

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
Case Type: Torrens

Robert T. Ruhland and Rhonda G. Ruhland,

Petitioners,

v.

101 Farms, LLC, a Minnesota limited liability
company, Lois Becher, Jerry Becher, and
Elwin Schmidt,

Defendants.

**ORDER GRANTING
DEFENDANTS 101 FARMS,
LLC, LOIS BECHER, JERRY
BECHER'S MOTION FOR
SUMMARY JUDGMENT**

27-ET-CV-11-2040

Judge Ronald L. Abrams

The above-entitled matter came on for hearing on Petitioners Robert Ruhland and Rhonda Ruhland's Motion for Summary Judgment and Defendants 101 Farms, LLC, Lois Becher, and Jerry Becher's Motion for Dismissal or Alternatively for Summary Judgment before the Honorable Ronald L. Abrams at 1:30 p.m. on February 14, 2013 in Courtroom 1657 of the Hennepin County Government Center. Frederick R. Jacobberger, Esq., appeared on behalf of Robert Ruhland and Rhonda Ruhland (the "Petitioners"). Thomas B. Olson, Esq., and Jacqueline M. Rubi, Esq., appeared on behalf of Defendants 101 Farms, LLC, Lois Becher, and Jerry Becher (the "Defendants").

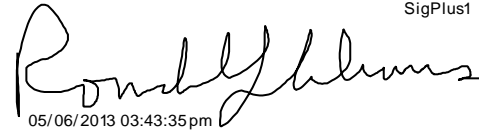
Based upon the pleadings, memoranda, affidavits, and arguments of counsel, the Court enters the following:

ORDER

1. Defendants' Motion for Summary Judgment under MINN. R. CIV. P. 50.03 is **GRANTED**.
2. Petitioners Robert Ruhland and Rhonda Ruhland's Motion for Summary Judgment is **DENIED**.
3. The Petition of Robert T. Ruhland and Rhonda G. Ruhland is **DISMISSED WITH PREJUDICE**.
4. The Petition of Robert T. Ruhland and Rhonda G. Ruhland shall be **DELETED** as Memorial on Certificate of Title No. 1231170.
5. The attached Memorandum is incorporated herein.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

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Dated: May 6, 2013

Ronald L. Abrams
District Court Judge

Memorandum

Background

Cami Freeman-Waag (“Freeman-Waag”) and Defendant Lois Becher (“Becher”) formed Defendant 101 Farms, LLC (“101 Farms”), in June 2001. Freeman-Waag and Becher formed 101 Farms for the purpose of acquiring and holding title to real property in Corcoran, MN, which is legally described as: The North 1/3 of the East ½ of the Southeast Quarter of Section 1, Township 119, Range 23 (“the Property”). At the time, Freeman-Waag was a licensed attorney and formed the entity, naming herself and Becher as members and governors of 101 Farms.

Freeman-Waag also drafted the Member Control Agreement (“MCA”) for 101 Farms. The MCA stated in part:

2.7 Title to Company Property. All property owned by the Company, whether real or personal, tangible or intangible, is owned by the Company as an entity, and no Member, individually, shall have any separate ownership interest in any such property.

3.1 Initial Capital Contributions. As their initial Capital Contributions to the Company, the Members agree to make the Capital Contributions set forth in Schedule A, which is attached hereto and made a part of this Agreement, for which they will receive the number of Units set forth on Schedule A.

101 Farms entered into a contract for deed to purchase the Property on October 15, 2001, which required a \$300,000 down payment and \$200,000 in remaining monthly payments. Freeman-Waag paid \$200,000 of the down payment, and Becher paid \$100,000. These funds were marked as capital contributions on Schedule A of the MCA. Membership units were issued based on the amounts. Subsequent monthly payments under the contract for deed maintained the two-thirds/one-third payment split.

Freeman-Waag and Becher entered into a second 101 Farms MCA in 2004.¹ This document required full membership approval prior to any assignment of interest in 101 Farms. The 2004 MCA was designed to prevent both Freeman-Waag and Becher from mortgaging or pledging the property without the knowledge and approval of the other.

101 Farms paid the contract for deed in full by October 17, 2006. 101 Farms received a warranty deed for the Property, and recorded this deed with the Examiner of Titles. The Examiner of Titles issued Certificate of Title No. 1231170 to 101 Farms as owner in fee simple of the Property. 101 Farms is still the registered owner of the Property.

In 2006 and 2007, Freeman-Waag attempted to assign her interest in 101 Farms without obtaining Becher’s approval. In April 2007, Becher brought a declaratory judgment action to

¹ For a discussion of the second MCA, *see: Becher v. Freeman-Waag*, 2010 WL 3545656 (Minn.Ct. App., Sept. 14, 2010).

determine the members of 101 Farms. The Court found that the provisions of the 2004 MCA voided Freeman-Waag's attempted transfers. The Court granted 101 Farms permission to expel Freeman-Waag as a member pursuant to paragraph 7.7 of the 2004 MCA due to her violation of the terms of the membership agreement.

When 101 Farms purchased the Property and the Examiner of Titles issued the Certificate of Title to 101 Farms, Freeman-Waag was married to Roal Waag. Their Judgement and Decree was entered on December 19, 2008.² Roal Waag was awarded any interest Freeman-Waag "may have, if any," in the Property. Roal Waag transferred his interest in the Property to Petitioners Robert Ruhland and Rhonda Ruhland ("Petitioners") by quitclaim deed on July 7, 2011. Petitioners are Roal Waag's sister and brother-in-law.

Analysis

Petitioners commenced this action before the Hennepin County Examiner of Titles seeking an Order determining interests in the Property on December 11, 2011. The Examiner of Titles issued an Adverse Report on March 20, 2012. The Adverse Reports states that Freeman-Waag was not the fee owner of the Property at the time of the divorce decree, and that the divorce decree only awarded Roal Waag "any interest that [Freeman-Waag] may have had, if any, in the subject land." The Adverse Report states that "record title was and is currently held by 101 Farms, LLC." On July 5, 2012, Petitioners elected to proceed. On November 5, 2012, the case was reassigned from the Hennepin County Examiner of Titles Office to District Court for the purposes of a hearing.

Petitioners brought a motion for summary judgment. Shortly thereafter, Defendants brought a motion to dismiss Petitioners' claims under Rule 12 of the Minnesota Rules of Civil Procedure, or, alternatively, for summary judgment.

A court reviews a motion to dismiss under a liberal interpretation of pleadings pursuant to Rule Eight of the Minnesota Rules of Civil Procedure. *Hedlund v. Hedlund*, 371 N.W.2d 232, 235 (Minn. Ct. App. 1985). "[T]he test is whether the facts alleged, liberally construed, entitle[] plaintiff to any relief, either legal or equitable." *Wells Fargo Home Mortg., Inc. v. Newton*, 646 N.W.2d 888, 899 (Minn. Ct. App. 2002) (citing *Lucas v. Medical Arts Bldg. Co.*, 291 N.W. 892, 894 (Minn. 1940)); *see also N. States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963) ("A claim is sufficient against a motion to dismiss based on [Rule 12.02(e)] if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded. To state it another way, under this rule a pleading will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded."). A claim should be dismissed on the pleadings "only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *Martens v. Minnesota Min. & Mfg. Co.*, 616 N.W.2d 732, 750-51 (Minn. 2000) (quoting *N. States Power Co.*, 122 N.W.2d at 29). "The reviewing court must consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party." *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003) (citing *Marquette*

² *See: In Re the Marriage of Roal E. Waag v. Cami Jo Waag*, Court File No. 27-FA-07-291.

Nat'l Bank v. Norris, 270 N.W.2d 290, 292 (Minn. 1978)); *see also*, 122 N.W.2d at 30 (“[A]ll assumptions made and inferences drawn [from the pleadings] must favor the party against whom dismissal is sought.”). “[A] complaint should be dismissed if there are no facts alleged that could support the claim.” *Rohricht v. O’Hare*, 586 N.W.2d 587, 588 (Minn. Ct. App. 1998) (citing *Elzie v. Comm’r of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980)).

“When reviewing cases dismissed for failure to state a claim on which relief can be granted, we determine only ‘whether the complaint sets forth a legally sufficient claim for relief. It is immaterial to our consideration here whether or not the plaintiff can prove the facts alleged.’” *Doyle v. Kuch*, 611 N.W.2d 28, 31 (Minn. Ct. App. 2000) (quoting *Royal Realty Co. v. Levin*, 69 N.W.2d 667, 670 (Minn. 1955)); *see also* *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997); *Nelson v. Productive Alts., Inc.*, 696 N.W.2d 841, 846 (Minn. Ct. App. 2005). “On a motion to dismiss for failure to state a claim, the district court may consider only the complaint and the documents referred to in the complaint.” *Hamann v. Park Nicollet Clinic*, 792 N.W.2d 468, 470 (Minn. Ct. App. 2010) (citing *Martens* 616 N.W.2d at 739 n. 7).

When matters outside the pleadings are presented to a court considering a motion to dismiss and those external matters are not excluded by the court when it makes its determination, the motion to dismiss shall be treated as one for summary judgment. Minn. R. Civ. P. 12.02. A court may, however, consider an entire written contract when the complaint refers to the contract and the contract is central to the claims alleged. *In re Hennepin co. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 497 (Minn. 1995). Other courts have found treatment of a motion as a motion to dismiss to be appropriate when the complaint references the extrinsic documents. *Martens*, 616 N.W.2d at 739 n.7; *Brown v. State*, 617 N.W.2d 421, 424 (Minn. Ct. App. 2000).

Summary judgment is an integral part of civil procedure and is designed to secure the just, speedy, and inexpensive determination of every action. *Dixon v. Depositors Ins. Co.*, 619 N.W.2d 752, 757 (Minn. Ct. App. 2000). To prevail on summary judgment, the moving party must demonstrate “there is no genuine issue as to any material fact and that [the moving] party is entitled to judgment as matter of law.” Minn. R. Civ. P. 56.03. There is no genuine issue of material fact if “the record as a whole could not lead a rational trier of fact to find for the nonmoving party.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). In order to avoid summary judgment, “the nonmoving party cannot rely on denials or general averments, but must offer specific facts to show that there is a genuine issue of material fact for trial.” *Southcross Commerce Ctr., LLP v. Tupy Properties, LLC*, 766 N.W.2d 704, 707 (Minn. Ct. App. 2009) (citing Minn. R. Civ. P. 56.05; *DLH, Inc.*, 566 N.W.2d at 69).

At the summary judgment stage, a court must view the facts in the light most favorable to the non-moving party. *See Sayer v. Minn. Dept. of Transp.*, 790 N.W.2d 151, 162 (Minn. 2010). The non-moving party need not present “clear and convincing” or substantial evidence. *Anderson v. Minn. Dep’t of Natural Res.* 693 N.W.2d 181, 191 (Minn. 2005) (stating that a genuine issue of fact may have existed where each party’s expert affidavit supports an alternative conclusion); *see also*, *Schroeder v. St. Louis County*, 708 N.W.2d 497, 507 (Minn. 2006). However, the nonmoving party must present evidence beyond that which creates a mere metaphysical doubt about an essential element of the case. *DLH, Inc.*, 566 N.W.2d at 71. “A self-serving affidavit that contradicts other testimony is not sufficient to create a genuine issue of

material fact.” *Risdall v. Brown-Wilbert, Inc.*, 759 N.W.2d 67, 72 (Minn. 2009) (citing *Barbury v. Omnitrition Int’l, Inc.*, 533 N.W.2d 876, 881 (Minn. Ct. App. 1995)).

Plaintiffs have moved for summary judgment. The Defendants have moved to dismiss the complaint for failure to state a cause of action upon which relief can be granted. Rather than simply repeat the analysis, the court will utilize the summary judgment standard under Minn. R. Civ. P. 56.03 in determining Defendants motion.

Minn. Stat. § 508.10 provides that District Courts have “full power to inquire into the title of the land, and any right, title, interest, or estate therein, and any lien, charge, or encumbrance thereon.” “By its decree, the court shall adjudge and determine the title to the land, the nature, character, extent, and amount of all liens and encumbrances thereon, the priority as between the same, and remove all clouds from the title. The district court shall have full power and authority to make all necessary orders, judgments, and decrees and, for these purposes, the court shall always be open.” Minn. Stat. § 508.10 (2012).

It is undisputed that 101 Farms obtained the Property through a contract for deed. All payments owed under the contract for deed were made. The last payment was made on or about October 17, 2006. 101 Farms properly registered title for the Property. The Examiner of Titles issued Certificate of Title No. 1231170.

Petitioners contend that they have a two-thirds interest in the property. Petitioners state that they obtained this interest in the property as payment of a debt owed by Roal Waag. Petitioners argue that Roal Waag obtained his interest in the property as a transfer of Freeman-Waag’s interest through the divorce decree. Alternatively, Petitioners argue that Roal Waag obtained half of his interest from Freeman-Waag and held half on his own as by virtue of a resulting trust from the purchase of the Property.

A. Freeman-Wagg did not have a real property interest in the Property.

The Minnesota Limited Liability Company Act provides that a member of an LLC “has no interest in specific limited liability company property. All property of the limited liability company is property of the limited liability company itself.” Minn. Stat. § 322B.30. The MCA provides that “All property owned by the Company, whether real or personal, tangible or intangible, is owned by the Company as an entity, and no Member, individually, shall have any separate ownership interest in any such property.”

Freeman-Waag and Becher both treated their financial contributions used for the down payment on the Property as capital contributions to 101 Farms. The books and records for 101 Farms record the down payment amounts as capital contributions. The funds provided to 101 Farms purchased corresponding membership interests in the entity: two-thirds for Freeman-Waag, one-third for Becher. Freeman-Waag’s interest in the Property at the time of the divorce decree, if any, was a membership interest in 101 Farms, the owner of the Property.

Pursuant to Minn. Stat. § 322B.30 and section 2.7 of the MCA she drafted, Freeman-Waag had no real property interest in the Property. She therefore could not transfer a real

property interest in the Property to Roal Waag via the divorce decree. Roal Waag did not receive a real property interest in the Property, and therefore could not transfer a real property interest to the Petitioners.

101 Farms is the title holder of the Property. Freeman-Waag and Becher were the members of 101 Farms. Both by virtue of the explicit terms of the MCA and by operation of statute, 101 Farms is the owner of the Property, not its members. Freeman-Waag did not have any real property interest in the Property to transfer to Roal Waag. Roal Waag had no real property interest to transfer to the Ruhlands.

B. There is No Resulting Trust

Minn. Stat. § 501B.7 states that “[i]f a transfer of property is made to one person and the purchase price is paid by another, a resulting trust is presumed to arise in favor of the person by whom the purchase price is paid...” Petitioners state that the funds Freeman-Waag used for her share of the down payment for the Property, and some of the monthly payments on the balance, were paid directly by Freeman-Waag to the Property’s seller. Petitioners argue that the form of these payments mean that the purchase price of the Property was paid not by 101 Farms, but by another. They allege that as a result of these payments, the Property is held in a resulting trust on behalf of Freeman-Waag under the presumption arising from Minn. Stat. § 501B.7. Additionally, Petitioners argue that some of those funds were actually provided by Roal Waag, and were meant to purchase the property on his behalf. Petitioners state that Roal Waag’s provision of some of those funds entitles him to a resulting trust of his own under Minn. Stat. § 501B.7.

A resulting trust does not arise when “the person by whom the purchase price is paid manifests a contrary intention.” Minn. Stat. § 501B.07(1). Freeman-Waag and Becher formed 101 Farms *for the purpose* of purchasing the Property. They created documents governing their financial rights, membership interests, and control of 101 Farms. Specifically, the MCA provides that “[a]s their initial Capital Contributions to the Company, the Members agree to make the Capital Contributions set forth on Schedule A,” and defines Capital Contributions to include “the agreed upon fair market value of property contributed to the Company.” Schedule A lists contributions of \$200,000 from Freeman-Waag and \$100,000 from Becher. A corresponding two-thirds of the membership interests were assigned to Freeman-Waag and one-third to Becher. Freeman-Waag and Becher were the formative and only members of 101 Farms. Purchasing this property was the purpose for which 101 Farms was formed. A member’s interest in an LLC is personal property pursuant to Minn. Stat. § 322B.30, subd. 1, not a real estate interest subject to adjudication in a proceeding subsequent in accordance with Minn. Stat. § 508.71, subd. 2. 101 Farms does not hold the Property in trust, but rather, owns the Property, and its members have ownership rights in 101 Farms.

When 101 Farms was formed, Freeman-Waag was an attorney licensed to practice law in Minnesota. She drafted the 101 Farms documents, including the MCA, which makes note of the original capital contributions from the members, and specifically states that any property held by 101 Farms is the property of the LLC and not of the individual members. She was fully aware of the effects of her drafting, did not intend to create a resulting trust, and expressed this intention

through the explicit terms of Section 2.7 of the MCA (“All property owned by the Company, whether real or personal, tangible or intangible, is owned by the Company as an entity, and no Member, individually, shall have any separate ownership interest in any such property.”).

Petitioners cite a quintet of cases from other jurisdictions for the proposition that becoming a member of an entity and voluntarily allowing legal title to the property they have paid for, in whole or in part, to be transferred to the entity does not indicate “contrary intent” for the purpose of defeating the presumption of a resulting trust. None of the cases Petitioners cite serve as binding precedent and all are distinguishable.

Ealy v. Ealy, 48 Fed. Appx. 564 (8th Cir. 2005), was a bankruptcy case arising out of Arkansas where the mortgage was foreclosed upon. The property was held by an LLC. The court found it was held in trust for the members of the LLC. However, unlike the present case, there were no facts establishing clear intent for the LLC to hold the property. *Staffacher v. Great Falls Public Service*, a 1935 case decided by the Montana Supreme Court, held that a resulting trust applied when a party paid for the purchase of a property for a corporation, but received nothing from the corporation as consideration for his payment. 43 P.2d 647 (Mont. 1935). In contrast, Freeman-Waag was compensated for her purchase with a membership interest in 101 Farms. *Marston v. Marston*, a 1949 case decided by the Oregon Supreme Court, concerned a plaintiff who did not understand the difference in her ownership rights between ownership outright and ownership of the property by a corporation predominantly owned by another. 187 P.2d 832 (Or. 1949). There was no confusion about the rights under the undisputed facts of this case. Freeman-Waag drafted the documents governing ownership of the Property, and then drafted the 2004 MCA to increase the limitations on herself and Becher. *Crymes v. Crymes*, 242 S.E.2d 30 (Ga. 1979) arose out of a marriage dissolution. Husband and wife were the sole officers and shareholders of a closely held corporation. The trial court found that the equitable ownership of the corporation was vested equally in the husband and the wife. Therefore, husband was awarded one-half of the interest in the properties purchased by the corporation. In this case, ownership of 101 Farms was explicitly divided between Freeman-Waag and Becher pursuant to their contributions to the corporation.

The fifth case cited by Plaintiffs is *Shew v. Coon Bay Loafers, Inc.*, 455 P.2d 359 (Wash. 1969). A corporation was formed to facilitate the joint ownership of leisure property by six friends. The corporation bought that property and each of the members paid proportional amounts of the assessments. Some of the friends later became interested in buying a second property, but not all of the corporation members were interested. The five who were interested in the purchase agreed to have the corporation hold the title, but that they would split the payments amongst themselves. The Plaintiff was one of those five. The Plaintiff later decided to leave the corporation and was paid money in return for his equity in the corporations’ assets. However, he was not repaid any portion of the money he had paid toward the second property. The court held that he was entitled to an ownership interest, and the corporation held that interest in trust for him. *Id.* at 366. Again, that is not the case here: Freeman-Waag was compensated for her share of the property with a membership interest in 101 Farms.

Finally, Petitioners contend that Roal Waag, Freeman-Waag’s then-spouse, was entitled to a one-third interest in the Property himself. Petitioners state that Roal Waag provided

\$100,000 of Freeman-Waag's portion of the down payment on the Property, which was paid out of an account where Roal Waag and Freeman-Waag each deposited \$100,000. Petitioners argue that even if Freeman-Waag showed contrary intent through the formation and use of 101 Farms, Roal Waag did not show that contrary intention. Petitioners argue there is a resulting trust in Roal Waag's favor for the portion of the Property his funds purchased.

This argument is not persuasive. Petitioners state that Freeman-Waag and Roal Waag transferred their funds to a joint account, and then the funds were transferred to the seller by Freeman-Waag. Freeman-Waag formed the entity which purchased the Property, and Roal Waag "did not know what entity had been formed to be the buyer." Roal Waag was aware that Freeman-Waag used the funds to pay part of a down payment on the Property, and trusted Freeman-Waag to purchase the Property in the proper way. He "would not have been concerned if [he] had known." By his own words, Roal Waag did not know and was not concerned about the form ownership of the Property took. He exhibited the intent to allow Freeman-Waag to choose the form of ownership of the Property. Roal Waag is not entitled to a resulting trust based on his lack of knowledge or concern over the form ownership of the Property took.

Finally, Petitioners are not without remedy. Petitioners may have a cause of action against Freeman-Waag for the membership interests she received by virtue of Roal Waag's alleged contribution. *See: In re Wellington Apartment, LLC*, 350 B.R. 213 (A resulting trust may be imposed on a bad-acting member's interest in an LLC and not on the property).

Conclusion

Petitioners have not raised any genuine issue of material fact that would prevent the Court from granting Defendants' Motion for Summary Judgment. Consequently, the Court grants Defendants 101 Farms, LLC, Lois Becher, and Jerry Becher's motion for summary judgment. Petitioners Robert Ruhland and Rhonda Ruhland's motion for summary judgment is denied.

R.L.A.