STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

TODD ALAN STACY, individually and as assignee of ADMINISTRATION SYSTEMS RESEARCH CORPORATION, a Michigan corporation,

Plaintiff,

vs.

J. MICHAEL BRANDON; and MARY J. BRANDON,

Defendants.
_____/

Case No. 12-11945-NZB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER DENYING DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY DISPOSITION UNDER MCR 2.116(C)(7) & (10)

Some disputes are destined for trial, and this case appears to be one of them. But Defendants J. Michael Brandon and Mary J. Brandon seem bound and determined to seek summary disposition repeatedly until the Court finally relents and ends the case without a trial. Alas, the Court once again must make clear that genuine issues of material fact prevent resolution of this case through the entry of summary disposition under MCR 2.116(C)(7) and (10).

I. Factual Background

On May 29, 2013, and again on October 17, 2013, the Court explained the factual setting of this case in ruling on the defendants' motions for summary disposition. In those opinions, the Court stated in clear terms how this dispute arose. As a result, the Court need not devote substantial effort to exploring the background of this action. Instead, the Court need only explain in simple terms why the parties are fighting.

Several decades ago, Defendants Michael and Mary Brandon became majority shareholders of Administration Systems Research Corporation ("ASRC"), while Plaintiff Todd Stacy purchased a minority interest in ASRC. See Amended Complaint, ¶ 11. But in 2011, the Brandons sold their ASRC stock, which amounted to two-thirds of the company's outstanding shares, to HMA Capital ASR Acquisition Fund ("Fund"), leaving Stacy with the remaining one-third of ASRC's outstanding shares. See id., ¶ 14. Shortly thereafter, Stacy replaced Michael Brandon as the president and chief executive officer of ASRC. See id., ¶ 16. While serving in those capacities, Stacy purportedly found pervasive "theft, embezzlement, or conversion" by the Brandons at the expense of ASRC. Id., ¶ 17. Thus, Stacy initiated this action against the Brandons and a company they controlled called Orchard Vista Properties, LLC ("Orchard Vista").[1]

After the Court winnowed down claims in response to two motions for summary disposition, Plaintiff Stacy was left with a claim for unjust enrichment on behalf of himself and claims for unjust enrichment and statutory conversion on behalf of ASRC.[2] In their most recent motions for summary disposition, the Brandons contend that they should be awarded relief under MCR 2.116(C)(7) and (10) with respect to rent payments ASRC made to Orchard Vista and the expenditure of ASRC funds to cover legal bills of the Brandons and Orchard Vista. The Court has no aversion to narrowing the parties' disputes through the use of summary disposition, but the Court must carefully scrutinize the Brandons' contentions to decide whether any portions of Stacy's claims can be excised before the trial begins.

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[1] Although Orchard Vista no longer has to defend itself in this action because it obtained an across-the-board award of summary disposition on October 17, 2013, that entity nonetheless figures prominently in Plaintiff Stacy's claims against the Brandons.

[2] Plaintiff Stacy is proceeding in his individual capacity and as assignee of ASRC.

II. Legal Analysis

The Brandons' latest motions for summary disposition rest upon MCR 2.116(C)(7) and (10). "If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide." RDM Holdings, Ltd v Continental Plastics Co, 281 Mich App 678, 687 (2008). "If a factual dispute exists, however, summary disposition is not appropriate." Id. Similarly, "[s]ummary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." West v General Motors Corp, 469 Mich 177, 183 (2003). Such "[a] genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." Id. Applying these standards, the Court must determine whether the Brandons are entitled to summary disposition on Stacy's claims concerning rent payments ASRC made to Orchard Vista and expenditures ASRC made to cover legal bills of the Brandons and Orchard Vista. The Court shall address these issues *seriatim*.

A. Rent Payments to Orchard Vista.

The defendants do not dispute that ASRC made a large number of rent payments to Orchard Vista, but the defendants insist that Plaintiff Stacy failed to seek relief for those payments until after the governing three-year statute of limitations expired. Stacy, in turn, does not contest that a three-year statute of limitations governs his statutory-conversion claim,[3] see Tillman v Great Lakes Truck Center, Inc, 277 Mich App 47, 49-50 (2007), citing MCL 600.5805(10), or that "the limitation period

[3] The Court's opinion issued on October 17, 2013, explains that, although Plaintiff Stacy has pleaded that claim as "theft, embezzlement, or conversion," Stacy cannot use such a multiple-choice approach in defining that cause of action. Given Stacy's citation to MCL 600.2919a and his request for treble damages, the Court has chosen to treat the claim as one for statutory conversion.

begins to accrue 'at the time the wrong upon which the claim is based was done regardless of the time when damage results.'" See Brennan v Edward D Jones & Co, 245 Mich App 156, 158 (2001) citing MCL 600.5827. But Stacy seeks relief from the three-year statute of limitations and the legal principle governing accrual of his claim for statutory conversion based upon MCL 600.5855, which provides relief from the statute of limitations "[i]f a person who is or may be liable for any claim fraudulently conceals the existence of the claim . . . from the knowledge of the person entitled to sue on the claim[.]" If that fraudulent-concealment statute applies, Stacy was entitled to commence this action "at any time within 2 years after [he] discover[ed], or should have discovered, the existence of the claim" even if "the action would otherwise be barred by the period of limitations." See MCL 600.5855.

As the Court ruled on October 17, 2013, in denying the Brandons' prior motion for summary disposition under MCR 2.116(C)(7), Plaintiff Stacy "has presented a factual scenario that may well support his fraudulent-concealment theory" under MCL 600.5855. That is, "Stacy did not assume control of ASRC until 2011," so Stacy and "ASR did not discover the aforementioned misdeeds [of the Brandons] until after Mr. and Mrs. Brandon sold their shares of ASR stock in June of 2011." See Amended Complaint, ¶ 85. The Brandons insist that Stacy knew or should have known about all of the conduct underlying the statutory-conversion claim long before the Brandons sold their interest in ASRC, but the Court concludes that genuine issues of material fact remain on that important issue of Stacy's knowledge. The Brandons contend, for example, that ASRC employees had access to the company's books and records, so their knowledge of ASRC's payments to Orchard Vista should be imputed to the company. See Upjohn Co v New Hampshire Ins Co, 438 Mich 197, 213-214 (1991). Here, however, ASRC employees such as Julie Corpe and Pearl McLittle have not only disclaimed

knowledge of ASRC's activities with Orchard Vista, e.g., McLittle Affidavit, ¶¶ 4-5, but also stated under oath that Michael Brandon threatened to fire them if they shared information with Stacy. E.g., Corpe Affidavit, ¶¶ 8-9. Therefore, Stacy has presented substantial evidence that nobody at ASRC other than the Brandons knew about the financial dealings between the company and Orchard Vista, so knowledge of those dealings ought not be imputed to ASRC because "'[t]he general rule which imputes an agent's knowledge to his principal is subject to an exception where the agent acts in his own interest, adversely to his principal.'" New Properties, Inc v George D Newpower, Jr, Inc, 282 Mich App 120, 134 (2009) (refusing to impute knowledge of embezzlement of funds).

"In the absence of disputed facts, whether a cause of action is barred by the applicable statute of limitations is a question of law[.]" Joliet v Pitoniak, 475 Mich 30, 35 (2006). Thus, if the Court could find no disputed facts concerning Plaintiff Stacy's requested application of the rule set forth in MCL 600.5855 for relief from the statute of limitations because of fraudulent concealment, the Court would award summary disposition to the Brandons under MCR 2.116(C)(7). But the record is rife with factual disputes on that point, so the Court has no choice but to deny summary disposition to the Brandons on their statute-of-limitations defense. Accordingly, because genuine issues of fact remain regarding the knowledge of Stacy and ASRC about the company's rent payments to Orchard Vista, the Court must deny the Brandons' request for summary disposition on that issue.

B. Payment of Legal Expenses.

By all accounts, Miller, Johnson, Snell & Cummiskey, P.L.C. furnished legal services to the Brandons and Orchard Vista. In seeking summary disposition, the Brandons assert that the bills for legal services for Orchard Vista may have been paid in the first instance by ASRC, but the company

received reimbursement from Orchard Vista for those expenses. In addition, the Brandons contend that the representation they received from Miller Johnson in connection with the sale of their ASRC stock was disclosed to the buyer and Stacy, and that Stacy effectively authorized ASRC's payment of the Brandons' legal fees. The Court shall consider these two contested matters in turn.

The record leaves no doubt that ASRC paid bills arising from legal work that Miller Johnson performed for the benefit of Orchard Vista, rather than ASRC. But according to the Brandons, "each and every invoice was paid by" Orchard Vista. Indeed, the Brandons have presented evidence that Orchard Vista issued a $30,667.60 check to ASRC as reimbursement for Orchard Vista's legal fees in 2005. See Defendants' Brief in Support of Motion for Partial Summary Disposition Pursuant to MCR 2.116(C)(7) and (10) Regarding All Claims Related to Alleged Payments of Legal Fees Made by ASR, Exhibits B & C. Clearly, if Orchard Vista bore the financial cost of its legal representation, then ASRC cannot claim conversion even though ASRC paid Orchard Vista's legal bills in the first instance. But Plaintiff Stacy has provided evidence that ASRC paid for legal projects that benefitted only the Brandons and Orchard Vista, e.g., Plaintiff's Brief in Opposition to Defendants' Motion for Partial Summary Disposition Regarding ASR's Legal Fees, Exhibits A-E, yet ASRC paid for those legal services without receiving any reimbursement from the Brandons or Orchard Vista. To be sure, the instances of such conduct seem few and far between, but those instances create a genuine issue of fact as to whether the Brandons and Orchard Vista converted ASRC's funds by using those funds to pay for their own legal services. See Salvador v Connor, 87 Mich App 664, 676-677 (1978).

With respect to the Brandons' legal fees in connection with the sale of their stock in ASRC, neither side disputes that ASRC funded those legal services. Nevertheless, the Brandons insist that Plaintiff Stacy ratified that use of ASRC's funds by paying the legal bills from Miller Johnson after

the Brandons sold their stock, and thereby ceded control of ASRC to Stacy and the Fund.[4] Michigan law recognizes that acquiescence and ratification "are based on a party's knowledge of a prior action and manifest an intent to abide by the action[,]" see *In re* Beglinger Trust, 221 Mich App 273, 277 (1997), so that argument could support the Brandons' defense of their legal fees resulting from the sale of their ASRC stock. But ratification "cannot occur where the party to be bound is acting 'under the influence of misrepresentation, concealment or other wrongful conduct . . . .'" Id. Because the record creates genuine issues of material fact regarding those matters, the Court cannot rely upon the parties' conduct to award summary disposition to either side with respect to ASRC's payment of the Brandons' legal bills after they sold their stock in the company.

III. Conclusion

For the reasons set forth in this opinion, the Court must deny the Brandons' two motions for summary disposition under MCR 2.116(C)(7) and (10). Although the Court is even more eager than the Brandons to bring this case to its conclusion, the record developed thus far simply does not allow the Court to award summary disposition in a manner that resolves the case. Instead, the Court must

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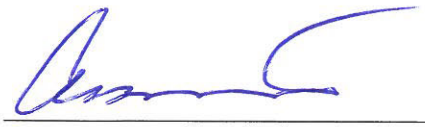
[4] The Brandons also contend that they entered into a settlement agreement with the Fund's successor, Health Alliance Plan of Michigan ("HAP"), in June 2012 that resolved any dispute about the Brandons' attorney fees. Although that settlement agreement may well resolve the issue of legal fees for the Brandons' sale of their ASRC stock, that document bears no signature from anyone from HAP, see Brief in Support of Motion for Partial Summary Disposition Pursuant to MCR 2.116(C)(7) and (10) Regarding All Claims Related to Alleged Payments of Legal Fees Made by ASR, Exhibit P, so a fact question exists as to whether HAP intended to bind itself and ASRC to the terms of that settlement agreement. See Green v Gallucci, 169 Mich App 533, 538 (1988), quoting Wiegand v Tringali, 22 Mich App 230, 234 (1970). If the Brandons can produce a version of their settlement agreement bearing the signature of somebody from HAP, the Court can enforce that agreement if it is unambiguous. But without a signed version, the Court cannot treat that agreement as enforceable in the absence of a jury determination to that effect. In their reply brief, the Brandons claim that they attached a "fully executed copy of the Settlement Agreement" as Exhibit Q. The Court has perused the entire court file in this case, but has found no such document, sealed or unsealed, in the file.

set the matter for trial on the remaining claims of statutory conversion and unjust enrichment. The Court shall schedule a settlement conference that requires the presence of the parties and attorneys. If the Court fails to resolve the case by settlement, the matter shall be set for trial.

IT IS SO ORDERED.

Dated: July 14, 2015



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge