

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

**VICTORIA PASTURES, LLC,
Plaintiff,**

v.

**Case No. 14-140792-CK
Hon. James M. Alexander**

**SALEM LAND ASSOCIATES LIMITED PARTNERSHIP
and HUNTINGTON NATIONAL BANK,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant Huntington National Bank’s Motion for Summary Disposition. In 2008 and 2009, Huntington loaned some \$13 million to certain borrowers. These borrowers, through a variety of business interests, owned Defendant Salem Land Associates LP (Salem). The sole asset of Salem was a 50% ownership interest in an entity called Northville Crossing Venture LLC. Huntington argues that it perfected its security interest in Salem by filing a UCC Financing Statement in March 2008.

By February 2010, this loan (and others) was in default for nonpayment. This resulted in litigation that concluded with a December 15, 2011 Judgment that exceeded \$28 million. In May 2012, Huntington learned that Salem was trying to sell its 50% interest in Northville Crossing – despite Huntington’s claimed perfected security interest.

As a result, Huntington notified the borrowers that it intended to sell the interest in Northville Crossing under Article 9 of the UCC. A public sale was conducted on June 12, 2012, at which, Huntington was the successful bidder with a \$4.2 million credit bid. Huntington then

sold the Salem partnership interests to the other 50% owner of Northville Crossing (KM Eight Mile Operating Limited Partnership) for \$4,974,000.

Prior to this sale, but after Huntington's original loan, Plaintiff claims that its predecessor (Ayad George and others) loaned Salem \$1,075,000 between April and November 2009. By a December 2010 Agreement to Convert Debt and Pledge Agreement, Plaintiff's predecessor agreed to cancel the George loans in return for an ownership interest in two non-party limited partnerships. As security for part of this debt cancellation, "Salem pledged Plaintiff all proceeds from any sale of Salem's membership interest in [Northville Crossing]." Plaintiff filed a UCC Financing Statement regarding this debt on October 3, 2013.

The Pledge Agreement also provided that, if both Daniel and Arnold Aronoff ceased to be in control of Salem, "then Salem is immediately obligated to pay Plaintiff the Guaranteed Indebtedness."

In its Complaint, Plaintiff claims that once Huntington sold Northville Crossing and "took ownership of and control over" Salem, its obligation to pay the Guaranteed Indebtedness under Pledge Agreement was triggered. Despite this, however, Plaintiff claims that Huntington took the sale proceeds and distributed them to itself – without paying Plaintiff's \$1,045,000 outstanding debt.

To recover this amount, Plaintiff sued on claims titled: (1) breach of contract, (2) conversion, (3) illegal distribution, (4) avoidance of fraudulent transfer, (5) declaratory relief, and (6) unjust enrichment.

Huntington now moves for summary disposition under MCR 2.116(C)(8) and (C)(10) – claiming that it simply foreclosed its security interest – which arose and was perfected prior to Plaintiff's security interest in the same collateral. Because the foreclosure sale "had the effect of

wiping out all junior liens or encumbrances in the collateral, including Plaintiff's," summary disposition is appropriate.

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint, and a motion under (C)(10) tests the factual support for Plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In response, Plaintiff seeks summary under (I)(2).

The Court will note that Huntington characterizes this case as presenting "a fairly straightforward claim, and one that the Court should have little problem dismissing as a matter of law." The Court, however, disagrees.

This case presents a not-too-uncommon problem – ambiguity in legal drafting. In a nutshell, Plaintiff's Complaint is based on the theory that Huntington was granted a security interest in **the business** that is Salem. Huntington, on the other hand, argues that it was given a security interest in Salem's assets.

The outcome of this case is wholly dependent upon which interpretation is correct. If Plaintiff's theory is correct, then Huntington took over ownership and control of Salem – which owes Plaintiff \$1,045,000. And Huntington, as the "new owner" of Salem, is responsible for existing debts – including Plaintiff's.

If Huntington's theory is correct, then it simply foreclosed on its perfected security interest – **the sole asset of** Salem (Northville Crossing). And since Huntington held the prior security interest in the same collateral, Plaintiff's junior claim was extinguished by the foreclosure sale.

Michigan law is well-established that "[a] contract must be interpreted according to its plain and ordinary meaning." *Holmes v Holmes*, 281 Mich App 575, 593; 760 NW2d 300 (2008), citing *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 107; 577 NW2d 188 (1998).

“Under ordinary contract principles, if contractual language is clear, construction of the contract is a question of law for the court. If the contract is subject to two reasonable interpretations, factual development is necessary to determine the intent of the parties and summary disposition is therefore inappropriate.” *Holmes*, 281 Mich App at 594; quoting *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997).

Huntington’s Credit Agreement defines “collateral,” in part, as “any and all collateral in which [Huntington] has been granted, or in intended to be granted, a security interest, including without limitation . . . the Northville Crossing Collateral.” In turn, “Northville Crossing Collateral” is defined as “a collateral assignment of **partnership interests in Salem** and a collateral assignment of **Salem’s share of cash flow in the Northville Crossing Venture**, each in a form acceptable to Huntington.” (emphasis added).

The “Release Provisions” portion of the Credit Agreement states that the Northville Crossing Collateral shall be released upon Huntington’s receipt of the greater of \$7 million or “the Net Sale Proceeds derived from the sale of assets owned by Northville Crossing Venture.”

Additionally, one of Huntington’s UCC Financing Statements lists its collateral as (emphasis added):

All of [Salem Land, Inc’s]¹ right, title and interest **as a partner of** the Salem Land Associates Limited Partnership, a Michigan limited partnership (the “Partnership”), including without limitation, **Debtor’s rights to receive any and all distributions of cash and any other property** from the Partnership in respect of the Debtor’s holdings of the overall interest in the Partnership.

Under the December 2010, Pledge of Sale Proceeds, Plaintiff was granted (as collateral) a security interest in “all proceeds from any sale of Salem’s Membership Interest in Northville Crossing Venture Limited Liability Company.”

¹ Salem Land, Inc is a different entity than Salem Land Associates LP. Salem Land, Inc was a part owner and general partner of Salem Land Associates LP.

Plaintiff's UCC Financing Statement, on the other hand, lists its collateral as: "All of [Salem's] Membership Interest in Northville Crossing Venture, L.L.C., a Michigan limited liability company, and any proceeds from the sale thereof."

As stated, while Huntington claims that this case is "fairly straightforward," it is simply not clear what the parties intended to accomplish. The wording of Huntington's security interest in Salem could indicate either an ownership interest in the business itself or an interest in the assets of the business. Plaintiff's security interest, on the other hand, appears to be worded more broadly – indicating an interest in all proceeds from Northville Crossing's sale.

Because Huntington's security interest is first in time, however, its meaning needs to be resolved first, and it just isn't clear. The Court finds that the provisions contemplating Huntington's security interest in Salem are open to multiple interpretations, which precludes summary disposition. Because the meaning of these contractual provisions are open to two reasonable interpretations, and the crux of both parties' arguments hinge on the interpretation of their meaning, factual development is necessary to determine the intent of the parties. *Holmes*, 281 Mich App at 594.

For the foregoing reasons, Huntington's motion for summary disposition under MCR 2.116(C)(8) and (C)(10) is DENIED. For the same reasons, Plaintiff's (I)(2) motion is similarly DENIED.

IT IS SO ORDERED.

September 10, 2014 _____
Date

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