

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PROGRAM MANAGEMENT GROUP, LLC
a Michigan Limited Liability Company,

Plaintiff/Counter-Defendant,

v

Case No. 15-149322-CB
Hon. Wendy Potts

GEORGE LEWIS, et al.

Defendants,

and

LIUFENG MACHINERY INDUSTRY
COMPANY, LTD, et al.

Defendants/Counter-Plaintiffs.

OPINION AND ORDER RE: PLAINTIFF'S MOTION FOR PARTIAL SUMMARY
DISPOSITION PURSUANT TO MCR 2.116(C)(8) AND SANCTIONS AS TO COUNT II OF
COUNTER-COMPLAINT

At a session of Court
Held in Pontiac, Michigan
On

JUL 06 2016

This matter is before the Court on Plaintiff Program Management Group, LLC's motion for partial summary disposition pursuant to MCR 2.116(C)(8) of Count II of Defendants Liufeng Machinery Industry Company, Ltd. and Lioho Light Metal Company, Ltd.'s counterclaim. Plaintiff argues that summary disposition is appropriate under (C)(8) because Defendants failed to allege sufficient facts to prove that Plaintiff owes Defendants a fiduciary duty.

A fiduciary relationship arises where the plaintiff reasonably reposes faith, confidence, and trust in the purported fiduciary. *Rose v National Auction Group, Inc.*, 466 Mich 453, 469;

646 NW2d 455 (2002). “Relief is granted when such position of influence has been acquired and abused, or when confidence has been reposed and betrayed.” *Vicencio v Ramirez*, 211 Mich App 501, 508; 536 NW2d 280 (1995).

“A fiduciary relationship is a relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships—such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client—require the highest duty of care. Fiduciary relationships usually arise in one of four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.” *Calhoun County v Blue Cross Blue Shield Michigan*, 297 Mich App 1, 20; 824 NW2d 202 (2012) (internal quotation marks and citation omitted).

Program Management Group asserts that the counterclaim does not allege the existence of a fiduciary duty. Program Management Group’s motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the counterclaim. When considering such a motion, all well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dept of Corrections*, 439 Mich 158, 162-163; 483 NW2d 26 (1992). A motion under this subrule may be granted only where the claims alleged are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Id.* at 163. When deciding such a motion, the court considers only the pleadings. MCR 2.116(G)(5). For purposes of the cited Court Rule, under MCR 2.110, “The term ‘pleading’

includes only: (1) a complaint, (2) a cross-claim, (3) a counterclaim, (4) a third-party complaint, (5) an answer to a complaint, cross-claim, counterclaim, or third-party complaint, and (6) a reply to an answer.”

Despite the (C)(8) standard, both parties attach evidence outside the pleadings. The Court will not consider such evidence. In response to Program Management’s motion, Defendants assert that Program Management Group was an agent and owed fiduciary duties to Lioho. Defendants argue that the agent-principal relationship can be created by explicit agreement between the agent and principal or that it can arise from implication. However, Defendants fail to identify any facts that support that they have alleged a fiduciary relationship that arose as a result of an explicit agreement or by implication. A fiduciary relationship only arises when one reposes faith, confidence, and trust in another’s judgment and advice. *Fassihi v Sommers, Schwartz, Silver, Schwartz & Tyler, P.C.*, 107 Mich App 509, 515; 309 NW2d 645 (1981).

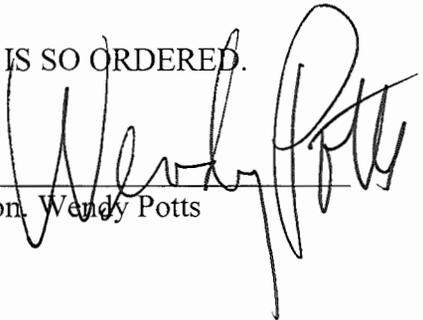
The relevant paragraphs in the Counterclaim state: “22. By virtue of Counter-Defendant’s conduct, in violation the exclusive provision of the Agreement between the parties, Counter-Defendant acted in its own self-interest which was in conflict with the interests of Counter-Plaintiffs. 23. Counter-Defendant[’s] conduct constituted a breach of its fiduciary duties to Counter-Plaintiffs. 24. Counter-Defendant used its position to further its own self-interest and wrongfully converted its knowledge of Counter-Plaintiffs for its own benefit. 25. As a direct and proximate result of Counter-Defendant’s actions, Counter-Plaintiffs sustained damages, including lost profits.” Defendants’ counterclaim does not allege that a fiduciary relationship existed, either by agreement or implication, that would result in the existence of a fiduciary duty.

Thus, considering only the pleadings, and accepting all well-pled factual allegations as true, the Court concludes that Defendants/Counter-Plaintiffs' claims in Count II of the counterclaim are so "clearly unenforceable as a matter of law that no factual development could possibly justify recovery." Accordingly, Plaintiff/Counter-Defendant Program Management Group, LLC's motion is granted and Count II of Defendants/Counter-Plaintiffs' counterclaim is dismissed.

Since the Court granted Plaintiff/Counter-Defendant's motion, Defendants/Counter-Plaintiffs argue that the now dismissed Count II of the counterclaim for breach of the fiduciary duty is proper and request leave to amend the counterclaim pursuant to MCR 2.118(A)(2). Our court rules and case law instruct that where the Court grants a motion under MCR 2.116(C)(8), the plaintiff should be allowed an opportunity to amend its complaint unless amendment would be futile. MCR 2.116(I)(5); *Weymers v Khera*, 454 Mich 639, 658; 563 NW2d 647 (1997). Accordingly, Defendants/Counter-Plaintiffs may file an amended Counterclaim within 7 days.

Dated: **JUL 06 2016**

IT IS SO ORDERED.



Hon. Wendy Potts