

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND**

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FRAMINGTON CVS., INC., FAIRLANE CVS, INC.,  
BRIARWOOD CVS, INC., MARLEY STATION CVS, INC.,  
STERLING HEIGHTS, CVS, INC., GAITHERSBURG  
MALL CVS, INC., FAIR OAKS CVS, INC., and  
STAMFORD TOWN CENTER CVS, INC.,  
Plaintiffs,

V.

Case No: 2002-045081-CK  
Hon. Deborah G. Tyner

WESTFARMS ASSOCIATES, FAIRLANE TOWN  
CENTER, BRIARWOOD; TKL-EAST, LAKESIDE MALL,  
RICH-TAUBMAN ASSOCIATES, FAIRFAX ASSOCIATES,  
LAKEFOREST ASSOCIATES and  
JOHN DOES 1 through 7,  
Defendants.

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**OPINION AND ORDER**

At a session of said Court held in the Courthouse in  
Pontiac, Oakland County, Michigan on **APR 15 2003**

PRESENT: DEBORAH G. TYNER, Circuit Judge

Before the Court is Defendants' motion for summary disposition of Plaintiffs' complaint alleging breach of contract, breach of fiduciary duty and unjust enrichment related to common area maintenance (CAM) charges at various malls. Defendants also seek a protective order and Plaintiffs have filed a motion to compel production of documents.

The CAM charges are paid on a monthly basis and are estimates. The Lease requires that, annually, the Landlord furnish tenant a statement of the "actual amount of Tenant's proportionate share of such cost and expenses" for the preceding year. The Defendants contend that they complied with the Lease provision in providing such reconciliation statements. The

Plaintiffs however, have submitted the affidavit of David R. Pryor, which challenges whether the statements reflect the “actual amount” of the tenant’s proportionate share.

Since the Lease agreement does not provide that their reconciliation statements are conclusive evidence of the correct amount, as was the case in Saada v King of Prussia Associates, 1989 WL 38627 (E.D.Pa.), and since the agreement does not otherwise preclude litigation, the motion is denied with regard to the Breach of contract claim in count I.

Defendants also argue, in the alternative, for partial summary disposition with regard to the statute of limitations. Statements submitted within the limitations period are timely regardless of whether they relate to charges for 1995 or 1994. Further, the Defendants’ motion does not consider the tolling as a result of the prior filing in US District Court. Additionally, there may be fraudulent concealment defenses to the statute of limitations argument. Since there has been no discovery to date, this issue is not ripe for summary disposition. The Defendant’s request for partial summary disposition as to the breach of contract claim is also denied.

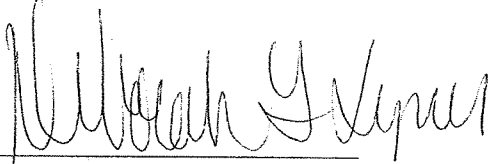
Next, with respect to the breach of fiduciary duty claim, the Plaintiffs have stated a claim upon which relief may be granted. In PV Properties v. Rock Creek Village Associates Limited Partnership, 77 Md.App. 77, 549 A.2d 403 (1988), the Court held that there was a limited fiduciary relationship between the landlord and the tenant where the landlord maintained exclusive control over the records which documented its expenses for maintenance and the tenant was required to pay its pro rata share of the expenses. The tenants in PV Properties, like those in this case, had no control over how their money was spent and had to place their trust in the landlord’s good faith. Under those facts, the court in PV Properties held that there was a limited fiduciary relationship. Accordingly, the motion is denied with regard to Count II.

Finally, with regard to the unjust enrichment claim, the Defendants motion is denied. There may be grounds for an unjust enrichment claim with respect to one of the plaintiff's, Sterling CVS.

Defendants' motion for protective order is denied. Defendants motion seeks to prevent the discovery of any of the documents requested. Defendants have not established good cause for such a broad protective order. MCR 2.302(C).

Plaintiffs' motion to compel production of documents is granted.

IT IS SO ORDERED.

  
HON. DEBORAH G. TYNER