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

GREENFIELD PLAZA, INC., a Michigan corporation, and SHERWOOD SQUARE SHOPPING PLAZA, INC., a Michigan corporation,

Plaintiffs/Counter-Defendants,

Case No. 24-206153-CB
Hon. Victoria A. Valentine

v

FRIEDMAN REAL ESTATE BROKERAGE, INC., a Michigan corporation,

Defendant/Counter-Plaintiff.

OPINION AND ORDER REGARDING PLAINTIFFS'/COUNTER-DEFENDANTS' MOTION FOR SUMMARY DISPOSITION AS TO ALL COUNTS AND DEFENDANT/COUNTER-PLAINTIFF FRIEDMAN REAL ESTATE BROKERAGE, INC.'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

At a session of said Court, held in the
County of Oakland, State of Michigan
February 13, 2025

HONORABLE VICTORIA A. VALENTINE

This matter is before the Court on the Plaintiffs'/Counter-Defendants' Motion for Summary Disposition as to All Counts and the Defendant/Counter-Plaintiff Friedman Real Estate Brokerage, Inc.'s Motion for Summary Disposition Under MCR 2.116(C)(10). This Court has reviewed the pleadings filed by the parties and the motions, responses, and reply briefs. Oral argument was held on the above-entitled motions on February 5, 2025.

OPINION

I.

Overview

This case arises out of the dispute over a commission alleged to be due under a Commercial Property Exclusive Listing Agreement (the "Listing Agreement"). The Plaintiffs (Greenfield Plaza, Inc. and Sherwood Square Shopping Plaza, Inc.) entered into the Listing Agreement with Friedman Real Estate Brokerage, Inc. ("Friedman") in March 2020 for the lease and sale of the Plaintiffs' two commercial properties.[1] The Listing Agreement provides that Friedman would market the properties as follows:

> The marketing of the Property in the manner agreed upon between the parties or as provided below subject to the authorization set forth in Paragraph 7:
>
> • Listing of the Property on Costar's commercial real estate listing database and other commercial listing services as Broker deems appropriate
>
> • Erection of signage at the Property
>
> • Listing of the Property on Friedman website
>
> • Regular Broker email marketing blasts
>
> •Acceptance of delivery and presentation of offers and counteroffers to lease or purchase the Property.[2]

For its services related to the sale of the properties, Friedman was to be compensated "2% of the total gross sale price if it is a direct deal and 3% of the total gross sale price if there is a co-broker involved."[3] This commission was payable if the property was sold during the listing period or within six months after the expiration or termination of the Listing Agreement to anyone with

[1] Complaint ¶ 9 and Exhibit A.
[2] Complaint, Exhibit A § 5.
[3] *Id.* § 3.

whom the Plaintiffs or Friedman had negotiations or communications during the listing period (the "Protection Period").[4] The listing period in the original contract expired on September 30, 2020,[5] but the Listing Agreement was extended several times.[6] The most recent extension was signed on December 28, 2022 and it extended the Listing Agreement for six months, so the new expiry date was June 30, 2023.[7]

On June 19, 2023, the Plaintiffs entered into two purchase agreements with Mio Investment, LLC for the sale of the properties.[8] The purchase agreements were subsequently assigned to Southfield Ventures South, LLC and Southfield Ventures North, LLC.[9] The Plaintiffs allege that the buyer was discovered "through efforts completely unrelated to any marketing activities" by Friedman.[10] However, when the purchase agreements were signed, the Plaintiffs agreed that Friedman was entitled to compensation for its role in the transaction.[11]

The Plaintiffs allege that in October 2023, after the execution of the Purchase Agreements with Mio, the Plaintiffs' former principal (Louis Meram) was approached by a real estate broker who asked if Meram wanted to sell the properties.[12] According to Joseph Attisha, Meram's nephew and a current principal of the Plaintiffs, the broker told Meram that the properties "were not posted anywhere."[13] Attisha states that he "never knew nor did any of the shareholders know that

[4] *Id.*
[5] *Id.* § 1.
[6] Complaint ¶ 27 and Exhibit E.
[7] Complaint, Exhibit E.
[8] Complaint ¶ 16.
[9] *Id.* ¶ 29.
[10] *Id.*
[11] Defendant/Counter-Plaintiff Friedman Real Estate Brokerage, Inc.'s Motion for Summary Disposition under MCR 2.116(C)(10), Exhibit L § 10.
[12] Plaintiffs'/Counter-Defendants' Motion for Summary Disposition as to All Counts, Exhibit D, p 29.
[13] *Id.*, p 30.

Friedman did not list the properties for sale or fail to comply with the terms of the listing agreement until after the listing agreement had expired in 2023."[14]

Friedman alleges that the properties were not being mass marketed at the direction of Louis Meram. Specifically, Alan Stern, a Friedman senior broker who was working with Meram states:

> Because of the financial circumstances of the properties and the bank's threatened foreclosure, Plaintiffs [sic Plaintiff's] principal, Louis Meram, asked me not to mass market the properties and to instead take a more targeted approach to selling the properties.
>
> A targeted marketing approach for selling commercial retail properties minimizes tenant anxiety and uncertainty, reducing the risk of discouraging potential new tenants and causing Lender concerns.[15]

When the Plaintiffs became aware that the properties had never been mass marketed for sale, the Plaintiffs communicated to Friedman that they would not pay the commission as originally agreed in the Listing Agreement because Friedman "failed to perform any of the duties" to mass market the property under Section 5 of the Listing Agreement.[16] Friedman recorded an "Affidavit Regarding Exclusive Listing Agreement" on December 13, 2023, which stated that the Exclusive Listing Agreement provided for a commission payment of 2% of the gross sale price if it is a direct deal or 3% if there is a co-broker involved, and Friedman had not been paid a sales commission.[17] As a result of Friedman's Affidavit, Best Homes Title Agency, LLC ("Best Homes")[18] "refused to close the transaction and insure the sale" until the Plaintiffs escrowed

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[14] Plaintiffs/Counter-Defendants' Response to Defendant/Counter-Plaintiff's Motion for Summary Disposition, Exhibit B ¶ 8.

[15] Defendant/Counter-Plaintiff Friedman Real Estate Brokerage, Inc.'s Motion for Summary Disposition under MCR 2.116(C)(10), Exhibit C ¶¶ 10-11.

[16] Complaint ¶¶ 31-33.

[17] Complaint, Exhibit C.

[18] The Complaint included a claim for Interpleader against Best Homes (Count V). By Order dated March 15, 2024, this Court authorized and directed Best Homes to deposit the sum of $402,000 with the Court Clerk. Upon the transfer of the sum of $402,000, Best Homes was dismissed from the suit.

$402,000 with Best Homes.[19] According to the Plaintiffs, this delayed the closing of the sale to Mio, although the sale eventually closed on December 19, 2023.[20] The closing was within the six month Protection Period in Section 3 of the Listing Agreement (and subsequent extension), but the Plaintiffs refused to pay Friedman's commission.

The Plaintiffs brought this suit in March 2024 seeking Declaratory Relief (Count I), alleging Breach of Contract as to Defendant Friedman (Count II), Tortious Interference with a Business Relationship and Economic Expectancy as to Defendant Friedman (Count III), Clouding Title as to Defendant Friedman (Count IV), and Interpleader as to Defendant Best Homes (Count V).[21] In turn, Friedman filed its Counterclaim for Declaratory Relief (Count I) and Breach of Contract (Count II). Both parties now move for summary disposition pursuant to MCR 2.116(C)(10).

II.

Standard of Review

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim or defense. See, e.g., MCR 2.116(G)(3)(b); *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Accordingly, "[i]n evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999); *Quinto*, 451 Mich at 358.

[19] Complaint ¶¶ 17-22.
[20] *Id.* at ¶ 29.
[21] By Order dated March 15, 2024, this Court authorized and directed Best Homes to deposit the sum of $402,000 with the Court Clerk. Upon the transfer of the sum of $402,000, Best Homes was dismissed from the suit.

The moving party "must specifically identify the issues" as to which it "believes there is no genuine issue" of material fact and support its position as provided in MCR 2.116. MCR 2.116(G)(4). Under Michigan law, the moving party may satisfy its burden of production under MCR 2.116(C)(10) by demonstrating to the court that the non-moving party's evidence is insufficient to establish an essential element of the non-moving party's claim. *Quinto*, 451 Mich at 361. If the moving party properly supports its motion, the burden "then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Id.* at 362. If the moving party fails to properly support its motion for summary disposition, the non-moving party has no duty to respond and the trial court should deny the motion. MCR 2.116(G)(4). See also *Meyer v City of Center Line*, 242 Mich App 560, 575; 619 NW2d 182 (2000) (concluding that the trial court erred when it granted an improperly supported motion for summary disposition under MCR 2.116(C)(10)).

In all cases, MCR 2.116(G)(4) squarely places the burden on the parties, not the trial court, to support their positions. A reviewing court may not employ a standard citing mere possibility or promise in granting or denying the motion, *Maiden*, 461 Mich at 120-121 (citations omitted), and may not weigh credibility or resolve a material factual dispute in deciding the motion. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). Rather, summary disposition pursuant to MCR 2.116(C)(10) is appropriate if, and only if, the evidence, viewed most favorably to the non-moving party fails to establish any genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362, citing MCR 2.116(C)(10) and (G)(4); *Maiden*, 461 Mich at 119-120. A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152,160; 934 NW2d 665 (2019) (citation omitted). Granting a motion for summary disposition under MCR 2.116(C)(10) is warranted if the substantively admissible evidence shows that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362-363.

III.

Declaratory Relief and Breach of Contract

Both sides argue that they are entitled to declaratory relief and summary disposition of the competing claims for breach of contract. Specifically, the Plaintiffs argue that Friedman is not entitled to its commission under the Listing Agreement because it did not fulfill its contractual obligations to mass market the property for sale. In turn, Friedman argues that it did fulfill the requirements of the Listing Agreement, and it is owed a commission for the sale to Mio. Consequently, the Court must examine the provisions of the Listing Agreement and determine whether Friedman fulfilled its contractual obligations to market the properties.

A. The Law of Contract Interpretation

Whether contract language is ambiguous is a preliminary question of law. *UAW-GM Human Resource Center v KSL Rec Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998) (citation omitted). A contract is unambiguous when it fairly admits of but one interpretation. *Holmes v Holmes*, 281 Mich App 575, 594; 760 NW2d 300 (2008). If the language of the contract is clear and unambiguous, it must be enforced as written. *In re Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008). A written contract is ambiguous if, after reading the entire document, its language reasonably can be understood in differing ways (i.e., the language is susceptible to more than one reasonable interpretation). *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 70; 467 NW2d 17 (1991). "A provision in a contract is ambiguous if it irreconcilably conflicts with another provision, or when it is equally susceptible to more than a single meaning." *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 715; 706 NW2d 426 (2005) (citation omitted).

In making this determination, contractual language is to be construed according to its plain and ordinary meaning. *Id.* Furthermore, the court is required to read the contract as a whole, giving harmonious effect, if possible, to each word and phrase in order to avoid an interpretation that would render any part of the contract surplusage or nugatory. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003). Ultimately, courts must strive to enforce the agreement intended by the parties.

B. The Court Must Interpret Section 5 of the Listing Agreement as Written

In the instant action, Section 5 of the Listing Agreement required Friedman to market the properties as follows:

> 5. BROKER'S SERVICES. Broker shall, at a minimum, provide the following services to the Owners:
>
> The marketing of the Property in the manner agreed upon between the parties or as provided below subject to the authorization set forth in Paragraph 7:
>
> • Listing of the Property on Costar's commercial real estate listing database and other commercial listing services as Broker deems appropriate
>
> • Erection of signage at the Property
>
> • Listing of the Property on Friedman website
>
> • Regular Broker email marketing blasts
>
> •Acceptance of delivery and presentation of offers and counteroffers to lease or purchase the Property.

As Friedman correctly observes, of the five items listed in Section 5 of the contract, only the final requirement (acceptance of delivery and presentation of offers and counteroffers) specifies that it applies for both sales and leases. The other five requirements do not. The Plaintiffs essentially urge this Court to add "for both sale and lease" to each of the first four requirements, but this language is not in the contract that the parties agreed to. "[I]t has long been the law in this state that courts are not to rewrite the express terms of contracts." *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 199–200; 747 NW2d 811 (2008). "We cannot read words into the plain language of a contract." *Northline Excavating, Inc v Livingston Cnty*, 302 Mich App 621, 628; 839 NW2d 693 (2013). The express inclusion of both *sale* and *lease* in the fifth requirement implies that the absence of this language in the first four requirements was intentional. See *Marino v Grayhaven Ests Ltd, LLC*, unpublished per curiam opinion of the Court of Appeals, issued Oct. 4, 2007 (Docket No. 271118), p 2 ("Generally, the express mention of one thing implies the exclusion of another").

The contract, as written and agreed to by the parties, required Friedman to market the property "in the manner agreed upon by the parties" or as provided in Section 5. Section 5 required Friedman to perform five enumerated tasks, only one of which explicitly applied to both the sale and lease of the property. Friedman has demonstrated that it did perform the fifth enumerated task for both sale and lease of the property.[22] Friedman argues that it did perform each of the first four tasks in its efforts to market the property *for lease*,[23] and the Plaintiffs agree.[24] Requiring Friedman to fulfill the first four enumerated tasks in the Listing Agreement for both sale *and* lease would be

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[22] Defendant/Counter-Plaintiff Friedman Real Estate Brokerage, Inc.'s Motion for Summary Disposition under MCR 2.116(C)(10), Exhibits G and H.

[23] See Defendant/Counter-Plaintiff Friedman Real Estate Brokerage, Inc.'s Motion for Summary Disposition under MCR 2.116(C)(10), p 11 ("To be clear, it is undisputed that Friedman did conduct each of the marketing efforts outlined in section 5 as to the leasing of the properties."); see also Defendant/Counter-Plaintiff Friedman Real Estate Brokerage, Inc.'s Motion for Summary Disposition under MCR 2.116(C)(10), Exhibit. C ¶ 12.

[24] Plaintiffs'/Counter-Defendants' Motion for Summary Disposition as to All Counts, p 13 n 2 ("Greenfield/Sherwood complied with their duties to pay the **lease commissions** called for in the Listing Agreement on numerous occasions during the time that the Listing Agreement was in effect, including extensions, specifically because Friedman provided the required services for the **lease** of the Properties") (emphasis in original).

adding terms to the contract, which this Court cannot do. Accordingly, the undisputed facts demonstrate that Friedman fulfilled its obligations in Section 5 of the Listing Agreement, and summary disposition in Friedman's favor is warranted.

C. The Plaintiffs Have Not Demonstrated that they Suffered Damages Attributable to the Alleged Breach

The Plaintiffs' breach of contract claim also fails for the additional reason that they have not submitted evidence that they suffered damages attributable to Friedman's alleged breach of the Listing Agreement. A party asserting a breach of contract must establish that (1) there was a contract, (2) the other party breached the contract, and (3) that breach resulted in damages. *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich 161, 178; 848 NW2d 95 (2014). "Damages recoverable for breach of contract are those that arise naturally from the breach or those that were in the contemplation of the parties at the time the contract was made." *Farm Credit Servs of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 678; 591 NW2d 438 (1998). Indeed, "causation of damages is an essential element of any breach of contract action. . . ." *Miller-Davis*, 495 Mich at 178.

In the instant action, the Plaintiffs allege that Friedman breached the Listing Agreement by failing to mass market the properties for sale. As discussed above, the Plaintiffs have failed to show that this constituted a breach of the Listing Agreement. However, even if Friedman's actions did constitute a breach of the Listing Agreement, the Plaintiffs have failed to show they suffered any damages *attributable to the alleged breach*. The Complaint alleges:

> 29. That Mio Investment, LLC (Buyer) entered into a purchase agreement with Plaintiffs to purchase the Properties (Parcel 1 and Parcel 2 respectively) on or about June 19, 2023 for a total of $13,400,000.00. Said purchase agreements were subsequently assigned to Southfield Ventures South, LLC and Southfield Ventures North, LLC. This buyer was discovered through efforts completely unrelated to any marketing activities by Defendant

> Friedman nor was this buyer procured by Defendant, Friedman. **The closing was delayed due to Defendant, Friedman's improper interference with the transaction**, but eventually took place on or about December 19, 2023.
>
> 30. As a result of Defendant, Friedman's actions, the Plaintiffs incurred additional interest charges on its existing loan of approximately $3,100.00 per day plus attorney fees and other charges to December 19, 2023.[25]

As the allegations in the Complaint make clear, the damages the Plaintiffs claim to have suffered (interest charges from the delay in closing) are not attributable to the alleged breach (failure to mass market the property for sale). The Plaintiffs do not explain how the delay in closing was a natural consequence of failing to mass market the properties for sale. Rather, any delay in closing was caused by Friedman's attempt to collect the commission rightfully due under the Listing Agreement. Consequently, the Plaintiffs have not shown that there were any damages caused by Friedman's alleged breach of the Listing Agreement, and summary disposition of the Plaintiffs' breach of contract claim is also warranted on this independent basis.

D. The Alleged Oral Agreement Not to Mass Market the Properties for Sale is a Disputed Issue of Fact, and so Summary Disposition is Not Warranted on This Basis

Friedman argues that it did not mass market the properties for sale at the behest of Louis Meram, the Plaintiffs' principal. This, argues Friedman, is an independent basis for summary disposition in its favor. According to Friedman, because Section 5 of the Listing Agreement obligated Friedman to market the properties "in the manner agreed upon between the parties," and because Meram directed Friedman not to mass market the properties for sale, they fulfilled their obligations in Section 5 of the Listing Agreement.

As a preliminary matter, the parties disagree about whether this alleged agreement occurred. Alan Stern, the Friedman senior broker who worked with the Plaintiffs, stated in his

[25] Complaint ¶¶ 29-30 (emphasis added).

affidavit that, "Because of the financial circumstances of the properties and the bank's threatened foreclosure, Plaintiffs' principal, Louis Meram, asked me not to mass market the properties and to instead take a more targeted approach to selling the properties."[26] Stern testified in his deposition about the reasoning for Meram's request:

> Q. Right, so that's – that's the reason you supposedly didn't market the properties?
>
> A. And the reason because he was in workout and he didn't want the bank to see that he's still trying to solicit the properties for sale versus trying to sell it.
>
> Q. Bank knew that.
>
> A. What's that? The bank would have foreclosed on him.[27]

The Plaintiffs, however, maintain that Meram never directed Friedman not to mass market the properties. Joseph Attisha testified in his deposition that Meram was confused when he heard the properties were not listed for sale:

> Q. And what did you say to Louis?
>
> A. I said, Louis, how can—how can Friedman say—from what we're understanding, how could Friedman say that you said not to lease these places when you signed a listing agreement? And he said, I don't know, that's ridiculous, that doesn't make any sense.
>
> * * *
>
> (Record read back as requested.)
>
> THE WITNESS: Not to list.
>
> BY MS. KOLKMEYER:
>
> Q. Got it, got it.
>
> A. The word I meant was list.[28]

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[26] Defendant/Counter-Plaintiff Friedman Real Estate Brokerage, Inc.'s Motion for Summary Disposition Under MCR 2.116(C)(10), Exhibit C ¶ 10.
[27] Plaintiffs'/Counter-Defendants Motion for Summary Disposition as to All Counts, Exhibit C, p 105.
[28] Plaintiffs'/Counter-Defendants Motion for Summary Disposition as to All Counts, Exhibit D, pp 36-37.

Attisha also testified that Meram told him he never instructed Friedman not to list the properties for sale:

> Q. When you spoke to Louis, he denied ever having directed Friedman not to mass market the properties?
>
> A. Correct. He was the most eager to sell.[29]

Although the Plaintiffs maintain that Meram never directed Friedman not to mass market the properties for sale, they argue that even if Meram did so, this alleged oral agreement would be nullified by the integration clause in the Listing Agreement as extended by parties on December 28, 2022. The integration clause in the Listing Agreement, executed on March 16, 2020, states that "any prior agreements, whether oral or written, have been merged and integrated into this Agreement."[30] Friedman alleges that the agreement with Meram not to list the properties for sale took place in or around November 2022.[31] Thus, according to the Plaintiffs, when the parties agreed to extend the Listing Agreement in December 2022, the integration clause rendered this prior oral agreement unenforceable.

The Plaintiffs contend that the extension is a "new contract," citing a case regarding the renewal of an insurance policy, *21st Century Premier Ins Co v Zufelt*, 315 Mich. App 437, 444; 889 NW2d 759 (2016). In the insurance context, while a renewal may technically be a "new contract," it "in no way change[s] the terms and conditions of the policy, except as they continued it in force. The rights of both parties, no matter how often a policy of insurance may have been renewed, are still bound by the provisions of the policy as originally issued. Its terms are neither enlarged, restricted or changed." *Russell v State Farm Mut Auto Ins Co*, 47 Mich App 677, 680;

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[29] *Id.*, Exhibit D, p 37; see also Plaintiffs/Counter-Defendants' Response to Defendant/Counter-Plaintiff's Motion for Summary Disposition, Exhibit B ¶¶ 5-8.
[30] Complaint, Exhibit A § 23.
[31] Plaintiffs'/Counter-Defendants Motion for Summary Disposition as to All Counts, Exhibit C, p 61. ("In November of--in November of 2022 he told me not to list the properties for sale.").

209 NW2d 815 (1973) (citation and quotation omitted). The same is true with the contract extensions at issue in this case. The only provision that the extensions modified in the original Listing Agreement was the duration: "The above referenced Listing Agreement is hereby extended for six (6) months, commencing on January 1, 2023 and expiring on June 30, 2023."[32] All other provisions in the Listing Agreement, including the integration clause, "continued in force" as originally executed in March 2020. Consequently, the Court is not persuaded that the extensions to the Listing Agreement modified the integration clause such that it would nullify an oral agreement between the Plaintiffs and Friedman regarding the decision not to mass market the property for sale in November 2022.

Here, the parties have presented conflicting evidence as to whether this oral agreement between the Plaintiffs and Friedman occurred. When evaluating a motion under MCR 2.116(C)(10), the Court may not weigh credibility or resolve a material factual dispute. *Skinner*, 445 Mich at 161. Accordingly, because a dispute exists as to a material issue of fact, summary disposition is not warranted on this independent basis.[33]

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[32] Complaint, Exhibit E.

[33] Friedman also argues that another independent basis for summary disposition exists, namely the Plaintiffs' failure to provide notice of a default and an opportunity to cure as required by Section 12 of the Listing Agreement. Section 12 provides that, in the event of a material breach, the non-defaulting party must provide notice and a 30-day cure period. If the default is not cured within the 30-day period, the non-defaulting party may terminate the Listing Agreement. This is consistent with the parties' right to condition "the right to terminate for a material breach upon notice and the opportunity to cure." *Convergent Grp Corp v Cnty of Kent*, 266 F Supp.2d 647, 658 (WD Mich 2003). Here, as the Plaintiffs point out, the Listing Agreement (and subsequent extensions) expired on June 30, 2023. The Plaintiffs allege that they discovered the purported breach in October 2023, well after the Listing Agreement had expired. Thus, the Court is not convinced (and the cases cited by Friedman require) that the contract required the Plaintiffs to fulfill the pre-termination notice of default provisions when the contract had already expired.

IV.

Tortious Interference with a Business Relationship and Economic Expectancy

Friedman argues that summary disposition of the Plaintiffs' claim for tortious interference with a business relationship and economic expectancy is warranted because its actions were simply the legal assertion of its right to a commission under the Listing Agreement.

A. The Law of Tortious Interference

The elements of tortious interference with a business relationship claim are "[1] the existence of a valid business relationship or expectancy, [2] knowledge of the relationship or expectancy on the part of the defendant, [3] an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and [4] resultant damage to the plaintiff." *Dalley v Dykema Gossett*, 287 Mich App 296, 323; 788 NW2d 679 (2010).

To establish the third element of the tort, a plaintiff must demonstrate that the defendant acted intentionally and the interference was improper or without justification:

> In other words, the intentional act that defendants committed must lack justification and purposely interfere with plaintiffs' contractual rights or plaintiffs' business relationship or expectancy. *Winiemko v Valenti*, 203 Mich App 411, 418 n. 3; 513 NW2d 181 (1994) (citations omitted); *Feldman v Green*, 138 Mich App 360, 369; 360 NW2d 881 (1984). The "improper" interference can be shown either by proving (1) the intentional doing of an act wrongful per se, or (2) the intentional doing of a lawful act with malice and unjustified in law for the purpose of invading plaintiffs' contractual rights or business relationship. *Id*.
>
> [*Advoc Org for Patients & Providers v Auto Club Ins. Ass'n*, 257 Mich App 365, 383; 670 NW2d 569 (2003)].

"Where the defendant's actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference." *Dalley*, 287 Mich. App. at 324 (citation omitted). "If the defendant's conduct was not wrongful per se, the plaintiff must demonstrate specific, affirmative acts that corroborate the unlawful purpose of the interference." *Badiee v Brighton Area Sch*, 265 Mich App 343, 367; 695 NW2d 521 (2005).

B. Analysis

In the instant action, the Plaintiffs allege that Friedman tortiously interfered with the valid business relationship between the Plaintiffs and the potential purchasers by recording the Affidavit Regarding Exclusive Listing Agreement on the two properties and thereby delaying the closing on the sale of the properties.[34] Because the act of recording an Affidavit Regarding Exclusive Listing Agreement is not wrongful per se (i.e., "an act that is inherently wrongful or an act that can never be justified under any circumstances," *Badiee*, 265 Mich App at 367), the Plaintiffs must demonstrate "specific, affirmative acts that corroborate the unlawful purpose of the interference." They have failed to do so. Rather, the Plaintiffs assert, without citing any evidence, that Friedman's motives in recording the Affidavit Regarding Exclusive Listing Agreement were malicious and the Affidavit was "false and improper."[35]

As discussed above, Friedman fulfilled its obligations under Section 5 of the Listing Agreement, and it was owed a commission upon the closing of the transaction even if the purchaser was not procured through Friedman's marketing efforts. When the Plaintiffs refused to pay Friedman's commission, Friedman had a legitimate business purpose in ensuring that it received the payment due under the Listing Agreement. The Plaintiffs have not provided evidence that Friedman's actions were the result of "the unlawful purpose of interference" instead of the legitimate business interest of lawfully pursuing its commission. Accordingly, the Plaintiffs have failed to present evidence to support one of the elements of its claim, and summary disposition in favor of Friedman is warranted.

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[34] Complaint ¶¶ 36-41.

[35] Plaintiffs'/Counter-Defendants' Motion for Summary Disposition as to All Counts, p 15.

V.

Clouding Title

The Plaintiffs assert that when Friedman recorded the Affidavit Regarding Exclusive Listing Agreement on the properties, it clouded the title to the properties "in an attempt to impair and/or invalidate Plaintiffs' ownership rights."[36] The Plaintiffs further clarify in their response to Friedman's motion for summary disposition that the gravamen of this claim is slander of title.[37]

A. The Law of Slander of Title

"An action for slander of title exists under the common law and by statute." *Equity Funding, Inc v Vill of Milford*, 342 Mich App 342, 352; 994 NW2d 859 (2022). "The elements of a slander-of-title claim are the same under the statute or the common law." *Id*. To prove slander of title under the common law, a claimant must show falsity, malice, and special damages, i.e., that the defendant maliciously published false statements that disparaged a plaintiff's right in property, causing special damages. *Id*.

"[T]he crucial element is malice." *Wells Fargo Bank v Country Place Condo Ass'n*, 304 Mich App 582, 596; 848 NW2d 425 (2014), quoting *Gehrke v Janowitz*, 55 Mich App 643, 648; 223 NW2d 107 (1974). "A slander of title claimant must show some act of express malice, which 'implies a desire or intention to injure.'" *Id.*, quoting *Glieberman v Fine*, 248 Mich 8, 12; 226 NW 669 (1929). "Malice may not be inferred merely from the filing of an invalid lien; the plaintiff must show that the defendant knowingly filed an invalid lien with the intent to cause the plaintiff injury." *Id.*, quoting *Stanton v Dachille*, 186 Mich App 247, 262; 463 NW2d 479 (1990).

B. Analysis

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[36] Complaint ¶ 46.
[37] Plaintiffs'/Counter-Defendants' Response to Defendant/Counter-Plaintiff's Motion for Summary Disposition, p 13.

Like the claim for tortious interference discussed above, the Plaintiffs' claim for slander of title fails because the Plaintiffs have not provided any evidence to suggest that Friedman acted with malicious intent in recording the Affidavit Regarding Exclusive Listing Agreement. Rather, the Plaintiffs assert that the recording of the Affidavit was malicious because Friedman was not entitled to a commission under the Listing Agreement. However, as the Court of Appeals has observed, "[m]alice may not be inferred merely from the filing of an invalid lien. . ." *Wells Fargo Bank*, 304 Mich App at 596. In the instant action, Friedman was entitled to a commission under the Listing Agreement, as demonstrated above. The Plaintiffs have not provided any evidence that Friedman "knowingly filed an invalid lien with the intent to cause the plaintiff[s] injury." Accordingly, summary disposition in favor of Friedman is warranted.[38]

ORDER

Based upon the foregoing Opinion:

IT IS HEREBY ORDERED that the Defendant/Counter-Plaintiff Friedman Real Estate Brokerage, Inc.'s Motion for Summary Disposition under MCR 2.116(C)(10) is GRANTED, and Plaintiffs'/Counter-Defendants' Motion for Summary Disposition as to All Counts is DENIED. This Opinion and Order resolves the matter of liability, and the only issue left for determination is Friedman's damages.

This Order DOES NOT resolve the last pending matter and DOES NOT close the case.

[38] Friedman alleges that it "appropriately asserted its right to record a lien for its outstanding commissions in compliance with the Commercial Real Estate Broker's Lien Act, MCL 570.584." Defendant/Counter-Plaintiff Friedman Real Estate Brokerage, Inc.'s Motion for Summary Disposition under MCR 2.116(C)(10), p 17. Although the Commercial Real Estate Broker's Lien Act (MCL 570.584) allows a commercial real estate broker to file a lien if they are entitled to a commission pursuant to a written commission agreement, the "Affidavits of Interest" in this case do not appear to conform to the requirements of MCL 570.584(10). Because the parties have not raised the discrepancy as to the form of the Affidavits, the Court need not address it. "Trial Courts are not the research assistants of the litigants; the parties have a duty to fully present legal arguments for its resolution of their dispute." *Walters v Nadell*, 481 Mich 377, 388; 751 NW2d 431 (2008).

/s/Victoria A. Valentine
HON. VICTORIA A. VALENTINE
BUSINESS COURT JUDGE

Dated: 2/13/25