

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

**JAMES A. AKOURI and
JAMES A. AKOURI LIVING TRUST,
Plaintiffs,**

v.

**Case No. 15-150003-CB
Hon. James M. Alexander**

**BIRMINGHAM PROPERTY, LLC, ET AL,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendants Larry Yaladoo's and Laith Yaladoo's motions for summary disposition. Defendants Jamal and Salam Kalabat are two of the six, current members of Defendant Birmingham Property, which owned a single piece of real estate located at Woodward and Maple in Birmingham.

In a separate lawsuit, Birmingham Property was ordered to close a sale of said Property. On February 2, 2016, the Final Order in said case resulted in distributions (in relevant part) of \$886,886.65 to another Kalabat Company, Kalabat Equities, and \$1,050,200 to Larry Yaladoo. Jamal and Salam Kalabat also waived any personal claim to any funds.

In large part, this case was brought because Plaintiffs and Defendants Larry and Laith Yaladoo all claim a security interest in the Kalabats' membership interests in Birmingham Property.

Under the terms of a December 2003 Demand Note, Birmingham Property borrowed \$550,000 from Larry Yaldao, in part, to acquire the Property and, in return, granted Larry Yaldao a mortgage on the same to secure repayment. Under the terms of a July 2004 Demand Note, Larry Yaldao loaned another \$150,000 to Birmingham Property.

Then in 2007, the Kalabats sought financing for a separate real estate project in Henderson, Nevada. Plaintiffs and Larry and Laith Yaldao all loaned money on the project.

Larry's loan to Birmingham Property and Kalabat Equities was evidenced by a June 27, 2007 Demand Note for \$692,045.26, which was a consolidation of the prior \$550,000 and \$150,000 Notes. The Kalabats also sought Larry's consent to release his mortgage on the Property, and in return, the Kalabats agreed to grant Larry and Laith a security interest in their membership interests in Birmingham Property.

Larry and Laith also each loaned another \$300,000 to the Kalabats' company, K4 Development. Larry's loan is evidenced by a July 2, 2007 Demand Note, and Laith's loan is evidenced by a July 3, 2007 Demand Note. All of Larry's and Laith's outstanding Notes were also secured by July 2, 2007 Continuing, Joint and Several Guarantees executed by Jamal and Salam.

The Kalabats also each executed a July 2, 2007 Membership Interest and Security Pledge Agreement in Larry's and Laith's favor, which pledged their Birmingham Property Membership Interests as security for their loan obligations. Each Kalabat also contemporaneously executed a "Security Agreement (All Assets)" in Larry's and Laith's favor. Larry also claims that he simultaneously took physical possession of Jamal's and Salam's original membership certificates in Birmingham Property.

Plaintiffs also claim that they loaned money to the Kalabats, which was secured by a security interest in their membership interest in Defendant Birmingham Property. And, Plaintiffs claim, Laith Yaldoo acted as their attorney in the Kalabat transaction.

Plaintiffs claim the source of their security interest in Birmingham Property comes from identical July 2, 2007 Membership Interest Security and Pledge Agreements executed by Jamal and Salam Kalabat. Under these Agreements' terms, Plaintiff James Akouri loaned the Kalabats \$250,000, and the Kalabats secured repayment of the same by granting a security interest in their membership interests in Birmingham Property.

The parties generally dispute which has the superior security interest. For example, Larry Yaldoo claims that he “was the first to file his UCC Financing Statement on May 5, 2010.” But it appears that Larry is attempting to mislead the Court with this statement because the exhibits that he attaches in support of his claim appear to show that **Laith** Yaldoo actually first filed a UCC Financing Statement on May 5, 2010.¹ Larry Yaldoo first filed his UCC Financing Statements on January 13, 2011; and Plaintiff James Akouri first filed his UCC Financing Statements on October 11, 2015.²

Plaintiffs filed the present suit on claims titled: (Count I) declaratory relief, (Count II) foreclosure of membership interest, (Count III) breach of fiduciary duty (only as to Laith Yaldoo), and (Count IV) fraud (also only as to Laith Yaldoo).

Generally, Plaintiffs seek a “pro-rata” share of the proceeds of the Property sale based on their foreclosure on the Kalabats' membership interests in Birmingham Property and allege claims against Laith Yaldoo based on his alleged legal representation in the underlying loan.

¹ But Laith Yaldoo only appears to have filed a UCC Financing Statement as to **Jamal** Kalabat (on May 5, 2010).

² Larry Yaldoo appears to have filed his UCC Financing Statements as to both Jamal and Salam Kalabat (as does Plaintiff James Akouri).

Larry Yaldoo filed a Counter- and Cross-Claim against Plaintiffs and the Kalabat Defendants, respectively. His claims seek a declaration that he possesses a superior, perfected security interest and seeks money damages against Plaintiffs following a UCC foreclosure sale on the Kalabats membership interests.

Defendant Larry Yaldoo now moves for summary disposition of Plaintiffs' claims and his Counterclaim under MCR 2.116(C)(10) based on his alleged first priority perfected security interest in the Membership interests.

Separately, Laith Yaldoo moves for summary disposition of Plaintiff's Counts III and IV under MCR 2.116(C)(7) and (C)(8) because said claims are both time-barred and fail as a matter of law.

A (C)(7) motion determines whether a claim is barred, among other grounds, by a statute of limitations. A (C)(8) motion tests the legal sufficiency of the complaint. And a (C)(10) motion tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

I. Larry Yaldoo's Motion.

Larry Yaldoo first moves for summary disposition of Plaintiffs' claims and of his Counterclaim – arguing that there is no dispute that he has the superior security interest as he was the first to file a UCC Financing Statement.

But, as stated, the evidence that he presents in support of this claim actually appears to establish that Laith Yaldoo was the first to file a UCC Financing Statement on May 5, 2010. It does not appear that Larry filed his Statement until January 13, 2011.

MCL 440.9322(1)(a) provides that:

priority among conflicting security interests . . . in the same collateral is determined according to the following rules:

(a) Conflicting perfected security interests . . . rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest . . . is first perfected, if there is no period thereafter when there is neither filing nor perfection.

Because Larry Yaldoo’s Statement filing preceded Plaintiffs’ by a number of years, he claims that his security interest is superior.

In response, Plaintiffs claim that they are in a first position with respect to the Membership Interests because they “otherwise perfected” their security interest before Larry’s Statement filing.

In support, Plaintiffs cite to MCL 440.9102(ww)³ for the proposition that the membership interests in an LLC such as Birmingham Property are “investment property” for purposes of Article 9.

But, as Larry Yaldoo responds, Michigan has adopted MCL 440.8103(3), which provides (emphasis added) that an interest in an LLC “**is not a security** unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this article, or it is an investment company security.”⁴ And, Larry Yaldoo claims, Birmingham property does not fall within any of these categories. As a result, Defendant argues, “the only way that [Plaintiffs] could have perfected [their claimed security interest] was by filing a UCC-1 financing statement.” The Court agrees.

³ It appears that the parties actually mean MCL 440.9102(vv), which provides: “Investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.”

⁴ In full, MCL 440.8103(3) provides:

An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

The Court also rejects Plaintiffs' argument that the July 2, 2007 Membership Interest Security and Pledge Agreement between the Kalabats and Larry Yaldoo acted as an amendment to Birmingham Property's Operating Agreement to the extent that it provided that the Membership Interest is a security for purposes of Articles 8 and 9 of the Uniform Commercial Code." (Paragraph 6).

While the Operating Agreement provides that it may be "amended only by a written agreement of a majority of the Members," the July 2 Security and Pledge Agreement was not an amendment to the Operating Agreement. It was a Security and Pledge Agreement. And, to the extent that the Kalabats made a representation that was not true, they could be subject to a claim for breach of said agreement. But in no event did the Security and Pledge Agreement operate to amend Birmingham Property's Operating Agreement.

For the foregoing reasons, because his UCC Financing Statement was filed years before Plaintiffs', Larry Yaldoo's security interest was superior to Plaintiffs'.

The Court next rejects Plaintiffs' argument that Larry Yaldoo's security interest lapsed in January 2016 because the same are only good for five years under MCL 440.9515(1). This is so because Larry Yaldoo foreclosed on his security interest in October 2015.⁵ As a result, after this time, there was no need to continue the perfection of said security interest.

Finally, the Court rejects Plaintiffs' argument that equity demands realignment of the priority of the disputed security interests. Plaintiffs fail to identify any alleged acts of Larry Yaldoo that should negate the position of his security interest.

⁵ The Court will note that, had Larry Yaldoo filed his UCC Financing Statement on May 5, 2010 (as he claimed), the same would have expired on May 5, 2015 – before his foreclosure sale. But, as stated, Larry Yaldoo's actual UCC Financing Statement provides that it was filed on January 11, 2011 – meaning it remained valid at the time of the foreclosure sale.

For all of the foregoing reasons and viewing all evidence in the light most favorable to Plaintiffs, the Court finds that there are no material facts in dispute and Defendant Larry Yaldoo is entitled to judgment as a matter of law, but only to the extent that the Court finds that his security interest in the Kalabats' membership interest in Birmingham Property is superior to Plaintiffs' claimed security interest in the same. Larry Yaldoo's motion for costs is DENIED.

Because the Court has so ruled, it need not address any of the parties' remaining arguments.

II. Laith Yaldoo's Motion.

Next, Laith Yaldoo moves for partial summary disposition on Plaintiff's Counts III and IV for breach of fiduciary duty and fraud, respectively.⁶ Defendant bases his request on the six-year limitations period for fraud claims (MCL 600.5813) and the three-year limitations period for tort-based claims (MCL 600.5805(10)).

Plaintiffs base said claims on the general allegation that Laith Yaldoo acted as their attorney by "drafting a security agreement for Akouri that Laith now claims is ineffective and subordinate to his father's rights." Further, Plaintiffs allege that Laith knowingly drafted (and allowed Akouri to sign) the Security Agreement that warranted that there were no other liens or claims against the Membership Interest – despite his knowledge otherwise.

While Laith Yaldoo disputes these allegations, for purposes of the present motion, he claims that all of Plaintiffs' alleged events occurred in the summer and fall of 2007 – more than eight years before Plaintiffs filed the present Complaint. As a result, Defendant argues, Plaintiffs' Counts III and IV are time-barred.

⁶ Because both parties present evidence in support of their arguments, it is appropriate to also consider Defendant's motion under the (C)(10) standard.

Plaintiffs' claim accrued when they received something different than what they claim they were supposed to receive. In this case, Plaintiffs' claim accrued when they were allegedly promised a senior, perfected security interest, but received something less.

In response to Defendant's motion, Plaintiffs claim that they can still bring said claims because Defendant fraudulently concealed the existence of said claims, citing MCL 600.5855, which provides:

If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

While Plaintiffs claim that Laith Yaldoo concealed the existence of their claim by failing to disclose that he and Larry Yaldoo also had security interests in the Kalabats' membership interest in Birmingham Property, Plaintiffs entirely fail to allege how Defendant did so.

This is particularly true when his and Larry Yaldoo's UCC Financing Statements based on their security interest were filed in 2010 and 2011, respectively. Said Statements then became a matter of public record. Assuming arguendo that Laith Yaldoo did somehow conceal the existence of Plaintiffs' claims before this filing, Plaintiffs can point to no acts that concealed the same after the UCC filing.

Further, the Kalabats filed for Chapter 7 bankruptcy in 2011 – listing both Plaintiffs and Defendants as secured creditors. As a result, Plaintiffs were on actual notice in 2011 – more than two years before they filed their present Complaint.

For the foregoing reasons, the Court finds that Plaintiffs' Counts III and IV are time barred by MCL 600.5813 and MCL 600.5805(10), respectively, and MCL 600.5855 cannot act to toll said claims.

For the foregoing reasons, Laith Yaladoo's motion for summary disposition is GRANTED under (C)(7) and (C)(10), and Plaintiffs' Counts III and IV are DISMISSED.⁷

IT IS SO ORDERED.

April 27, 2016
Date

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

⁷ Just as it exercised discretion to accept Plaintiffs' summary responses despite Plaintiffs' failure to timely file the same, the Court will also exercise its discretion to deem Defendants' discovery responses as timely.