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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

IH RIVERDALE, LLC and GEOFFREY NOLAN,

Plaintiffs,

v.

MCCHESNEY CAPITAL PARTNERS, LLC, RIVERDALE CAPITAL INVESTMENTS, LLC, GEORGE MCCHESNEY, NICHOLAS WALLDORFF, MEADOW SPRINGS, LLC, G&I DEVELOPMENT CO., LLC, MCCHESNEY INVESTMENT ADVISORS, LLC, and HOMESTEAD CONSTRUCTION,

Defendants,

McCHESNEY CAPITAL PARTNERS, LLC; RIVERDALE CAPITAL INVESTMENTS, LLC; GEORGE McCHESNEY; and NICHOLAS WALLDORFF,

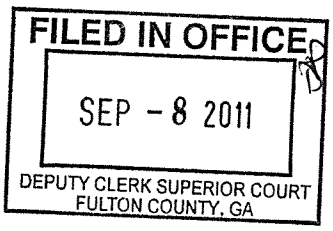
Counterclaim Plaintiffs,

v.

IH RIVERDALE, LLC; GEOFFREY NOLAN; WILSON & NOLAN SOUTHEAST, INC.; and TAYLOR WILLIAMS,

Counterclaim Defendants.

Civil Action No.: 2003CV73603



MICHAEL MCCHESNEY,

Plaintiff,

v.

IH RIVERDALE, LLC and GEOFFREY NOLAN,

Defendants, Third-Party Plaintiffs

v.

MCCHESNEY CAPITAL PARTNERS, LLC

Civil Action No.: 2004CV83192

GEORGE MCCHESNEY and NICK WALDORFF, Third-Party Defendants	)	
MEADOW SPRINGS, LLC, Plaintiff, v. IH RIVERDALE, LLC and GEOFFREY NOLAN, Defendants, Third-Party Plaintiffs v. MCCHESNEY CAPITAL PARTNERS, LLC GEORGE MCCHESNEY and NICK WALDORFF, Third-Party Defendants	)	Civil Action No.: 2007CV143869
McCHESNEY CAPITAL PARTNERS, LLC, Plaintiff, v. IH RIVERDALE, LLC Defendant and Third-Party Plaintiff v. RIVERDALE CAPITAL INVESTMENTS, LLC., MICHAEL McCHESNEY, GEORGE McCHESNEY and NICHOLAS WALLDORFF Third-Party Defendants	)	Civil Action No.: 2006CV114780

ORDER ON MOTION FOR SUMMARY JUDGMENT

On August 30, 2011, counsel appeared before the Court to present oral argument on the Motion for Summary Judgment filed by McChesney Investment Advisors, LLC ("MIA"), Nicholas Walldorff ("Walldorff"), Homestead Construction, Inc. ("Homestead"), and Meadow Springs, LLC ("Meadow Springs," together with MIA, Walldorff, and Homestead, the "Walldorff Parties"). After reviewing the record of the case, the briefs submitted by the parties, and the arguments of counsel, the Court finds as follows:

These cases arise out of a series of disputes among former business partners that has resulted in five separate lawsuits, four of which are still pending before this Court. At this juncture, following years of protracted litigation and an arduous appellate journey, much of the claims have been resolved by settlement or by rulings of this Court, the Georgia Court of Appeals or the Georgia Supreme Court. The Walldorff parties now move for summary judgment on all remaining claims, counterclaims, and third-party claims left in these cases.

Standard

A court should grant a motion for summary judgment pursuant to O.C.G.A. § 9-11-56 when the moving party shows that no genuine issue of material fact remains to be tried and that the undisputed facts, viewed in the light most favorable to the non-movant, warrant summary judgment as a matter of law. Lau's Corp., Inc. v. Haskins, 261 Ga. 491, 491 (1991).

1. *IH Riverdale v. McChesney Capital Partners*, CAFN 2003CV73603 Counts 3 & 4

Walldorff seeks summary judgment on claims against him based on fraud, suppression and negligent misrepresentation brought by Geoffrey Nolan ("Nolan") and/or IH Riverdale, LLC ("IH," together with Nolan, "IH/Nolan"). Specifically, IH/Nolan allege that Walldorff falsely represented that the Phase 1 construction project was over budget and therefore, in need of

additional funds from Regions Bank under a loan, which Nolan had guaranteed. In fact, IH/Nolan contend that there were cost savings of approximately $1 million for the Phase I project, and that the excess loan funds were wrongfully transferred from Riverdale Capital Investments, LLC ("RCI") to other entities owned or operated by Walldorff. IH/Nolan claim injury on the basis that IH was deprived of additional guaranty fees owed by RCI in connection with Nolan's guaranty of the increased loan amount of $463,000. IH/Nolan also claim damage due to lost profits and distributions brought about by RCI's continued payment of interest on loan proceeds wrongfully diverted to other entities, who may not have fully repaid RCI for such interest payments or loan funds.

The Court **GRANTS** summary judgment on these claims in favor of Walldorff. With regard to the portion of IH/Nolan's claim premised on lost interest and unpaid loan amounts due to RCI for funds allegedly loaned to entities affiliated with Walldorff, this claim is derivative of RCI's claim, and RCI has settled all claims in these cases. Moreover, IH does not have standing to assert a direct claim against Walldorff because it has not established a special injury. Any injury to IH by virtue of decreased distributions is derivative of injury to RCI. Finally, regarding the allegations of unpaid guaranty fees, this fee was owed by RCI, who has settled with IH/Nolan. And in any event, the purported failure of RCI to pay any additional amount owed to IH for Nolan's guaranty of the additional loan amounts from Regions Bank was not caused by IH/Nolan's reliance on Walldorff's purported misrepresentations.

2. Counts 6 & 7

IH/Nolan assert unjust enrichment claims against MIA and Homestead, who they allege wrongfully received funds from RCI to purchase land and complete construction projects that ultimately generated a profit. The Court **GRANTS** summary judgment in favor of MIA and

Homestead on this claim. IH/Nolan did not confer a benefit on MIA and Homestead, RCI did. And RCI has now settled all claims and is no longer a party to these consolidated cases. As far as IH's argument that it has standing to bring this claim directly, the Court is not persuaded. IH has not established any special injury which would allow him to advance this claim on his own. Moreover, Nolan concedes in his affidavit that the unauthorized transfer of RCI funds to MIA and Homestead amount to breaches of the RCI Operating Agreement, thereby eliminating any basis for an unjust enrichment claim.

IH/Nolan also allege that Meadow Springs was unjustly enriched because IH/Nolan were deprived of the right to invest in the Phase II property. The Court holds that the right of IH/Nolan to invest in the project is governed by the RCI Operating Agreement. Accordingly, a claim for unjust enrichment will not lie. Smith v. McClung, 215 Ga. App. 786, 789 (1994). Summary Judgment is **GRANTED** in favor of MIA, Homestead and Meadow Springs on Counts 6 and 7.

3. Counts 8, 11, 12, 13, 14, and 16

The Court **GRANTS** summary judgment in favor of the Walldorff Parties as to Counts 11, 12, 13, 14 and 16, which the Court finds are now moot. With respect to Count 8, the Court **GRANTS** summary judgment in favor of Walldorff because IH/Nolan have not pointed to evidence to show that he was a majority member or a manager of RCI, and IH/Nolan has not otherwise established that he was owed a fiduciary duty.

4. *McChesney v. IH Riverdale*, CAFN 2004CV83192
Counts 1 & 2

Summary judgment is **GRANTED** in favor of the Walldorff Parties as to Counts 1 and 2 because these claims are moot in light of IH/Nolan's settlement with Michael McChesney.

5. ***McChesney Capital Partners v. IH Riverdale*, CAFN 2006CV114780 Counts 3 & 9 [sic]**

Next, IH/Nolan contend that Walldorff made misrepresentations and withheld information with regard to the sale of IH's interest in RCI to MCP. The Court finds that summary judgment is appropriate because IH/Nolan has not established that Walldorff had a duty to speak. Actionable fraud may be based on "[s]uppression of a material fact which a party is under an obligation to communicate." O.C.G.A. 23-2-53. "The obligation to communicate may arise from the confidential relations of the parties or from the particular circumstances of the case." Id. IH/Nolan has not pointed to anything in the record to show that Walldorff shared a confidential relationship with IH/Nolan.

Moreover, even if Walldorff stood in a position giving rise to an obligation to disclose that reserves would be established if IH chose to exercise the Buy-Sell option, the RCI Operating Agreement provides that the Buy-Sell price would be calculated after deducting "Reserves." Accordingly, because this information was equally available to IH, IH cannot say that it was deceived by any misrepresentation of Walldorff regarding MCP's intent to establish a reserve account. Futch v. Lowndes County, 297 Ga. App. 308, 312 (2009). The Court **GRANTS** summary judgment in favor of Walldorff on these claims of fraud, suppression and misrepresentation.

6. **Counts 6, 8, 9, 10, 11, 12, 13, and 14**

Summary judgment is **GRANTED** in favor of the Walldorff Parties as to Counts 6, 8, 9, 10, 11, 12, and 13 because these claims are moot and as to Count 14 because the claim for attorneys' fees fails in light of the Court's ruling in favor of the Walldorff Parties.

7. ***Meadow Springs v. IH Riverdale*, CAFN 2007CV143869 Counterclaim 1-3, Third-Party Complaint Count 1& 2**

Summary judgment is **GRANTED** in favor of Meadow Springs and Walldorff as to these claims in light of the opinions of the Georgia Supreme Court[1] and the Georgia Court of Appeals.[2]

8. *Meadow Springs v. IH Riverdale*, CAFN 2007CV143869

Meadow Springs seeks partial summary judgment on its claims for slander of title and tortious interference with contract and business relationships based on the rulings of the Georgia Supreme Court and the Georgia Court of Appeals on the invalidity of the lis pendens filed by IH/Nolan. The Court would appreciate additional briefs within 30 days from the date of this Order on the subject of whether the filing of the lis pendens in this case satisfies the elements required for slander of title; specifically, whether the improperly-filed lis pendens constituted the uttering and publishing of slanderous words and whether such words were malicious.

Additionally, IH/Nolan urge the Court to consider the circumstances surrounding settlement with the other parties in this case, specifically McChesney Capital Partners, LLC ("MCP") and its majority shareholders George and Michael McChesney, to find that Meadow Springs is estopped or otherwise lacking in authority to continue its pursuit of these claims against IH/Nolan. The Court finds evidence in the record that Meadow Springs has no authority to act without the approval of MCP. The Court further finds that issues of fact exist concerning whether the majority owners of MCP have authorized Meadow Springs to proceed with these claims against IH/Nolan. Accordingly, summary judgment is **DENIED** on Meadow Springs's claims for slander of title and tortious interference with contract and business relationships.

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[1] Meadow Springs, LLC v. IH Riverdale, LLC, 286 Ga. 701 (2010).

[2] Meadow Springs, LLC v. IH Riverdale, LLC, 307 Ga. App. 72 (2010).

SO ORDERED this 7th day of Sept, 2011.

ELIZABETH E. LONG, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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