

STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

MACHINERY MANAGEMENT, INC., a
Nevada Corporation, d/b/a MACHINERY
RESOURCES INTERNATIONAL, INC.,

Plaintiff,

vs.

Case No. 2023-002603-CB

ROBERT KATTULA, an individual,
DAVID KATTULA, an individual,
ANGELA KATTULA, an individual,
GREEN LAKE EQUITIES, LLC, a
Michigan limited liability company, and
SASCO MACHINE SHOP, an Oklahoma
for profit corporation, jointly and severally,

Defendants.

OPINION AND ORDER

This matter is before the Court on Defendant Robert Kattula's (Kattula) motion for summary disposition under MCR 2.116(C)(7) and (C)(8) in lieu of an answer filed October 27, 2023.

I. Background

Plaintiff Machinery Management, Inc. d/b/a Machinery Resources International, Inc. ("MRI") alleges that in a prior separate Macomb County lawsuit (Case No. 2022-003427-CB), it and non-party K&B Capital, LLC ("K&B") settled MRI claims against K&B by entering into a settlement agreement (the "settlement agreement") that required K&B to pay MRI. (First Am. Compl. Ex. D.) MRI alleges that emails of the draft of the settlement agreement included a personal guaranty of K&B's registered agent, Kattula, under which Kattula guaranteed K&B's payment obligations under the settlement agreement. Kattula

was not a party in that lawsuit.¹

According to MRI, after being presented with the settlement agreement and the personal guaranty, K&B's attorney, Scott Yaldo, consulted with Kattula who purportedly agreed to the terms of the settlement and personal guaranty and instructed Yaldo to "sign my name on behalf of K&B Capital." (First. Am. Compl., Ex. F, Feb 27, 2023 4:24 p.m. email from Kattula). Yaldo then allegedly executed the settlement agreement on behalf of K&B. As for the personal guaranty, MRI alleges Kattula emailed Yaldo stating that he would "sign the other document notarized [sic] them tomorrow." (First Am. Compl., Ex. F, Feb 27 2023 4:27 p.m. email from Kattula.) However, Kattula purportedly never signed the personal guaranty. According to MRI, K&B failed to pay as required by the settlement agreement and the Court in the previous case entered a consent judgment against K&B for \$200,000 as required by the settlement agreement. However, MRI maintains that despite Kattula's failure to sign the personal guaranty, his email to Yaldo constitutes Kattula's binding acceptance of the personal guaranty, which he has failed to comply with by failing to pay MRI the \$200,000 K&B failed to pay.

On August 7, 2023, MRI filed suit against Kattula alleging a single count of breach of contract based on Kattula's alleged breach of the personal guaranty. On October 27, 2023, Kattula, filed a motion for summary disposition under MCR 2.116(C)(7) and (C)(8) in lieu of an answer. On November 9, 2023, MRI filed a first amended complaint that included the breach of contract claim against Kattula and added new claims and parties

¹ During oral arguments, MRI's counsel asserted that K&B was a single-member LLC and Kattula was the sole member, but there are no allegations in the complaint or evidence in these motion proceedings to support that assertion.

that are not at issue here.² MRI filed its response to Kattula's motion on November 27, 2023, and Kattula filed his reply on November 30, 2023. The Court heard oral arguments on December 4, 2023, where it took the matter under advisement.

Standard of Review

MCR 2.116(C)(7) tests, in part, whether a claim is barred because of the statute of frauds. For a motion brought pursuant to MCR 2.116(C)(7), the contents of the complaint are accepted as true unless contradicted by evidence submitted by the moving party. *Pusakulich v City of Ironwood*, 247 Mich App 80, 82; 635 NW2d 323 (2001). If a party submits admissible documentary evidence, those materials must be considered. MCR 2.116(G)(5); *Pusakulich*, 247 Mich App at 82-83. The evidence is viewed in a light most favorable to the nonmoving party. *Brennan v Edward D Jones & Co*, 245 Mich App 156, 157; 626 NW2d 917 (2001). If there is no factual dispute, whether a claim is barred under MCR 2.116(C)(7) is a question of law for the court to decide. *RDM Holdings, LTD v Conti Plastics Co*, 281 Mich App 678, 687; 762 NW2d 529 (2008).

A motion for summary disposition under MCR 2.116(C)(8) that the opposing party "has failed to state a claim upon which relief can be granted" must be granted "if the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Simko v Blake*, 448 Mich 648, 654; 532 NW2d 842 (1995). It tests the legal sufficiency of the complaint based on the pleadings, including any written agreement that is the basis of action. *Laurel Woods Apartments v Roumayah*, 274 Mich App 631, 635; 734 NW2d 217 (2007). All factual allegations in the pleadings are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts.

² During oral arguments, the parties agreed that Kattula's motion only applied to the breach of contract claim against Kattula in Count 1 of the first amended complaint.

Eason v Coggins Mem Christian Methodist Episcopal Church, 210 Mich App 261, 263; 532 NW2d 882 (1995).

III. Law and Analysis

Kattula argues that because he never signed the personal guaranty, it is unenforceable under the statute of frauds, MCL 566.132(1)(b). Kattula further argues that any attempt by MRI to rely on his emails to Yaldo to establish that he signed the personal guaranty violates the parol evidence rule and is barred by the integration clause in the settlement agreement. In response, MRI maintains the statute of frauds in MCL 566.132(1)(b) does not apply here; instead, MCR 2.507, which governs settlement agreements applies and Kattula's emails to Yaldo satisfy that court rule. MRI also asserts that Kattula's statute of frauds defense is barred by promissory estoppel.

"[A] guaranty contract . . . is a special kind of contract." *Bandit Indus v Hobbs Intern*, 463 Mich 504, 511–513; 620 NW2d 531 (2001). The Supreme Court has explained that courts "must approach with caution a claim that the parties have formed a guaranty contract" because "[o]rdinary experience teaches that assumption of another's debt is a substantial undertaking, and thus the courts will not assume such an obligation in the absence of a clearly expressed intention to do so." *Id.* at 511-512.

A. Statute of Frauds

The statute of frauds regarding a personal guaranty provides, "A special promise to answer for the debt, default, or misdoings of another person" is void unless "[the] agreement, contract, or promise, or a note or memorandum of the agreement, contract, or promise is in writing and signed with an authorized signature by the party to be charged with the agreement, contract, or promise." MCL 566.132(1)(b).

At issue here is whether Kattula's emails to Yaldo satisfy the requirement that the agreement be "signed with an authorized signature." However, Kattula, fails to provide any analysis or legal authority explaining what qualifies as an "authorized signature" that satisfies the statute of frauds. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) ("It is not sufficient for a party 'simply to announce a position . . . then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'") Instead, his argument that his emails do not satisfy the signature requirement appears to assume that to qualify, a signature must appear on the face of the personal guaranty and that an email cannot qualify as a signature. In support of his argument, he relies on *Livonia Bldg Materials Co v Harrison Const Co*, 276 Mich App 514, 526; 742 NW2d 140 (2007), *Shurlow Tile & Carpet Co. v Farhat*, 60 Mich App 486; 231 NW2d 384 (1975), and *Bourdow v Lake Huron Credit Union*, unpublished per curiam opinion of the Court of Appeals, issued February 11, 2016 (Docket No. 324801). None of these cases support these assumptions or his argument.

In *Livonia Bldg Materials*, 276 Mich App at 526-527, there was no dispute that the only signature at issue, which was on the personal guaranty, was not the defendant's, so the document was void under the statute of frauds. That case did not involve an email or whether an email satisfied the signature requirement, nor did it hold as a matter of law that to satisfy the signature requirement, the signature must be on the agreement. At issue in *Shurlow Tile*, 60 Mich App at 490, was whether a check by defendant to plaintiff constituted a "note or memorandum" sufficient to satisfy the requirement in the statute of frauds that the promise be "in writing." *Id.* The Court held that it did not because it "was

not the requisite writing or part performance to take the transaction out of the statute of frauds.” *Id.* at 490-491. Notably, that case did not involve any analysis of what constitutes an “authorized signature” under the statute of frauds. And as it was decided in 1975, it naturally could not have addressed whether an email can serve as the requisite “authorized signature.” Lastly, in *Bourdow*, the Court of Appeals held that an email from an employee of the defendant bank that allegedly waived plaintiff’s loan obligations was unenforceable under the statute of frauds because “it [did not] contain ‘an authorized signature by the financial institution.’” unpub op at *7, quoting MCL 566.132(2). As an unpublished opinion, *Bourdow* is not binding precedent, and the Court finds its analysis lacking as it does not elaborate why the employee’s email did not qualify as an “authorized signature by the financial institution.” Was it because the employee was not authorized by the financial institution to enter the agreement, or was it because as a matter of law an email cannot serve as an authorized signature? Given *Bourdow*’s lack of any relevant analysis, the Court is unpersuaded it has any persuasive value here.

None of the cases cited by Kattula support his argument that his emails do not satisfy the statute of fraud’s signature requirement. Nor is the Court aware of any such authority. Additionally, Kattula has failed to cite any legal authority that explains what constitutes a “authorized signature” under the statute of frauds. Consequently, Kattula has failed to provide this Court with any relevant legal authority to guide its analysis and that would warrant finding as a matter of law that the statute of frauds barred MRI’s claim for breach of contract.

B. Parol Evidence

Kattula also argues that MRI’s reliance on his email is improper because the emails

are inadmissible parol evidence. According to Kattula, parol evidence is precluded because the settlement agreement includes an express integration clause. This argument assumes, without any support, that the alleged personal guaranty is part of the settlement agreement and bound by the latter's integration clause. See *Thomas v McPherson Cmty Health Ctr*, 155 Mich App 700, 710; 400 NW2d 629 (1986) ("A party may not leave it to [the courts] to search for authority to sustain or reject its position.") On the contrary, by Kattula's own acknowledgment, he was not a party to the settlement agreement and the settlement agreement never references the personal guaranty. (Mot., p 2 and p 5 n2.) Moreover, MRI's counsel conceded during oral arguments that it is not seeking to enforce the settlement agreement between it and K&B, it is only seeking to enforce the personal guaranty against Kattula. Given these parties' concessions and Kattula's failure to cite any relevant legal authority, the Court fails to see how the settlement agreement controls the admissibility of parol evidence to establish whether Kattula is bound by the separate personal guaranty.

C. MCR 2.507(G)

MRI argues in response that MCR 2.507, which governs settlement agreements, applies here and that Kattula's emails to Yaldo satisfy that court rule. Kattula counters that MCR 2.607(G) only applies to settlement agreements between parties and their attorneys in a lawsuit, but because Kattula was not a party to the lawsuit that resulted in the settlement agreement nor was he a party to the settlement agreement, the court rule does not apply here.

MCR 2.507(G) provides,

An agreement or consent between the parties or their attorneys respecting the proceedings in an action is not binding unless it was made in open court,

or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney.

The Court of Appeals has characterized this rule as “in the nature of a statute of frauds.” *Kloian v Domino's Pizza LLC*, 273 Mich App 449, 456; 733 NW2d 766 (2006). “A contract for the settlement of pending litigation that fulfills the requirements of contract principles will not be enforced unless the agreement also satisfies the requirements of MCR 2.507(H).” *Id.*

In support of its assertion that MCR 2.507(G) applies to the personal guaranty and that the rule's subscription requirement was satisfied in this case, MRI relies on *Kloian*, 273 Mich App 449. However, *Kloian* is readily distinguishable from this one as it did not involve a settlement agreement where a non-party also personally guaranteed the payment of one of the settling parties. See *Kloian*, 273 Mich App at 459-460 (settlement agreement satisfied MCR 2.507(G) where emails between plaintiff's and defendant's attorneys contained the material terms of the settlement and were subscribed by the attorneys). MRI also relies on the Michigan circuit court opinion, *Blue Horseshoe Holding Co v Flagstar Bank*, Case No. 19-175976-CB (Oakland County, 2019). Circuit court opinions are not binding on this Court. Further, the Court is unpersuaded by its analysis as it misapplies *Kloian*, which involved the “subscription” requirement in MCR 2.507(G), to the “signature” requirement in MCL 566.132. In doing so, *Blue Horseshoe* conflated the “subscription” requirement in MCR 2.507(G) with the “signature” requirement in MCL 566.132 despite *Kloian*'s explicit finding that the two are separate requirements and must be treated differently, 273 Mich App at 459.

The Court is unaware of any binding authority that has applied MCR 2.507(G) to an agreement by a non-party to guaranty the obligations of a party to settlement

agreement. In contrast, by its unambiguous terms, MCR 2.507(G) only applies to settlement agreements “between the parties or their attorneys,” thus it does not govern agreements involving non-parties. See *Kloian*, 273 Mich App at 458 (courts must give effect to the unambiguous language of a court rule). Accordingly, MRI’s reliance on MCR. 2.507(G) to avoid application of MCL 556.132(1)(b) is unavailing.

D. Promissory Estoppel

In its response, MRI includes a single sentence that states, “The facts of Plaintiff’s Complaint establish grounds for application of the doctrine of promissory estoppel and admission by Robert Kattula preventing the asserted statute of frauds defense” followed by a citation to *Opdyke Inv Co v Norris Grain Co*, 413 Mich 354, 369; 320 NW 2d 836 (1982). Beyond this conclusory statement and citation, it failed to provide any legal analysis to establish that promissory estoppel (which is not alleged in the first amended complaint) applies here. See *Wilson*, 457 Mich at 243 (“It is not sufficient for a party ‘simply to announce a position . . . then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.’”) Thus, MRI’s unelaborated promissory estoppel argument fails.

IV. Conclusion

For the reasons set forth above Kattula’s motion for summary disposition on MRI’s breach of contract claim against Kattula is DENIED. This Opinion and Order neither resolves the last pending claim nor closes the case. MCR 2.602(A)(3).

IT IS SO ORDERED.

Date: 01/19/2024



Kathryn A. Viviano

Signed by KATHRYN VIVIANO 01/19/2024 04:37:35 ljeHFt15

Hon. Kathryn A. Viviano, Circuit Court Judge