

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

MORRIS MARGULIES,

Plaintiff,

v

Case No. 2014-144246-CK

Hon. Wendy Potts

KAL-MOR PROPERTIES, CO, et al,

Defendants.

OPINION AND ORDER REGARDING DEFENDANT HAROLD KALT'S MOTION
FOR SUMMARY DISPOSITION

At a session of Court
Held in Pontiac, Michigan

On
AUG 07 2015

In 1988, Plaintiff Morris Margulies, Defendant Harold Kalt, and non-parties Michael Giddings and J. Leonard Hyman formed the partnership Defendant Kal-Mor Properties Co. to own and manage an office complex in Royal Oak. Under the partnership agreement, Kalt held a 33.333% "profit & loss" interest, Margulies and Hyman each held a 30.833% interest, and Giddings held a 5% interest. However, Kalt had a 50% voting interest, while Margulies, Hyman, and Giddings shared a 50% voting interest. In 1989, Kalt granted one-third of his profit & loss interest to each his sons Steven and Allan Kalt, so that Harold, Steven, and Allan Kalt each held a 11.11% profit & loss interest. However, Harold Kalt retained his 50% voting interest. Hyman assigned his interest to a family trust, and in August 2012 the trust sold both the voting interest and profit & loss interest to Margulies and Kalt. As of August 1, 2012, Harold, Steven, and Allen Kalt collectively held a 48.75% profit & loss interest, Harold Kalt had a 61.56% voting interest,

Margulies had a 46.25% profit & loss interest and a 34.69% voting interest, and Giddings had 5% profit & loss interest and a 3.75% voting interest.

In 2011, Kal-Mor's Bank of America loan matured, it was unable to satisfy its mortgage obligations, and the loan fell into default. In May 2012, the Bank sold the debt to GMN Kalt Building, LLC, and GMN purchased the property at a July 3, 2012 foreclosure sale. Margulies claims that he tried to arrange financing through Level One Bank to redeem the property, however, Harold Kalt refused to cooperate. Instead, Kal-Mor obtained alternate financing that Margulies claims had less favorable terms and did not fully cover the redemption costs. Harold Kalt claims the partnership interests were altered by December 2012 amendments to the partnership agreement that gave his sons Steven, Allan, and Jeffrey Kalt, both profit & loss and voting interests. However, Margulies disputes the validity of those amendments.

In July 2013, Kal-Mor issued a cash call to the partners, which Margulies claims he refused to pay because it was not authorized by the partnership agreement. According to Margulies, his voting and profit & loss interests were diluted by 50% after he refused to contribute. Margulies further alleges that Harold Kalt's company Bee Kalt Travel then loaned Kal-Mor \$400,000, which provided sufficient funding for Kal-Mor to redeem the property on December 27, 2013. Margulies claims that the partnership amendments, dilution of his interests, and foreclosure redemption allowed Harold Kalt and his family full control over the partnership and the ability to squeeze out Margulies and Giddings. Margulies filed this action against Harold Kalt and Kal-Mor in November 2014 asserting claims for breach of fiduciary duty, breach of contract, and violation of the Uniform Partnership Act, and seeking a declaratory judgment and an accounting.

Harold Kalt now moves for summary disposition of Margulies's claims under MCR 2.116(C)(8), which tests the legal sufficiency of the complaint, and (C)(10), which tests the factual support for the claims. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). Margulies asserts, and the Court agrees, that the motion is largely premature because there appear to be numerous factual disputes and discovery is ongoing. *Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000). In particular, Margulies and Kalt vigorously dispute the facts and events underlying his claims that Kalt breached his fiduciary duties to the partnership. Further, if Margulies can show that he was wrongfully excluded from the partnership or that Kalt engaged in misconduct with respect to the partnership agreement amendments, then he may be entitled to a declaratory judgment regarding the validity of the amendments. Because further factual development may provide support for Margulies's breach of fiduciary duty and declaratory judgment claims, the Court denies summary disposition of those claims without prejudice. Kalt may renew his motion after discovery on these claims is completed.

As for the breach of contract claim, the Court agrees with Kalt that this claim is ripe for dismissal. Margulies alleges that Kalt breached the partnership agreement by unilaterally enacting amendments without obtaining consent of the majority of partnership interests. The partnership agreement stated that it "may not be amended without the written consent of a majority in interest of the Partners." The agreement does not specify if the "majority in interest" applies to voting interests or profit & loss interests. If the applicable interest is voting interest, Kalt had more than 50% of the voting interest, and his vote was sufficient to approve the amendment. However, even if the "majority in interest" refers to the profit & loss interest, then the amendment was still authorized by a majority because Giddings consented to the

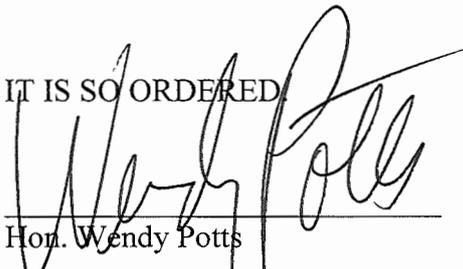
amendments. Margulies asserts that Kalt improperly induced Giddings's consent, however, Margulies cites no authority for his theory that wrongfully inducing a partner to vote for an amendment would give rise to a breach of the partnership agreement. Because Margulies fails to demonstrate a question of fact on his breach of contract claim, Kalt is entitled to summary disposition of that claim.

Regarding Margulies's accounting claim, he may be entitled to an accounting if he can show that he was wrongfully excluded from the partnership. MCL 449.22(a). The fact that Kalt has given Margulies access to financial information since this case was filed does not necessarily eliminate the need for an accounting. Whether Kalt is entitled to an accounting is dependent on whether he can establish his wrongful exclusion theory, and it is premature to make that determination. Kalt's request for summary disposition on the accounting claim is denied without prejudice.

For all of these reasons, the Court grants summary disposition of Margulies's Count II alleging breach of contract against Harold Kalt. In all other respects, summary disposition is denied without prejudice.

Dated:

AUG 07 2015

IT IS SO ORDERED


Hon. Wendy Potts