IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

UNITED COMMUNITY PATROL SERVICES, INC., et al.	*	
Plaintiffs,	*	
v.	*	Case No. 466145-V
HAMID SEPEHRI, et ux.	*	
Defendants.	*	

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MEMORANDUM OPINION AND ORDER

This matter came before the court January 27-29, 2020 and June 30, 2020 for trial on Plaintiffs' Amended Complaint at **Docket Entry No. 33**. Defendants' Answer to Plaintiffs' Amended Complaint appears at **Docket Entry No. 61**. For the reasons below, the Court finds in favor of Plaintiff McClure regarding the enforceability of the April 8, 2015 Stock Purchase & Mutual Business Agreement and will order that Defendants transfer sufficient shares of United Community Patrol Services, Inc. ("United") stock such that Plaintiff McClure owns forty-nine percent (49%) of United. All other requests for relief will be denied.

Procedural History

On April 26, 2019, Plaintiff Marquis McClure filed this case on behalf of himself and United Community Patrol Services, Inc. ("United"). A nine-count Amended Complaint followed on September 24, 2019. It it, Plaintiff McClure generally alleges that Defendants are United's shareholders and officers, that Defendants breached their contract to sell United stock to Mr. McClure, that Mr. McClure is also a shareholder of United, that Defendants breached their

fiduciary duties to him, oppressed him and United, and otherwise defrauded and damaged him. Plaintiffs seek a variety of remedies.

On September 24, 2019, Plaintiffs also moved to compel production of additional discovery from Defendants. The motion was granted in part following a hearing, and Defendants were compelled to produced copies of United's federal and state income tax returns, including " . . . all other information forms, or other documents relied upon by [them] or [their] tax preparer in computing [their] taxes, for the years 2015 to present [,]" among other items. In the motion, Plaintiffs sought no other relief.

On November 19, 2019, Defendants filed an Answer to Plaintiff's Amended Complaint and Negative and Affirmative Defenses. It incorporated their original Answer filed on June 21, 2019, and generally denied the averments in the Amended Complaint. The Defendants' Answer also asserts that Plaintiff's claims are barred by unclean hands, accord and satisfaction, the statute of frauds, and estoppel, and further alleges that Plaintiffs' claims fail to state a claim upon which relief could be granted, lack substantial justification, and are brought in bad faith in violation of Maryland Rule 1-341.

At trial, in addition to documentary evidence, the Court received testimony from Marquis McClure, Tracy Lyles, Kathleen Koppenhaver, Eric Wexler, Terry Sepehri, Retha Arens, and Hamid Sepehri. The parties submitted proposed Findings of Fact and Conclusions of Law and returned to court for closing arguments (held remotely by agreement of the parties) on June 30, 2020.

Findings of Fact

1. Plaintiff Marquis McClure ("Mr. McClure") is a resident of Montgomery County, Maryland. He was a Montgomery County police officer from 1998 until his retirement due to disability in 2004. Since then, he has worked in the security industry.

2. Plaintiff United Community Patrol Services, Inc. ("United") is a Maryland corporation engaged in the business of providing private security and investigations to the general public. Its principal place of business is located at 9710 Traville Gateway Drive, No. 312, Rockville, Maryland, 20850.

3. Defendants Hamid Sepehri and Terry Sepehri, husband and wife, are both residents of Montgomery County, Maryland. Mr. Sepehri is a network engineer in the security industry, and has worked in that industry his entire adult life. Ms. Sepehri is a computer technician at the National Institute of Standards and Technology.

4. In December 2008, Mr. and Mrs. Sepehri formed United Community Patrol Systems, Inc. ("United") as a Maryland close corporation pursuant to Maryland Corps. & Ass'ns Article §§ 4-201 *et. al.* by filing its Articles of Incorporation with the State of Maryland. United elected to operate as an S-Corporation and authorized 1,000 shares of stock.

5. With United, the Sepehris wanted a side business in order to pursue government contract work through the minority- or woman-owned small business preferences (or set aside) program. Accordingly, they decided that Mrs. Sepehri would own 51% of the stock and Mr. Sepehri would own 49%. To this end, Mrs. Sepehri purchased 275 shares of United for $550.00. Mr. Sepehri purchased 225 shares of United for $450.00. United issued stock certificates to Mr. and Mrs. Sepehri and its corporate ledger reflects their purchase and the transfer of stock. Using

the form annexed to United's Organizational Resolutions, the Sepeheris' stock certificates stated that stock is "transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed."

6. At all times relevant hereto, the Sepehris continued to be officers of United.

7. Initially, United was not a full-service security company but served primarily as a business development/security project consultant to other security companies. Proactive Special Security, Inc. ("Proactive") was United's biggest client prior to 2015. United provided business development services to Proactive.

8. Between 1995 and 2015, Proactive also employed Mr. Sepehri. During his tenure, Mr. Sepehri served in multiple positions at Proactive and ultimately rose to the level of operations manager.

9. Mr. McClure had met Mrs. Sepehri when she was 16 years old working at Sportland in a mall where Mr. McClure was serving as a security guard.

10. Mr. McClure and Mr. Sepehri knew of each other because of their respective work in, and familiarity with, the local security industry.

11. In July 2014, following an introduction by Mr. Sepehri, Proactive hired Mr. McClure as a 1099 independent contractor to provide business development/referral services.

12. In 2014, United hired Retha Arens for assistance with United's tax preparation. Ms. Arens is a lawyer who provides tax and accounting services. She prepared United's 2011, 2012, and 2013 returns. In addition, she trained Mr. Sepehri on how to reconcile United's bank

statements with its QuickBooks ledgers. She reviewed Mr. Sepehri's QuickBooks entries periodically, answering Mr. Sepehri's questions about various entries to make sure they were properly posted and reconciled. She reviewed the entries reflected on Defendant's Exhibit No. 9. She also prepared United's income tax returns for the ongoing years.

13. With QuickBooks, Mr. Sepehri tracked United's transactions by account. One of these accounts, "28000," was Loans from Shareholders. One column was "Credit," a reflection of loans made to United, and another was "Debit," a reflection of United's repayment of those loans made to it. A December 31, 2009 credit (or loan) for $6,690.65 was the first entry, and raised the loan balance from zero to $6,690.65. See Defendant's Exhibit No. 9.

14. At all times relevant hereto, United maintained a checking account at Capital One Bank. In it, United received deposits via check, ACH and ATM, among other means. Withdrawals were made via check and debit card. Ms. Arens did not reconcile United's bank statements with QuickBooks or review invoices for, or receipts of, individual transactions. Instead, she reviewed United QuickBooks ledger to see that Mr. Sepehri had reconciled it.

15. For transactions starting in April 2015, there is no obvious correspondence between deposits into United's Capital One checking account and credits on the above QuickBooks ledger.[1] Nor is there any obvious correspondence between withdrawals from United's checking account and debits on its QuickBooks ledger. Nor was there independent documentation to substantiate loans to United, loan repayments, or many of United's business business expenses.

[1]Statements predating April 2015 were not introduced.

16. In February 2015, Proactive fired Mr. Sepehri and shortly thereafter terminated Mr. McClure's business development position. Mr. Sepehri and Mr. McClure then began discussing how they might work together.

17. At some point between its formation and March, 2015, United's status as a business in good standing in Maryland was forfeited. The Sepehris caused it to be reinstated in March, 2015.

18. In March 2015, Proactive was sued by its employees.

19. On April 2, 2015, Mr. McClure paid Hamid Sepehri $49 cash for purchase of 49 shares "equaling" 49% of United.

20. Plaintiff McClure introduced a document purporting to be an April 8, 2015 Stock Purchase & Mutual Business Agreement. Mr. McClure drafted it, and it appeared to be signed by him, Mr. Sepehri, and Mrs. Sepeheri. Regarding whether the Sepehris' signatures were their original penned signatures, Ms. Koppenhaver noted that the signatures were rapidly written, smoothly executed, and displayed good pressure patterns. She opined that the Sepehris' signatures were genuine. The Court credits this testimony. Accordingly, the court finds that on April 8, 2015, the parties executed the written Stock Purchase & Mutual Business Agreement (the "Agreement") drafted by Mr. McClure. For this purpose, they met at the Starbucks in the Safeway at King Farm. Two copies of the Agreement were executed. Mr. McClure retained one copy and the Sepehris retained the other copy.

21. The Agreement provided:

> This agreement is made on the 8th day of April, 2015 between Terry Sepehri, Hamid Sepehri, and Marquis McClure. This agreement is made for the purpose of Marquis McClure purchasing forty nine (49%) of the company owned by Terry Sepehri and Hamid Sepehri named and known as United Community Patrol Services. Both Terry Sepehri and Hamid Sepehri will sell a certain portion of their shares of United Community Patrol Services to Marquis McClure so that the final portion that Marquis McClure possesses shall be forty nine percent of that company. The price per share shall be $1.00 One Dollar per share totaling $49.00 in order to obtain forty nine percent equity of the company. This agreement is made freely and willingly by all parties involved. All parties give their full consent to the terms and conditions of this agreement, which is confirmed by each individuals [sic] signature on this document. In the future United Community Patrol Services or any entity operating as or conducting business as a DBA of United Community Patrol Services shall operate under the terms of this agreement. The percentages within this agreement shall be a representation of ownership of United Community Security [sic] Services or any DBA affiliated to that company.

22. Prior to executing the Agreement, Mr. McClure did not consult with an attorney or review any documents related to United because he trusted the Sepehris and assumed there would be no issues. Mr. McClure had known the Sepehris for approximately twenty (20) years.

23. At the time the parties executed the Agreement, Mr. McClure understood that United was doing little to no business. As an owner of United, his primary role would be to bring in business to help build United, and Mr. Sepehri would handle the day-to-day operations. There were no specific discussions regarding compensation levels of the parties, but Mr. McClure and Mr. Sepehri discussed and agreed that no money should be taken out of the business for compensation of the parties, unless and until there was a contrary agreement of the parties, so that the business could grow and be successful.

24. Following the execution of the Agreement, neither Mrs. Sepehri nor Mr. Sepehri caused shares to be transferred to Mr. McClure on United's ledger, nor did they cause United to

issue him a stock certificate pursuant to the terms of the Agreement. No transfer of any of Mrs. Sepehri's stock or Mr. Sepehri's stock is recorded on United's books or ledger.

25. By the end of April 2015, Mr. Sepehri and Mr. McClure succeeded in transferring from Proactive to United many of the customers that Mr. Sepehri and United had serviced and procured for Proactive as well as the customers Mr. McClure had brought to Proactive.

26. In May 2015, Mr. McClure brought to United a security detail needed in conjunction with a high-profile murder case in Rockville, Maryland.

27. On May 27, 2015, Proactive filed a Third-Party claim against Mr. Sepehri and United.

28. Since the execution of the Agreement, Mr. McClure attempted to bring new business to, and increase the revenue of, United. Mr. McClure brought in new contracts, took employee phone calls, visited job sites, participated in hiring guards, scheduled jobs, and participated in management decisions and policy, among other things.

29. Mr. McClure and Mr. Sepehri exchanged texts and emails discussing new business, hiring guards, setting pay for guards, scheduling, and planning meetings. In many of these emails, both Mr. McClure and Mr. Sepehri referred to themselves as "we" and "us." Mr. McClure was issued a United Community Patrol email address.

30. On August 13, 2015, United paid Mr. McClure $4,000.00 by check, signed by Mrs. Sepehri, for the referral of the Rockville murder security detail to United.

31. This $4,000.00 was not documented in United's 1096 or 1099 Forms as being paid to Mr. McClure.

32. On February 1, 2016, Mr. Sepehri and United settled the case with Proactive. The settlement required the Sepehris and United to pay close to $120,000.00 to Proactive, including attorney's fees.

33. In early January 2018, the Sepehris and United made the final Proactive settlement payment.

34. On January 28, 2018, Mr. McClure sent a text to Mr. Sepehri wherein he stated: "Hey man I'm working on something big I just want to know if u still shaky about 49/51% u in charge? If so we need to talk." Mr. Sepehri responded: "Call me."

35. In April, 2018, the relationship between Mr. McClure and the Sepehris began to sour. Mr. Sepehri started to replace people Mr. McClure had hired and refused to keep Mr. McClure informed about certain integral financial matters related to United.

36. On May 9, 2018, United filed its 2015 federal corporate tax returns. United reported ordinary business loss of $33,526.00 and a shareholder loan balance of $39,557.00. That day, United paid its accountant, Ms. Arens, $1239 for having prepared the return. The return included Schedule K-1's for Mr. and Mrs. Sepehri, but not Mr. McClure.

37. On May 11, 2018, United filed its Maryland 2016 corporate tax return. It reported a loss of $59,351.00 and a shareholder loan balance of $24,277.00. The return included Maryland Schedule K-1's for Mr. and Mrs. Sepehri, but not Mr. McClure.

38. On May 15, 2018, United filed its 2017 federal corporate tax return. It reported ordinary business loss of $30,733 and a shareholder loan balance of $27,982.00. The return included Schedule K-1's for Mr. and Mrs. Sepehri, but not Mr. McClure.

39. By mid-July, 2018, Mr. McClure was raising questions with Mr. Sepehri about lack of proper supervision of United's security guards and lateness in making United's payroll.

40. On July 27, 2018, Mr. McClure asked Mr. Sepehri to produce a number of United's financial documents, including bank statements, accounts payable, accounts receivable, and any other information related to the financial status of United.

41. The next day, Mr. Sepehri indicated he would work on collecting the documents Mr. McClure had requested, and meet up to deliver them, but added that he was disappointed in Mr. McClure's contributions to the "partnership" and Mr. McClure's having gone "missing in action." Mr. Sepehri said,

> I want you to be 100% clear there is nothing to hide! My problem is originally we stated we would be at a million dollars in sales by the end of 2015 which we never got to. I got all the current contacts that Pat [Proactive's owner] had moved over and dealt with the lawsuit and you basically went mia for 3 years. This is not a partnership when you Mia and I am dealing with the levys on my house because we do a detail with Hanifah that you were confident we would get paid. That again set us back two years.
>
> Now again you resurface and bring the Baltimore contracts and we are a mess again with payroll and staffing. . . .

See Defendant's Exhibit No. 12.

42. Thereafter, Mr. McClure met with Mr. Sepehri, at which time Mr. Sepehri gave Mr. McClure three months of United's corporate bank statements. At the meeting, Mr. Sepehri tried to convince Mr. McClure that he should forget about the Agreement and instead suggested that Mr. McClure just procure new business for United and be paid a commission. Mr. McClure did not agree to Mr. Sepehri's proposed changes to the parties' Agreement.

43. On December 28, 2018, and in order to pay Mr. McClure for the referrals and contract coordination services he provided to United in 2018 before the relations soured, the Sepehris caused United to issue Mr. McClure a check in the amount of $18,500, and issued Mr. McClure at 1099 for it.

44. Mrs. Sepehri received a W-2 wage of $87,692.00 in 2018.

45. Plaintiffs filed suit herein on April 26, 2019.

46. On November 14, 2019, United filed its federal corporate tax return. It reported ordinary business income of $44,336.00, and loans from shareholders of minus $13,825.00. The return included Schedule K-1's for Mr. and Mrs. Sepehri, but not Mr. McClure.

47. Mr. Eric Wexler testified as an expert witness in all aspects of corporate and small business accounting, tax and tax compliance. Mr. Wexler examined United's tax returns for the years 2015-2018, United's bank statements from 2015 through October 2019, cancelled checked and deposit slips for 2015 through October 2019, and financial statements for 2015-2018. Mr. Wexler reviewed and analyzed all the relevant financial information that was provided by the Sepehris in discovery, based upon IRS standards and the generally accepted accounting principles ("GAAP").

48. According to Mr. Wexler, United's actual total gross income for the calendar years 2015 through 2019 was $2,164,585.00. United's bank statements revealed that United's expenses per the self-prepared financial statements and/or tax returns were overstated in the amount of $736,339.00 for the years 2015, 2016, 2017, and 2018. Mr. Wexler found that, based upon United's bank statements, United's net profit was $125, 461.00 for 2015; $168,955.00 for

2016; $208,370.00 for 2017; $424,400.00 for 2018; and $175,485.00 for 2019. Accordingly, Mr. Wexler concluded that United's total net income for the period of 2015-2019 was $1,102,671.00.

49. According to Mr. Wexler, United's bank statements show that the Sepehris made innumerable large cash ATM withdrawals from United corporate accounts from 2015 and continuing through 2019. The amount of cash withdrawals from the company by the Sepehris during the same time period was approximately $450,000.00 with no substantiation of any business purpose or corporate loan repayment.

50. For reasons outlined below, Mr. Wexler's testimony was not reliable.

Discussion

United Community Patrol Services, Inc. is, and always has been, a close corporation pursuant to Maryland Corps. & Ass'ns Article §§ 4-201 *et. al.* Of the nature of close corporations, the Court of Special Appeals recently explained, "[a] close corporation is a creature of statute that allows a small business to operate like a partnership, although in a corporate form. . . . A close corporation typically has few stockholders, active stockholder participation in the business, no liquid market for the stock, close personal relationships between or among the stockholders, flexibility to operate without a board of directors, and few, if any, of the corporate formalities required of general corporations." *Bartenfelder v. Bartenfelder*, ___ Md. App. ____, slip op. at 16 (July 2, 2020)(omitting citation and footnote).

Due to the nature of a close corporation, there are limitations on how stockholders may transfer stock. As *Bartenfelder* said, "[t]he distinguishing feature of a close corporation most relevant here is the restraint placed on the ability of stockholders to transfer their stock. . . . By default, and unlike other types of Maryland corporations, stock in a close corporation is not

transferrable without the consent of the other stockholders. See CA § 4-503(b). The rationale is that in such an intimate business relationship, people should have the right to choose their partners." *Bartenfelder, supra*, at 17 (omitting citations and footnote).

Here, there is no dispute that Defendants never transferred any shares of United to Plaintiff McClure. Where the parties disagree is the legal ramification of this. In essence, Plaintiff McClure contends that with the April 8, 2015 Stock Purchase & Mutual Business Agreement, Defendants agreed to transfer enough shares of United to Plaintiff McClure such that he would own 49% of the company. Defendants' failure to do so, Plaintiff McClure and United contend, entitles one or both to a number of remedies, including declaratory relief, compensatory and punitive damages, receivership, and an accounting. Defendants contend that Plaintiffs have shown no basis for relief, in large part because they never agreed to transfer shares to Plaintiff McClure.

Plaintiffs' specific claims appear to take two forms, direct and derivative. In Count I, a direct claim, Plaintiff McClure seeks a declaration regarding the "rights and liabilities of the parties with respect to the Stock Purchase & Mutual Business Agreement. . . [hereinafter "the Agreement]." In Count II and III, also direct claims, Plaintiff McClure demands compensatory damages for Defendants' breach of the Agreement, or alternatively, promissory estoppel. In Count IV, also a direct claim, Plaintiff McClure demands compensatory damages for Defendants' conversion of his shares of United. In Count V, Plaintiff McClure directly, and derivatively on behalf of United, alleges that Defendants' actions constitute oppression under Maryland Corps. & Ass'ns Article § 3-413(b)(2), and demands appointment of a Receiver for United. In Count VI, Plaintiff McClure directly on behalf of himself, and derivatively on behalf of United, seek an accounting. In Counts VII and VIII, also direct claims, Plaintiff McClure

alleges that he is a minority shareholder of United, and demands compensatory and punitive damages from Defendants for having breached their fiduciary duties as directors and officers to him, and having constructively defrauded him. In Count IX, also a direct claim, Plaintiff McClure alleges that he is a minority shareholder of United and demands compensatory damages from Defendants for having breached their duty to disclose, and having concealed, United's financial condition to him.

Counts I, II, III, and IV

With these counts, Plaintiff McClure seeks a declaration of his rights under the Stock Purchase & Mutual Business Agreement, as well as compensatory damages for Defendants' alleged failure to comply with it, both by failing to transfer United Stock to him, and thereby converting United stock to their own use. These counts are direct counts that Plaintiff McClure pursues on his own behalf.

When a declaratory judgment action is brought, and the controversy is appropriate for resolution by declaratory judgment, "the trial court must render a declaratory judgment." *Christ v. Department*, 335 Md. 427, 435 (1994). Further, where a party "requests a declaratory judgment, it is error for the trial court to dispose of the case simply with oral rulings and a grant of...judgment in favor of the prevailing party." *Ashton v. Brown*, 339 Md. 70, 87 (1995). The declaration of rights that constitutes a final judgment stands by itself and does not call for "executory process or coercive relief." *Davis v. State*, 183 Md. 385, 389 (1944). Nevertheless, further relief based upon a declaratory judgment may be granted if necessary or proper. Maryland Courts Article § 3-412(a). The statutory scheme permits a party to bring an action for declaratory judgment and, either in conjunction with that action or in a separate action, request

further injunctive relief based on the rights determined by that judgment. *Bankers and Shippers Ins. Co. v. Electro Enter., Inc.*, 287 Md. 641, 653 (1980).

On April 8, 2015, Plaintiff McClure and the Defendants executed the Stock Purchase & Mutual Business Agreement ("the Agreement"). Defendants' various attempts to claim that they did not sign the Agreement, or that they did not remember signing the Agreement, or that Plaintiff McClure xeroxed their signatures onto the Agreement, did not persuade the court otherwise. If anything, Mr. Sepehri's July 2018 comment about a "partnership" shows that Mr. and Mrs. Sepehri did sign the Agreement.

The Agreement provided:

> This agreement is made on the 8th day of April, 2015 between Terry Sepehri, Hamid Sepehri, and Marquis McClure. This agreement is made for the purpose of Marquis McClure purchasing forty nine (49%) of the company owned by Terry Sepehri and Hamid Sepehri named and known as United Community Patrol Services. Both Terry Sepehri and Hamid Sepehri will sell a certain portion of their shares of United Community Patrol Services to Marquis McClure so that the final portion that Marquis McClure possesses shall be forty nine percent of that company. The price per share shall be $1.00 One Dollar per share totaling $49.00 in order to obtain forty nine percent equity of the company. This agreement is made freely and willingly by all parties involved. All parties give their full consent to the terms and conditions of this agreement, which is confirmed by each individuals [sic] signature on this document. In the future United Community Patrol Services or any entity operating as or conducting business as a DBA of United Community Patrol Services shall operate under the terms of this agreement. The percentages within this agreement shall be a representation of ownership of United Community Security [sic] Services or any DBA affiliated to that company.

See Plaintiff's Exhibit No. 1.

Maryland adheres to the principle of the objective interpretation of contracts. *Myers v. Kehoe*, 391 Md. 188, 198 (2006). If the language in the contract is unambiguous, the Court will give effect to the plain meaning of the contract terms and will not contemplate what the parties may have subjectively intended at the time of formation. *Id.* Thus, under the objective theory of contracts, we look at what a reasonably prudent person in the same position would have

understood as the meaning of the agreement. *Walton v. Mariner Health*, 391 Md. 643, 660 (2006).

Measured against this objective standard, the Agreement is a valid, enforceable contract between the parties for the sale of 49% of United's stock to Plaintiff. The Agreement identifies what is to be sold (49% of United Community Patrol Services), by sellers (Terry Sepehri and Hamid Sepehri), to buyer (Marquis McClure), and for what price ($1.00 per share). A reasonable person would have understood what the Agreement meant.

To avoid this conclusion, Defendants claim that the Agreement is an unenforceable "agreement to agree." Specifically, Defendants point to the presence of the phrase "will sell a portion of their shares" and argue that because it means at an undetermined future date, the parties never agreed to time of performance, a material term. Defendants also point to the absence of detail on how many shares were to come from Ms. Sepehri versus Mr. Sepehri as another gap that renders the Agreement unenforceable. These arguments fail.

To be sure, "[f]ailure of the parties to agree on an essential term of a contract may indicate that the mutual assent required to make a contract is lacking. . . . If the parties do not intend to be bound until a final agreement is executed, there is no contract. *Cochran v. Norkunas*, 398 Md. 1, 14 (2007)(omitting citations). Here, the Agreement mentions nothing about another document being executed, or other steps, before the parties are bound. Nor does it specify "time for performance" as an outstanding item before negotiations concluded.[2] To the contrary, the Agreement says that it is "made freely and willingly by all parties involved[,]" that

[2] Nor did it have to, given that in the absence of an express time for performance, a reasonable time will be implied. *Evergreen Amusement Corp. v. Milstead*, 206 Md. 610, 617 (1955); *Coates v. Sangston*, 5 Md. 121, 130 (1853).

"[a]ll parties give their full consent to the terms and conditions of this agreement," and that "[i]n the future United Community Patrol Services . . . shall operate under the terms of this agreement." All of these phrases suggest that the parties objectively intended the Agreement to be a final expression of their promises to each other, not merely a precursor to further negotiations.

Nor did the Agreement envision further negotiation about how many shares were to come from each Defendant to Plaintiff. On this point, the Agreement stated that "[b]oth Terry Sepehri and Hamid Sepehri will sell a certain portion of their shares of United Community Patrol Services to Marquis McClure so that the final portion that Marquis McClure possesses shall be forty nine percent of that company." Thus, Defendants jointly promised to sell Plaintiff enough shares so that his "final portion" would be 49%. While Ms. Sepehri and Mr. Sepehri may have had to negotiate among themselves as to how many shares each would transfer to Plaintiff, their joint obligation to Plaintiff was clear.

Even if there was some ambiguity about whether Defendants objectively intended to be bound when they signed the Agreement on April 8, 2015, Mr. Sepehri's April 2, 2015 receipt of "$49 cash paid" from Plaintiff for "49 Shares Purchase equaling 49% of United Community Patrol Services" eliminates it. By paying $49 cash, Plaintiff McClure performed. Mr. Sepehri took Plaintiff's cash in receipt for the stock purchase. Having done so, Defendants cannot reasonably claim that there was more to negotiate or that the April 8, 2015 Agreement was merely an agreement to agree. *See Cochran v. Norkunas,* 398 Md. at 708-09 (partial performance is a factor to be considered in determining whether parties have manifested an intention to be bound, *citing Teachers Ins. and Annuity Ass'n v. Tribune Co.,* 670 F.Supp. 491,

499–503 (S.D.N.Y.1987) *and Burbach Broadcasting Co. of Del. v. Elkins Radio,* 278 F.3d 401, 408 (4th Cir.2002)).

Beyond the validity of the Agreement (Count I), Plaintiff has established that the Sepehris failed to transfer United's shares on the ledger to Mr. McClure or to issue Mr. McClure a stock certificate reflecting his 49% ownership of United stock. Accordingly, the Sepehris breached the Agreement (Count II). Given this conclusion, the court need not separately consider Plaintiff's alternative theory, Promissory Estoppel, in Count III.

Defendants' failure to transfer their stock to Plaintiff McClure also amounts to Conversion under Count IV. The stock certificates themselves provide that they are " . . . transferrable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed." By failing to endorse over, and thus, transfer what amounted to 49% of United's shares to Plaintiff McClure, and register this transfer on United's books, Defendants converted Plaintiff McClure's shares in United to themselves.

With regard to remedies for the liability established in Counts II and IV, Plaintiff seeks compensatory damages, a sum Plaintiff says is properly measured by a proportionate share of United's net profits[3] for 2015-2019. To this end, Plaintiff offered the expert testimony of Mr.

[3]"Net profits" or "lost profits" may be the proper measure of damages in some scenarios. "Lost profits" are claimed " . . . for lost income from business operations that would have been made but for the breach, . . ." *CR-RSC Tower I, LLC, et al. v. RSC Tower I, LLC et al.,* 429 Md. 387, 408 (2012)(citing 3 Dan B. Dobbs, Law of Remedies § 12.4(3)(2d ed. 1993)). As an item of "consequential" or "special" damages, these are losses that " . . . 'may reasonably be supposed to have been in the contemplation of both parties at the time of the making of the contract.'" *CR-RSC Tower I, LLC, et al. v. RSC Tower I, LLC et al., supra* at 408 (2012)(citing *Burson v. Simard,* 424 Md. 318, 327 (2012)).

Eric Wexler, who opined that the total net profit was $1,102,271.00, with Plaintiff's 49% share being $540,112.79. Plaintiff's evidence in this regard was not reliable.

To start, United's accountant, Retha Arens, testified that United did not show a net profit until 2018,[4] when its net profit was $44,336. Ms. Arens explained that Mr. and Mrs. Sepehri made a number of loans to United over the years, loans that United repaid by purchasing personal items for the Sepehris and paying their personal credit card bills. Mr. Sepehri maintained a Quickbooks ledger of the outstanding loan balance, a ledger that Ms. Arens reviewed periodically. Moreover, Ms. Arens trained Mr. Sepehri in how to reconcile United's QuickBooks ledger with its bank statements, and Ms. Arens checked the ledger to make sure reconciliations were done. The federal returns from 2015, 2017, and 2018[5] all showed varying loan balances from shareholders, all that corresponded with United's Quickbooks report.[6]

Mr. Wexler did not credit United's corporate tax returns or its Quickbooks ledger. Many of the items were unaccompanied by adequate documentation, he explained, and as a consequence, he was unwilling to accept that they were business expenses, loans to United, or loan repayments. Instead, Mr. Wexler relied on United's bank statements, checks, and deposit slips. Based on this set of information, he determined that United had underreported revenue and overreported expenses, with the result that United underreported net profits on its tax returns.

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[4]Without a net profit in 2015, 2016 and 2017, the Sepehris would likely have been prohibited from making a distribution to Plaintiff McClure in these years. *See* Maryland Corps. & Ass'ns Article §§ 2-309(b) and 2-311(a).

[5]There does not appear to be a complete 2016 federal return in evidence.

[6] For example, Defendant's Exhibit No. 9 showed a 2015 year end loan balance of $39,557.45. United's tax return for 2015 reported a balance of loans from shareholders of $39,557.

His opinion on this would have changed, however, if United borrowed funds from the Sepehris and paid them back via personal expense purchases and credit card payments for them.

On balance, Mr. Wexler's opting not to consider the possibility of more debt (and more repayments of that debt) for United, particularly as reflected in its Quickbooks ledger and tax returns, left his opinion vulnerable and Ms. Arens' opinion more credible. Mr. Wexler explained this choice as in keeping with Internal Revenue Service rules and general accounting principles, both of which burden the taxpayer with substantiating business expenses and loans. Certainly, Defendants' lack of substantiating documents could support an inference that the items at issue were not loans or business expenses, particularly where, as here, Defendants were compelled to produce documents relied on to prepare United's tax returns. But, United's accountant, also a lawyer, was satisfied with United's use of its QuickBooks ledger as a means of tracking the above items. Under these circumstances, the court declines to draw the above inference. Accordingly, the court is not persuaded that United netted $1,102,271.00 between 2015 and 2019.

Beyond Mr. Wexler's opinion, the court has considered whether Plaintiff McClure has proven his entitlement to at least some of the $44,336 that Defendants admit United netted in 2018. A review of United's 2019 bank statements shows debit card purchases for items that could be personal expenses. Examples include purchases at places that are, or could be, restaurants or convenience food shops, including "Kristopher S Pizza," "California Tortilla," "Bassett's Restaurant," "Buffalo Wild Wings," and "Wawa." United's having paid for these items in 2019 could amount to distributions of United 2018's net profits to the Sepheris. But Plaintiff McClure has not proven that these are personal expenses (and not loan repayments) or in what overall amount.

Having failed to prove damages, Plaintiff McClure is not necessarily without remedy, however. Maryland Courts Article § 3-412 permits the court to award "further relief based on a declaratory judgment if necessary or proper." Here, Plaintiff McClure requested that the court " . . . find and declare that Plaintiff McClure is shareholder of forty nine percent (49%) of the company known as United Community Patrol Services." Given the conclusions above, and in addition to declaring Plaintiff's rights under the Stock Purchase & Mutual Business Agreement, the court will enforce the Agreement (and today's declaration) by ordering that Defendants cause the transfer of stock to Plaintiff McClure such that he becomes an owner of 49% of United's issued stock.

Counts V, VII, VIII, and IX

The remedies Plaintiff McClure seeks in these counts are not available to him. Plaintiff McClure was not a United stockholder when he filed suit, and will not become one until Defendants comply with today's Orders. Thus, Plaintiff McClure is without standing to pursue direct remedies available to a minority stockholder or derivative claims on behalf of United. Accordingly, Counts V, VII, VIII, and IX fail.

Maryland Corps. & Ass'ns Article §1-101(bb) defines a stockholder as " . . . a person who is a record holder of shares of stock in a corporation. . ." On formation, United was authorized to issue 1000 shares of capital stock. It opted for the form of stock certificate annexed to its Organizational Resolutions. This certificate provided that stock was " . . . transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed." Of the authorized 1000 shares, Ms. Sepehri purchased 275 and Mr. Sepheri purchased 225. The remaining 500 shares were never purchased, apparently. Upon signing the Stock Purchase & Mutual Business

Agreement, Mr. Sepehri and Ms. Sepehri never transferred any stock to Mr. McClure, and no such transfers were recorded on United's stock ledger. Accordingly, Plaintiff never became a stockholder.

In Count V, Plaintiff seeks a Receivership to remedy minority shareholder oppression, and relies on Maryland Corps. & Ass'ns. Article § 3-413(b)(2). This statute provides in pertinent part "(b) . . . any stockholder entitled to vote in the election of directors of a corporation may petition a court of equity to dissolve the corporation on grounds that . . . (2) The acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent." Maryland Corps. & Ass'ns. Article § 3-413(b)(2). This statute is made applicable to close corporations such as United by Maryland Corps. & Ass'ns. Article § 4-602(a), which provides that "(a) Any stockholder of a close corporation may petition a court of equity for dissolution of the corporation on the grounds set forth in § 3-413 of this article or on the ground that there is such internal dissension among the stockholders of the corporation that the business and affairs of the corporation can no longer be conducted to the advantage of the stockholders generally." Plainly read, § 3-413's remedies are limited to "stockholders," and as a result, Plaintiff McClure is without standing to pursue them.

Plaintiff McClure's reliance on *Edenbaum v. Schwarcz-Osztreicherne,* 165 Md. App. 233, 258 (2005)[7] does not prompt a different conclusion. In *Edenbaum*, appellee, the party claiming oppression, was a stockholder and a former employee of a closely-held corporation, not one who claimed a contractual right to corporate stock of a close corporation.[8] Thus, the

[7] See Paragraphs 49-51 of Plaintiff's Proposed Findings of Fact and Conclusions of Law.

[8] Here, unlike *Edenbaum*, Plaintiff McClure does not claim that he was an employee of United, and makes no employment-based claims against United, such as for breach of employment contract or other wrongful termination.

Edenbaum court had no occasion to determine whether oppression claims might lie for one who is not a record stockholder of a close corporation. Given that Plaintiff McClure has provided no other basis for reading the statutory definition of "stockholders" to include those who have a contractual right to become stockholders, Count V will be denied.

Count IX fails for similar reasons. In Count IX, Plaintiff claims that because he is a minority stockholder of United, Defendants owed him a fiduciary duty, were required to disclose United's financial condition to him, and were otherwise required to allow him to inspect United's books and records. Certainly, a "stockholder" has certain inspection rights in the books and records of a corporation, *see* Maryland Corps. & Ass'ns Article §2-512 and 513, but Plaintiff McClure is not yet a "stockholder" of United. Nor has he identified any contractual, or other basis, for requiring that United disclose its financial condition to him or permit inspection of its books and records. On plain reading, the Stock Purchase & Mutual Business Agreement affords no such rights. Accordingly, Count IX will be denied.

Plaintiff McClure's not being a stockholder also prevents him from pressing derivative claims on behalf of United. To maintain a derivative action on behalf of a corporation against its officers and directors, one must be a shareholder at the time of the wrongs complained of. Known as the "contemporaneous ownership rule,"[9] this requirement requires that one have "a present possessory interest" in the corporation's shares during the relevant time period. *See Danieliwicz v. Arnold*, 137 Md. App. 601, 622-23 (2001). But, a derivative plaintiff's failure to

[9] Why the contemporaneous ownership rule applies in this case is plain. As above, had Defendants transferred United's shares to Plaintiff McClure as agreed, he may have become United's majority shareholder. Because United opted to operate without a Board of Directors, as majority shareholder, Plaintiff would have had control of the corporation and the obligation of directing it. Allowing him to pursue a derivative claim for wrongs that occurred when he should have been in charge would be anomalous, to say the least.

possess the actual stock certificates is not a barrier to his proceeding provided there is no real dispute about his equitable ownership of shares. See *Berger v. Bata Shoe Co.*, 197 Md. 8, 12-14 (1951)(citing cases). Here, there was such a dispute. And because it was not resolved when Plaintiff McClure lodged the instant derivative claims, Plaintiff McClure cannot rely on an "equitable interest"[10] in United to sue on its behalf.

Plaintiff McClure's inability to press derivative claims means that Counts VII and VIII fail. In Count VII, Plaintiff McClure claims that Defendants breached their fiduciary duties as directors and officers of United by enhancing their personal wealth, self-dealing, failing to disclose United's financial condition to McClure, failing to hold regular annual meetings, usurping corporate opportunities, and taking assets of United. Count VIII claims this conduct amounted to constructive fraud. In both, Plaintiff McClure seeks compensatory and punitive damages from Defendants for himself, not United.

Notwithstanding Plaintiff's McClure's demand,[11] the claims in Counts VII and VIII belong to United because the wrongs alleged are injuries to United. At bottom, Plaintiff McClure's allegations are that Defendants took unsubstantiated cash withdrawals from United, and used United's funds to pay their personal expenses.[12] But, directors or officers who commit

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[10] Maryland Corps & Ass'ns Article § 2-514 permits a procedure whereby a stockholder can certify that shares of stock in his, hers, or its name are held for another's account. Here, no one has suggested that United adopted such a procedure or that Defendants actually held a portion of their United shares for Plaintiff's benefit.

[11] In their proposed Findings of Fact and Conclusions of Law for Counts VII and VIII, Plaintiffs characterize their request for relief as being on behalf of Plaintiff McClure *and* United. *See* Plaintiffs' Proposed Findings of Fact and Conclusions of Law at Paragraphs 62 and 68. Because Plaintiffs' Amended Complaint only sought recovery for Plaintiff McClure on these counts, relief on behalf of United will be not be entertained.

[12] *See* Plaintiffs' Proposed Findings and Fact and Conclusions of Law at Paragraphs 59-68.

fraud or breach of trust are liable to the corporation, not individual stockholders or creditors, and any recovery belongs to the corporation, not individual stockholders. This is the case even if directors are " . . . 'animated merely by greed or by hostility toward a particular stockholder, for the wrongdoing affects all the stockholders alike.'" *Mona v. Mona Elec. Group, Inc.*, 176 Md. App. 672, 698-99 (2007)(quoting *Waller v. Waller,* 187 Md. 185, 189-91 (1946)). Accordingly, the only vehicle for recovery is a derivative claim against the corporation. *Mona v. Mona Elec. Group, Inc.* 176 Md. App. at 706. But, because Plaintiff McClure was not a stockholder at the time of the wrongs he claims, he cannot bring a derivative claim on United's behalf to remedy these alleged wrongs.

Count VI

An Accounting may be had "...where there is a confidential or fiduciary relationship between the parties, and a duty rests upon the defendant to render an account." *P.V. Props., Inc. v. Rock Creek Vill. Assocs. Ltd. P'ship*, 77 Md. App. 77, 89 (1988). The burden of proof is on the party seeking the remedy, who must establish, by a preponderance of the evidence, that he or she has the right to an Accounting. *Golub ex rel Golub v. Cohen*, 138 Md. App. 508, 520 (2001). Here, Plaintiffs theorize that an Accounting is appropriate because Defendants have a fiduciary duty to United and Plaintiff McClure as United's minority shareholder. See Plaintiffs' Proposed Facts and Conclusions of Law at Paragraph 54.[13]

For the reasons outlined above, both of these claims fail. Plaintiff McClure is not a minority shareholder of United yet, and as a consequence, Defendants do not owe him a fiduciary duty at this time. Nor has Plaintiff identified any authority for the proposition that one

[13]Plaintiffs' Amended Complaint does not specify whether this claim is based on a confidential or a fiduciary relationship.

with a contractual right to shares can demand an Accounting. As to United, while Defendants certainly owe it a fiduciary duty, Plaintiff McClure does not yet have standing to demand an Accounting on the corporation's behalf, as same is a derivative claim. Accordingly, Count VI will be denied.

ORDER

For the above reasons, it is this 1st day of September, 2020, by the Circuit Court for Montgomery County, Maryland, hereby

DECLARED, that the Stock Purchase & Mutual Business Agreement is a valid contract, and affords Plaintiff Marquis McClure the right to receive from Defendants sufficient shares of United Community Patrol Services, Inc. ("United") such that Plaintiff McClure owns forty-nine percent (49%) of United; and it is further

ORDERED, that no later than 30 days after the entry of this Order, Defendants shall transfer sufficient shares of United to Plaintiff McClure such that he owns 49% of United, and take all other steps reasonably necessary to cause stock certificates to be issued to Plaintiff McClure and register Plaintiff McClure's stock certificates on the stock ledger of United; and it is further

ORDERED, that until such time as the above stock certificates are registered on United's stock ledger in Plaintiff McClure's name, Defendants are hereby enjoined from taking any steps, either in their individual capacity, or as stockholders, directors, or officers of United, that would diminish their, or United's ability, to comply with this Order.

ORDERED, that all other requests for relief are **DENIED**.

ANNE K. ALBRIGHT
Judge
Circuit Court for Montgomery County, Maryland