

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

THE FILTER DEPOT, LLC,

Plaintiff,

vs.

Case No. 2014-4186-CB

EDWARD CASTLE, JR.,

Defendant.

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OPINION AND ORDER

Defendant Edward Castle, Jr. ("Castle") has filed a motion for summary disposition as to Count I of Plaintiff The Filter Depot's ("Filter Depot") complaint. Filter Depot has filed a response and requests that the motion be denied.

I. Factual and Procedural History

Castle is a minority owner of Filter Depot. Midwest Air Filter, Inc. ("MAF") is the majority owner of Filter Depot. Since 2013 Marcia and Jonathan Shoham (collectively, the "Shohams") have owned and operated MAF.

On September 12, 2014, Castle filed his original complaint in this case no. 2014-3568-CB ("3568 Case"). In his complaint, Castle alleged that MAF, at the direction of the Shohams, has engaged in various improper activities, including issuing an improper capital call.

On October 27, 2014, Filter Depot filed its complaint in this matter. In its complaint, Filter Depot purports to state claims for: breach of operating agreement for failure to contribute (Count I), breach of fiduciary duty by breaching the operating agreement (Count II), and breach of common law fiduciary duty (Count III).

On January 21, 2015, Filter Depot and Castle filed their first amended complaint in the 3568 Case ("Amended Complaint"). The Amended Complaint added Filter Depot as a plaintiff and contains the following claims: Count I- Member Oppression against MAF under MCL 450.4515, Count II- Fraud, Fraudulent Omission, and Silent Fraud against MAF, Count III- Breach of Contract against MAF, Count IV- Unjust Enrichment against MAF, Count V- Attorney Fees pursuant to MCL 450.4503 against MAF, Count VI- Accounting, Count VII- Breach of Common Law Fiduciary Duties against MAF, Count VIII- Breach of Statutory Fiduciary Duties against MAF, Count IX- Statutory and Common Law Conversion against MAF and the Shohams , Count X- Aiding and Abetting Breaches of Fiduciary Duty, Fraud, Conversion, Breach of Contract, Member Oppression, and Unjust Enrichment against MAF and the Shohams, and Count XI- Civil Conspiracy against MAF and the Shohams.

On January 28, 2015, MAF and the Shohams filed a motion for summary disposition pursuant to MCR 2.116(C)(8) in the 3568 Case. On March 16, 2015, the Court entered its Opinion and Order in connection with that motion in which the Court dismissed the portions of Filter Depot and Castle's breach of fiduciary duty claim based on ¶59 (b), (f), (g), (j), (m), (q), (r), and (u), as well as their conversion of money, conspiracy, and aiding and abetting breach of contract, unjust enrichment and membership oppression claims.

On July 9, 2015, MAF and the Shohams filed a motion for summary disposition of the portion of Castle's claims based on the termination of his employment. On August 12, 2015, Plaintiff filed his response and requests that the motion be denied. On August 13, 2015, Defendants filed a reply brief in support of their motion.

On July 16, 2015, MAF and the Shohams filed a motion for summary disposition of the portion of Plaintiff's claims related to the increase of management fees that were charged. On August 12, 2015, Castle filed his response and requests that the motion be denied. On August 13, 2015, MAF and the Shohams filed their reply brief in support of their motion. On August 17, 2015, the Court held a hearing in connection with the two above-referenced motions in the 3568 Case and took the matters under advisement.

On August 21, 2015, Castle filed his instant motion for summary disposition of Filter Depot's claim for breach of contract based on Castle's refusal to comply with the capital call. On September 21, 2015, Filter Depot filed its response and requests that the motion be denied. On September 28, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

## II. Standard of Review

A motion under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

### III. Arguments and Analysis

As a preliminary matter, the Court notes that the instant motion was filed in the 3568 Case pursuant to a June 22, 2015 Order consolidating the 3568 Case and this case and providing that all filings were to be filed in the 3568 Case. However, the June 22, 2015 Order has since been amended by an October 30, 2015 Order providing that the two matters are consolidated for discovery, conferences and trial only. As such all future pleadings are to be filed in the appropriate case.

In his instant motion, Castle seeks summary disposition of Filter Depot's Count I based on his position that the capital call at issue was not authorized by Filter Depot's operating agreement ("Operating Agreement") and is unenforceable. Specifically, Castle contends that the capital call violated at least two provisions within the Operating Agreement. The first provision at issue is Paragraph 6.1 of the Operating Agreement, which provides:

**6.1 Voting.** All Members shall be entitled to vote on any matter submitted to a vote of the Members. The Members shall have the right to vote on all of the following: (a) a dissolution of the Company pursuant to Paragraph 9.1(c) of this Operating Agreement; (b) the merger of the Company; (c) a transaction involving an actual or potential conflict of interest between a Manager and the Company; (d) an amendment to the Articles; and (e) the sale, exchange, lease or other transfer of all or substantially all of the Company's assets other than in the ordinary course of business.

(See Castle's Exhibit 1.)

In his motion, Castle avers that the capital call violated Paragraph 6.1 because it involved a conflict of interest with respect to MAF. In response, Filter Depot argues that the Operating Agreement provides that a consent resolution may but utilized to taken actions instead of holding a vote. Consent resolutions are governed by Paragraph 6.4 of the Operating Agreement, which provides:

6.4 Consent. Any action required or permitted to be taken at an annual or special meeting of the Members may be taken by consent without a meeting, prior notice, or a vote. The consent must be in writing, set forth the action so taken and be signed by the Members having at least the minimum number of votes that would be necessary to authorize or take action at a meeting at which all membership interest entitled to vote on the action were present and voted....

(See Castle's Exhibit 1.)

A contract must be interpreted according to its plain and ordinary meaning. *Wells Fargo Bank, NA v Cherryland Mall Ltd Partnership (On Remand)*, 300 Mich App 361, 386; 835 NW2d 593 (2013), quoting *Holmes v. Holmes*, 281 Mich App 575, 593; 760 NW2d 300 (2008). Under ordinary contract principles, if contractual language is clear, construction of the contract is a question of law for the court. *Klein v. HP Pelzer Auto Sys, Inc*, 306 Mich App 67, 75–76; 854 NW2d 521 (2014).

In this case, Paragraph 6.1 of the Operating Agreement sets forth specific matters upon which Filter Depot's members are entitled to vote. (See Castle's Exhibit 1.) One such category of matters are transactions involving an actual or potential conflict of interest. (*Id.*) In his motion, Castle identifies two actual or potential conflicts of interest. First, Castle states that MAF had an interest in requiring Castle to make the capital call because the contribution would ultimately be used to pay the management fees that MAF had previously unilaterally raised without a vote. Second, Castle contends that the consent resolution only required him to make an additional contribution, thereby benefitting MAF's interest in Filter Depot disproportionately. In support of his position, Castle relies on the deposition of Jonathan Shoham and the consent resolution instituting the capital call. (See Castle's Exhibits 2 and 4.)

Mr. Shoham testified that he arrived at the amount of the capital call based on the amount of distributions that had been issued to MAF, but that MAF had not received and/or accepted. (See Castle's Exhibit 2, at p.72.) Further, Mr. Shoham testified that the additional funding was needed to repay money Filter Depot owed to MAF. Moreover, the consent resolution provides that Castle and his son, who at that time was a minority member of Filter Depot, each make additional contributions. (See Castle's Exhibit 4.) The consent resolution did not require MAF to make any additional contributions or take any other action. (Id.)

While the MAF and Filter Depot may ultimately establish that the capital call was fair and equitable, the Court is convinced that the decision to make a capital call involved an actual or potential conflict of interest. It is undisputed that MAF, the party making the resolution, was the same party that would be benefitted from the additional funding. One of Filter Depot's largest expenses was the management fees it was required to pay to MAF. By requiring Castle and his son to provide additional funding, MAF was creating an additional source from which it could collect its management fees. Accordingly, MAF was on both sides of the transaction. As such, the situation present, at a minimum, a potential conflict of interest.

As a transaction involving a potential or actual conflict of interest, Paragraph 6.1 of the Operating Agreement provides Castle with a right to vote on the transaction. However, Paragraph 6.4 provides an exception to the general rule that certain matters must be submitted to a vote of the members by allowing members holding more than a 50% interest in Filter Depot to "taken any action required or permitted to be taken at an annual or special meeting.....by consent without a meeting, prior notice, or a vote."

Upon the reviewing the Operating Agreement, the Court is convinced that Paragraphs 6.1 and 6.4 of the Operating Agreement are capable of conflicting interpretations, specifically where, as here, one member holds more than a 50% membership interest. Paragraph 6.1 specifically states that "all members shall have a right to vote on all of the following....(c) a transaction involving an actual or potential conflict of interest between a [member] and [Filter Depot]." (See Castle's Exhibit 1.) However, the clear and unambiguous language of Paragraph 6.4 operates, where one member holds more than a 50% membership interest, to completely negate the other member(s)' right to vote on any matter unless the majority member unilaterally decided to allow the other members to vote. However, if the Court were hold that Paragraph 6.1 provides an unconditional right to vote, it would negate the exception set forth in Paragraph 6.4. Where, as here, provisions are capable of conflicting interpretations, the contract is ambiguous, and factual development is necessary to determine the intent of the parties and summary disposition is therefore inappropriate. *Klein*, 306 Mich App at 75–76. Further, courts cannot simply ignore portions of a contract in order to avoid a finding of ambiguity or in order to declare an ambiguity. *Klapp v United Ins Group Agency, Inc.*, 468 Mich 459, 467; 633 NW2d 447 (2003). Instead, contracts must be construed so as to give effect to every word or phrase as far as practicable. *Id.* [internal citations omitted]. Moreover, the various parts of a contract should be read together. *JAM Corp. v. AARO Disposal, Inc.*, 461 Mich 161, 170, 600 N.W.2d 617 (1999). In this case, additional factual development is needed in order to determine what was intended by the provisions at issue. As a result, summary disposition based on either of those provisions is inappropriate.

Castle's other basis for summary disposition is that the capital call did not comply with Paragraph 3.2 of the Operating Agreement, which provides:

3.2 Additional Contributions. In addition to the initial capital contributions, the managers may determine from time to time that additional contributions are needed to enable the company to conduct its business and affairs. After making such determination, notice of it shall be given to all members in writing at least ten (10) days before the date on which the additional contributions are due. The notice shall describe in reasonable detail, the purposes and uses of such additional capital, the amounts of additional capital required, and the date by which payment of the additional capital is due...."

(See Castle's Exhibit 1.)

In his motion, Castle asserts that the capital call violated Paragraph 3.2 because it was not made in order to enable Filter Depot to conduct its business and affairs, and because it did not state why additional capital was needed to operate Filter Depot. The consent resolution at issue merely provides that "additional Member capital contributions are necessary in order to operate the business of the [Filter Depot]." (See Plaintiff's Exhibit 4.) Paragraph 3.2 requires the notice require a capital call to, *inter alia*, describe in "reasonable detail, the purposes and uses of such additional capital..." The question of reasonableness is generally considered to be a question of fact. *City of Novi v Detroit*, 433 Mich 414, 431; 446 NW2d 118 (1989). The Court is convinced that while the consent resolution does not provide much detail, the question of whether the amount of detail provided was reasonable is a question of fact that must be left for trial. As such, the portion of Castle's motion for summary disposition based on Paragraph 3.2 must be denied.

IV. Conclusion

For the reasons discussed above, Defendant Edward Castle, Jr.'s motion for summary disposition of Count 1 of Plaintiff Filter Depot, LLC's complaint is DENIED.

Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

Date: JAN 21 2016

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