

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

**MBR REAL ESTATE, LLC,  
Plaintiffs,**

**v.**

**Case No. 15-147085-CB  
Hon. James M. Alexander**

**RC HOME HEALTH, INC, ET AL,  
Defendants.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Plaintiff's Motion for Summary Disposition. Defendant RC Home Health leased certain office space from Plaintiff under the terms of a September 3, 2013 lease agreement. Defendants Robert and Carolyn Dickinson are RC Home's owners.

Plaintiff claims that RC Home went out of business during the Lease's term, and upon vacating the premises, left approximately \$102,535 owing under the Lease. Plaintiff also claims that the Dickinsons sold RC Home's assets at a time when they knew that it owed money to Plaintiff on the lease. Plaintiff alleges that any sale of assets constitutes a fraudulent transfer.

On these general allegations, Plaintiff's Complaint alleges claims of: (Count I) breach of contract, (Count II) unjust enrichment, (Count III) anticipatory breach, (Count IV) fraudulent transfer under MCL 566.34, (Count V) fraudulent transfer under MCL 566.35(1), and (Count VI) fraudulent transfer under MCL 566.35(2).

Plaintiff now moves for partial summary disposition of its Counts I and III against RC Home and Count V against Robert Dickinson under MCR 2.116(C)(10), which tests the factual support for Plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In such a motion, "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).

For Counts I and III, Plaintiff appears to seek a judgment for \$102,535 in unpaid rent on RC Home's breach of the Lease Agreement. And under Count V, Plaintiff seeks a ruling that it "is entitled to levy execution directly from Mr. Dickinson on the proceeds from the transfer of assets."

In response, Defendants do not dispute Plaintiff's entitlement to a judgment for unpaid rents against Defendant RC Home. As a result, the Court will GRANT Plaintiff's motion with respect to Counts I and III and enter a judgment against Defendant RC Home Health only in the amount of \$102,535.00.

With respect to Plaintiff's Count V for fraudulent transfer against Defendant Robert Dickinson, Defendants respond that there cannot be any fraudulent transfer because any and all monies gained from the sale of the RC Home's assets must be used to satisfy the priority debts of RC Home to the IRS for payroll taxes. As a result, Defendants seek summary in their favor on Count V under MCR 2.116(I)(2).

According to Mr. Dickinson's Affidavit, after RC Home went out of business, he signed an agreement with a competitor to act as an independent contractor. In exchange, Mr. Dickinson

was paid \$10,000 up front. He would also receive 10% of the amount collected for “initial [home care] cases”<sup>1</sup> for the first three months; 10% of the amount collected on “referred cases”<sup>2</sup> cases for the first five months; and \$7,500 per month thereafter.

Mr. Dickinson claims that he immediately turned over the \$10,000 he received to the IRS for partial payment of RC Home’s \$37,000 in back payroll taxes. Defendants have also attached the cancelled checks further evidencing this claim.

Plaintiff claims that Dickinson’s \$10,000 payment to the IRS was

for his benefit and not for the benefit of [RC Home] (because [RC Home] is insolvent and out of business). Dickinson paid the IRS debt because he was going to be personally responsible for these payments, whether they had already been assessed to him or not.

Plaintiff also claims that the “sale” of RC Home’s customers to the competitor (through Mr. Dickinson) was a fraudulent transfer.

Under the Uniform Fraudulent Transfer Act, a purported creditor can bring a claim alleging a fraudulent transfer under either MCL 566.34 or MCL 566.35. Under Section 35,

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

The Court of Appels has reasoned that MCL 566.35’s “species of fraudulent transfer” is “commonly called “fraud in law” or constructive fraud, [which] deems certain transactions fraudulent regardless of the creditor’s ability to prove the debtor’s actual intent.” *Dillard v Schlussel*, 308 Mich App 429, 446; 865 NW2d 648 (2014).

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<sup>1</sup> Referred cases that the competitor begins servicing within one week of the effective date of the Business Development Agreement.

<sup>2</sup> Cases procured for the competitor by Mr. Dickinson that the competitor begins servicing more than one week after the effective date of the Business Development Agreement.

Defendant claims that there can be no fraudulent conveyance when the \$10,000 advance obtained by Mr. Dickinson has been used for the priority debt of RC Home to the IRS. And, Defendants claim, in addition to this initial \$10,000, the amount received for initial and referred cases would not eclipse the IRS debt. Plaintiff has failed to produce any evidence otherwise. Instead, Plaintiff only speculates.

Plaintiff's motion also assumes that the initial and referred cases are assets of RC Home subject to a fraudulent transfer. But a reasonable trier of fact could just as easily find the contrary. Plaintiff's entire Count V is built on speculation and conjecture, and in its motion, Plaintiff fails to produce any evidence that would support such a claim.

The only evidence before this Court establishes that Mr. Dickinson turned over the \$10,000 initial payment to the IRS to partially satisfy RC Home's payroll tax obligation.

Plaintiff has failed to cite to any authority that establishes that payment of an insolvent corporation's tax obligation before payment on a defaulted lease somehow constitutes constructive fraud under MCL 566.35. And this Court is not inclined to so find. Therefore, Plaintiff's Count V may not be based on an alleged fraudulent transfer of the \$10,000 initial payment.

Further, Plaintiff's reliance on any purported payments received by Mr. Dickinson for initial and referred cases is based on its unsupported assumption that the same are assets of RC Home Health. This has not been established. And Defendants dispute the same, arguing that his compensation under the Development Agreement was for his services and his agreement to a covenant not to compete – and not for the sale of RC Home's assets.

In other words, there are numerous disputed questions of fact, including: (1) whether the \$10,000 initial payment was intended to be the sole compensation for any of RC Home's assets;

or (2) whether the initial and referred cases also represented assets of RC Home (and if so, whether the value received also exceeded RC Home's tax obligation – such that Plaintiff could found a fraudulent transfer claim on the same).

As a result, Plaintiff's motion with respect to its Count V against Defendant Dickinson is DENIED. Defendants' (I)(2) motion is, likewise, DENIED.

**IT IS SO ORDERED.**

December 16, 2015  
Date

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