

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.

OPINION AND ORDER

Defendants Shant Shirinian ("Defendant Shirinian"), Shirinian Investments, LLC and Van 8 Collision, Inc. (collectively, "Shirinian Defendants") have filed a motion for entry of an order approving the 6th report of receiver and for payment of liabilities by Choice Automotive Group, LLC ("CAG"). Plaintiff has filed a response and requests that the motion be denied.

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 ("Receiver"). The Receiver has been performing various duties in connection with his role in this matter.

On November 16, 2015, the Receiver filed his 6th report ("Report"). On November 23, 2015, Plaintiff filed his reply to the Report in which he raised various objections. On November 30, 2015, the Shirinian Defendants filed their instant motion for entry of an order approving the Report and for payment of liabilities by CAG.

On December 7, 2015, the Court held a hearing in connection with the instant motion. At the conclusion of the hearing, the Court entered an order resolving all of the issues raised by the parties with respect to the Report, except for the issue relating to payment, collection and/or distribution of CAG's loans payable to one or more the Shirinian Defendants, which the Court took under advisement.

II. Arguments and Analysis

In the Report, the Receiver states, *inter alia*: "As of October 31, 2015, [CAG] owes [Defendant Shirinian] Six Hundred Twenty One Thousand One Hundred Fifty Two and 79/100 Dollars (\$621,152.79)." Further, the Receiver

proposes that he pay off the above-referenced liability. In his reply, Plaintiff objects to the proposed payment based on his position that the accounting between the parties is at the center of this case, and that any payment to Defendant Shirinian on CAG's behalf by the Receiver would be inappropriate at this time. Indeed, the parties have disputed almost every material issue involving the parties' business from the date the relationship began to how the business was conducted up until the date the Receiver was appointed.

MCR 2.622(E)(3) provides that "[a] receiver may pay the ordinary expenses of the receivership but may not distribute the funds in the receivership estate to a party to the action without an order of the Court." Given the fact that the parties' dispute centers on the parties' actions with respect to CAG and an accounting between the parties, the Court is convinced that the most equitable manner to address the proposed payment is to order that the funds be held in escrow until further order of the Court.

III. Conclusion

For the reasons set forth above, the Shirinian Defendants' motion for entry of an order approving the 6th report of receiver and for payment of liabilities by CAG is GRANTED, IN PART, and DENIED, IN PART. Specifically, the Six Hundred Twenty One Thousand One Hundred Fifty Two and 79/100 Dollars (\$621,152.79) the Receiver proposes to pay to Defendant Shirinian from the receivership estate shall be deposited in a segregated, interest bearing account with the Macomb County Clerk, where the funds shall remain until further order of

the Court. Once such deposit is made, the Receiver shall be deemed discharged upon the filing of a final accounting with this Court.

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: FEB 02 2018

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge