

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

PAUL GRANZOTTO; and FOREVER
FIT OF GRANDVILLE a/k/a FOREVER
FIT FITNESS,

Plaintiffs,

vs.

MICHAEL DOW; and JASON OBER,

Defendants.

Case No. 15-11025-CZB

HON. CHRISTOPHER P. YATES

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND VERDICT

Abraham Lincoln famously observed: “He who represents himself has a fool for a client.” In the course of representing themselves in this case, Defendants Michael Dow and Jason Ober made the fatal error of failing to submit an answer, and thereby permitting a default to enter against them. As a result, although the defendants had viable defenses to the plaintiffs’ claims, those defenses will never see the light of day because the clerk’s entry of default against the defendants settles the issue of liability on all claims and limits the defendants to contesting damages. The Court concludes that Plaintiff Paul Granzotto shall recover \$16,900 from both of the defendants, and the Court shall also reinstate Granzotto’s interest in the parties’ limited liability company.

I. Findings of Fact

Pursuant to MCR 2.517(A)(1), in an action tried without a jury, “the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.” The Court must render “[b]rief, definite, and pertinent findings and conclusions on the contested matters”

that may take the form of a written opinion. See MCR 2.517(A)(2) & (3). Therefore, the Court shall begin with findings of fact, followed by conclusions of law, and ultimately the verdict. Because, as a matter of Michigan law, the clerk's entry of default ""settles the question of liability as to all well-pleaded allegations and precludes the defaulting party from litigating that issue[,]"" Kalamazoo Oil Co v Boerman, 242 Mich App 75, 79 (2000), the Court shall draw the operative facts primarily from the plaintiffs' complaint and augment the allegations in the complaint where necessary by referring to evidence presented at the damages hearing on January 29, 2016.

On July 30, 2014, a filing from LegalZoom brought Forever Fit Fitness LLC ("Forever Fit") into existence. See Defendants' Exhibit B. The Forever Fit operating agreement provided that the two defendants – Jason Ober and Michael Dow – each owned a 40-percent interest in the company and Plaintiff Paul Granzotto held a minority share of 20 percent. See Plaintiff's Exhibit 2 (Exhibit A). And in similar fashion, the operating agreement for Plaintiff Forever Fit of Grandville noted that each of the defendants made a contribution valued at \$20,000 to that business and Granzotto made a contribution valued at \$10,000 to the business.¹ See Defendants' Exhibit A (Operating Agreement, § 8). Although the relationship between Forever Fit of Grandville and Forever Fit seems murky at best, the two companies appear to function as one and the same entity. See Complaint, ¶ 9.

In January of 2015, Plaintiff Granzotto gave Defendants Ober and Dow a \$2,000 loan for the purpose of improving Plaintiff Forever Fit of Grandville. See Complaint, ¶ 12. That loan has never been repaid. See Complaint, ¶ 14. In addition, on October 26, 2015, Granzotto authorized Forever Fit of Grandville to obtain a \$5,000 loan through an entity called "Kabbage." See Complaint, ¶ 19.

¹ Curiously, the operating agreement for Plaintiff Forever Fit of Grandville allocated profits and losses at a rate of 34 percent to Defendants Dow and Ober and 32 percent to Plaintiff Granzotto. See Defendants' Exhibit A (Operating Agreement, § 9).

According to the complaint, on October 30, 2015, Ober and Dow obtained an additional loan in the amount of \$14,900 from Kabbage without Granzotto's knowledge or permission. See Complaint, ¶ 21; Plaintiff's Exhibit 1. Neither Ober nor Dow has repaid that loan, so the obligation has fallen upon Granzotto even though he was not involved in obtaining the loan. See Complaint, ¶ 23.

On November 21, 2015, Plaintiff Granzotto raised the issue of improper distributions from Plaintiff Forever Fit of Grandville with Defendants Ober and Dow. See Complaint, ¶ 32. Two days later, on November 23, 2015, Dow threatened Granzotto over the dispute. See Complaint, ¶ 33. One day after that, on November 24, 2015, Dow revoked Granzotto's entire ownership interest in Forever Fit.² See Complaint, ¶ 36. On December 1, 2015, Granzotto responded by filing this action against Ober and Dow on behalf of himself and Forever Fit of Grandville.

II. Conclusions of Law

The complaint filed by Plaintiffs Granzotto and Forever Fit of Grandville sets forth a wide variety of claims, including conversion, assault, defamation, breach of contract, tortious interference with business relationships, intentional infliction of emotional distress, and fraud. At the threshold, the Court must recognize that Granzotto has no right to pursue claims for Forever Fit of Grandville in his capacity as a minority member of that entity. See MCL 450.4510 (establishing conditions for civil suits by members of limited liability companies). Accordingly, the Court simply must analyze the claims advanced by Granzotto himself. The Court shall consider those claims *seriatim*.

² The Court has received what appears to be a revised version of Exhibit A to the operating agreement of Forever Fit that identifies only two members – Defendants Ober and Dow – and lists each member's ownership interest at 50 percent. Significantly, however, all of the section references in that document apply exclusively to Forever Fit, rather than Forever Fit of Grandville, so the Court concludes that that document has no impact upon Plaintiff Granzotto's ownership interest in Forever Fit of Grandville.

A. Conversion.

Count One of Plaintiff Granzotto's complaint offers two flavors of conversion without clearly articulating whether his claim is for common-law conversion or statutory conversion. According to our Supreme Court, common-law conversion consists of "any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein." Aroma Wines & Equipment, Inc v Columbian Distribution Services, Inc, 497 Mich 337, 351-352 (2015). Statutory conversion under MCL 600.2919a is "a subset of common-law conversion[] in which the common-law conversion was to the other person's 'own use.'" Id. at 355. Here, although the proof of conversion is quite thin,³ the default establishes the defendants' liability, see Kalamazoo Oil, 242 Mich App at 79, so the Court must determine the appropriate amount of damages for Granzotto on his conversion claim.

The Court concludes that Plaintiff Granzotto suffered a loss of \$14,900 for conversion when the defendants used his identity to obtain the \$14,900 loan from "Kabbage." See Plaintiff's Exhibit 1 (Kabbage Business Loan Agreement). Thus, the defendants are responsible, jointly and severally, for the entire amount of that loan, *i.e.*, \$14,900. The Court cannot conclude, however, that either of the defendants should be responsible for treble damages or attorney's fees available in the event of statutory conversion under MCR 600.2919a because the proceeds of that loan were employed for the benefit of Forever Fit of Grandville, rather than for their "own use."⁴

³ Plaintiff Granzotto's conversion claim primarily refers to funds the defendants purportedly obtained from "Kabbage" by using Granzotto's identity. As a general rule, conversion of money is difficult (but not impossible) to prove. See Dunn v Bennett, 303 Mich App 767, 778 (2014).

⁴ The "Kabbage Business Loan Agreement" admitted as Plaintiff's Exhibit 1 makes clear that the loan proceeds were distributed to Plaintiff Forever Fit of Grandville, as opposed to either of the defendants.

Insofar as Plaintiff Granzotto seeks recovery in Count One of funds that the defendants took from Plaintiff Forever Fit of Grandville, the Court cannot award Granzotto damages because he has no right to recover damages inflicted upon the limited liability company, as opposed to himself. See MCL 450.4510. Thus, even if the Court accepts Granzotto’s allegations of embezzlement of Forever Fit of Grandville’s “company assets” in paragraphs 54 through 61 of the complaint, the Court cannot award damages either to Granzotto in his personal capacity or to Forever Fit of Grandville, for which Granzotto has no right to litigate. Thus, Granzotto is entitled to an award of damages in the amount of \$14,900 on his conversion claim in Count One.⁵

B. Assault.

Count Two presents a claim for assault against Defendant Dow based upon the confrontation that took place on November 23, 2015.⁶ According to Plaintiff Granzotto’s submission, the assault should result in damages “of no less than \$5,000.00” based upon “Plaintiff Paul Granzotto’s affidavit outlining damages suffered as a result” See Plaintiff’s Motion for Default Judgment Against Defendant Michael Dow, ¶ 9. But neither that affidavit nor Granzotto’s trial testimony provides the Court with any basis for setting an award of damages for the assault claim. Therefore, the Court is left to speculate about the damages resulting from the assault, so the Court cannot render any award

⁵ Plaintiff Granzotto’s recitation of his damages raises the amount of his loss for conversion to “no less than \$25,000.00 in payments due after anticipated interest.” See Plaintiff’s Motion for Default Judgment Against Defendant Michael Dow, ¶ 7. Although the “Kabbage” loan indisputably has turned into kimchi, the record contains no evidence as to interest. Indeed, Plaintiff’s Exhibit 1 includes a confusing “cost schedule” that bears no relationship to the interest requested by Granzotto.

⁶ Count Two itself identifies the date of the assault as November 21, 2015, see Complaint, ¶ 63, whereas the general allegations identify the date of the assault as November 23, 2015. See id., ¶ 33. The richness of detail in the general allegations leads the Court to conclude that the event took place on November 23, 2015. See id., ¶¶ 33-35.

of monetary damages on Granzotto's assault claim.⁷ See Ensink v Mecosta County General Hosp, 262 Mich App 518, 524-525 (2004).

C. Defamation.

Plaintiff Granzotto's demand for damages on Count Three alleging defamation falls prey to the same infirmity that befell his request for damages for assault. The complaint contends that both of the defendants "made a statement to a Grandville Police Officer that Plaintiff Paul Granzotto was at no point an owner of Plaintiff Forever Fit of Grandville, LLC, and that he was a trespasser on the premises." See Complaint, ¶ 67. But the complaint itself further explains that, "[a]fter leaving the premises, Plaintiff Paul Granzotto visited the City of Grandville Police Department, presented a copy of the Operating Agreement, and cleared up his ownership status." See Complaint, ¶ 40. Thus, the Court cannot fathom how Granzotto suffered any damages as a result of the defendants' statements to the Grandville police officer, so an award of damages would constitute impermissible speculation. See Ensink, 262 Mich App at 524-525. Moreover, our Court of Appeals recently reaffirmed, in the course of rejecting a defamation claim, that all statements made to the police "when reporting crimes or assisting the police in investigating crimes enjoy a privilege" and "may not be used to sustain a defamation claim." Eddington v Torrez, 311 Mich App 198, 201 (2015). This rule applies "even if the reporting party made the report maliciously." Id. at 202. Accordingly, Granzotto is not entitled to damages on his defamation claim both because such an award would be the product of speculation and because the defendants are entitled to immunity for their statements to the police.

⁷ To the extent Plaintiff Granzotto requests an additional \$3,750 in damages for the assault claim on behalf of Plaintiff Forever Fit of Grandville, the Court must flatly deny that request because Granzotto has no right to proceed with a tort claim on behalf of that limited liability company. See MCL 450.4510.

D. Breach of Contract.

Count Four of the complaint includes a hodgepodge of theories under the broad heading of breach of contract. First, Plaintiff Granzotto seeks recovery for the defendants' failure to repay the \$2,000 loan he made based upon the defendants' promise to repay the full amount within 90 days. See Complaint, ¶ 73. The Court readily concludes that Granzotto is entitled to an award of damages to account for the full amount of that loan because neither defendant has "made any payments on the loan, and they have expressed no intention of repaying the loan." See Complaint, ¶ 74. Second, the complaint makes allegations about unauthorized distributions and expenditures that caused damage to Plaintiff Forever Fit of Grandville. See Complaint, ¶¶ 76-83. As the Court has already explained, however, Granzotto cannot seek relief on behalf of Forever Fit of Grandville, see MCL 450.4510, so the Court cannot award damages for any unauthorized distributions or expenditures. Finally, the complaint contends that the defendants completely dispossessed Granzotto of his interest in Forever Fit of Grandville. The Court agrees that Granzotto was harmed by that development, but the proper remedy is to reinstate Granzotto as a member of Forever Fit of Grandville with all of the rights and at the same percentage of ownership that he enjoyed before the defendants effectively expelled him from the business. Thus, the Court shall not only award Granzotto \$2,000 for breach of contract, but also issue a declaration that his interest in Forever Fit of Grandville is restored.

E. Tortious Interference.

In Count Five of the complaint, which alleges tortious interference with Plaintiff Granzotto's business relationship with a landlord, *i.e.*, Bradley Company, the plaintiff states that, because of the defendants' actions, "Bradley Company has issued a warning to Plaintiff Forever Fit of Grandville,

LLC, diminishing a once unfettered relationship.” See Complaint, ¶ 91. The Court has no idea how to quantify that loss, and the plaintiffs’ motions for default judgment against both defendants do not even mention damages on the tortious-interference claim. As a result, the Court truly has no basis to award any damages to Granzotto on that claim. See Ensink, 262 Mich App at 524-525.

F. Intentional Infliction of Emotional Distress.

Count Six refers to intentional infliction of emotional distress, but it seems to be an amalgam of the myriad grievances Plaintiff Granzotto has aired against the defendants in his other claims. See Complaint, ¶ 93. The only allegation in Count Six unique to that claim accuses both defendants of “consistent, excessive, and appalling verbal abuse against Plaintiff Paul Granzotto, the likes of which would cause any reasonable person to suffer severe emotional distress.” See Complaint, ¶ 93(i). As a result of that abuse, Granzotto seeks \$25,000 in damages. Again, however, the record is bereft of evidence to support such an award. To be sure, Granzotto’s girlfriend, Britney Bradshaw, testified that Granzotto’s “sleep habits have been awful” and he often has “a look of distress on his face[.]” See Hearing Tr at 53. Again, the Court simply cannot quantify Granzotto’s damages without taking part in rank speculation. This, of course, is impermissible, see Ensink, 262 Mich App at 524-525, so the Court cannot award damages for intentional infliction of emotional distress.

G. Fraudulent Misrepresentation.

Plaintiff Granzotto’s final claim, presented as Count Seven, rests upon a theory of fraudulent misrepresentation with respect to his ownership interest in Forever Fit of Grandville. See Complaint, ¶¶ 97-103. The default against the defendants precludes the Court from considering the applicability of the economic-loss doctrine to the fraud claim arising from the defendants’ alleged breach of the

membership agreement. See Huron Tool and Engineering Co v Precision Consulting Services, Inc., 209 Mich App 365, 371 (1995). But the fraud claim proceeds from the assertion that the defendants fraudulently dispossessed Granzotto of his ownership interest in Forever Fit of Grandville, and the Court has already decided to reinstate that interest based upon the breach-of-contract claim in Count Four. Having done so, the Court cannot find any additional measure of damages that the defendants must pay to Granzotto for taking his interest in the business.

III. Verdict

For all of the reasons stated in the Court's findings of fact and conclusions of law, the Court hereby renders a verdict in favor of Plaintiff Granzotto and against Defendants Dow and Ober in the aggregate amount of \$16,900, comprising an award of \$14,900 for common-law conversion based upon Count One and an award of \$2,000 for breach of contract based upon Count Four. In addition, the Court orders that Granzotto's ownership interest in Forever Fit of Grandville is hereby reinstated based upon the breach-of-contract theory in Count Four.⁸ In every other respect, however, the Court shall not award any money damages to Granzotto, who is invited to submit a proposed judgment that memorializes the Court's verdicts under the seven-day rule. See MCR 2.602(B)(3).

IT IS SO ORDERED.

Dated: May 23, 2016



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

⁸ If Plaintiff Granzotto seeks any additional relief in another action filed in his capacity as a member of Forever Fit of Grandville, his interest in the company shall be presumptively supportive of his right to seek redress.