

Dated: June 15, 2023



*Daniel P. Collins*  
Daniel P. Collins, Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA**

In re	)	Chapter 11 Proceedings
	)	
<b>RYBEK DEVELOPMENTS, LLC,</b>	)	Case No: 2:21-bk-07697-DPC
	)	
<b>Debtor.</b>	)	<b>UNDER ADVISEMENT ORDER RE</b>
	)	<b>CLAIMANTS' MOTION FOR</b>
	)	<b>RECONSIDERATION</b>
	)	
	)	(Not for Publication – Electronic
	)	Docketing ONLY) <sup>1</sup>
	)	

Before this Court is the Motion (“Motion for Reconsideration”)<sup>2</sup> of Sandra Williamson (“Williamson”) and Manny Guyot (“Guyot”) (collectively, “Claimants”). Rybek Developments, LLC (“Debtor”) filed a Response (“Response”)<sup>3</sup> and Claimants filed a Reply (“Reply”).<sup>4</sup> On April 10, 2023, the Court held a hearing on the Motion for Reconsideration and took this matter under advisement. After considering the parties’ briefs, oral arguments, relevant statutes, and case law, this Court now issues this Order denying Claimants’ Motion for Reconsideration.

**I. FACTUAL BACKGROUND**

On March 26, 2013, Green Investments, LLC (“GI LLC”), a Michigan limited liability company, purchased property located at 1916 East Hayden Lane, Tempe, Arizona, 85281 (“Property”).<sup>5</sup> Dennis Green (“Green”) is the sole member of GI LLC.<sup>6</sup> After unsuccessful attempts to develop the Property, on April 4, 2014 GI LLC entered

<sup>1</sup> This decision sets forth the Court’s findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. (“Rule”) 7052.

<sup>2</sup> DE 135. “DE” references a docket entry in the bankruptcy case 2:21-bk-07697.

<sup>3</sup> DE 137.

<sup>4</sup> DE 140.

<sup>5</sup> DE 117, page 1-2

<sup>6</sup> DE 117, page 1.

1 into a Partnership Agreement (“Partnership Agreement”) with the Claimants.<sup>7</sup> The  
2 partnership is a general partnership, which confusingly goes by the same name: Green  
3 Investments LLC (“Partnership”).<sup>8</sup> The Partnership Agreement called for the Claimants  
4 to invest \$150,000 into the Partnership for the “Construction and Sale” of the Property.<sup>9</sup>  
5 Green (“Managing Partner”) was designated as the managing partner.<sup>10</sup> The Partnership  
6 Agreement explicitly states that title to all Partnership property remains in the name of  
7 the Partnership and that no partner has any ownership interest in Partnership property.<sup>11</sup>  
8 GI LLC was to receive 50% of profits of the Partnership.<sup>12</sup> The Claimants were to receive  
9 the other 50% of the Partnership’s profits.<sup>13</sup> The Partnership Agreement did not define  
10 “profits” or “partnership property.”<sup>14</sup> It is disputed as to whether Partnership profits were  
11 ever realized or even whether the Property was an asset of the Partnership or was simply  
12 retained by GI LLC.

13 GI LLC granted a lien on the Property in favor of Capital Fund I, LLC (“Capital  
14 Fund I”).<sup>15</sup> Capital Fund I, in turn, assigned that deed of trust to Capital Fund II LLC  
15 (“Capital Fund II”).<sup>16</sup> The assignment of deed of trust was recorded in Maricopa County  
16 on February 27, 2015.<sup>17</sup> On February 23, 2016, the Property was sold by GI LLC to  
17 Debtor to avoid Capital Fund II’s threatened foreclosure.<sup>18</sup> As a part of that sale, GI LLC  
18 retained a \$215,000 deed of trust against the Property.<sup>19</sup> Subsequently, Debtor granted  
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20 <sup>7</sup> DE 117, page 2.

21 <sup>8</sup> DE 117-1, Exhibit C. Although the Partnership is named Green Investments LLC, it is not a limited  
22 liability company. It is a general partnership governed by the laws of the State of Michigan. DE 117,  
23 Exhibit 1-1, C.

24 <sup>9</sup> DE 117-1, Exhibit C.

25 <sup>10</sup> DE 117-1, Exhibit C.

26 <sup>11</sup> DE 117-1, Exhibit C.

<sup>12</sup> DE 117-1, Exhibit C.

<sup>13</sup> DE 117-1, Exhibit C.

<sup>14</sup> DE 117, page 3-4.

<sup>15</sup> DE 117-2, Exhibit E.

<sup>16</sup> DE 117-2, Exhibit F.

<sup>17</sup> DE 117-2, Exhibit F.

<sup>18</sup> DE 117, page 5.

<sup>19</sup> DE 117, page 5.

1 Sell Wholesale Funding, LLC (“Sell Wholesale”) a deed of trust to secure a \$250,000  
2 loan to Debtor.<sup>20</sup> That loan was used to pay off Capital Fund II’s lien.<sup>21</sup> GI LLC  
3 subordinated its lien on the Property to Sell Wholesale’s lien.<sup>22</sup>

4 In March of 2017, Debtor fell behind on its obligations to Sell Wholesale.<sup>23</sup>  
5 Capital Lending Partners, LLC (“Capital Lending”) agreed to loan Debtor money to pay  
6 off the Sell Wholesale loan, but only if GI LLC released its deed of trust against the  
7 Property.<sup>24</sup> GI LLC acquiesced and released its deed of trust on December 27, 2017,<sup>25</sup> at  
8 which point GI LLC retained only an unsecured claim against the Debtor in the amount  
9 of approximately \$215,000.

10 Debtor filed for chapter 11 bankruptcy on October 13, 2021.<sup>26</sup> The Claimants filed  
11 proof of claims in the amount of \$283,333.33 (Guyot’s Proof of Claim) and \$141,666.67  
12 (Williamson’s Proof of Claim).<sup>27</sup> The Debtor objected to the Guyot Proof of Claim<sup>28</sup> and  
13 the Williamson Proof of Claim.<sup>29</sup> The Claimants filed responses to those objections.<sup>30</sup>  
14 Those objections have not been resolved.

15 With this Court’s approval the Debtor sold the Property on December 21, 2021,  
16 netting \$72,336.74 to the estate after payment of closing costs and all encumbrances.<sup>31</sup>

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21 <sup>20</sup> DE 117, page 5.

22 <sup>21</sup> DE 117, page 5.

23 <sup>22</sup> DE 117, page 5.

24 <sup>23</sup> DE 117, page 6.

25 <sup>24</sup> DE 117, page 6.

26 <sup>25</sup> DE 117, page 6.

27 <sup>26</sup> DE 1.

28 <sup>27</sup> DE 117, page 7.

29 <sup>28</sup> DE 44.

30 <sup>29</sup> DE 43.

31 <sup>30</sup> DE 46; DE 47.

<sup>31</sup> DE 117, page 8.

1     **II.    PROCEDURAL BACKGROUND**

2           On February 6, 2023, this Court held a hearing on Debtor’s and Claimants’  
3 simultaneously filed motions for summary judgment.<sup>32</sup> The Claimants’ motion argued  
4 for entry of judgment under a constructive trust theory and a state law fraudulent transfer  
5 theory.<sup>33</sup> The Debtor’s motion argued that this Court did not have jurisdiction and that  
6 there was no constructive trust or fraudulent transfer.<sup>34</sup> The Court denied both motions  
7 finding material factual issues existed relating to Debtor’s motion and standing issues  
8 and material factual disputes existed relating to Claimants’ motion.<sup>35</sup>

9     **III.   THE BRIEFS**

10    **A.    Claimants’ Motion for Reconsideration**

11           Claimants argue they have standing to pursue claims against the Debtor because,  
12 under their constructive trust theory, GI LLC was required to hold the deed of trust for  
13 the benefit of the Partnership.<sup>36</sup> Claimants contend GI LLC released its \$215,000 deed of  
14 trust against the Property, thereby breaching its duty of loyalty to the Claimants.<sup>37</sup>  
15 Additionally, Claimants argue they have standing to assert their claims against their  
16 partner, GI LLC, under both Arizona law and Michigan law.<sup>38</sup> In addition to arguing  
17 Claimants have standing, Claimants insist that their previously denied summary  
18 judgment motion should be granted.<sup>39</sup>

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23    <sup>32</sup> DE 116; DE 118.

24    <sup>33</sup> DE 118.

25    <sup>34</sup> DE 116.

26    <sup>35</sup> DE 131.

<sup>36</sup> DE 135, page 2.

<sup>37</sup> DE 135, page 4.

<sup>38</sup> DE 135, page 6-7.

<sup>39</sup> DE 135, page 1.

1           **B. Debtor’s Response**

2           Debtor responds that Claimants are confusing the issue of standing to bring their  
3 claims against a third party and the issue of jurisdiction as to where a partner can bring a  
4 claim against another partner.<sup>40</sup> Debtor notes that Claimants contend the GI LLC deed of  
5 trust was held in trust for the Partnership, yet Claimants concede that any claim against  
6 their partner is to be determined under the Partnership Agreement.<sup>41</sup> The Partnership  
7 Agreement contains a forum selection clause submitting the partners to the jurisdiction  
8 of Michigan.<sup>42</sup> In any event, Debtor maintains that the Partnership itself is the party with  
9 standing to assert claims against Debtor, not the Claimants who are merely non-managing  
10 partners in the Partnership.<sup>43</sup>

11           Debtor contends that, even if this Court were to find that Claimants have standing  
12 to assert their claims against Debtor and even if this Court had the jurisdiction to hear the  
13 claims alleged under the Partnership Agreement, the underlying summary judgment  
14 motions were also denied for many factual reasons.<sup>44</sup> The factual issues still in dispute  
15 include determining who owned the Property, an accounting of the Partnership, and any  
16 alleged wrongdoing by GI LLC.<sup>45</sup>

17           **C. Claimants’ Reply**

18           Claimants’ argue that their failure to pursue GI LLC in Michigan does not  
19 preclude their ability to assert claims against the Debtor.<sup>46</sup> Claimants conclude they have  
20 standing because Debtor admits Claimants have claims against GI LLC and it is not  
21 necessary for Claimants to first reduce such a claim to judgment under the Arizona  
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24 <sup>40</sup> DE 137, page 2.

<sup>41</sup> DE 137, page 2

25 <sup>42</sup> DE 137, page 2-3.

<sup>43</sup> DE 137, page 3.

<sup>44</sup> DE 137, page 4.

26 <sup>45</sup> DE 137, page 7-8.

<sup>46</sup> DE 140, page 2.

1 Fraudulent Transfer Act (“AFTA”).<sup>47</sup> Next, Claimants maintain that a constructive trust  
2 claim may be imposed against the transferee of an improperly transferred asset, not  
3 necessarily the transferor of the improperly transferred asset.<sup>48</sup> To bolster this claim,  
4 Claimants rely on *Turley v. Ethington*<sup>49</sup> to support the proposition that individual partners  
5 have standing to assert a constructive trust claim.

#### 6 **IV. JURISDICTION**

7 This Court has jurisdiction over this case and these issues pursuant to 28 U.S.C.  
8 §§ 1334 and 157(b)(2)(A), (B), (H), (K), and (O).

#### 9 **V. ISSUES**

10 Whether non-managing partners in a general partnership have standing to pursue  
11 the Partnership’s claims against the Debtor under Michigan partnership law and whether  
12 genuine and material factual issues prevent entry of summary judgment in this contested  
13 matter.

#### 14 **VI. DISCUSSION**

15 Claimants seek this Court’s reconsideration of the denial of their motion for  
16 summary judgment. “Bankruptcy Rule 9023 authorizes a party to move for the  
17 reconsideration of a bankruptcy court’s decision.”<sup>50</sup> “Reconsideration is granted to  
18 permit a court to correct ‘an error in interpreting the facts or the law or when there has  
19 been a significant change in the law or facts since submission of the issue to the court.’”<sup>51</sup>

20 Claimants contend this Court erred in determining they did not have standing to  
21 recover from Debtor on their two theories: (1) a fraudulent transfer theory; and (2) a  
22 constructive trust theory. Claimants’ standing to pursue each theory will be addressed  
23 after the applicable law is recounted.

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24 <sup>47</sup> DE 140, page 4.

25 <sup>48</sup> DE 140, page 4.

26 <sup>49</sup> *Turley v. Ethington*, 213 Ariz. 640 (Ariz. Ct. App. 2006).

<sup>50</sup> *In re Interstate Cigar Co., Inc.*, 285 B.R. 789, 794 (Bankr. E.D.N.Y. 2002).

<sup>51</sup> *Id.* (citing *Sundial Asphalt Co., Inc. v. V.P.C. Investors Corp.*, 147 B.R. 72, 84 (E.D.N.Y. 1992)).

1       **A. Applicable Law**

2           A partnership is governed by the state laws in which it is domiciled, absent a  
3 choice-of-law clause.<sup>52</sup> If a partner seeks to enforce its rights under its partnership  
4 agreement, the state law of that partnership agreement applies. The Partnership  
5 Agreement contains a choice-of-law provision that states the Partnership is formed “in  
6 accordance with the laws of the State of Michigan. The rights and obligations of the  
7 Partners will be as stated in the applicable legislation of the State of Michigan... except  
8 as otherwise provided here.” Accordingly, any issues that arise out of the Partnership  
9 Agreement or any claims the Claimants hold to enforce their rights under the Partnership  
10 Agreement are to be governed by Michigan law, specifically the Michigan Uniform  
11 Partnership Act.

12           Under the AFTA, a transfer is fraudulent as to a creditor if the transfer was made  
13 (1) “with actual intent to hinder, delay, or defraud any creditor of the debtor” or (2)  
14 “without receiving a reasonably equivalent value in exchange for the transfer or  
15 obligation, and the debtor either: (a) was engaged or was about to engage in a business  
16 or a transaction for which the remaining assets of the debtor were unreasonably small in  
17 relation to the business or transaction” or (b) “intended to incur, or believed or reasonably  
18 should have believed that he would incur, debts beyond his ability to pay as they became  
19 due.”<sup>53</sup> A creditor is defined as “a person who has a claim.”<sup>54</sup> A claim is defined as “a  
20 right to payment, whether or not the right is reduced to judgment[.]”<sup>55</sup>

21           The parties seem to agree that the AFTA would apply here under an appropriate  
22 fraudulent transfer cause of action. This Court agrees. Debtor/transferee is an Arizona  
23 limited liability company, the Property is in Arizona, and the transfers occurred in

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25 <sup>52</sup> J. William Callison & Maureen A. Sullivan, *Partnership Law and Practice: General and Limited*  
*Partnerships*, § 1:1 (2022—2023 ed. 2022).

26 <sup>53</sup> A.R.S. § 44-1004(A).

<sup>54</sup> A.R.S. § 44-1001(3).

<sup>55</sup> A.R.S. § 44-1001(2).

1 Arizona. Even though the AFTA is the correct fraudulent transfer law applicable here,  
2 the Claimants still must have standing under Michigan partnership law to assert the  
3 fraudulent transfer cause of action.

#### 4 **B. Standing Under Michigan Partnership Law**

5 Because the Partnership Agreement explicitly states it is governed by Michigan  
6 law,<sup>56</sup> this Court must turn to Michigan partnership law to determine whether the  
7 Claimants, in their individual capacity as non-managing general partners, have standing  
8 to sue the Debtor, a party who is not their partner and with whom the Claimants were not  
9 involved.

10 Under the Michigan Uniform Partnership Act, “[t]he property rights of a partner  
11 are (1) his rights in specific partnership property, (2) his interest in the partnership, and  
12 (3) his right to participate in the management.”<sup>57</sup> “Specific partnership property” is not  
13 defined in the Michigan Uniform Partnership Act.<sup>58</sup>

##### 14 1. M.C.L.A. § 449.24(1)

15 The use of the word “specific” in M.C.L.A § 449.24(1) suggests that a general  
16 partner does not automatically have rights in all partnership assets, but only might hold  
17 ownership rights to specific partnership property. In other words, this statute recognizes  
18 a scenario where a partner could jointly hold, with the partnership, rights in one or more  
19 partnership assets. Here, the Claimants do not have any rights in the underlying assets of  
20 the Partnership, unless a specific asset is jointly owned by the Partnership and the partner.  
21 Notably, however, the Partnership Agreement forbids such joint ownership:

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24 <sup>56</sup> DE 117, Ex. 1-1, page 20. (“By this Agreement the Partners enter into a general partnership (the  
25 “Partnership”) in accordance with the laws of the State of Michigan.”)

25 <sup>57</sup> M.C.L.A. § 449.24.

26 <sup>58</sup> The Michigan Uniform Partnership Act maintains the tenancy-in-partnership concept that was  
eliminated by the Revised Uniform Partnership Act. J. William Callison & Maureen A. Sullivan,  
*Partnership Law and Practice: General and Limited Partnerships*, § 7:12 (2022—2023 ed. 2022).



1 Title to all Partnership Property will remain in the name of the Partnership.  
2 No Partner or group of partners will have any ownership interest in such  
3 Partnership Property in whole or in part.<sup>59</sup>

4 Notwithstanding the possibility that a partner could jointly own specific partnership  
5 property under Michigan partnership law, here the Partnership's partners have all  
6 mutually agreed that no partner will have any ownership interest in any of the  
7 Partnership's property. The Partnership alone owns all its property. If the Partnership  
8 owns a cause of action against the Debtor, the Partnership alone has standing to assert  
9 that cause of action.

10 2. M.C.L.A. § 449.24(2)

11 Next, M.C.L.A § 449.24(2) indicates a partner's interest in a partnership itself is  
12 a property right of that partner. In a corporate setting, that ownership would be called  
13 equity. The Claimants' interest in the Partnership is effectively just an equity interest.  
14 That equity interest does not confer upon the Claimants standing to sue Debtor on an  
15 alleged claim that is a claim of the Partnership.

16 3. M.C.L.A. § 449.24(3)

17 M.C.L.A § 449.24(3) indicates a partner's right to participate in management of  
18 the Partnership is a property right. The Partnership Agreement states that "[a]ll the  
19 Partners will be consulted and the advice and opinions of the Partners will be obtained as  
20 much as is practicable. However, the Managing Partner [Green] will have management  
21 and control of the day-to-day business of the Partnership for the purposes stated in this  
22 Agreement."<sup>60</sup> As the Managing Partner, Green may have standing to sue on behalf of  
23 the Partnership to avoid an allegedly fraudulent transfer to Debtor. However, under  
24 Michigan partnership law, absent an order from a court with jurisdiction over the affairs  
25 of the Partnership, the Claimants do not have standing to sue Debtor on a cause of action  
26 belonging to the Partnership. This Court has not been asked to confer upon the Claimants

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<sup>59</sup> DE 117-1, Exhibit C.

<sup>60</sup> DE 117-1, Exhibit C.

1 the right to act on behalf of the Partnership, nor does this Court presume it would have  
2 the jurisdiction to do so.

### 3 **C. Genuine Issues of Material Fact Preclude Entry of Summary Judgment**

#### 4 1. Title to the Property

5 There is a genuine issue of material fact as to whether the subject Property was  
6 ever Partnership property. At all relevant times, the Property was titled to GI LLC, not  
7 the Partnership. Although the Partnership shared the name “Green Investments LLC”  
8 with GI LLC, all of the following documents reflect the Property title as being held by  
9 “Green Investments LLC, a Michigan limited liability company” and not Green  
10 Investment LLC, a Michigan partnership: (1) the warranty deed from GI LLC’s initial  
11 purchase of the Property; (2) Capital Fund II’s notice of trustee’s sale; (3) the deed of  
12 trust between GI LLC and Capital Fund I; and (4) the special warranty deed conveying  
13 the Property to Debtor.<sup>61</sup> Further, the Partnership Agreement does not suggest the  
14 Property was to be contributed to the Partnership by its partner GI LLC, even though a  
15 list of partner capital contributions, in the form of “cash or property,” is provided for on  
16 page two of the Partnership Agreement.<sup>62</sup> If the Property was never owned by the  
17 Partnership, the Partnership could not have transferred the Property. There is a genuine  
18 issue of material fact concerning ownership of the Property.

#### 19 2. Partnership Profits

20 M.C.L.A § 449.26 defines a partner’s interest in a partnership as his share of the  
21 profits and surplus. “Profits,” however, are not defined in the Partnership Agreement, nor  
22 are they defined in the Michigan statute. There is a genuine issue of material fact as to  
23 the profits of the Partnership, if any. An accounting would likely need to be done to  
24 determine such an amount. The Claimants may have a right to an accounting of the  
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26 <sup>61</sup> DE 117-1; DE 117-2; DE 117-3.

<sup>62</sup> DE 117-1, Exhibit C.

1 Partnership's property, but Debtor is certainly not a proper party to such an accounting  
2 demand.

3 Claimants argue that GI LLC was required to "hold as trustee for [the Partnership]  
4 any profits derived by him without the consent of the other partners from any transaction  
5 connected with the formation, conduct, or liquidation of the partnership or from any use  
6 by him of its property."<sup>63</sup> The Claimants must first prove that either the \$215,000 deed  
7 of trust or the Property itself was property of the Partnership. This fact is hotly contested  
8 by the parties. But even if the \$215,000 deed of trust was a Partnership asset, only a court  
9 with jurisdiction over the affairs of the Partnership could require the Partnership's assets  
10 to be held in trust for the Claimants.

### 11 3. Fraudulent Transfer Cause of Action

12 There is a genuine issue of material fact as to whether the Claimants fall within  
13 the definition of "creditors" under the AFTA with respect to the Partnership. The  
14 Claimants are more akin to equity holders than creditors of the Partnership. Further, the  
15 Claimants' right to payment may be against GI LLC or the Partnership but not against  
16 the Debtor.

17 This Court is not finding that a fraudulent transfer cause of action against Debtor  
18 does not exist. However, if there is a valid fraudulent transfer cause of action here, it is  
19 the Partnership (or perhaps the Partnership's Managing Partner [Green]) that must bring  
20 that cause of action if it was the Partnership's asset that was transferred. This Court does  
21 not have jurisdiction to order the Partnership to bring a cause of action. Given the forum  
22 selection clause in the Partnership Agreement, it appears Michigan may well be the  
23 correct court to address this question.

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<sup>63</sup> M.C.L.A. § 449.21; DE 135, page 3.

1           4. Constructive Trust Theory

2           The Claimants also request the imposition of a constructive trust. Since the parties  
3 and this Court agree the AFTA would apply to the allegedly fraudulent transfer here,  
4 Arizona’s law on constructive trust is implicated. “A constructive trust is a flexible,  
5 equitable remedy that a court may shape and impose in a variety of circumstances,  
6 especially situations where conscience demands.”<sup>64</sup> A constructive trust “is a remedial  
7 device, used whenever title to property has been obtained through actual fraud,  
8 misrepresentation, concealment, undue influence, duress,”<sup>65</sup> or a breach of a fiduciary  
9 duty.<sup>66</sup> Imposition of a constructive trust first requires establishing a party is liable under  
10 one of the above causes of action.

11           Although Claimants repeatedly assert that they have “standing to pursue Debtor  
12 on a constructive trust claim[,]”<sup>67</sup> imposing a constructive trust is not a claim at all—it is  
13 an equitable remedy. Claimants must first assert a viable cause of action and they must  
14 have standing to pursue that cause of action before a court may impose the remedy of a  
15 constructive trust.

16           Claimants heavily rely on *Turley* to support their position that they have standing  
17 under a constructive trust theory. In *Turley*, Turley and Ethington orally agreed to enter  
18 into a partnership to buy 200 acres of land.<sup>68</sup> Ethington took title to the 200-acre parcel  
19 and orally assured Turley that he would honor their 50-50 partnership arrangement.<sup>69</sup>  
20 Later, Ethington refused to acknowledge the oral partnership so Turley sued for breach  
21 of fiduciary duty, fraud, breach of the duty of good faith and fair dealing, and unjust  
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<sup>64</sup> *Cal X-Tra v. W.V.S.V. Holdings, L.L.C.*, 229 Ariz. 377, ¶ 107 (Ariz. Ct. App. 2012).

25 <sup>65</sup> *Harmon v. Harmon*, 126 Ariz. 242, 244 (Ariz. Ct. App. 1980)

26 <sup>66</sup> *Turley*, 213 Ariz. at 643.

<sup>67</sup> DE 140, page 4.

<sup>68</sup> *Turley*, 213 Ariz. at 642.

<sup>69</sup> *Id.*

1 enrichment.<sup>70</sup> Turley sought the imposition of a constructive trust.<sup>71</sup> On appeal of the trial  
2 court's dismissal order, the court of appeals held the imposition of a constructive trust  
3 was not barred by the statute of frauds. The court of appeals found that Turley pled  
4 sufficient facts to show Ethington "breached the fiduciary duty he owed to Turley under  
5 the partnership agreement."<sup>72</sup> The court of appeals went on to note that "[b]ased on the  
6 facts alleged in the complaint, the Turleys have stated a cause of action under which the  
7 doctrine of constructive trusts might apply."<sup>73</sup>

8 *Turley* is not on point. First, *Turley* addresses whether the imposition of a  
9 constructive trust was barred by the statute of frauds. The statute of fraud is not at issue  
10 in the case at hand. *Turley* also undermines Claimants' insistence that a constructive trust  
11 theory is a cause of action. The underlying cause of action contemplated in *Turley* was a  
12 breach of fiduciary duty, among others. Turley's demand that the court impose a  
13 constructive trust was simply a remedy supporting Turley's alleged cause of action. More  
14 importantly, *Turley* is not a case concerning standing. The court in *Turley* held that Turley  
15 had alleged sufficient facts to support a cause of action "under which the doctrine of  
16 constructive trusts might apply."<sup>74</sup> The *Turley* case does not even mention standing. If  
17 Claimants were entitled to seek imposition of a constructive trust, they could so only if  
18 Claimants first had standing to proceed with a cognizable cause of action.

19 Claimants mention fraud, breach of fiduciary duty, and misrepresentation (among  
20 other causes of action) that could be vehicles to impose a constructive trust. Of course,  
21 genuine issues of material fact remain as to whether there was a breach of a fiduciary  
22 duty or any fraud or misrepresentation was committed by Green or GI LLC. Again, any  
23 misdeeds by Green or GI LLC committed against the Claimants (as opposed to the  
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25 <sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 644.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

1 Partnership itself) might be properly pursued in Michigan courts, but this Court does not  
2 have jurisdiction over such Partnership disputes.

3 **VII. CONCLUSION**

4 Claimants' Motion for Reconsideration is denied. The Claimants do not have  
5 rights in the Partnership's assets, whether those Partnership assets are the subject  
6 Property, the Partnership's \$215,000 deed of trust against the Property, or the  
7 Partnership's claims against Debtor. The Partnership Agreement explicitly forbids a  
8 partner from holding rights in Partnership property. Even if the Claimants had rights to  
9 pursue the Partnership's assets or claims that could give them standing to sue Debtor,  
10 genuine issues of material fact remain. Claimants' summary judgment motion is hereby  
11 denied.

12 This Court hereby sets a status hearing on this matter at the same time as the  
13 Debtor's attorney's First Fee Application<sup>75</sup> hearing on Tuesday, June 20, 2023 at 9:00  
14 a.m.

15  
16 **ORDERED**  
17 **DATED AND SIGNED ABOVE.**

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23 **To be Noticed through the BNC to:**  
24 Interested Parties

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26 \_\_\_\_\_  
<sup>75</sup> DE 144.