defendants note, the sale was published in the Legal News. Even if the sale was private, Plaintiffs fail to explain how this would make it commercially unreasonable where the loan documents specifically allowed for a private sale. Regarding the credit bid, Defendants assert and present evidence that the amount owed on the loan exceeded the credit bid, and Plaintiffs present no evidence to dispute this fact. In sum, Plaintiffs fail to demonstrate that Naser Investments did not act in good faith or a commercially reasonable manner when it declared a default, held a UCC sale of the collateral, and purchased the collateral by credit bid. Thus, the claims asserted in this action belong to Naser Investments and Plaintiffs no longer have any interest in these claims. Because Plaintiffs do not have an interest in the claims, they are not the real parties in interest and cannot pursue the action. MCR 2.201(B); *Hofmann v Auto Club Ins Assn*, 211 Mich App 55, 95; 535 NW2d 529 (1995).

For all of these reasons, the Court grants the motion and dismisses Plaintiffs' Counts II, III, IV, V, VI, VII, and VIII. Because Plaintiff Derrick George still has a claim for tortious interference and Defendants have asserted counterclaims, this order does not resolve the last pending claim.

Dated: **AUG 08 2014**

IT IS SO ORDERED.  
  
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Hon. Wendy Potts