STATE OF VERMONT

SUPERIOR COURT
Addison Unit

CIVIL DIVISION
Docket No. 164-10-17 Ancv

EDGEWATER CENTER LLC
Plaintiff

v.

TIMOTHY HUNT et al.,
Defendants

DECISION

Motions for Summary Judgment:
Hunts' Motion for Summary Judgment, Center LLC's Amended Complaint (Motion #26)
Hunts' Motion for Summary Judgment, Holdings LLC's Counterclaims (Motion #27)
Hunts' Motion for Summary Judgment, George Dorsey's Counterclaims (Motion #28)

This case arises out of a failed real estate development project. The court has reviewed the parties' statements of fact, affidavits, exhibits, and memoranda of law, and has determined that the following facts are undisputed. While Respondents claim many disputes of fact, the court has determined that the *material* facts, based on the claims asserted, are largely undisputed as set forth below. Summary judgment is granted on most claims and denied on one where the facts are either disputed or insufficient to support a legal conclusion.

Undisputed Material Facts

George Dorsey is an experienced and sophisticated businessperson with business interests in Middlebury, Boston, and Bozeman, Montana. He owns homes in Florida, Bozeman, and Cornwall, Vermont. He owns five rental properties in Vermont.

Edgewood Holdings LLC (hereinafter "Holdings LLC") is a Florida limited liability company of which George Dorsey is the sole member. It was in existence prior to the events involved in this case and invests in a broad spectrum of commercial activities.

Tim and Martha Hunt owned a home in Charlotte, Vermont at the beginning of the events involved in this case. Tim, a graduate of UVM with an accounting certificate and MBA from Champlain College and a 9-year career in the Army, has worked as an accountant or controller for Vermont companies, including companies owned by Mr. Dorsey. Martha is a paralegal in a Burlington law firm.

In 2013, Tim was employed by Mr. Dorsey. The Hunts were interested in acquiring a home on a larger property that would enable them to conduct some kind of business for

additional income. Mr. Dorsey began advising and assisting them with this plan. He brought to their attention a property on Route 7 in Charlotte known as the "Varney Farm," which had a farmhouse and a barn in need of repair. His own prior negotiations to purchase it had not succeeded, and he recommended that Tim contact Mr. Hinsdale, the owner, without mentioning Mr. Dorsey's involvement. Tim did so in October of 2013. He also began to explore revenue-generating possibilities for the property. Mr. Dorsey asked Tim to investigate the possible use of the barn as a wedding space.

By April of 2014, the Hunts had given Mr. Dorsey a summary of their modest assets, and Mr. Dorsey and the Hunts had developed a plan whereby each would invest a total of $70,000 into the property. The balance of the Hunts' contribution, after credit for their down payment and closing costs, would come from the sale of their Charlotte home. The purchase price would be $350,000. Tim began to obtain estimates for work to be done on the house. Preliminary estimates for moving the house back from Route 7 and renovating it were in the neighborhood of $300,000. An estimate of $190,000 was also obtained for shoring up the barn floor. It did not include complete renovations necessary to use the barn as a wedding venue. Thus, the projected cost for the purchase plus initial level of improvements was $840,000.

In June of 2014, the Hunts purchased the Varney Farm for $350,000 in their own names. The funds came from $10,000 in cash from the Hunts and a $340,000 loan from Holdings LLC to the Hunts for which they gave Holdings LLC a first mortgage. Terms called for payment of interest only with a balloon payment due in December 2014, six months later. The Hunts also paid for more than $11,000 in closing expenses.

In July of 2014, the Hunts obtained a construction loan from the National Bank of Middlebury in the amount of $518,000. It was guaranteed by Mr. Dorsey. Renovation work began on the house and barn.

In August of 2014, a document was drafted that laid out proposed terms for the project. It has been called the "Three Part Agreement" but was not signed as a completed contract. (The only party who signed it was Martha Hunt.) It described a plan for home improvements to be made, with funds borrowed from Holdings LLC and the amounts added to the mortgage. Payments for improvements would be made through a business checking account set up for a separate LLC, Gateway Property Holdings LLC (hereinafter "Gateway LLC") that had been formed on July 31, 2014. Holdings LLC would fund barn renovations with the expectation that income would be generated from rental income and fees charged for activities at the barn. The Hunts would sell their Charlotte home and make up the balance of their $70,000 contribution from the house sale proceeds. The Hunts still owned and continued to live in their own home.

Mr. Dorsey recommended additional upgrades to the farmhouse to make it an attractive adjunct to the wedding barn, and many additional renovations were made to the farmhouse. Costs exceeded the $300,000 house-improvement budget. Work was also done on the barn in the fall of 2014, but not sufficient for operation as a wedding venue.

In November of 2014, the abutting neighbor, Evan Metropoulos, who had previously been informed about the project and had appeared not to oppose it, began to express

dissatisfaction, and in December of 2014, he made it clear in an email that he strongly opposed the project and would spend 'a million dollars' to defeat it. Mr. Dorsey determined to go ahead with the project nonetheless, and the Hunts apparently agreed and proceeded to arrange to sell their home. They moved into the farmhouse on the Varney Farm on April 26, 2015, and closed on the sale of their Charlotte home shortly thereafter.

In May or June of 2015, Mr. Dorsey decided to form Edgewater Center LLC (hereinafter "Center LLC"), as a limited liability company for the project. He arranged with his attorney to draft documents for the structuring of the project, including changes in ownership and financing of the real estate, and the preparation of several necessary documents to do so.

In July, Mr. Dorsey instructed Tim by email not to return to work unless the Hunts signed all the documents that Mr. Dorsey had had prepared to create a formal legal structure. The Hunts executed all the documents as requested, thereby agreeing to the terms.

They included:

1. Edgewater Center LLC was created as an LLC with Mr. Dorsey as 80% owner and the Hunts (together) as 20% owner. A formal Operating Agreement was signed providing for 50-50 sharing of profits and losses.
2. The Hunts deeded the Varney Farm property to Center LLC.
3. The Hunts' $340,000 mortgage to Holdings LLC was discharged by a discharge document signed by Mr. Dorsey on behalf of Holdings LLC.
4. Holdings LLC paid off the Hunts' mortgage loan to the National Bank of Middlebury.
5. Mr. Dorsey, on behalf of Center LLC, signed 2 demand promissory notes to Holdings LLC. One was in the amount of $1,030,563.12, which represented the money that Holdings LLC had provided to date, and the other was in the amount of $510,314.16, which represented the payoff of the mortgage loan to the National Bank of Middlebury that Mr. Dorsey had guaranteed. The Hunts were neither signatories nor guarantors of these notes.
6. Center LLC and the Hunts entered into a Lease whereby the Hunts leased a portion only of the Varney Farm property (essentially the farmhouse) for a 2-year period with monthly rent.

The documentation for all these transactions was prepared by Mr. Dorsey's attorney from the Langrock Sperry & Wool law firm and represents highly professional legal work. The Hunts had the opportunity to have them reviewed by their own attorney. All the documents were signed on or around July 23, 2015. As a result of these changes, the Hunts no longer had any direct ownership interest in the real estate and were tenants of the farmhouse under a lease; neither did they have any debt obligation to Holdings LLC. Mr. Dorsey held a controlling interest in Center LLC, which owned the property and owed his solely owned LLC, Holdings LLC, over $1.5 million on the 2 promissory notes.

Tim continued to work for Mr. Dorsey and the Hunts continued to pursue the project. The Hunts used funds generated from the sale of their Charlotte home on improvements pursuant to project plans. Tim kept accounting records for the project through Gateway LLC, and credited

some expenses paid by the Hunts personally for the project toward their rent obligation to Center.

In January of 2016, the Town issued a conditional permit for the wedding barn. In February, Mr. Metropoulos, the neighbor, appealed the permit.

In June of 2016, Mr. Dorsey, on behalf of Center LLC, signed a listing agreement to sell the property for $2.45 million.

In May of 2017, Mr. Dorsey, on behalf of Center LLC, sent the Hunts a Notice of Termination, terminating the lease as of June 30, 2017.

The Hunts vacated the property pursuant to the termination of the lease, and Mr. Hunt stopped working for Mr. Dorsey on July 17, 2017. The Hunts moved to Monkton.

In September of 2017, Center LLC sold the Varney Farm property for $1,475,627.07.

In October of 2017, Center LLC filed this lawsuit against the Hunts. In Center LLC's Amended Complaint, it seeks judgment for "the sum of the amount Center has borrowed, plus interest, less the net proceeds from the sale of the Property," unpaid rent in the amount of $48,000 and attorneys' fees," and costs of collection, court costs, and attorneys' fees. The Hunts counterclaimed and filed third party complaints against Mr. Dorsey and Holdings LLC, who counterclaimed against the Hunts.

Mr. Dorsey's counterclaim against the Hunts is for "either 50% or 20% of the remaining balance due and owing from Edgewater Center LLC to Edgewood Holdings LLC, Edgewood Property Holdings LLC, and other Dorsey-managed businesses, and the cost of collection, court costs, and attorney's fees."

Holdings LLC's counterclaim against the Hunts is for "50% of the total amount loaned by Edgewood Holdings to the Hunts and/or the joint venture on and prior to July 23, 2015, . . . 50% of the total amount loaned by Edgewood Holdings to the Hunts, the joint venture between the Hunts and Dorsey, and/or Edgewater Center LLC," and costs of collection and court costs.

Analysis

The Hunts seek summary judgment on the following motions:

I. Center LLC's Amended Complaint claims against the Hunts (Motion 26),

II. Holdings LLC's Counterclaims against the Hunts in the third-party action (Motion 27), and

III. Mr. Dorsey's Counterclaims against the Hunts in the third-party action (Motion 28).

Center LLC's Opposition to the motion claims that "Holdings LLC has loaned approximately $2 million to the partnership to fund the Project. The Property eventually sold for $1.45 million, and the two partners now each owe Holdings (either directly or to Center so Center can pay Holdings) $212,937, plus interest."

As a preliminary matter, the facts are clear that the transactions did not include any executed personal guaranties on the part of the Hunts for Center LLC's debt to Holdings LLC, nor are there any personal guaranties from the Hunts for any liabilities of either Holdings LLC or Mr. Dorsey. As of July of 2015, all legal and financial relationships and obligations were well documented in writing, and none of the instruments includes guaranties by the Hunts.

In addition, summary judgment has already been granted to the Hunts to the effect that the Hunts are not obligated on the Center LLC debt to Holdings LLC on the basis of ¶ 2.01 of the Center LLC Operating Agreement. See 6/12/19 Decision (holding that the Operating Agreement provision for 50-50 sharing of profits and losses did not allocate responsibility for any part of the debt to Holdings LLC).

I. Center LLC's Amended Complaint claims against the Hunts (Motion 26)

Center LLC seeks recovery from the Hunts on several legal grounds.

1. Breach of Contract
2. Fraudulent Inducement to Contract
3. Negligent Misrepresentation
4. Breach of Rental Contract
5. Conversion
6. Breach of Implied Covenant of Good Faith and Fair Dealing
7. Breach of Fiduciary Duties
8. Quasi-Contract (Unjust Enrichment and Quantum Meruit)

1. Breach of Contract

Center LLC claims that the Hunts have breached their promise to guarantee any loans to Center LLC from Holdings LLC. There is no such written promise. There is no clear evidence of any such oral promise either. Instead, the relevant evidence largely consists of Mr. Dorsey's bare allegations that he believed shared responsibility for the debt was understood by Mr. Hunt or was implied by informal references to being in a 50/50 partnership. Any such informal partnership, however, ceased to exist when the parties' relationship was restructured and formally reduced to writing in July 2015 in the form of the creation of Center LLC, the promissory notes, the deed, the discharges, and the new leasing arrangement, all of which substantially describe the parties' business relationship as of that time, and they include no personal guaranties by or other allocations of Center LLC or other debt to the Hunts. Any informal belief by Mr. Dorsey in shared responsibility for debts persisting after these events of July 2015 would have been unfounded and unreasonable.

The alleged *oral* agreement on which Center LLC relies falls squarely within the scope of the statute of frauds, 12 V.S.A. § 181(2), and the parol evidence rule and thus would be unenforceable even if it had occurred. The statute of frauds requires certain contracts to be in writing to be enforceable. "[W]hile the writing requirement is imposed primarily as a shield

against possible fraud, it also 'promotes deliberation, seriousness, certainty, and shows that the act was a genuine act of volition.'" *Chomicky v. Buttolph*, 147 Vt. 128, 130 (1986) (citation omitted). It applies specifically to promises "to answer for the debt . . . of another," such as the alleged guaranty at issue here. 12 V.S.A. § 181(2). Center LLC argues, however, that a so-called original promise, as opposed to a collateral one, remains outside the statute and enforceable despite not having been reduced to writing. It claims that the disputed guaranty at issue here may be an enforceable original promise and the matter should be determined by a jury. Center LLC does not, however, marshal the evidence to show how the record could support a reasonable determination by a jury that the alleged guaranty operated as an original contract.

The question is whether the disputed promise to pay itself formed a new contract for the Hunts' benefit, and thus was "original" and enforceable, or was merely a promise to pay the debt of another that is collateral to the underlying contract or liability of another, in which case it is within the statute and must be reduced to writing. "In determining whether a subsequent promise constitutes an original contract rather than a collateral promise to the original contract, we must look to see if there was 'new consideration' to support the agreement. If 'new consideration' exists, the contract is considered an original agreement. An element that must be present to establish 'new consideration' is that 'the consideration must be one that operates to the advantage of the [subsequent] promissor.'" *Lussier v. N. Troy Engr. Co., Inc.*, 149 Vt. 486, 493 (1988) (citations omitted). There is no evidence of any such consideration in the record. Rather, the Charlotte property was conveyed to Center LLC as part of its formation, the Hunts lost any direct ownership of it at that time, and the Hunts' debt was extinguished. Any oral promise to also become guarantors of Center LLC debts to Holdings LLC would have been wholly unsupported by any new consideration, would not have displaced Center LLC's liability to Holdings LLC in any event, and thus it would have been collateral to the agreements related to the formation of Center LLC and the Holdings LLC notes. The statute of frauds applies.

Center LLC also claims that it relied on the Hunts' oral promise to pay the debt to Holdings LLC and that reliance removes the agreement from the statute of frauds. See *Quenneville v. Buttolph*, 2003 VT 82, ¶ 18, 175 Vt. 444 ("An oral agreement may be removed from the Statute of Frauds contained in 12 V.S.A. § 181 if the proponent 'can show that, in reliance on the agreement, he or she suffered a substantial and irretrievable change in position.'"). The record is clear that the parties' arrangement was substantially reflected in the Center LLC documents, the notes to Holdings LLC, and the related transactions, all of which were drafted and undertaken at Mr. Dorsey's instruction and included no guaranty by the Hunts. Mr. Dorsey's bare allegation of reliance on, at best, a collateral oral promise amidst the reduction of the parties' new relationship to writing, in these circumstances, is wholly conclusory and insufficient to establish a dispute of fact on the issue of reliance.

In any event, the parol evidence rule clearly applies to bar any evidence of the claimed oral agreement. "The parol evidence rule bars the admission of evidence of a prior or contemporaneous oral agreement that varies or contradicts the terms of a written agreement." *Hous. Vermont v. Goldsmith & Morris*, 165 Vt. 428, 431 (1996). It is neither a rule of evidence nor a rule of interpretation. 11 Williston on Contracts § 33:3 (4th ed.). Rather, it "identifies what

is the proper subject matter of interpretation." *Id.* "The rule may be stated in these terms: The parol evidence rule is a substantive rule of law that prohibits the admission of evidence of prior or contemporaneous oral agreements, or prior written agreements, whose effect is to add to, vary, modify, or contradict the terms of a writing which the parties intend to be a final, complete, and exclusive statement of their agreement." *Id.* § 33:1. "The rule is founded on experience and public policy, created by necessity, and designed to give certainty to a transaction that has been reduced to writing by protecting the parties against the doubtful veracity and uncertain memory of interested witnesses." *Id.* (quoting *Evenson v. Quantum Industries, Inc.*, 687 N.W.2d 241, 244 (N.D. 2004)).

Center LLC argues that the rule does not apply in this case because each note to Holdings LLC is merely an isolated arrangement that is part of a larger group of agreements, and the disputed oral guaranty thus does not conflict with the lack of a written guaranty. In other words, Center LLC is arguing that the parties' business relationship at that time was not substantially reduced to writing, and the alleged oral guaranty is merely one part of a larger group of complementary agreements. The record does not reasonably support this argument. The alleged oral guaranty squarely contradicts the Center LLC Operating Agreement, which clearly—consistent with Vermont law—holds the Hunts harmless with regard to debt. Center LLC is trying to modify the parties' final written agreement with an alleged contradictory, prior oral agreement. The parol evidence rule squarely applies in these circumstances.

The Hunts are entitled to summary judgment on this claim.

2. Fraudulent Inducement to Contract

Center LLC claims that the Hunts' alleged oral promises to be responsible for Center LLC debts amount to the tort of fraudulent inducement to contract. This claim is merely the breach of contract claim described above repackaged as a tort. It does not rely on any different facts. It appears to be intended to do nothing but avoid the statute of frauds and parol evidence rule.

Center LLC has not marshaled the evidence to show that there is admissible evidence that could reasonably support a jury finding of an actionable misrepresentation as to any guaranty in this case. Even if it could, however, the record simply could not reasonably support any claim of reliance. "A central element of a fraud claim is that a misrepresentation be made as to a material fact, knowledge of which would be 'otherwise . . . unavailable to the purchasers in the exercise of their due diligence.'" *Lewis v. Cohen*, 157 Vt. 564, 569 (1991). No diligence was required for Center LLC to know that the Hunts were not responsible for Center LLC debts. Their lack of any such responsibility was express under Vermont limited liability law and the Center LLC Operating Agreement, which defined the parties' relationship in writing.

The Hunts are entitled to summary judgment on this claim.

3. Negligent Misrepresentation

Here, Center LLC repackages its fraudulent inducement claim as a negligent misrepresentation claim—the underlying facts are no different. This claim fails for the same reasons the fraudulent inducement claim does: (1) the record lacks sufficient admissible evidence of an oral guaranty by the Hunts; (2) Center LLC did not "rely" on any such guaranty; and (3) any claims to the contrary collide directly with the statute of frauds and the parol evidence rule.

4. Breach of Rental Contract

Center LLC claims that the Hunts are liable for all rental payments under the July 2015 lease agreement. The Hunts claim that all payments were made and are accounted for, and they seek summary judgment to that effect, allowing that there may be a discrepancy as to whether certain payments of $2,700 ought to have been $3,000. The record is insufficient, and the arguments of both parties insufficiently briefed, to support any ruling as a matter of law on this claim.

The Hunts claim that they made all payments, with Mr. Dorsey's approval, to an account of Gateway LLC, where the funds were used for project expenses, rather than Center LLC as ostensibly required by the lease. Center LLC does not clearly dispute this but appears to argue that doing so would have violated the lease terms, without considering that doing so may have complied with the Hunts' obligation to pay rent "at such address as Landlord shall supply to Tenant from time to time" or otherwise have been subject to waiver or an estoppel. Lease Agreement ¶ 5(b).

In any event, the evidence as to the payments actually made and their accounting is murky and conclusory, and without a clearer record of undisputed facts, the court is unable to assay the parties' legal arguments. Summary judgment is denied on this claim.

5. Conversion

Center LLC claims that the Hunts' failure to make all payments in compliance with the terms of the lease amounts to the tort of conversion. The alleged facts are no different than those asserted in support of Center LLC's breach of lease claim above. This is another contract claim inappropriately dressed up as a tort claim. Damages claimed for the breach of a contract may be sought under principles of contract law. Such a claim does not amount to a tort claim of conversion. See *Sullivan v. Thorndike*, 934 A.2d 827, 836 (Conn. Ct. App. 2007); *Citipostal, Inc. v. Unistar Leasing*, 724 N.Y.S.2d 555, 559 (N.Y. App. Div. 2001); *Kuehn v. Selton & Associates, Inc.*, 530 S.E.2d 787, 791 (Ga. Ct. App. 2000). The Hunts are entitled to summary judgment on this claim.

6. Breach of Implied Covenant of Good Faith and Fair Dealing

As explained above, the failure to have reduced to writing any disputed personal guaranty by the Hunts runs directly into the statute of frauds and the parol evidence rule and prevents any proof of such a guaranty at this point. Here, Center LLC makes the unlikely claim that the Hunts

violated the implied covenant of good faith and fair dealing by failing to unilaterally reduce to writing the guaranty, the existence of which is disputed, in the first place. "The implied covenant of good faith and fair dealing exists to ensure that parties to a contract act with 'faithfulness to an agreed common purpose and consistency with the justified expectations of the other party.'" *Carmichael v. Adirondack Bottled Gas Corp. of Vermont*, 161 Vt. 200, 208 (1993) (citation omitted). Center LLC's attempt to use the covenant to, in effect, establish the existence of the contract that would serve as its source, or to manufacture liability for the lack of a contract out of nothing, makes no sense. "A cause of action for breach of the covenant of good faith can arise only upon a showing that there is an underlying contractual relationship between the parties." *Monahan v. GMAC Mortg. Corp.*, 2005 VT 110, ¶ 54 n.5, 179 Vt. 167. Where there is no contract, there is no covenant, and there can be no breach of any covenant. The Hunts are entitled to summary judgment on this claim.

7. Breach of Fiduciary Duties

Center LLC claims that the Hunts violated their fiduciary duties to Center LLC and Mr. Dorsey by refusing to accept personal responsibility for the debt to Holdings LLC and for not making rent payments in accord with the lease terms. There are no new facts asserted in support of these claims. They are merely the same claims analyzed above—the personal guaranty claim and the breach of lease claim—restated as breaches of fiduciary duties. However, there is no actionable personal guaranty and the lack of any such guaranty does not *ipso facto* establish a breach of fiduciary duty. As for lease payments, the parties' relationship and any liabilities arise out of the terms of the lease agreement and their conduct in relation to it. There are no facts that would suggest a breach of fiduciary duty beyond the breach of contract claim. The Hunts are entitled to summary judgment on this claim.

8. Quasi-Contract (Unjust Enrichment and Quantum Meruit)

Under this claim, Center LLC attempts to establish the Hunts' liability for Center LLC debts under principles of quasi-contract. "Claims for quasi-contract are based on an implied promise to pay when a party receives a benefit and the retention of the benefit would be inequitable." *DJ Painting, Inc. v. Baraw Enterprises, Inc.*, 172 Vt. 239, 242 (2001). "In order to prevail on a quasi-contract claim, . . . [the] plaintiff must prove that (1) a benefit was conferred on defendant; (2) defendant accepted the benefit; and (3) defendant retained the benefit under such circumstances that it would be inequitable for defendant not to compensate plaintiff for its value." *Ctr. v. Mad River Corp.*, 151 Vt. 408, 412 (1989).

Apart from the parties' July 2015 written arrangements, notably including the provisions of the Center LLC Operating Agreement, there is no meaningful basis for any separate claimed benefit that was provided to the Hunts and which the Hunts somehow inequitably retained. That Center LLC ended up with a debt that its members are not personally responsible for is an ordinary incident of the law of limited liability companies. That outcome itself does not warrant equitable relief. The Hunts are entitled to summary judgment on this claim.

II. Holdings LLC's Counterclaim against the Hunts in the third-party action (Motion 27)

Holdings LLC's claims are a companion attempt to hold the Hunts personally liable for Center LLC's debt to Holdings LLC.

1. Inducement to Contract (Pre-7/23/15 Loans)

Here, Holdings LLC makes the same claim against the Hunts as Center LLC did above with regard to loans made before the parties restructured and formalized their relationship, at which time all the debt became Center LLC responsibility. This claim, as advanced by Holdings LLC, fails for all the same reasons described above when it was advanced by Center LLC. There is scant proof at best of any oral promise to pay, and the claim otherwise squarely conflicts with the statue of frauds, parol evidence rule, the Center LLC Operating Agreement, and the law of limited liability companies. The Hunts are entitled to summary judgment on this claim.

2. Inducement to Contract (Post-7/23/15 Loans)

Here, Holdings LLC advanced the same claim as above but extends it to any lending that occurred after the parties restructured and formalized their relationship. This claim fails for the same reasons the claim above does.

3. Breach of Implied Covenant of Good Faith & Fair Dealing

Holdings LLC claims that the Hunts violated the implied covenant of good faith and fair dealing with regard to the Holdings LLC loans to Center LLC made in the course of the parties' July 2015 restructuring and formalization of their relationship. There is no specific evidence of bad faith on the part of the Hunts. More importantly, however, there is no contract out of which the alleged covenant could have arisen. The loans were made to Center LLC, not the Hunts. There is no relevant contract with the Hunts. The Hunts are entitled to summary judgment on this claim.

4. Quasi-Contract

Holdings LLC also relies on principles of quasi-contract as Center LLC did above. There is no perceptible basis for equitable relief in this case. If Holdings LLC believed that its loans to Center LLC should have been secured by personal guaranties then it was incumbent on it to secure them prior to or in the course of making the loans. Holdings LLC cannot rely on equity after to fact to give it the agreement that it wishes it had negotiated at the outset. The Hunts are entitled to summary judgment on this claim.

III. Mr. Dorsey's Counterclaim against the Hunts in the third-party action (Motion 28)

Again, this is a companion attempt to have the Hunts guarantee Center LLC's debt to Holdings. The relief requested is the same.

1. Inducement to Contract (Pre-7/23/15 Loans)

Mr. Dorsey claims that the Hunts negligently or intentionally induced him to participate in the original informal partnership, and later redouble his commitment to developing the property, by misrepresenting early cost estimates and the extent of Mr. Metropoulos's opposition.

The record does not provide any reasonable support for the claim that Mr. Hunt provided to Mr. Dorsey any specific cost estimates that in fact were "false," that Mr. Hunt knew or should have known of that falsity, that Mr. Hunt intended Mr. Dorsey to rely on any such false estimates, or that Mr. Dorsey in fact justifiably relied on any false estimates.

It is not sufficient for such a claim to simply look back at early estimates for portions of a larger project that might not have accounted for expenses that later became clearer, and to characterize the lack of foresight at the outset as the promulgation of falsities, blame them on Mr. Hunt, who Mr. Dorsey knew did not have experience managing this type of project, and claim a retrospective right to be made whole after the fact. Mr. Dorsey concedes that he did not even see actual project estimates. He simply delegated the details to Mr. Hunt and "was content to trust Mr. Hunt because Mr. Hunt knew that Dorsey had expected him to vet the contractors to ensure the quotes were reliable and accurate." Joint Statement of Material Facts ¶ 18 (filed Mar. 23, 2020). Mr. Dorsey's disappointed subjective expectations in these circumstances are insufficient to demonstrate the falsity of any representations or that he justifiably relied on them. "'[J]ustifiable reliance' connotes an objective standard." *Silva v. Stevens*, 156 Vt. 94, 108 (1991). Nothing prevented Mr. Dorsey from getting better or different information if he wanted it. Mr. Hunt was not some exclusive source of information on whom Mr. Dorsey needed to depend.

The record also lacks any clear evidence of any misrepresentations to Mr. Dorsey by Mr. Hunt about Mr. Metropoulos's state of mind. Mr. Dorsey's bare allegations about his own state of mind on such matters are insufficient to establish falsity or justifiable reliance on any specific representations made by Mr. Hunt.

The record is clear that by the time of the July 2015 restructuring and formalization of the parties' relationship, the scope of the project expenses and Mr. Metropoulos's convictions about stopping the project altogether had become much clearer. In response, Mr. Dorsey restructured the parties' formal business relationships, which replaced their earlier informal relationships, and substantially increased his investment. Project losses were only eventually realized when he later sold the property. Mr. Dorsey has not attempted any showing of how any alleged pre-July 2015 misrepresentations could have caused losses incurred much later when the property was sold. On this record, any such showing would be highly speculative and not clearly tethered to any specific misrepresentation.

The Hunts are entitled to summary judgment on these misrepresentation claims.

2. Breach of Implied Covenant of Good Faith & Fair Dealing

Here, Mr. Dorsey argues that the Hunts' alleged failure to pay their share of the debt to Holdings LLC, to document their promises to do so, and to pay rent to Center LLC all somehow violate an implied covenant of good faith and fair dealing of their "arrangement," with reference to their informal partnership relationship prior to July 2015. As explained above, the covenant must arise out of a contract and Mr. Dorsey had no contracts with the Hunts following the July 2015 restructuring and formalization of the parties' relationship. To the extent that he may be relying on some contract prior to July 2015, any such contract was replaced in the course of the July 2015 restructuring. There is no surviving implied covenant benefiting Mr. Dorsey personally after that time. Otherwise, Mr. Dorsey appears to be trying, for purposes of these claims, to improperly stand in the shoes of Center LLC. Center LLC's claims, however, already have been addressed above. The Hunts are entitled to summary judgment on these claims.

3. Breach of Fiduciary Duties

Under this count, Mr. Dorsey essentially recounts the claims against the Hunts asserted by Center LLC and Holdings LLC and claims without substantial explanation that they amount to breaches of fiduciary duties owed to him personally. It is wholly unclear how the various potential ways an LLC member might breach fiduciary duties would have any record support here and not come within the business judgment rule. See 1 Ltd. Liab. Co.: L., Prac. and Forms § 10:2; *Henderson Square Condo. Ass'n v. LAB Townhomes, LLC*, 46 N.E.3d 706, 727 (Ill. 2016) ("Under the business judgment rule, in the absence of bad faith, fraud, illegality or gross overreaching, courts will not interfere with the exercise of business judgment by corporate directors."). In any event, these claims have been addressed above in the forms asserted by Center LLC and Holdings LLC. The Hunts are entitled to summary judgment no this claim.

4. Contribution

Under this count, Mr. Dorsey claims that the plain language of ¶ 4.04 of the Center LLC General Terms of Operating Agreement requires the Hunts to share liability for the Center LLC debt to Holdings LLC. The court earlier concluded that no such liability otherwise exists in ¶ 2.01 of the Operating Agreement or Vermont law generally.

Paragraph 4.04 provides that liability for any Center LLC debt that is required to be guaranteed by at least one member will be shared proportionally by all members. Paragraph 4.04 cannot apply in this case because there is no required personal guaranty of any member at issue in this case. That Mr. Dorsey may feel as though he is unfairly left holding the bag if debts to Holdings LLC are not paid by Center LLC or otherwise is insufficient to establish that ¶ 4.04 required any member to personally guarantee any of Center LLC's debts. Mr. Dorsey's dismissal of this analysis as "simplistic" is entirely unexplained in his briefing. The Hunts are entitled to summary judgment on this claim.

5. Quasi-Contract (Unjust Enrichment and Quantum Meruit)

Lastly, Mr. Dorsey asserts a general equitable claim against the Hunts framed as quasi-contract. The court has ruled on this claim in the Hunts' favor above. The outcome is no different here where the claim is asserted by Mr. Dorsey personally. The Hunts are entitled to summary judgment on this claim.

ORDER

For the foregoing reasons,

(1) The Hunts' Motion for Summary Judgment, Center LLC's Amended Complaint (Motion #26) is *granted in part and denied in part*. It is granted with regard to all claims against the Hunts but for Count 4, breach of the rental contract, on which it is denied.

(2) The Hunts' Motion for Summary Judgment, Holdings LLC's Counterclaims (Motion #27) is *granted.*

(3) The Hunts' Motion for Summary Judgment, Mr. Dorsey's Counterclaims (Motion #28) is *granted.*

(4) The attorneys shall confer and file an updated pretrial scheduling order to address the remaining needs of the case and file a stipulated proposed pretrial order by June 29, 2020. If there is no agreement, each may file its proposal with supporting explanation.

Dated this 12th day of June 2020.

Mary Miles Teachout

Mary Miles Teachout
Superior Judge