

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT**

**LIBERTY PLUS, LLC,
Plaintiff,**

v.

**Case No. 20-179615-CB
Hon. James M. Alexander**

**VILLAGE CREST CONDOMINIUM ASSOCIATION,
Defendant,**

and

**VILLAGE CREST CONDOMINIUM ASSOCIATION,
Third-Party Plaintiff,**

v.

**ELITE MANAGEMENT CONSULTANTS LLC
And RICHARD SAVAGE,
Third-Party Defendants.**

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**OPINION AND ORDER RE: PLAINTIFF LIBERTY PLUS, LLC'S
MOTION FOR SUMMARY DISPOSITION**

This matter is before the Court on Plaintiff Liberty Plus, LLC's Motion for Summary Disposition. The Court dispenses with oral argument pursuant to MCR 2.119(E)(3).

According to Plaintiff, Liberty Plus, LLC ("Liberty") and Defendant Village Crest Condominium Association ("Village Crest") executed a Loan Agreement on June 28, 2018, whereby Liberty loaned \$75,000.00 to Village Crest.¹ Liberty claims that the funds were wired directly to Village Crest's bank account that same day, however, Village Crest has failed to repay the loan pursuant to the Loan Agreement. On these general allegations, Liberty filed its Complaint

¹ To avoid confusion, the parties shall be identified by their proper names in this Opinion and Order.

against Village Crest on claims titled: (Count One) Breach of Contract; (Count Two) Account Stated; (Count Three) Unjust Enrichment; and, (Count Four) Constructive Trust.

On April 17, 2020, Village Crest filed a Third-Party Complaint against Third-Party Defendants Elite Management Consultants, LLC (“Elite Management”) and Richard Savage. According to the allegations within the Third-Party Complaint, Village Crest, Elite Management, and Richard Savage entered into a Management Agreement whereby Richard Savage would serve as the managing agent for the condominium association. Over the course of the relationship, however, Richard Savage, the principal owner of Elite Management, allegedly utilized Village Crest’s funds to pay for his personal expenses. Further, Village Crest alleges that Richard Savage made routine misrepresentations that its bank accounts were properly managed and had sufficient funds on hand to satisfy its financial obligations. What is more, Village Crest alleges that Richard Savage obtained the \$75,000.00 loan from Liberty, without Village Crest’s knowledge or approval, in an attempt to cover up or further his crimes

On these general allegations, Village Crest filed its Third-Party Complaint on claims titled: (Count One) Declaratory Judgment; (Count Two) Breach of Contract; (Count Three) Statutory Conversion/Embezzlement; and, (Count Four) Breach of Fiduciary Duty.

Subsequently, and in response to the Third-Party Complaint, Liberty filed its Motion for Summary Disposition pursuant to MCR 2.116(C)(10). “A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, 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. 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.” *Maiden v Rozwood*, 461 Mich 109,

120; 597 NW2d 817 (1999); *Quinto v Cross & Peters Co.*, 451 Mich 358, 362; 547 NW2d 314 (1996).

1. Third-Party Complaint

In its Motion, Liberty argues that the subject Third-Party Complaint in this matter should be dismissed pursuant to MCR 2.116(C)(10) for the reason that Village Crest is bound by the actions of Richard Savage as its agent. Even if Village Crest revoked Richard Savage's actual authority as its agent, Liberty contends that Richard Savage maintained the apparent authority to act on behalf of Village Crest.

In its Response to Liberty's motion, Village Crest argues that Liberty does not have standing to bring the present motion since it is not a party to the Third-Party Complaint. Rather, Village Crest contends that only a Third-Party Defendant has standing to advance the arguments in Liberty's motion. Here, Liberty appears to be advancing its argument for the dismissal of the Third-Party Complaint on behalf of Richard Savage and Elite Management.

Regarding Liberty's claim that the Third-Party Complaint should be dismissed, the Court agrees with Village Crest that Liberty lacks standing to advance this argument. To have standing, a party must have a legally protected interest that is in jeopardy of being adversely affected. *Barclay v Zarb*, 300 Mich App 455, 483; 834 NW2d 100 (2013). Michigan law provides:

The purpose of the standing doctrine is to assess whether a litigant's interest in the issue is sufficient to ensure sincere and vigorous advocacy. Thus, the standing inquiry focuses on whether a litigant is a proper party to request adjudication of a particular issue and not whether the issue itself is justiciable. *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 355; 792 NW2d 686 (2010).

In this matter, Liberty is not a party to Village Crest's Third-Party Complaint. Since Liberty is not a party to the Third-Party Complaint, Liberty does not have "a legally protected

interest that is in jeopardy of being adversely affected” by the Third-Party Complaint. Therefore, Liberty lacks standing to bring the present motion with respect to the Third-Party Complaint.

1. Unjust Enrichment

Next, Liberty asserts that it is entitled to summary disposition under MCR 2.116(C)(10) on its Unjust Enrichment claim, namely Count Three of the Complaint. In support of its position, Liberty argues that the agency relationship between Village Crest and Elite/Richard Savage provided Richard Savage with the actual or apparent authority to enter into the loan agreement with Liberty. As a result of the loan agreement, Village Crest received the benefit of the \$75,000.00 loan while failing to repay the debt.

Conversely, Village Crest contends that summary disposition of this claim is premature as discovery is in its infancy. That is, significant discovery, such as depositions and the discovery of relevant bank records and financial records, still needs to be completed in relation to this issue. “As a general rule, summary disposition is premature if granted before discovery on a disputed issue is complete. The question is whether further discovery stands a fair chance of uncovering factual support for the opposing party's position.” *Dep't of Soc. Servs. v Aetna Cas. & Sur. Co.*, 177 Mich App 440, 446; 443 NW2d 420 (1989).

Village Crest also maintains that its prior president, George Willis, has signed an Affidavit indicating that he was “never presented with any loan details, loan applications, or loan agreements regarding Liberty Plus, LLC or any other entity while serving as president of Village Crest Condominium Association.” See Exhibit C of the Response. Further, George Willis states in the Affidavit that the signatures contained on the Loan Agreement and Promissory Note were not his signatures. Notably, Village Crest represents that it has been unable to have Mr. Willis’ Affidavit notarized in light of the COVID-19 restrictions.

Village Crest is also quick to point out Liberty's admission that it does not have the Management Agreement that purportedly grants Richard Savage the authority to act as an agent on behalf of Village Crest. As a result, Village Crest poses the compelling question – what did Liberty have in its possession at the time the loan agreement was executed that delineated Richard Savage's alleged authority to act on behalf of Village Crest? It is also Village Crest's contention that Liberty has not demonstrated that it took action to confirm that the loan complied with the Village Crest Condominium Bylaws, which requires an affirmative vote of 75% of the members of the Association to borrow money. See page 27 of Exhibit 4 of the Third-Party Complaint. Furthermore, Village Crest asserts that Liberty has not established that it benefited from the \$75,000.00 loan. In fact, Village Crest maintains that it was unaware of the Bank of America account, in which Richard Savage deposited the \$75,000.00 loan.

Conversely, Liberty attaches as Exhibit Two to its Reply the handwritten notes of Board Member Martha James from a Village Crest Board Meeting held on August 25, 2018. The notes reference the \$75,000.00 loan for the improvement of Village Crest. Liberty also defers to the allegations in Paragraphs 10 and 19 of the Third-Party Complaint in which Village Crest alleges that Richard Savage agreed to act as the Association's managing agent under the Management Agreement.

In relation to Liberty's Unjust Enrichment claim in the Complaint, the Court notes that “[u]njust enrichment is a cause of action to correct a defendant's unjust retention of a benefit owed to another. It is grounded in the idea that a party shall not be allowed to profit or enrich himself inequitably at another's expense. A claim of unjust enrichment can arise when a party has and retains money or benefits which in justice and equity belong to another.” *Wright v Genesee Cty.*, 504 Mich 410, 417; 934 NW2d 805 (2019). (Citations omitted). The elements of an unjust

enrichment claim are: “(1) receipt of a benefit by the defendant from the plaintiff and, (2) which benefit it is inequitable that the defendant retain.” *Dumas v Auto Club Ins. Ass’n*, 437 Mich 521, 546; 473 NW2d 652 (1991). (Citations omitted). “The law will imply a contract to prevent unjust enrichment only if the defendant has been unjustly or inequitably enriched at the plaintiff’s expense.” *Morris Pumps v Centerline Piping, Inc.*, 273 Mich App 187, 195; 729 NW2d 898 (2006). “But a contract will be implied only if there is no express contract covering the same subject matter.” *Genesee Cty. Drain Comm’r v Genesee Cty.*, 321 Mich App 74, 78; 908 NW2d 313 (2017).

In its Complaint, Liberty has alleged that Village Crest breached the parties’ Loan Agreement and Promissory Note when it failed to make the payments due and owing under those contracts. Interestingly, Liberty is seeking summary disposition in its favor on its equitable Unjust Enrichment claim. As noted by Village Crest in its Response, Liberty must recognize that there is an issue with the validity of the Loan Agreement and Promissory Note based upon the assertions by Village Crest in its Affirmative Defenses. Since there appears to be a question as to the validity of the contracts in question, both of which are attached as Exhibits One and Two to the Complaint, the Court finds that it is premature to rule on whether Liberty is entitled to judgment in its favor on its Unjust Enrichment claim. That is, discovery is necessary to first determine if and what agreement, either contractual or equitable, governs the parties’ relationship with regard to the \$75,000.00.

Additionally, Village Crest denies – in its pleadings - that it received the benefit of the \$75,000.00. See Paragraph 35 of its Answer and Paragraph 24 of its Affirmative Defenses. Village Crest also filed its Answers to Plaintiff’s Second Set of Discovery Requests, in which it answered the Interrogatory to Request for Admission No. 1 that “the \$75,000.00 was wired to a Bank of

America bank account. Defendant [Village Crest] did not utilize a Bank of America bank account for its business accounts for Village Crest Condominium Association.” The Court is mindful of the fact that the afore-mentioned assertions by Village Crest are contained in various documents within the case file rather than submitted as documentary evidence with the Response.

“The party opposing a motion for summary disposition has the burden of showing that a genuine issue of disputed fact exists. The opposing party may not rest upon mere allegations or denials in the pleadings but must, by affidavit or other documentary evidence, set forth specific facts showing that there is a genuine issue for trial. MCR 2.116(G)(4).” *Dep’t of Soc. Servs. v Aetna Cas. & Sur. Co.*, 177 Mich App 440, 445; 443 NW2d 420 (1989).

Attached to Village Crest’s Response are various documents including the Affidavit of its prior president, George Willis. While the Affidavit of George Willis, namely Exhibit C to the Response, is not notarized, Village Crest explains that the ability to have the Affidavit notarized has been hindered by the COVID-19 restrictions. The Court observes that Liberty initiated this lawsuit on February 12, 2020 and approximately one month later, the pandemic effectively shut down the country and significantly delayed the discovery process in litigation. As such, the Court finds that summary disposition is not appropriate at this time in light of the need for discovery to ascertain whether or not the subject contracts are valid and to answer the outstanding question of whether the \$75,000.00 actually benefited Village Crest.

The issue regarding the parameters of the agency relationship between Village Crest and Richard Savage is also outstanding since the Management Agreement has not been submitted for the Court’s review. The Court also notes from the case file that Defaults were entered against Richard Savage and Elite Management by Village Crest on July 14, 2020 and July 17, 2020, respectively. “[T]he entry of a default means an admission only of matters well pleaded.” *Smak v*

Gwozdik, 293 Mich 185, 188–89; 291 NW 270 (1940). Effectively, the Defaults signify that Richard Savage and Elite Management have admitted the allegations by Village Crest that they procured the \$75,000.00 loan by improper means and deposited the funds into a checking account, held out to be the Association’s checking account, without their knowledge or approval. See Paragraphs 13 and 14 of the Third-Party Complaint. Clearly, discovery is necessary to fully flush out all of the material facts in order for the Court and the parties to have a better understanding of the disputed claims.

Based on the foregoing analysis, Liberty’s Motion for Summary Disposition under MCR 2.118(C)(10) is DENIED.

IT IS SO ORDERED.

July 28, 2020
Date

/s/ James M. Alexander
Hon. James M. Alexander,
Circuit Court Judge