

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

EDWARD CASTLE, JR. and  
THE FILTER DEPOT, LLC,

Plaintiffs,

vs.

Case No. 2014-3568-CB

MARCIA SHOHAM, JONATHAN  
SHOHAM and MIDWEST AIR  
FILTER, INC.,

Defendants.

and

THE FILTER DEPOT, LLC,

Plaintiff,

vs.

Case No. 2014-4186-CB

EDWARD CASTLE, JR.,

Defendant.

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OPINION AND ORDER

These matters are before the Court after a bench trial conducted in connection with both above-referenced cases. The Court will now render findings of fact and conclusions of law.

I. Factual and Procedural History

Edward Castle, Jr. ("Plaintiff Castle") is a minority owner (49%) of Filter Depot, LLC ("Filter Depot"). Midwest Air Filter, Inc. ("MAF") is the majority owner (51%) of Filter Depot. Since May 2013, Marcia and Jonathan Shoham (collectively, the "Shoman Defendants") have owned and operated MAF. MAF was previously owned and

operated by William R. Down, Marcia Shoham's father. MAF provides air filtration products for companies and organizations in Michigan and Indiana. Filter Depot is responsible for MAF's sales in the Detroit area.

On September 12, 2014, Plaintiff Castle filed his original complaint in case no. 2014-3568-CB ("3568 Matter"). In his complaint, Plaintiff Castle alleged that MAF, at the direction of the Shoham Defendants, has engaged in various improper activities.

On January 21, 2015, Plaintiff Castle and Filter Depot filed their first amended complaint ("Amended Complaint"). The Amended Complaint added Filter Depot as a plaintiff and contains the following claims: Count I- Member Oppression against MAF under MCL 450.4515, Count II- Fraud, Fraudulent Omission, and Silent Fraud against MAF, Count III- Breach of Contract against MAF, Count IV- Unjust Enrichment against MAF, Count V- Attorney Fees pursuant to MCL 450.4503 against MAF, Count VI- Accounting, Count VII- Breach of Common Law Fiduciary Duties against MAF, Count VIII- Breach of Statutory Fiduciary Duties against MAF, Count IX- Statutory and Common Law Conversion against Defendants, Count X- Aiding and Abetting Breaches of Fiduciary Duty, Fraud, Conversion, Breach of Contract, Member Oppression, and Unjust Enrichment against Defendants, and Count XI- Civil Conspiracy against Defendants. Defendants were subsequently granted summary disposition of the portion of Plaintiffs' breach of fiduciary duty claim based on ¶¶59 (b), (f), (g), (j), (m), (q), (r), and (u), as well as Plaintiffs' conversion of money, conspiracy, and aiding and abetting breach of contract, unjust enrichment and membership oppression claims. Further, the Court has also previously ruled that Defendants' actions in increasing the management fee did not violate ¶7.1 of the Operating Agreement, and that the management fee was not perpetually capped at 2%.

On October 24, 2014, Filter Depot filed its complaint in case no. 2014-4186-CB against Plaintiff Castle ("4186 Complaint"). The 4186 Complaint contains claims for: Count I- Breach of Operating Agreement for Failure to Contribute, Count II- Breach of Operating Agreement based on Breach of Fiduciary Duty, and Count III- Common Law Breach of Fiduciary Duty.

From May 17-20, 2016, the Court conducted a bench trial in connection with both the 3568 Matter and the 4168 Matter. The parties have since submitted their proposed findings of fact and conclusions of law as requested by the Court. The Court has reviewed the record, including the materials submitted by the parties, and is now prepared to render its findings of fact and conclusions of law.

### III. Arguments and Analysis – 3568 Matter

#### A. Membership Oppression pursuant to MCL 450.4515 (Count I)

In this case, Plaintiff Castle alleges that his minority interest in Filter Depot has been subjected to willfully unfair and oppressive conduct by Defendants in violation of MCL 450.4515. MCL 450.4515 provides:

(1) A member of a limited liability company may bring an action in the circuit court of the county in which the limited liability company's principal place of business or registered office is located to establish that acts of the managers or members in control of the limited liability company are illegal or fraudulent or constitute willfully unfair and oppressive conduct toward the limited liability company or the member.

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(2) As used in this section, "willfully unfair and oppressive conduct" means a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the member as a member. Willfully unfair and oppressive conduct may include the termination of employment or limitations on employment benefits to the extent that the actions interfere with distributions or other member interests disproportionately as to the affected member. The term does not include conduct or actions that are permitted by the articles of organization, an operating agreement, another agreement to which the

member is a party, or a consistently applied written company policy or procedure.

In his complaint and other pleadings, Plaintiff relies on a series of actions Defendants have taken since the Shoham Defendants purchased MAF. The first portion of actions in question are a series of consent resolutions MAF unilaterally issued beginning on October 3, 2013 without a vote that increased the management fee that Filter Depot paid MAF from 2% to 14%. (See Trial Exhibits 19-21.)

### 1. Management Fees

In its January 21, 2016 Opinion and Order, this Court held that MAF had a conflict of interest with respect to the decision of how much Filter Depot would pay it in connection with the management services it provided. Further, this Court held that MAF violated ¶6.1 of Filter Depot's operating agreement ("Operating Agreement") by failing to submit the issue to a vote. However, this Court also held that MAF's denial of Plaintiff's right to vote did not alone constitute oppression within the meaning of MCL 450.4515. Specifically, this Court held that in order to establish that denying his right to vote constituted oppression within the meaning of the statute, Plaintiff would need to establish that raising the management fee was unfair as the statute only restricts illegal, unfair, or willfully unfair and oppressive conduct.

#### a. Evidence of Fairness

With respect to the fairness of the increased management fee, Defendants relied on the testimony of Cynthia Tremain, MAF's accountant from 1992 until August 2014. (See 5/18 Transcript, at 12.) Ms. Tremain testified that she was asked to investigate into whether the management fee being charged to Filter Depot reflected the actual costs of the services MAF was providing to Filter Depot. (Id. at 15.) In response to that request, she conducted an analysis from July 2012 to April 2013 to determine the

historical costs of the services provided by MAF. (Id.) After concluding that the management fee being charged was much lower than the actual cost of the services that had been provided, Ms. Tremain helped prepare the first of several consent resolutions changing the management fee being charged to Filter Depot. (Id. at 16.) Ms. Tremain testified at length about the different portions of her analysis by going over the portions of the consent resolution itemizing the different costs that were reflected in the resolution (Id. at 16-38; See also, Trial Exhibit 18.) Further, Ms. Tremain testified that she discussed the numbers set forth in Exhibit 18 with Plaintiff Castle many times and invited him to come to Lansing to review the back-up documentation but Plaintiff Castle declined. (5/18 Trial Transcript, at 36-38.) Indeed, Plaintiff Castle conceded that he was given opportunities to review the supporting documentation in Lansing but declined. (See 5/17 Trial Transcript, at 214.)

In addition, Defendants relied on the testimony of Defendant Jonathan Shoham. Mr. Shoham testified that he asked Ms. Tremain to determine what the actual costs of MAF's services to Filter Depot were, but to err on the side of caution, i.e. in favor of Filter Depot. (Id. at 137.)

In response, Plaintiff Castle relied on the testimony of Carolyn Rieger, a certified public accountant employed by O'Keefe and Associates. Ms. Rieger was retained by Plaintiff Castle to determine if there were any irregularities within the consent resolutions and capital call, and to identify any areas that needed additional review. (See 5/19 Trial Transcript, at 9-11.) While Ms. Rieger testified that she initially did not have access to all of the documents she needed, she later conceded that she ultimately obtained the documents requested. (Id. at 21.) Ms. Rieger also discussed the consent resolutions and capital call with Ms. Tremain. (Id. at 30-31.) Ms. Tremain explained to

her that the consent resolutions were based on five categories of expenses: (1) Warehouse Employee wages and benefits, (2) Accounting and order entry staff wages and benefits, (3) Executive wages and benefits, (4) Transportation expenses, and (5) Warehouse rent and expenses. (Id.) While Ms. Rieger had no issues with the fourth category (Id. at 42.), she explained that she had concerns about the other categories.

With respect to the first category, Ms. Rieger testified that she was unable to determine how much time the warehouse employees actually spent on Filter Depot's inventory, as opposed to the other 6 companies MAF provided services for, because the costs attributed to Filter Depot were simply based on those employees' supervisor's allocation. (Id. at 34.) Specifically, Ms. Rieger testified that MAF's staff was unable to tell her how much of overall inventory kept at the warehouse was Filter Depot's, which prevented her from being able to determine whether a 30% allocation of the total wages and fees was reasonable. (Id. at 35.) However, Ms. Rieger also testified that she did not ask for a breakdown of the inventory. (Id. at 122-123.)

With regards to the second category, Ms. Rieger's concern was simply that Filter Depot was being charged between 20% and 30% of MAF's overall cost for accounting and order entry staff even though Filter Depot was only 1 of 7 companies serviced by MAF. (Id. at 35.) Further, Ms. Rieger testified that the only support for that allocation was those employee's subjective opinion as to how much time they thought they spent on Filter Depot. (Id. at 36.)

Ms. Rieger's concern about the third category was similar to her concern about the second. Specifically, Mr. Rieger questioned why Filter Depot was being charged 15% of MAF's total costs for executives despite only being 1 of 7 companies. (Id. at 36-37.)

Finally, as to the fifth category, Ms. Rieger had two concerns about MAF's rent. First, Mr. Rieger testified that MAF's rent for the warehouse was at \$6.43 per square foot despite comparable properties being available for an average of \$3.30-\$3.66 per square foot. (Id. at 81.) However, on cross-examination, Ms. Rieger testified that MAF's rent had been the same for some time prior to the first consent resolution (Id. at 126.) Further, Ms. Rieger admitted that MAF's lease was month-to-month and not personally guaranteed, which are both aspects of the lease beneficial to MAF. (Id. at 126-127.)

Ms. Rieger's second question regarding the rent allocation was why Filter Depot was being charged 30% of the rent when no one could explain how much of the inventory within the warehouse was attributable to Filter Depot. (Id. at 81-83.)

#### b. Analysis as to Fairness

Even when a member of a limited liability company has an interest in a transaction, that transaction will not necessarily be set aside. See MCL 450.4409. One category of those transactions that need not be set aside as those where the interested member establishes that the transaction was fair. MCL 450.4409(1)(a). In this case, Mr. Shoham testified that he asked Ms. Tremain and other MAF staff to determine what MAF's costs were that were attributable to Filter Depot, but to err on the conservative side. Further, Ms. Tremain cited to the support of her determination, and testified that she repeatedly gave Plaintiff Castle opportunities to ask questions regarding the allocation and to review the materials she relied upon. While Ms. Rieger questioned some of Ms. Tremain's conclusions, she did not testify that Ms. Tremain's allocations were unfair; rather, Ms. Rieger simply testified that she did not have enough information to make her completely comfortable with the allocation.

Upon reviewing the evidence before it, the Court is satisfied that Defendants

have met their burden in establishing that the consent resolutions were fair. Both Ms. Tremain and Defendant Jonathan Shoham testified that the consent resolutions merely passed along the true costs of the services MAF was providing to Filter Depot, and Ms. Tremain testified at length as to how those costs were determined. Further, while Ms. Rieger expressed concerns about how the costs were computed, she did not go so far as to opine that the charges were unfair or inaccurate. Moreover, Defendants' position that the consent resolutions were not made in bad faith is also buttressed by the fact that the amount set forth in the consent resolutions went down over time, which is the opposite from what one would expect if the consent resolutions were merely a tool to attempt to squeeze Plaintiff Castle out of Filter Depot or to devalue his interest. For these reasons, the Court is convinced that issuing the consent resolutions are not evidence of oppression under MCL 450.4515

## 2. Plaintiff's Termination

Plaintiff also alleges that his membership rights were oppressed when the Shoham Defendants decided, without a vote, to terminate his employment. MCL 450.4515 provides that termination of employment may constitute willful and oppressive conduct "to the extent that the actions interfere with distributions or other member interests disproportionately as to the affected member." While Plaintiff argues that his termination forms a basis for his oppression claim, he has not cited to any distribution or specific membership interest that was disproportionately impacted by his termination, nor has he identified any damage that was caused to his membership interest as a result of his termination. Consequently, the Court is satisfied that Plaintiff has failed to properly support his position. As a result, the Court is convinced that Plaintiff has failed to establish that his membership interest was oppressed by his termination.



### 3. Capital Call

The final portion of Plaintiff's oppression claim is based on the May 2014 capital call. First, Plaintiff argues that the capital call was invalid as it did not comply with paragraph 3.2 of Filter Depot's operating agreement, which provides:

3.2 Additional Contributions. In addition to the initial capital contributions, the managers may determine from time to time that additional contributions are needed to enable the company to conduct its business and affairs. After making such determination, notice of it shall be given to all members in writing at least ten (10) days before the date on which the additional contributions are due. The notice shall describe in reasonable detail, the purposes and uses of such additional capital, the amounts of additional capital required, and the date by which payment of the additional capital is due...."

Plaintiff asserts that the capital call violated Paragraph 3.2 because it was not made in order to enable Filter Depot to conduct its business and affairs, and because it did not state why additional capital was needed to operate Filter Depot. The consent resolution at issue merely provides that "additional Member capital contributions are necessary in order to operate the business of the [Filter Depot]." (See Trial Exhibit 22.) Paragraph 3.2 requires the notice making a capital call to, *inter alia*, describe in "reasonable detail, the purposes and uses of such additional capital..." The question of reasonableness is generally considered to be a question of fact. *City of Novi v Detroit*, 433 Mich 414, 431; 446 NW2d 118 (1989). In this case, the Court is convinced that the capital call does not set forth the reason for its issuance in reasonable detail. Merely stating that additional contributions are needed in order to operate Filter Depot is very vague and provides no detail whatsoever. While it goes without saying that additional contributions would be used to operate Filter Depot, the capital call does not identify why additional funds are needed to operate Filter Depot or provide specific ways in which the funds would be used. Consequently, the Court is convinced that the capital

call violated paragraph 3.2 of the operating agreement. Further, Plaintiff testified that the capital call did not provide 10 days' notice as required by paragraph 3.2, testimony which has not been disputed. (See 5/17 Trial Transcript, at 104-105.) For these reasons, the capital call did not comply with paragraph 3.2 and is therefore invalid.

While the capital call is invalid, the question remains whether issuing the capital call was oppressive. Although the capital call was made, it is undisputed that Plaintiff did not make any contribution(s) in connection with it. Accordingly, at worst Defendants' actions in making an unauthorized and invalid capital call can be categorized as attempted oppression that did not cause any harm. As a result, the Court is satisfied that the capital call in question does not constitute oppression within the meaning of MCL 450.4515.

In sum, the Court is convinced that Plaintiff has failed to establish that Defendants oppressed his membership interest in Filter Depot. As a result, the Court hereby finds no cause of action on Count I of Plaintiff's complaint.

#### B. Fraud (Count II)

Count II of the complaint alleges that Defendants made material misrepresentations and concealed material facts from him. With respect to the fraud/fraudulent misrepresentation claim, the elements are:

(1) the defendant made a representation that was material, (2) the representation was false, (3) the defendant knew the representation was false, or the defendant's representation was made recklessly without any knowledge of the potential truth, (4) the defendant made the representation with the intention that the plaintiff would act on it, (5) the plaintiff actually acted in reliance, and (6) the plaintiff suffered an injury as a result.

*Stephens v Worden Ins Agency, LLC*, 307 Mich App 220, 230; 859 NW2d 723 (2014).

Further, an action for fraudulent misrepresentation must be predicated upon a statement relating to a past or an existing fact; future promises are contractual in nature and do not constitute actionable fraud. *Kamalnath v. Mercy Memorial Hosp. Corp.*, 194 Mich App 543, 554; 487 NW2d 499 (1992).

In this case, Plaintiff Castle alleges that Defendants fraudulently misrepresented that: (1) Filter Depot had a need for a capital call; (2) That MAF paid its pro rata share of the capital call; (3) That the increased management fee correlated to the actual costs incurred by MAF. However, as discussed above, the capital call was invalid and Plaintiff did not make any contribution in connection with the capital call. Accordingly, Plaintiff has failed to establish that he has been damaged by the capital call. As a result, Plaintiff has failed to sustain his burden with respect to the portion of his cause of action for fraudulent misrepresentation based on the capital call.

With respect to the portion of Plaintiff's claim based on the consent resolutions regarding MAF's management fee, the Court has already found that MAF has established that those consent resolutions were fair. Consequently, the Court hereby finds that Defendants did not fraudulently misrepresent that the consent resolutions correlated to MAF's actual costs.

For these reasons, the Court hereby finds no cause of action with respect to Plaintiff's fraudulent misrepresentation claim.

The remainder of Plaintiff's claim is a claim for silent fraud. The elements of silent fraud are:

- (1) the defendant failed to disclose a material fact about the subject matter at issue;
- (2) the defendant had actual knowledge of the fact;
- (3) the failure to disclose the fact gave the plaintiff a false impression;
- (4) when the defendant failed to disclose the fact, he or she knew that the failure to disclose would create a false impression;
- (5) when the defendant failed to disclose the fact, he or she intended that the plaintiff rely on the resulting

false impression; (6) the plaintiff indeed relied on the false impression; and (7) the plaintiff suffered damages resulting from his or her reliance.

See *Hord v. Environmental Research Institute of Michigan*, 228 Mich App. 638, 645; 579 NW2d 133 (1998).

With regards to Plaintiff Castle's silent fraud claim, he avers that Defendants committed silent fraud by (1) concealing financial information and (2) by failing to disclose the fact that Filter Depot's finances and books were commingled with MAF's books and records. However, Plaintiff Castle could not identify any request he made for access to Filter Depot and/or MAF's books and records that was denied. As a result, the first portion of Plaintiff Castle's silent fraud claim fails.

As to the remainder of Plaintiff Castle's silent fraud claim, he testified that he had no understanding one way or the other as to whether Filter Depot had a separate bank account. (See 5/17/16 Trial Transcript, at 137.) A necessary element of a claim for silent fraud is that the defendant's silence gave the plaintiff a false impression. See *Hord*, 228 Mich App at 645. Based on Plaintiff Castle's own testimony that he had no impression one way or another as to whether Filter Depot had a separate bank account, the remainder of the silent fraud claim fails.

For the reasons discussed above, the Court hereby finds no cause of action with respect to Count II of the Complaint.

### C. Breach of Contract (Count III)

Count III is based on MAF's alleged breaches of Filter Depot's operating agreement. Like the previously address claims, the breach of contract claim is based on the consent resolutions regarding the management fees and the invalid capital call. With respect to the capital call, any breach of the operating agreement has been rendered harmless as a result of the Court's declaration that the capital call is invalid

and in light of the fact that Plaintiff made no contributions in response to the capital call. With regards to the consent resolutions regarding management fees, Plaintiff avers that issuing the consent resolutions without a vote violated paragraph 6.1 of the Operating Agreement, which provides:

6.1 Voting. All Members shall be entitled to vote on any matter submitted to a vote of the Members. The Members shall have the right to vote on all of the following: (a) a dissolution of the Company pursuant to Paragraph 9.1(c) of this Operating Agreement; (b) the merger of the Company; (c) a transaction involving an actual or potential conflict of interest between a Manager and the Company; (d) an amendment to the Articles; and (e) the sale, exchange, lease or other transfer of all or substantially all of the Company's assets other than in the ordinary course of business.

(See Trial Exhibit 1.)

Specifically, Plaintiff avers that the consent resolutions violate paragraph 6.1 because they involved a conflict of interest with respect to MAF. In this case, the issue related to the management fees clearly involves a conflict of interest with respect to MAF as any increase in the amount of management fees Filter Depot would pay would have a negative impact on Filter Depot while having an equally positive impact on MAF. Accordingly, paragraph 6.1 provides that such a matter must be submitted to a vote. As a result, by failing to submit the subject of the consent resolutions to a vote, MAF breached the terms of the operating agreement. However, despite the fact that MAF's actions breached the operating agreement, the Court is convinced that Plaintiff has not been damaged by the breaches.

While paragraph 6.1 entitled Plaintiff to vote on the changes to the management fees, nothing within the operating agreement operates to prevent MAF, the 51% member of the Filter Depot, from also voting. Consequently, even if Plaintiff would have been afforded his contractual right to vote, that vote would have been rendered meaningless as he clearly would have been outvoted by MAF and the management

fees would have been changed anyway. As a result, the Court hereby finds that while MAF breached the Operating Agreement by unilaterally changing the management fees, Plaintiff was not damaged by the breaches. Accordingly, the Court finds no cause of action with respect to the portion of Plaintiff's breach of contract claim based on the management fees.

#### D. Unjust Enrichment (Count IV)

"The elements of a claim for unjust enrichment are (1) receipt of a benefit by the defendant from the plaintiff, and (2) an inequity resulting to plaintiff from defendant's retention of the benefit." *Bellevue Ventures, Inc. v. Morag-Kelly Investment Inc.*, 302 Mich App 59, 64; 836 NW2d 898 (2013). Plaintiff's unjust enrichment claim is based on his argument that MAF, and by extension the Shoham Defendants, were unjustly enriched by the increased management fee. However, as discussed above, the Court is convinced that the increased management fee was fair. As a result, any benefit Defendants derived from the consent resolutions regarding the management fee is not unjust. As a result, the Court hereby finds no cause of action with respect to Plaintiff's unjust enrichment claim.

#### E. Count V- Failure to Produce Documents in violation of MCL 450.4503

The basis for Count V of the Complaint is the allegation that Plaintiff Castle was improperly denied access to Filter Depot's books and records. However, Plaintiff Castle failed to identify any request that he made for access to Filter Depot's books and records that was denied. As a result, the Court hereby finds no cause of action with respect to Count V.

#### F. Breach of Fiduciary Duty (Counts VII and VIII)

Count VII consists of a claim for breach of common law fiduciary duties against

MAF. Count VIII is a claim for breach of statutory fiduciary duties against MAF.

Claims for breach of fiduciary duty require proof that the defendant owed the plaintiff a duty and breached it. *Schultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993). The first duty Plaintiff Castle has identified is the statutory duty of good faith imposed on managers of LLCs. Specifically, the duty is set forth in MCL 450.4404(1), which provides:

A manager shall discharge the duties of a manager in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner the manager reasonably believes to be in the best interests of the limited liability company.

The second duty identified is the common law duty of good faith owed by majority members to the LLC as well as minority members. See *Salvador v Connor*, 87 Mich App 664, 675; 276 NW2d 458 (1978). Plaintiff Castle argues that MAF has breached both above-referenced duties by engaging in self-dealing and failing to disclose facts. With regards to the alleged failure to disclose, it appears that those allegations are based on his ignorance of the fact that Filter Depot's finances were commingled with MAF's and his assertion that he was denied access to Filter Depot's and MAF's books and records. However, as discussed above, Plaintiff Castle has failed to identify any request to inspect the books and records in question that was refused, and has failed to establish that Defendants gave him a false impression of the Filter Depot's finances. As a result, the Court is convinced that Plaintiff Castle has failed to establish that MAF breached its fiduciary duties as a result of any non-disclosure.

The remainder of the breach of fiduciary duty claim is based on Defendants' alleged self-dealing, which once again deals with the invalid capital call and the consent resolutions related to management fees. However, as discussed in the previous sections of this Opinion and Order dealing with Plaintiff's oppression claim, the capital

call did not cause Plaintiff any damage and the consent resolutions related to management fees were fair. Under MCL 450.4409(1)(a), decisions made by a manager or agent of a limited liability company that involve self-dealing are permissible if they are fair to the company. For the reasons discussed above, the Court is convinced that the changes to the management fee were fair to Filter Depot. As a result, they are permissible under MCL 450.4409(1)(a) and may not form the basis for Plaintiff's breach of fiduciary duty claims. For these reasons, the Court hereby finds no cause of action with respect to Plaintiff's breach of fiduciary duty claims.

#### G. Aiding and Abetting (Count X)

Count X of Plaintiff's complaint seeks to impose liability on the Shoham Defendants for MAF's allegedly tortious conduct. However, for the reasons discussed above, the Court has found that Plaintiff has failed to establish that MAF has engaged in any tortious conduct. As a result, Plaintiff's claim for aiding and abetting also fails.

#### H. Accounting (. Count VI)

Plaintiff has not addressed Count VI. As a result, it is deemed abandoned. Moreover, an accounting is unnecessary where discovery is sufficient to determine the amounts at issue. *Boyd v Nelson Credit Centers, Inc.*, 132 Mich App 774, 779; 348 NW2d 25 (1984). Based on Plaintiff's failure to identify any issue that discovery has not resolved and that necessitates an additional accounting, the Court hereby finds that no relief is warranted in connection with Plaintiff's accounting claim.

### III. Law and Analysis – 4186 Matter

#### A. Breach of Operating Agreement based on Failure to Contribute (Count I)

Count I of Filter Depot's complaint against Plaintiff is based on his failure to make the contribution required by the capital call. However, for the reasons discussed above,



the capital call is invalid. As a result, Plaintiff has no obligation to make any contribution in connection with the capital call. Accordingly, the Court hereby finds no cause of action with respect to Count I.

#### B. Breach of Fiduciary Duty (Counts II and III)

Counts II and III are based Filter Depot's allegations that Plaintiff Castle breached his fiduciary duty as a member/manager. As a preliminary matter, Plaintiff Castle has conceded that he is a manager of the Filter Depot. (See 5/17/16 Trial Transcript, at 84.) As discussed above, managers of a limited liability company owe that LLC the duties set forth in MCL 450.4404(1)(a). In this case, Filter Depot avers that Plaintiff Castle breached that duty by failing to advise MAF, i.e. the Shoham Defendants that Dave Castle was leaving the Filter Depot and by failing to take affirmative steps to "protect" the Filter Depot from damage caused by Dave Castle's departure. Further, the Filter Depot asserts that as a result of Plaintiff's action/inaction it has suffered a decrease in sales since 2014 in the amount of \$297,045.00.

It is undisputed that Dave Castle left the Filter Depot in March 2014. Filter Depot's sales dropped from \$1,434,934.00 in 2013 to \$1,163,985.00 in 2014, and have dropped further in 2015. (See Trial Exhibits 34-36.) While Filter Depot argues that Plaintiff Castle's actions/inaction in connection with Dave Castle's departure caused the Filter Depot's decline in sales, they have failed to cite to any proof in support of their position. While Filter Depot relies on a list of its customers that shows how the sales to those customers changed since 2013, it has failed to link Dave Castle's departure to any of the changes, and has failed to provide any proof that the losses would have been prevented, in whole or part, if Plaintiff Castle had taken a different course of action. Accordingly, the Court is convinced that the Filter Depot has failed to satisfy its burden

of proof with respect to establish that it has been damaged by Plaintiff Castle's actions/inaction in connection with Dave Castle's departure. As a result, the Court hereby finds no cause of action with respect to Count II of the Filter Depot's complaint in the 4186 case.

#### IV. Conclusion

Based upon the reasons set forth above, the Court find No Cause of Action with respect to all of the parties' claims. In compliance with MCR 2.602(A)(3), the Court states this matter is CLOSED.

IT IS SO ORDERED.

Date: MAR 31 2017

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