

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

NORTH ROSE TOWNE HOUSES
IMPROVEMENT ASSOCIATION, INC.,

Plaintiff,

vs.

Case No. 2015-2445-CB

LISA MASTROGIOVANNI,

Defendant.

OPINION AND ORDER

Defendant has filed a motion for a more definitive statement pursuant to MCR 2.115(A) regarding Count I and to dismiss Counts II and III. Plaintiff has responded and requests that the motion be denied.

I. Factual and Procedural History

Defendant is one of Plaintiff's former board members. Plaintiff is a homeowners association formed to provide centralized control and support for the residents of the North Rose Townhouses.

On August 19, 2015, Plaintiff filed its complaint in this matter against Defendant ("Complaint"). In the Complaint, Plaintiff purports to state the following claims: Count I- Breach of Fiduciary Duty, Count II- Misrepresentation, and Count III- Injunctive Relief. Defendant has since filed its instant motion for a more definite statement as to Count I and to dismiss Counts II and III. Plaintiff has filed a response to the motion and requests that it be denied. On December 7, 2015, the Court held a hearing in connection with the motion.

II. Motion for More Definite Statement

MCR 2.115(A) governing motion for a more definitive statement, and provides:

If a pleading is so vague or ambiguous that it fails to comply with the requirements of these rules, an opposing party may move for a more definite statement before filing a responsive pleading. The motion must point out the defects complained of and the details desired. If the motion is granted and is not obeyed within 14 days after notice of the order, or within such other time as the court may set, the court may strike the pleading to which the motion was directed or enter an order it deems just.

In her motion, Defendant contends that the allegations within Count I of the Complaint are vague and do not satisfy the standard of pleading in Michigan. A complaint must contain “[a] statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary to reasonably inform the adverse party of the nature of the claims the adverse party is called on to defend[.]” MCR 2.111(B)(1); see also *Iron Co. v. Sundberg, Carlson & Assoc., Inc.*, 222 Mich App 120, 124, 564 NW2d 78 (1997). “Each allegation of a pleading must be clear, concise, and direct.” MCR 2.111(A)(1).

In the Complaint, Plaintiff alleges that Defendant breached her fiduciary duties as a board member by: (1) Failing to discharge her duties in good faith; (2) Engaging in self-dealing; (3) Making unauthorized payments and distributions to herself; and (4) Misusing money, property and assets of North Rose without the vote, knowledge, approval or consent of the remainder of Plaintiff’s board. (See Complaint, at ¶10 (a)-(d).) While not specific, the Court is convinced that such allegations are sufficient to meet the threshold standard of pleading in Michigan. A complaint is intended merely to give notice to the defendant of the nature of claim(s) brought against it. *Simonson v Michigan Life Ins Co*, 37 Mich App 79; 194 NW2d 446 (1971). “The exploratory

processes of discovery, pretrial conference, and summary judgment, combined with liberal amendment to pleadings, are designed to carry the burden of framing the particular issues to be tried." *Id.* While the Court recognizes that Plaintiff has not identified the specific actions that allegedly amount to a breach of fiduciary duty, such specificity is only required when pleading fraud or mistake. MCR 2.112(B)(1). Plaintiff's allegations set forth the types of activities that it alleges that Defendant engaged in that amount to a breach of her fiduciary duty. Based on the authority cited above, the Court is satisfied that such allegations are sufficient. Consequently, Defendant's motion for a more definite statement as to Count I of the Complaint is denied.

III. Motion to Dismiss

As a preliminary matter, the Court recognizes that it denied Defendant's motion to dismiss Counts II and III of the Complaint in a December 7, 2015 Order ("Order") entered after the hearing held in connection with the instant motion. However, upon reviewing the record, the Court is convinced that the portion of the Order denying Defendant's request to dismiss Plaintiff's misrepresentation claim must be vacated pursuant to MCR 2.604(A), and that the misrepresentation claim must be dismissed, as Plaintiff has failed to state a viable claim.

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party "has failed to state a claim on which relief can be granted." *Radtke v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). All factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.* The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could

possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992); *Cork v Applebee's Inc*, 239 Mich App 311, 315-316; 608 NW2d 62 (2000).

While Plaintiff has not identified whether it sought to bring a claim for innocent misrepresentation, negligent misrepresentation and/or fraudulent misrepresentation, the allegations in the Complaint are insufficient to state any of those claims. All three above-referenced types of misrepresentation claims require that a plaintiff establish, *inter alia*, that (1) the defendant made a misrepresentation to the plaintiff and (2) that the plaintiff acted on the misrepresentation to its detriment. *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 688; 599 NW2d 546 (1999). In its complaint, Plaintiff alleges that Defendant made misrepresentations to residents of the community and that the residents relied on them to Plaintiff's detriment. (See Complaint, at ¶¶ 17-19.) Accordingly, Plaintiff has failed to allege that a misrepresentation was made to it or that it relied on any of the alleged misrepresentations. Consequently, Plaintiff has failed to state a claim for misrepresentation. As a result, Defendant's motion to dismiss Count II of the Complaint must be granted.

IV. Conclusion

For the reasons discussed above, Defendant's motion for a more definite statement is DENIED. Defendant must file an answer within 21 days after notice of this Opinion and Order in accordance with MCR 2.108(C)(1).

Further, the portion of the Court's December 7, 2015 Order denying Defendant's motion to dismiss Count II of Plaintiff's complaint is VACATED. In addition, Defendant's

motion to dismiss Count II of Plaintiff's complaint is GRANTED pursuant to MCR 2.116(C)(8) as Plaintiff has failed to state a viable claim for misrepresentation.

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 15 2016

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