STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

SARMAD BRIKHO,

Plaintiff,

vs. Case No. 2014-3977-CB

SHANT SHIRINIAN, SHIRINIAN INVESTMENTS, LLC, VAN 8 COLLISION, INC., GARY CUNNINGHAM, and GARY H. CUNNINGHAM, P.C.

Defendants,

and

CHOICE AUTOMOTIVE GROUP, LLC, d/b/a Chase Automotive Leasing,

Nominal Defendant.

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OPINION AND ORDER

Defendants Shant Shirinian, Shirinian Investments, LLC and Van 8 Collision, Inc. ("Shirinian Defendants") have filed a second motion to surcharge receivership fees to Plaintiff Sarmad Brikho ("Plaintiff"). Plaintiffs have filed a response and request that the motion be denied. In addition, the Shirinian Defendants have filed a supplemental brief in support of their motion.

In addition, the Defendants have filed a motion for entry of attorney fees and costs in compliance with order for sanction entered 12/15/14. Plaintiff has filed a response and requests that the motion be denied. Defendants have also filed a reply brief in support of their motion.

I. Factual and Procedural History

In November 2014, Plaintiffs filed their original complaint in this matter. The original complaint contains the following claims: Count I- Violation of Michigan's Uniform Partnership Act, MCL 449.20 through 449.21; Count II- Conversion; Count III- Equitable Accounting; Count IV- Fraudulent Concealment and Misrepresentation; Count V- Tortious Interference with Business and Contractual Relations; Count VI- Promissory Estoppel; and Count VII- Civil Conspiracy.

On December 4, 2014, the Court entered an Order granting Defendants' motion to dissolve Choice Automotive Group, LLC ("CAG") and to appoint a receiver to liquidate its assets ("Order"). In the Order, the Court appointed Anthony J. Caputo as the receiver. Mr. Caputo has been performing various duties in connection with his role as receiver in this matter.

On December 15, 2014, the Court held a hearing in connection with one of the parties' reoccurring discovery disputes. At the conclusion of the hearing, an order was entered addressing the motion addressed at the hearing (the "Order"). On June 27, 2015, Defendants filed a motion for entry of attorney fees and costs consistent with the Order. Plaintiff has filed a response to the motion and requests that it be denied. Defendants have also filed a reply brief in support of their motion. The Court has since taken the matter under advisement.

On September 28, 2015, the Shirinian Defendants filed their instant motion to surcharge Mr. Caputo's receivership fees to Plaintiff with respect to Mr. Caputo's fourth receivership report. On October 5, 2015, Plaintiff filed his

response in which he requests that the motion be denied. On November 12, 2015, the Shirinian Defendants filed their supplemental brief in support of their motion. The Court has taken the matter under advisement. The Court will address the two above-referenced motions in turn.

II. Arguments and Analysis

A. Shirinian Defendants' Motion to Surcharge Receivership Fee to Plaintiff

Shirinian Defendants requests that the Court surcharge the entire $32,653.00 in receivership fees requested by Mr. Caputo in his fourth receiver report to Plaintiff. The fees requested in Mr. Caputo's fourth report were incurred in connection with responding to the objections to the third receiver report. The objections fell within two general categories: (1) General objections that Mr. Caputo's actions had gone beyond the scope of the initial receivership order, and (2) That Mr. Caputo's actions with respect to amending CAG's 2011-2013 tax returns were inappropriate.

At the July 20, 2015 hearing held in connection with Plaintiff's objections to the third receiver report, the Court held, with respect to Plaintiff's objection as to scope, that Mr. Caputo had been acting within the scope of the initial receivership order. With respect to the tax return issue, the Court recognized that both sides had concerns regarding the issue and ordered that the parties and receiver appear for a status conference on August 7, 2015. On August 7, 2015, counsel for both parties', the receiver and the receiver's counsel met in chambers with the Court at which time both sides again raised concerns. The Court set the issue for an evidentiary hearing on August 18, 2015. On August 18,

2015, the parties appeared for the evidentiary hearing and reached a stipulated resolution regarding Mr. Caputo's request for file amended tax returns. Due to reaching a resolution, Plaintiff withdrew his remaining objections.

The Court may apportion a receiver's fees as equity requires. See *Geer v Finn*, 196 Mich 738; 163 NW 20 (1917). After reviewing the record, the Court is convinced that Defendants' request to surcharge the fees request in the receiver's fourth report to Plaintiff should be denied. While Plaintiff was the party to formally file his objections to the receiver's actions, the fact is that both sides had concerns regarding the tax issue. Although the objections also contained a Plaintiff's unilateral objection as to scope, the Court is not persuaded that that portion of the objections warrants a surcharge of the receiver's fees. Throughout this litigation, issues have arisen due to the concerns and/or actions of all of the parties at various times. Indeed, upon reviewing the Mr. Caputo's billing records, entries related to each of the parties appear. While Plaintiff unilaterally raised some objections to the receiver's activities, the Court is not persuaded that doing was frivolous, done in bad faith, or made in circumstances otherwise warranting sanctions in the form of a surcharge of Mr. Caputo's fees. As a result, Defendants' request to surcharge the fees requested in the fourth receiver report will be denied.

B. Defendants' Motion for Sanctions Pursuant to 12/15/14 Order

In their motion, Defendants contend that they are entitled to sanctions pursuant to the Order Regarding Pending Discovery Motions entered on 12/15/14. The Order provides, in part:

> It is further ordered that counsel for the Defendants shall file a request for the amount of sanctions to be imposed by the Court, supported by appropriate time slips and other evidence of the amounts being requested for the Plaintiffs' failure to comply with previously ordered discovery.

Contrary to Defendants' position, the Court is persuaded that the Order did not grant sanctions, or even order that sanctions would be imposed. Rather, the Court ordered Defendants to file a properly supported motion in support of their request(s) for sanctions. Further, at the underlying hearing on December 15, 2014 before now retired Judge John Foster, the Court stated: "[Defendants] need to file an appropriate request for what the sanctions would be in terms of economic damages that you have suffered and your client has suffered as well. And at the final resolution of this matter, the Court will consider those as part of the possible dissolution aspect of this company that Mr. Caputo is working on now." (*See* Defendants' Exhibit B, at 13.) Accordingly, contrary to Defendants' position, the Court has not held that Defendants are entitled to sanctions for Plaintiff's conduct, except with respect to certain receivership fees.

Upon reviewing the record, the Court is convinced that the most appropriate way to address this sanction request given the ongoing and systematically contentious discovery process in this case is to make its decision with respect to sanctions at the final resolution of this matter when the Court will have the entire factual landscape of this matter before it. As a result, Defendants' motion will be denied without prejudice with all parties retaining the ability to request sanctions at the conclusion of this matter.

IV. Conclusion

Based upon the reasons set forth above, the Shirinian Defendants' motion to surcharge receiver fees is DENIED.

In addition, Defendants' motion for entry of attorney fees and costs in compliance with the December 15, 2014 Order is DENIED, WITHOUT PREJUDICE.

In compliance with MCR 2.602(A)(3), the Court states this *Opinion and Order* does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

Date: DEC 04 2015

Kathryn A. Viviano

Hon. Kathryn A. Viviano, Circuit Court Judge