

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

**LORENZO CAVALIERE, ET AL,
Plaintiffs/Counter-Defendants,**

v.

**Case No. 13-138079-CZ
Hon. James M. Alexander**

**DRSN ASSOCIATES, LLC, ET AL,
Defendants/Counter-Plaintiffs.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Counter-Defendant Lisa Mancini's motion for summary disposition. Until November 2014, Mrs. Mancini was the trustee of Plaintiff Senior Healthcare Trust. Plaintiff Lorenzo Cavaliere is a beneficiary of the Senior Healthcare Trust.

Plaintiffs generally allege that the parties were involved in the business of building and operating senior health care facilities. In their Complaint, Plaintiffs allege that the majority members embarked on a course of willfully unfair and oppressive conduct to punish it for refusing to sell its minority interest to the other members. Plaintiffs also claimed that Defendants terminated Plaintiff Cavaliere without cause.

In October 2014, Defendants filed a Counter-Claim against Plaintiffs, but also included Mrs. Mancini as a Counter-Defendant in her individual capacity. Generally, Defendants allege that Plaintiffs committed wrongs by developing a competing senior living facility known as the Troy Senior Project without giving the other DRSN members the required opportunity to invest. And, Defendants allege, Plaintiffs did so "while also being subject to the restrictions in the DRSN Operating Agreement as [the Senior Healthcare Trust's] trustee and beneficiary."

The caption of the Defendants' Counter-Claim lists Mrs. Mancini "individually, [and] as Trustee of Senior Health Care Trust, and as Trustee of Troy Senior Trust a/k/a Cavaliere Trust."

But paragraph 4 of the Counter-Claim provides, in full:

Counter-Defendant Lisa Mancini ("Mancini") is, and since approximately March 2013 and at all times relevant to this Counterclaim has been, the Trustee of [the Senior Healthcare Trust]. Mancini also is the Trustee of Counter-Defendant Troy Senior Trust a/k/a Cavaliere Trust ("the Cavaliere Trust"). Mancini is a Counter-Defendant in those Trustee capacities.

Mrs. Mancini argues that "[n]owhere in the counterclaim . . . is there a request for relief from Mrs. Mancini in her individual capacity." And in addition to the Counterclaim's paragraph 4 (above), Mrs. Mancini argues that, "because the counterclaim makes no allegation against [her] in her individual capacity (as opposed to trustee capacity)," she should be dismissed as a Defendant.

To that end, Mrs. Mancini moves for summary disposition under MCR 2.116(C)(8) or (C)(10). A (C)(8) motion tests the legal sufficiency of the complaint, and a (C)(10) motion tests the factual support for a plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

In response to Plaintiffs' motion, Defendants claim that they intended and did sue Mrs. Mancini in her individual capacity and their Counterclaim "alleges facts showing Mancini's involvement in the underlying tortious scheme and properly states tort claims against her." The Court disagrees.

As stated, Defendants' own Counterclaim specifically states that "Mancini is a Counter-Defendant in those Trustee capacities." There is no qualifying language indicating any intent to include her as an individual – other than the Counterclaim's caption, which doesn't qualify as an allegation.

Further, even considering all factual allegations contained in the Counterclaim as true, a closer review reveals no allegations against Mrs. Mancini outside of her capacity as Trustee of the Senior Healthcare Trust or Cavaliere Trust. Each allegation is directly tied to her duties as Trustee. If it was Defendants' intent to name Mrs. Mancini in her individual capacity, their Counterclaim wholly failed at doing so.

Because Defendants specifically stated that Mrs. Mancini is a Counter-Defendant in her "Trustee capacities," and their Counterclaim otherwise makes no allegations against Mrs. Mancini in her individual capacity, Plaintiffs' motion is appropriately GRANTED under (C)(8), and Defendants/Counter-Plaintiffs Counterclaim is DISMISSED as to only Mrs. Mancini in her individual capacity.

IT IS SO ORDERED.

February 18, 2015
Date

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