STATE OF MICHIGAN

COURT OF APPEALS

RICHARD T. SAHLIN FAMILY LIMITED PARTNERSHIP, GLENN R. SAHLIN, ERIC SAHLIN, CHRISTINE A. SAHLIN, and BRUCE SAHLIN, Plaintiffs-Appellants, and BRIDGET S. VAN ARNEM, Plaintiff	UNPUBLISHED May 8, 2008
v J.P. MORGAN CHASE BANK, f/k/a NBD, f/k/a NATIONAL BANK OF DETROIT, and BODMAN LLP, Defendants-Appellees.	No. 276196 Oakland Circuit Court LC No. 2006-076164-CZ

Before: Kelly, P.J., and Owens and Schuette, JJ.

PER CURIAM.

Plaintiffs Richard T. Sahlin Family Limited Partnership ("Family LP"), Glenn R. Sahlin, Eric Sahlin, Christine A. Sahlin, and Bruce Sahlin appeal as of right the final order of Oakland Circuit Court Judge Michael D. Warren Jr. granting summary disposition to defendants J.P. Morgan Chase Bank ("Chase") and Bodman LLP pursuant to MCR 2.116(C)(7) and (10). We affirm.

Richard T. Sahlin died without a surviving spouse on July 26, 1996. Sahlin[1] had been the president and chairman of Sahlin International, Inc. ("SII"), a Michigan corporation that made machinery for the automobile industry. Before his death, he created the Richard T. Sahlin Trust

[1] For the sake of clarity, we will refer to Richard Sahlin by his last name and his children by their first names in this opinion.

("the trust"), naming himself the first trustee and National Bank of Detroit and attorney Stephen Greenhalgh as co-successor trustees. After a series of mergers, National Bank of Detroit became part of Chase. Greenhalgh is a partner with defendant Bodman LLP. Richard Sahlin's children, the individual plaintiffs in this case, were designated the beneficiaries of the trust. The provisions of the trust specified that the assets would be divided into five shares and held in the trust until each beneficiary reached 50 years of age.[2]

In 1998, Chase, in its capacity as trustee, entered a purchase agreement on behalf of the trust in which it agreed to sell, in exchange for $1,026,000, all shares of SII held by the trust to an employee stock ownership plan created by the SII management.[3] According to plaintiffs, Chase maintained a banking relationship with SII and lent money to the corporation both before and after the sale, making Chase a creditor of SII at this time.

The terms of the promissory note issued to the trust by SII as part of the stock sale indicated that a regularly scheduled payment was due on February 15, 2000. However, SII requested a four-month deferral of this payment from Chase and Greenhalgh in their capacities as trustees. Chase granted the extension and took no action against the security pledged on the note. However, according to plaintiffs, Chase became concerned that it would be unable to collect on outstanding loans that SII owed directly to it. Chase demanded that SII pay its outstanding obligations and establish a new banking relationship with another bank.

On July 24, 2000, SII received a loan in the amount of $477,839 from North Oakland Bank, pledging certain assets as collateral. The same day, the trustees executed a subordination agreement with North Oakland Bank, subordinating the trust's security interest in SII in favor of North Oakland Bank. Although plaintiffs claim that SII made a regular payment on the promissory note to the trust in October 2000, they also claim that SII used the majority of the proceeds from the North Oakland Bank loan to reduce its outstanding obligations to Chase. Soon thereafter, SII ceased operations and made no further payments to the trust on the promissory note.

Apparently the individual plaintiffs were dissatisfied with the trustees' administration of the trust in the years following Richard's death and filed various causes of action against the trustees. On August 9, 2001, the individual plaintiffs entered a settlement agreement with Chase and Greenhalgh. The agreement stated in pertinent part:

The Parties' Desire for Settlement, Mutual Releases and Discharge

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[2] Sahlin's youngest child, Bridget, was born on June 25, 1960, and therefore would turn 50 years of age on June 25, 2010.

[3] SII paid the trust $428,025.40 on September 23, 1998 and executed a promissory note for the balance of the price. SII paid the trust $103,081 toward the note on October 12, 1998. The promissory note was secured by SII stock and a security agreement covering all the assets of SII including, but not limited to, accounts receivable, machinery, equipment, and patents.

17. The Beneficiaries[4] and the co-fiduciaries[5] mutually desire to settle all present and future disputes concerning the Estate and Trust, avoid further litigation and eliminate any uncertainty that may exist regarding the validity, interpretation or administration of the Trust, including matters related to the accountings or other matters which were or could have been raised in the Estate or Trust proceedings, and avoid the continued expenses of litigation and the potential filing of further lawsuits and claims.

18. [Chase] and all other parties further desire to compromise and forever terminate and release all claims by any of the Hoops Clients[6] concerning their individual claims.

19. [Chase] is currently owed fiduciary fees for the period July 26, 1998 through May 26, 2001 in the amount of $56,789 and extraordinary fiduciary fees substantially exceeding $40,000 and additional fiduciary fees continuing to accrue (the "Unpaid [Chase] Fiduciary Fees").

20. As part of the resolution of the overall settlement of all matters as stated in this Agreement but not otherwise, [Chase] is willing to assign as set forth below its right to $40,000 of the Unpaid [Chase] Fiduciary Fees (as consideration for settlement of the claims identified . . . above) and to waive the remainder of the unpaid [Chase] Fiduciary Fees (in additional consideration for the other agreements set forth below). The Hoops Clients are willing to accept this said assignment in full settlement and compromise of the disputed individual claims. The Hoops Clients have agreed among themselves and with their counsel in writing on how and in what amounts the assigned portion of the Unpaid [Chase] Fiduciary Fees should be distributed to themselves or others if and when collected from the Trust.

21. Each of the Beneficiaries has represented to the co-fiduciaries and to each other that he or she is competent, in good health, and that he or she has not assigned any part of his or her interest in the Estate or Trust to any person or entity, it being understood that the co-fiduciaries and the other Beneficiaries have relied on such representations in entering into this Agreement.

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[4] Richard Sahlin's five children are identified as the beneficiaries in the settlement agreement.

[5] Greenhalgh and Chase are identified as the co-fiduciaries in the settlement agreement.

[6] Attorney Frederick K. Hoops of Kitch, Drutchas, Wagner, DeNardis & Valitutti, PC, represented Glenn and Eric regarding separate claims that the men brought against Chase regarding fraud, negligent misrepresentation, and other alleged wrongdoing arising from lost residential property investments. Glenn and Eric are identified as the "Hoops Clients" in the settlement agreement.

23. The parties hereto, with the assistance of their counsel, have negotiated this Agreement in good faith.

NOW, THEREFORE, in consideration of their mutual promises, the parties agree as follows:

1. For the purpose of this Agreement, the "Effective Date" shall be the later of the date of entry of a final, unappealable order of the court approving this Agreement, or the date that any appeals from an order approving this Agreement are finally resolved in favor of this Agreement.

2. Upon the Effective Date, the following shall occur:

> a. [Chase] shall deliver a release and assignment . . . . By the assignment, [Chase] shall assign, to the client trust account . . . and for the benefit of the Hoops Clients as they may decide on among themselves, [Chase's] right to $40,000 of the Unpaid [Chase] Fiduciary Fees. By the release, [Chase] shall waive its right to payment of the remainder of the Unpaid [Chase] Fiduciary Fees.
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> d. Counsel for each Beneficiary shall approve for entry . . . a dismissal with prejudice of all objections, challenges, petitions, claims, or other proceedings of any nature filed on behalf of the Beneficiary with respect to the Trust and/or Estate or in any manner pertaining to Greenhalgh or [Chase].
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> e. The Estate of Richard T. Sahlin shall be closed, and an order . . . shall be entered discharging Greenhalgh and [Chase] as Co-Personal Representatives.
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> f. An Order shall be entered . . . terminating the Trust of Richard T. Sahlin and discharging Greenhalgh and [Chase] as successor Co-Trustees.
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> g. The co-fiduciaries shall distribute the remaining assets of the Trust and any separate trusts for any of the five children of Richard T. Sahlin, outright and free of trust, to [the Family LP] . . . .[7]

[7] The Family LP was created to receive these trust assets. Sahlin Management, LLC, was named the general partner of the Family LP, and each child of Sahlin was named a limited partner in the Family LP, holding a 20 percent interest in its assets. Although the future existence of the Family LP was anticipated at the time the parties signed the settlement agreement, the state of Michigan did not file the certificate of limited partnership and recognize the formation of the Family LP until January 10, 2002.

3. From and after the Effective Date, the Beneficiaries and [the Family LP] shall jointly and severally protect, indemnify, and hold harmless each of Greenhalgh and [Chase], and each of their present and former agents, employees, officers, shareholders, and attorneys, from and against all loss, damage or expense (including legal fees and expenses) which any of them may pay, sustain or incur as a result of any action, proceeding, claim or demand (i) arising out of or in any manner related to the Estate or Trust or this Agreement; or (ii) by reason of any action or proceeding brought to set aside or invalidate this Agreement for any reason whatsoever. The amount of any Beneficiary's indemnification obligations under this paragraph shall not exceed the value of the distributions to that Beneficiary from the Estate and/or Trust.

4. Each signatory of this Agreement hereby waives his, her or its right to appeal any order or decree of any court approving this Agreement or any action contemplated hereby, and all orders contemplated by this Agreement shall contain such provisions.

* * *

6. Each Beneficiary hereby acknowledges that he or she has consulted with legal counsel prior to executing this Agreement and understands his or her rights under the Trust and Michigan law.

7. Each person's consent to this Agreement shall be binding upon his, her or its heirs, personal representatives, successors in interest and assigns to the maximum extent allowed by Michigan law, including under MCL 700.1403.

8. This Agreement may be executed in counterparts, each of which shall constitute an original.

9. This Agreement supercedes all prior agreements and understandings between the parties with respect to all matters relating to the Estate and/or Trust, and may not be changed or terminated orally, and no attempted change or termination of any of the provisions hereof shall be binding unless in writing and signed by all parties. In executing this Agreement, no signatory has relied upon representations from any source not contained herein.

George G. Kemsley, counsel for the co-fiduciaries, Thomas E. Owen, special counsel for Chase, Lyle Dahlberg, Vice President and Trust Officer for Chase as well as co-personal representative and co-successor trustee, and Greenhalgh, co-personal representative and co-successor trustee, signed the agreement. Eric, Glenn, and Bruce also signed the agreement and Frederick Hoops signed in his capacity as counsel for the brothers, Bridget signed the agreement and Drew M. Levitt signed in his capacity as her attorney, and Christine signed the agreement, with Joseph L. Grand signing in his capacity as her counsel. Grand also signed the agreement as the co-managing member of Sahlin Management, LLC, the general partner in the Family LP.

Soon thereafter, Christine, Bridget, Glenn, and Bruce each signed individual instruments of release. Each instrument of release identified the child as the releasor and stated, in pertinent part:

> NOW, THEREFORE, to induce other persons to execute and to act in compliance with the Settlement Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged:
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> 1. The persons, entities and parties individually and collectively released and intended to be benefited by this Instrument of Release (the "Parties Released") are: (a) [Chase] . . . both individually and its capacities as co-personal representative of the Estate and co-successor trustee of the Trust . . . ; (b) Stephen I. Greenhalgh . . . ; (3) [sic] the law firm of Bodman, Longley & Dahling LLP and all of its present and former attorneys and staff members . . . .
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> 2. Except for claims arising under the Settlement Agreement and any documents and instruments executed and delivered on or after the date hereof in connection with the Settlement Agreement, Releasor, for himself and his heirs, personal representatives, successors and assigns, does hereby release, waive, satisfy and forever discharge each and all of the Parties Released from and against any and all claims, actions, causes of action, liabilities, demands, rights, payment obligations, damages and costs of every kind or nature, known or unknown, accrued or unaccrued, actual or contingent, from the beginning of time to the date hereof, including but not limited to any claims, counterclaims, cross-claims, objections, surcharges, offsets, or demands for accountings, which were asserted or could have been asserted in the Trust or Estate proceedings, and including any claims or demands which could be asserted by or in the name of Sahlin International, Inc.
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> 3. Releasor . . . further does hereby release, waive, satisfy and forever discharge all of the Parties Released from and against each and every claim, complaint, or grievance of whatever kind and description, arising out of or related to termination of the Estate and Trust, potential deviations from the terms of the trust instrument as amended, distribution of the assets of the Estate and/or Trust, or arising out of or related to compliance with the terms of the Settlement Agreement.
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> 4. Releasor . . . further does hereby release, waive, satisfy and forever discharge all of the Parties Released from and against each and every claim, complaint, or grievance of whatever kind and description, arising out of or related to [Chase's] assignment of the client trust account . . . for the benefit of Glenn Sahlin and Eric Sahlin, as consideration for their release of [Chase] from certain individual damages claims . . . .
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> 5. Releasor . . . further does hereby waive any right to seek accountings or otherwise to demand information of any nature or description from [Chase] or Stephen I. Greenhalgh or their officers, employees, agents, representatives and attorneys.

> 6. Releasor . . . further covenants not to file, bring, encourage, direct, or otherwise support legal action of any nature or type against the Released Parties or any of them relating, directly or indirectly, to any claim or other matter released or waived or purported to be released or waived by this instrument. Releasor shall indemnify, warrant and defend the Parties Released against and from any claims or other matters which have been released, or which purport to have been released, by this instrument, and against any costs or expenses, including without limitation legal fees and expenses, incurred by the Parties Released in defending or opposing any such matters.
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> 7. Releasor warrants and represents that he had independent legal advice in connection with the execution of this Instrument of Release and executed it knowingly and voluntarily.

The individual plaintiffs also stipulated, in a separate order presented to the Oakland County Probate Court, as follows:

> to the entry of an order dismissing with prejudice and without costs or attorney fees, any and all actions, suits, claims, challenges, petitions, objections, defenses, or other proceedings of any nature filed by or on behalf of any of them with respect to any of the following: (1) the Estate or Trust of Richard T. Sahlin; (2) [Chase] . . . (individually or in any capacity including as Co-Personal Representative of the Estate or as Co-Successor Trustee of the Trust of Richard T. Sahlin); (3) Stephen I. Greenhalgh (individually or in any capacity including as Co-Personal Representative of the Estate or as Co-Successor Trustee of the Trust of Richard T. Sahlin); (4) any law firms which provided services to or on behalf of [Chase] or Stephen I. Greenhalgh in connection with the Estate or Trust of Richard T. Sahlin (including Bodman, Longley & Dahling LLP . . .); or (5) any other beneficiary of the Trust or Estate.

Soon thereafter, the Oakland County Probate Court approved the settlement agreement and ordered its enforcement. Accordingly, the trust was terminated, the trustees were ordered to distribute the remaining assets and liabilities of the trust as directed by the settlement agreement, and the trustees were then discharged. The probate court also entered an order dismissing with prejudice "any and all actions, suits, claims, challenges, petitions, objections, defenses, or other proceedings of any nature" filed by the individual plaintiffs against, among others, the trust, Chase, Greenhalgh, and Bodman. Finally, the probate court entered another order again approving the settlement, ordering its enforcement, and closing Sahlin's estate.

Plaintiffs filed a complaint against defendants on June 24, 2006, alleging breach of fiduciary duties and conspiracy. Plaintiffs claimed that the trustees executed the subordination agreement with the bank in order to benefit Chase at the expense of the trust. This, they claimed, constituted a breach of their fiduciary duties to plaintiffs. Plaintiffs also claimed that because the security interest held by the trust was subordinate to that held by North Oakland Bank, the trust "suffered a complete loss of the remaining principal balance and all accrued interest under the Promissory Note." In response, defendants moved for summary disposition. On January 25, 2007, the trial court granted defendants' motion pursuant to MCR 2.116(C)(7) and (10).

First, plaintiffs argue that the trial court erroneously applied the doctrine of res judicata to bar it from raising claims of breach of fiduciary duties, conspiracy, and fraud arising from defendants' trusteeship because the parties never litigated these claims. We disagree. We review de novo a trial court's grant of a motion for summary disposition pursuant to MCR 2.116(C)(7) and (10). *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). We also review de novo the question whether res judicata bars a subsequent action. *Adair v Michigan*, 470 Mich 105, 119; 680 NW2d 386 (2004).

In *Adair*, *supra* at 121, our Supreme Court held,

> The doctrine of res judicata is employed to prevent multiple suits litigating the same cause of action. The doctrine bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first. *Sewell v Clean Cut Mgt, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001). This Court has taken a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not. *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999).

The trial court correctly applied the doctrine of res judicata to determine that plaintiffs' cause of action was barred.

First, the original action in this case was decided on its merits. The litigation that ensued between the parties regarding defendants' trusteeship was resolved when the parties entered the settlement agreement and release in 2001. A settlement is a judgment on the merits for the purpose of applying the doctrine of res judicata. *Ditmore v Michalik*, 244 Mich App 569, 576; 625 NW2d 462 (2001).

Both disputes also involve the same parties and their privies. The parties do not dispute that the individual plaintiffs are the same as in the original litigation and that defendants or their privies were parties to the original actions in this case. Plaintiffs argue that because the Family LP did not exist at the time the settlement agreement and release were executed, it is not bound by these agreements. Regardless, the Family LP is in privity with the original plaintiffs. "To be in privity is to be so identified in interest with another party that the first litigant represents the same legal right that the later litigant is trying to assert." *Adair*, *supra* at 122. In the original litigation, plaintiffs, as beneficiaries of the trust, challenged defendants' administration of the trust, especially with regard to defendants' decisions concerning their distribution of trust assets, allocation of expenses, and overall management of the trust. After the parties entered the settlement agreement, plaintiffs created the Family LP to become a surrogate for the original trust; the individual plaintiffs contributed their respective shares of the trust assets to the Family LP, named Sahlin Management, LLC, the general partner and themselves limited partners, and assigned Sahlin Management the duty of distributing the property held by the Family LP to the individual plaintiffs. The Family LP is the legal entity holding the trust assets that the individual plaintiffs were trying to protect in the original litigation against defendants. Further, the Family LP is asserting the same right that the individual plaintiffs asserted in the original action, namely, the right to recover damages to compensate for

defendants' mismanagement of the trust. Accordingly, the Family LP is in privity with the individual plaintiffs.

Finally, the causes of action that plaintiffs raise could have been raised and resolved in the original action. At the time they entered the settlement agreement, plaintiffs were aware that defendants had sold the trust's shares of SII and that SII was indebted to the trust as a result of this stock sale. Although plaintiffs claim that they were unaware of the wrongdoing that they alleged in the 2006 complaint until long after they entered the 2001 settlement agreement, the wrongdoing in question (defendants' execution of the subordination agreement) occurred in 2000, over a year before the parties entered the settlement agreement. Res judicata bars "not only claims already litigated, but every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Sewell v Clean Cut Mgt, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001), quoting *Dart*, *supra* at 586. Considering that plaintiffs were aware of other instances of misconduct by defendants in their role as trustees and that SII owed hundreds of thousands of dollars to the trust pursuant to a stock sale entered by defendants on the trust's behalf, they could have exercised reasonable diligence to discover and pursue these claims. Because they did not, plaintiffs are barred from raising these claims after entering the settlement agreement with defendants pursuant to the doctrine of res judicata.

Next, plaintiffs note that the trial court determined that their claims were barred by the settlement agreement and releases signed in 2001. They argue that the releases are not valid or binding on Christine, Bridget, Glenn, and Bruce because they released defendants from liability without knowing that Chase was a creditor of SII at the time it entered the subordination agreement on behalf of the trust.

"The scope of a release is controlled by the language of the release, and where, as here, the language is unambiguous, we construe it as written." *Adair*, *supra* at 127, citing *Batshon v Mar-Que Gen Contractors, Inc*, 463 Mich 646, 650; 624 NW2d 903 (2001). The release unambiguously states that Christine, Bridget, Glenn, and Bruce released defendants from all claims "of every kind or nature, known or unknown, accrued or unaccrued, actual or contingent . . . which were asserted or could have been asserted in the Trust or Estate proceedings . . . ." Therefore, although the individual plaintiffs were unaware that Chase was a creditor of SII when it executed the subordination agreement, they specifically released defendants from all unknown claims related to defendants' involvement in the trusteeship, including the breach of fiduciary duties, conspiracy, and fraud claims that they attempted to raise in 2006.

In addition, a plaintiff must knowingly execute a release for it to be valid. See *Denton v Utley*, 350 Mich 332, 342; 86 NW2d 537 (1957). Christine, Bridget, Glenn, and Bruce signed these releases after consulting with their attorneys, and plaintiffs do not argue that they were incapacitated or otherwise did not understand the terms of the release when they signed it. Accordingly, Christine, Bridget, Glenn, and Bruce validly released any cause of action against defendants concerning defendants' involvement in the trusteeship. Therefore, Christine, Bridget, Glenn, and Bruce are barred from raising claims of breach of fiduciary duties, conspiracy, and fraud against defendants.

Eric never signed a release of liability releasing his claims against defendants. However, Eric signed the settlement agreement, which stated that in consideration for Chase's promises to

relinquish the rights to certain fiduciary fees owed by the trust and to end the trusteeship, the Family LP and the beneficiaries of the trust (including Eric) would

> jointly and severally protect, indemnify, and hold harmless each of Greenhalgh and [Chase], and each of their present and former agents, employees, officers, shareholders, and attorneys, from and against all loss, damage or expense (including legal fees and expenses) which any of them may pay, sustain or incur as a result of any action, proceeding, claim or demand (i) arising out of or in any manner related to the Estate or Trust or this Agreement; or (ii) by reason of any action or proceeding brought to set aside or invalidate this Agreement for any reason whatsoever.

Plaintiffs do not explain why this settlement agreement, which indicates that Eric agreed to hold defendants harmless in exchange for consideration, does not, in effect, release defendants from liability. We are not required to make plaintiffs' arguments for them. See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Accordingly, we conclude that Eric, in effect, released defendants from liability when he signed the settlement agreement. Therefore, he is also barred from raising the breach of fiduciary duties, fraud, and conspiracy claims against defendants.

Plaintiffs also argue that because the Family LP was not in existence at the time the release was executed, the Family LP never released its claims against defendants. Although the Family LP had not been created at the time the settlement agreement was executed, the settlement agreement included a release of any claims that the Family LP would have against defendants with regard to their trusteeship. Plaintiffs fail to provide any support for their assertion that although the Family LP was assigned the causes of action that the trust held against defendants, it would not have been bound by the release. They also fail to discuss the settlement agreement and explain why it does not bar the Family LP from raising a cause of action against defendants. For these reasons, we need not consider plaintiffs' arguments further. In addition, because the Family LP's claims of error are barred by res judicata, we need not consider plaintiffs' argument that the Family LP never released its claims against defendants.

Plaintiffs present several additional arguments in an attempt to establish that the trial court erred when it granted summary disposition of plaintiffs' claims. In particular, they argue (1) that the trial court erred when it concluded that the statute of limitations had not been extended to six years in this case, (2) that their claims are not barred by the tender back rule, and (3) that the Family LP had standing to maintain this cause of action. However, because the trial court properly granted summary disposition on other grounds, we need not address these issues.

Plaintiffs also argue that a fiduciary owes a duty of full disclosure to the trust beneficiaries. However, they fail to address this question as a separate issue on appeal. Therefore, to the extent that plaintiffs assert that this alleged error constitutes a ground for reversal of the trial court's motion for summary disposition, this Court need not address the issue. See MCR 7.212(C)(5); *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000). Further, plaintiffs failed to develop this issue on appeal, and a bald assertion without supporting authority precludes appellate examination of an issue. *Impullitti v Impullitti*, 163 Mich App 507, 512; 415 NW2d 261 (1987).

Next, plaintiffs argue that the trial court erroneously made findings of fact to support its decision to grant summary disposition pursuant to MCR 2.116(C)(8). Because a MCR 2.116(C)(8) motion must be decided only on the pleadings, MCR 2.116(G)(5), plaintiffs maintain that the trial court erred when it made findings of fact as part of its opinion. However, the trial court granted summary disposition pursuant to MCR 2.116(C)(7) and (C)(10) and, therefore, it could consider admissions and documentary evidence submitted by the parties when making its rulings. MCR 2.116(G)(5). This assertion of error lacks merit.

Finally, plaintiffs dispute a statement in the trial court opinion that they characterize as a finding of fact. However, they fail to explain how the trial court's statement that "the individual plaintiffs directed that the consideration be paid to the Partnership, a party they selected and controlled/control" was harmful to plaintiffs, especially considering that the trial court made this statement as an aside when discussing a claim that it had already deemed abandoned. Again, we need not make plaintiffs' arguments for them. *Mitcham, supra* at 203. This claim of error lacks merit and we will not consider it further.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Donald S. Owens

Schuette, J. did not participate.