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

GETMEDCALLASSIST, LLC,
Plaintiff,

v. **Case No. 14-143571-CZ**
Hon. James M. Alexander

MEDCALLASSIST, LLC, ET AL,
Defendants.
_____/

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Plaintiff's motion for partial summary disposition of its Count IX for breach of fiduciary duty against Defendant Philip Tarazi. In its motion, Plaintiff asks the Court to rule, as a matter of law, that Tarazi breached his fiduciary duties to Plaintiff.

Plaintiff seeks this ruling under MCR 2.116(C)(10), which tests the factual support for a plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Under (C)(10), "In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), citing *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

Defendant MedCallAssist is a provider of telemedicine services. Plaintiff alleges that it "provided marketing, technology, sales and legal assistance to MedCallAssist" from late 2012 until July 30, 2014. Plaintiff had three members: Tarazi (through his company Breakthrough Messaging), Blaise Dietz (through his company Hamani Investments), and Trevor Zink.

Plaintiff claims that Defendant Tarazi was a Plaintiff Manager from November 2012 until July 11, 2014. As Manager, Plaintiff claims that Tarazi owed it a duty of good faith, loyalty and to refrain from self-dealing. Specifically, under MCL § 450.4404:

> A manager shall discharge the duties of manager in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the manager reasonably believes to be in the best interests of the limited liability company.

Plaintiff claims, however, that Tarazi "while still Manager . . . , deliberately steered a business opportunity away from [Plaintiff] to MedCallAssist." Plaintiff also claims that "Tarazi admitted that he was an agent for [Plaintiff] in negotiating a debt resolution with MedCallAssist, yet during that time period he surreptitiously shared the confidential, internal negotiating strategies and information of [Plaintiff] with MedCallAssist and [its] then current attorney."

"These outrageous acts," Plaintiff argues, "leave no genuine issue of material fact as to whether Tarazi breached his fiduciary duty, and all that is left for a jury to decide is the amount of damages to which [Plaintiff] is entitled."

In support of its claim that Tarazi steered away a business opportunity, Plaintiff points to a July 1, 2014 Tarazi email to Timothy Baker (of MedCallAssist) regarding a telemedicine opportunity with a company called Freedom Care. In this email, Tarazi appears to suggest that Freedom Care sign an agreement with MedCallAssist.

In support of its claim that Tarazi disclosed confidential information, Plaintiff points to Tarazi's July 2014 debt-settlement negotiations with MedCallAssist. During the course of these negotiations, Plaintiff claims that Tarazi disclosed confidential information.

In response to Plaintiff's motion, in short, Tarazi claims that "Zink and Dietz had been violating their duty to Tarazi and [Plaintiff] long before any of Tarazi's alleged misconduct."

Tarazi claims that Plaintiff, as a company, never generated a profit, which led to stress within Plaintiff and between Plaintiff and MedCallAssist. Plaintiff claims that the Plaintiff saw "increased infighting and backstabbing" among its members, which led Dietz to try to leave Plaintiff and align himself with MedCallAssist in May or June 2014.

Tarazi claims that, after he learned of Dietz's actions, he wanted to merge Plaintiff with MedCallAssist. Around this time, Tarazi also claims that Plaintiff's third member, Zink, attempted to restructure Plaintiff to gain substantially more control to Tarazi's detriment. When he refused to go along with the restructuring, Tarazi claims that Dietz and Zink began working together to force him out of Plaintiff.

Regarding the Freedom Care deal, Tarazi claims that he merely expressed his opinion that Freedom Care should sign with MedCallAssist directly because the potential deal came at a time when Plaintiff was imploding. Tarazi also claims that he would have gained nothing from the potential deal because he had no compensation agreement with MedCallAssist. Further, Freedom Care ultimately never signed an agreement with either company.

Regarding the debt restructuring, Tarazi claims that he was tasked by Dietz and Zink to negotiate with MedCallAssist to the best of his ability – which included being swift and transparent. Tarazi claims that he did just that.

In any event, this motion presents numerous questions of fact that preclude summary disposition. In fact, **both** parties' submissions contain evidentiary support for their assertions – as well as challenges to the other's credibility. It is well settled, however, that credibility is an issue that

must be submitted to the trier of fact. *White v Taylor Distributing Company, Inc*, 275 Mich App 615; 739 NW2d 132 (2007). The *White* Court reasoned that, "courts may not resolve factual disputes or determine credibility in ruling on a summary disposition motion" *White*, *supra* at 625.

Additionally, in *Vanguard Ins Co v Bolt*, 204 Mich App 271; 514 NW2d 525 (1994), the Court of Appeals held:

> The granting of a motion for summary disposition is especially suspect where motive and intent are at issue or where a witness or deponent's credibility is crucial. Accordingly, where the truth of a material factual assertion of a moving party depends upon a deponent's credibility, there exists a genuine issue for the trier of fact and a motion for summary disposition should not be granted. *Vanguard Ins*, 204 Mich App at 276 (internal citations omitted).

Additionally, **both** parties' arguments are based on artful editing and out-of-context quotations that cannot possibly tell the entire story.[1] Factual development is necessary for disposition of this claim.

The Court finds that resolution of Plaintiff's breach of fiduciary duty claim is so substantially intertwined with fact-finding and credibility determinations as to render summary disposition on said claim wholly inappropriate. As a result, Plaintiff's motion for summary on this claim is DENIED.

The Court will entertain a motion for costs brought pursuant to MCR 2.114.

IT IS SO ORDERED.

December 23, 2015 /s/ James M. Alexander
Date Hon. James M. Alexander, Circuit Court Judge

1 The Court will note that it rejects Tarazi's argument that he owed no fiduciary duty to Plaintiff under Section 3.3 or 3.5 of the Operating Agreement. Although Section 3.5 provides that "Managers shall not be fiduciaries or Company or Members," this directly conflicts with MCL 450.4404 (reproduced earlier). And, under the terms of the Operating Agreement (Section 1.3), when said Agreement conflicts with mandatory provisions of Michigan's Limited Liability Company Act, the Act controls.