

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

SARMAD FOUAD BRIKHO a/k/a  
SARMAD PUTRUS, and CHOICE  
AUTOMOTIVE GROUP, LLC, d/b/a  
CHASE AUTOMOTIVE LEASING,

Plaintiffs,

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

Defendant Shirinian Investments has filed a motion to strike two notices of lis pendens Plaintiff has filed. Plaintiff has filed a response and requests that the motion be denied.

I. Factual and Procedural History

On October 16, 2014, Plaintiff recorded two notices of lis pendens with the Macomb County Register of Deeds. The first relates to Defendant Shirinian Investments, LLC's ("Defendant Investments") real property located at 4182 Kendall Road, Warren, MI 48091 ("Kendall Property"). The second relates to

Defendant Investments' real property located at 23644 Ryan Road, Warren, MI 48091 ("Ryan Property")(Kendall Property and Ryan Property collectively, "Properties").

On June 17, 2016, Defendant Investments filed its instant motion to strike the two-above referenced notices of lis pendens (collectively, "Notices"). On June 24, 2016, Plaintiff filed his response to the motion in which he requests that the motion be denied. On June 27, 2016, the Court held a hearing in connection with the motion and took the matter under advisement.

## II. Arguments and Analysis

In its motion, Defendant Investments first asserts that the Notices fail to comply with MCL 600.2701(1). MCL 600.2701(1) provides:

- (1) To render the filing of a complaint constructive notice to a purchaser of any real estate, the plaintiff shall file for record, with the register of deeds of the county in which the lands to be affected by such constructive notice are situated, a notice of the pendency of such action, setting forth the title of the cause, and the general object thereof, together with a description of the lands to be affected thereby.

Defendant Investments' specific position is that the Notices fail to set forth the "general object" of this matter. In particular, Defendant Investments maintains that the Notices are required to include how the properties at issue are implicated in this case. Each of the Notices provides that this matter involves the dissolution of a partnership's assets, and that the real properties are subject to legal claims by the partners and parties. (See Defendant Investments' Exhibits A and B.) While Defendant Investments asserts that the statute requires the parties filing the notice to include exactly how the real property at issue is involved in the

case, it has failed to provide any authority in support of its position. A party may not merely state a position and then leave it to the Court to rationalize and discover the basis for the claim, nor may he leave it to the Court to search for authority to sustain or reject his position. *People v Mackle*, 241 Mich App 583, 604 n 4; 617 NW2d 339 (2000). Moreover, the Michigan Supreme Court, in *Atterauge v Christiansen*, 48 Mich 60; 11 NW 806 (1882) held that the statute merely requires sufficient detail to “give notice as will enable parties to ascertain therefrom the persons and property affected by the bill with the general nature of the matters in controversy, leaving them to an examination of the court record to ascertain the details and particulars thereof.” *Id.* at 67. In this case, the Notices set forth the persons and properties affected by the case, as well as sufficient case information to allow any interested party to locate the court record for this matter to ascertain the details of the case and how the properties at issue are involved. Consequently, the Court is satisfied that the Notices sufficient identify the objects of this case as required by the statute.

Defendant Investments also contends that Notices should be stricken because the claim which implicates the Properties fails based on the statute of frauds. The claim which involves the Properties is Count V of Plaintiff’s second amended complaint. That claim seeks to enforce an alleged oral contract between Defendant Investments, Defendant Shant Shirinian and Plaintiff. The alleged oral contract purportedly included Defendant Shirinian’s promise to convey a 50% ownership interest in the Properties to Plaintiff. (See Complaint, at ¶¶ 23, 103(C).) Defendant Investments avers that the alleged promise is

unenforceable under the statute of frauds provided by MCL 566.106. MCL 566.106 provides:

No estate or interest in lands, other than leases for a term not exceeding 1 year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing.

While Plaintiff concedes that the above-referenced statute of frauds would ordinarily apply the alleged oral contract, he avers that the alleged contract falls within the partial performance exception to the statute of frauds.

“The law of Michigan is clear that partial performance of an oral contract to convey an interest in land may remove that contract from the statute of frauds.” *Zaborski v Kutyla*, 29 Mich App 604, 607; 185 NW2d 586 (1971). “Possession and improvements in regard to the property may remove it from the statute.” *Id.* “Payment of money pursuant to the contract is another factor to consider.” *Id.* In this case, Plaintiff has alleged that he fully completed his obligations under the alleged oral contract and has provided evidence that CAG paid many of the utility bills for the Properties from 2011 to 2013. (See Complaint, at ¶107, Plaintiff’s Exhibit 2.)

While Defendant Investments seeks to have the Notices stricken, the Court, for the reasons discussed above, is satisfied that the Notices were filed in compliance with MCL 600.2701. Moreover, while Defendant Investments challenges the merits of the claim on which the Notices are based, it has not filed its instant motion as a motion for summary disposition. Consequently, any

examination of the claim itself in the context of Defendant Investments' instant motion to strike is inappropriate. Consequently, the Court is convinced that Defendant Investments has failed to demonstrate that the Notices should be stricken. As a result, the motion will be denied.

Finally, Defendant Investments requests leave to file an amended counterclaim to include a claim for slander of title. However, the request is simply a portion of Defendant Investments' prayer for relief, and Defendant Investments has not described what the proposed claim would entail or provided a proposed amended pleading for the Court's review. Without additional information, Plaintiff is unable to respond to the request and the Court is unable to sufficiently analyze the request. As a result, Defendant Investments' request for leave to amend must be denied.

### III. Conclusion

Based upon the reasons set forth above, Defendant Investments' motion to strike Plaintiff's notices of lis pendens is DENIED. Further, Defendant Investments' request for leave to file an amended counter-claim is DENIED.

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: JUL 05 2016

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