

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

**SCIONS CCS, LLC and  
CARL SLEMER  
Plaintiffs,**

v.

**Case No. 14-144508-CK  
Hon. James M. Alexander**

**PAUL GLANTZ, ET AL,  
Defendants.**

---

**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Defendants’ motion for summary disposition. Plaintiff Carl Slemer owns membership interests in Defendant corporations through Plaintiff Scions CCS. The Defendant corporations own and operate movie theaters in Canton, Novi, and Birch Run. Generally, Plaintiffs allege that Defendant Paul Glantz has, “in bad faith, intentionally refused to make distributions” in an effort to force Plaintiffs into selling back their interest in the companies.

On these allegations, Plaintiffs’ Second Amended Complaint alleges claims of: (Counts I, II, & III) breach of contract for failure to pay distributions under each operating agreement; (Count IV, V, & VI) minority member oppression of each of the Defendant corporations; (Count VII) a demand for access to books and records; and (Count VIII) minority oppression with respect to the payoff of an SBA loan.

Defendants now seek summary disposition 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).

Defendants argue that they are entitled to dismissal of Plaintiff’s Complaint because the actions of the directors were protected by the business judgment rule and they properly exercised their discretion with respect to distributions.

“The so-called ‘business judgment rule’ leaves relatively wide discretion in management to act in what it considers to be the best interests of the corporation.” *Berman v Gerber Products Co*, 454 F Supp 1310, 1319 (WD Mich 1978). “So long as the directors of a corporation control its affairs within the limits of the law, matters of business judgment and discretion are not subject to judicial review.” *Reed v Burton*, 344 Mich 126, 131; 73 NW2d 333 (1955), quoting *Wagner Electric Corp v Hydraulic Brake Co*, 269 Mich 560, 566-567; 257 NW 884 (1934).

Further, “[i]t is not the function of the court to manage a corporation nor to substitute its own judgment for that of the officers thereof. It is only when the officers are guilty of willful abuse of their discretionary powers or of bad faith or of neglect of duty or of perversion of the purpose of the corporation or when fraud or breach of trust are involved that the court will interfere.” *Reed*, 344 Mich at 131, quoting *Barrows v J N Fauver Co*, 280 Mich 553, 558-559; 274 NW 325 (1937).

As stated, Defendants argue that their decisions regarding distributions and paying off the SBA loan are protected by the business judgment rule and discretionary language contained in the operating agreements.

For example, the Birch Run Operating Agreement provides, at Section 4.3, that:

The Company shall distribute to the Members from time to time such cash as a Majority Interest determines is available for distribution and is not required to provide for the Company's cash needs, including payment of or provision for the Company's liabilities . . . and reasonable reserves for contingencies.

Similarly, the Novi Operating Agreement and Canton Operating Agreement provide, at Sections 3.2(c) and 3.2(a) respectively, that:

distributions shall be made to the extent that the Board of Managers determines that the Company's cash on hand . . . exceeds the current and anticipated needs of the Company to fulfill its business purposes, business plan and budget and contractual obligations.

In other words, all Operating Agreements provide that distributions shall be made if the majority of members or the Board determines that the same are appropriate given the needs of the companies. Necessarily, Defendants' argument regarding the business judgement rule and discretionary distributions requires an intensive examination of the facts and circumstances surrounding the distribution decisions.

In support of their claim that the majority of members or Board "in bad faith, intentionally refused to make distributions" to squeeze Slemer out of the companies, Plaintiffs cite to substantial evidence in the form of emails and deposition testimony.

Plaintiffs claim that Defendants knew that he did not have any cash flow to pay the taxes on the pass-through income taxable to the companies' members. As a result, distributions were vital to Plaintiffs, and Defendants failure to issue distributions financially hurt Plaintiffs.

While Defendants' motion claims that they did not know Slemer's tax problems until "late 2013," Plaintiffs cite to a February 17, 2010 email from Defendant Paul Glantz, which states (referring to Mr. Slemer) "He'll soon be receiving K-1s passing through approximately \$700K of taxable income for 2009 which absolutely no cash flow to pay the taxes."

Another huge problem for Defendants, Plaintiffs point to Glantz's decision to use Birch Run's cash reserves to pay off a mortgage that wasn't due for eight years. A November 2010 email from Glantz to the Michigan Certified Development Commission states that he chose to do so in order to be able to gain approval for a small business loan on a separate theater in Rochester Hills. And Slemer is not a member of the Rochester Hills theater. Plaintiffs claim that this money could have been used for distributions. But Defendants, instead, chose to use the money to open another theater that didn't include Slemer. This evidence is alarming.

In any event, whether Defendants' conduct is protected by the business judgment rule or the discretionary language found in the Operating Agreement implicates numerous questions about the circumstances surrounding Defendants' actions and distribution decisions.

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*, 275 Mich App at 625.

**Both** parties' arguments are also based on artful editing and out-of-context quotations that cannot possibly tell the entire story. As a result, factual development is necessary for disposition of Plaintiffs' claims.

(Remainder of page intentionally left blank.)

For all of the foregoing reasons and viewing all evidence in the light most favorable to Plaintiffs, the Court finds that there are substantial material facts in dispute, whereby Defendants are not entitled to judgment as a matter of law. As a result, Defendants' motion for summary disposition is DENIED in its entirety.

**IT IS SO ORDERED.**

February 10, 2016  
Date

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