

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

**GLAM HOUSE PRODUCTIONS, LLC, and
JEWELLETTE ESTES,
Plaintiffs/Counter-Defendants,**

**Case No. 23-199643-CB
Hon. Victoria A. Valentine**

v.

**OL13, LLC, and
FIRAS JAMIL, a/k/a “Frank,”
Defendants/Counter-Plaintiff.**

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OPINION AND ORDER REGARDING MOTIONS FOR SUMMARY DISPOSITION

At a session of said Court, held in the
County of Oakland, State of Michigan
March 27, 2024

HONORABLE VICTORIA A. VALENTINE

This matter is before the Court on Plaintiffs’ Motion for Summary Disposition Pursuant to MCR 2.116(C)(4) and (8) and Defendants/Counter-Plaintiffs’ Motion for Summary Disposition Pursuant to MCR 2.116(C)(8) and (C)(10). This Court has reviewed the pleadings as well as the Plaintiffs’ Motion and Response, and the Defendants’ Motion, Response and Reply briefs. Oral argument was held on the motions.

OPINION

I.

Overview

Plaintiff Glam House Productions, LLC (“Glam”) entered into a Lease Agreement with Defendant OL13, LLC (“OL13”), which Lease was guaranteed by Plaintiff Jewelette Janae Estes (“Estes”). The terms of the Lease Agreement provided for exclusive use of the property “for Noninvasive Hair and Beauty Products” (Lease, ¶ 31). By signing the Lease Agreement, Plaintiffs

agreed that any modifications to the Lease Agreement were required to be in writing (§§ 31, 45). The Lease Agreement also provided Lessor with the exclusive right to modify zoning (§ 29) and to modify the use (§ 35). Shortly after executing the Lease Agreement, Estes sought to amend the use to something other than the exclusive use in the Lease Agreement (Amended Complaint, §§ 2-3). Estes believes she received authority from “Frank” in 2022 to change the use to “wine sale and tasting location” that would allow alcohol during events (Amended Complaint, §§ 13-14). Este continued to attempt to secure OL13’s agreement to the change in use, as well as their assistance in changing the zoning of the space to allow for that use (Amended Complaint, §§ 21-23).

After failing to obtain an amended lease, Plaintiffs filed this action against OL13 and “Frank.” Plaintiffs allege Fraudulent Misrepresentation (Count I), Tortious Interference (Count II), Violation of MCL 445.83 as to Estes (Count III), and Unjust Enrichment (Count IV). Defendants filed a Counterclaim against Plaintiffs alleging Breach of Contract as to Glam (Count I); and Breach of Contract as to Estes (Count II). Plaintiff now moves for dismissal of Defendants’ Amended Counter Complaint pursuant to MCR 2.116(C)(4) and (8). Defendants oppose the motion. Defendants seek summary disposition of all Plaintiffs’ claims under MCR 2.116(C)(8) and (10). Plaintiffs oppose the motion.

II.

Standard of Review

A motion for summary disposition under MCR 2.116(C)(4) permits a trial court to dismiss a complaint when the court lacks subject matter jurisdiction over the claim. A motion under this subrule may be supported or opposed by affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(5). Where supporting documentation is provided, it must be considered.

Meisner Law Grp, PC v Weston Downs Condo Ass'n, 321 Mich App 702, 714; 909 NW2d 890 (2017).

A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, not whether the complaint can be factually supported. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160; 934 NW2d 665 (2019); *Pawlak v Redox Corp*, 182 Mich App 758, 763; 453 NW2d 304 (1990). A motion for summary disposition based on the failure to state a claim upon which relief may be granted is to be decided on the pleadings alone. *Bailey v Schaaf*, 494 Mich 595, 603; 835 NW2d 413 (2013); *Parkhurst Homes, Inc v McLaughlin*, 187 Mich App 357, 360; 466 NW2d 404 (1991).

“All well-pleaded factual allegations are accepted as a true and construed in a light most favorable to the nonmovant.” *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999); *Wade v Dep’t of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). Summary disposition is proper when the claim is so clearly unenforceable as a matter of law that no factual development can justify a right to recovery. *Parkhurst Homes*, 187 Mich App at 360; *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

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 (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 (1999); MCR 2.116(C)(10); MCR 2.116(G)(4); *Quinto*, 451 Mich at 358. 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 nonmoving 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 nonmoving 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 (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 121-120 (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 (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 (1999). 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 (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.

Analysis

Defendants' Motion for Summary Disposition of Plaintiffs' Amended Complaint

Fraudulent Misrepresentation (Count I)

Defendants argue that Plaintiffs have failed to articulate a claim for fraudulent misrepresentation with the specificity and particularity required under MCR 2.112(B)(1).

A claim for fraudulent misrepresentation requires a showing that: 1) the defendant made a material misrepresentation; 2) the representation was false; 3) the defendant knew it was false when the representation was made or the defendant made the representation recklessly without knowing whether it was false; 4) the defendant made the representation intending for plaintiff to act upon it; 5) the plaintiff did act in reliance upon the representation; and 6) the plaintiff suffered damage. *Bergen v Baker*, 264 Mich App 376; 691 NW2d 770 (2004).

Plaintiffs' Amended Complaint sets forth details regarding each of the required elements (¶¶ 13-14, 15, 16, 20, 23, 24, 30, 31, 33, 34, 36, 37, 38, 39, 40, 41). Because Plaintiffs' Amended Complaint sets forth a claim for fraudulent misrepresentation, summary disposition under MCR 2.116(C)(8) is not warranted.

Defendants also argue that summary disposition is proper under MCR 2.116(C)(10), indicating that there is no genuine issue as to any material fact. Defendants' arguments appear to imply that the fraudulent misrepresentation claims relate to execution of the Lease Agreement. But Plaintiffs' allegations relate to Defendants' actions or inactions after the Lease Agreement was executed. Neither party submitted Affidavits regarding their respective positions on the statements

made by “Frank.” Plaintiffs did attach text messages to their Response that they claim evidence acquiescence to the amendment of the exclusive use.

A reviewing court may not weigh credibility or resolve a material factual dispute in deciding a dispositive motion. *Skinner v Square D Co*, 445 Mich 153, 161 (1994).

Based on the foregoing, there is a genuine issue of material fact relating to the claims for fraudulent misrepresentation. Accordingly, summary disposition under MCR 2.116(C)(10) is not warranted.

Tortious Interference (Count II)

Defendants make conclusory statements that Plaintiffs have failed to plead the elements of tortious interference because they did not articulate specific affirmative acts. Plaintiffs’ Amended Complaint sets forth the required elements (¶¶ 46-55). Summary disposition is improper under MCR 2.116(C)(8).

In viewing the facts in the light most favorable to the non-moving party, if Defendants are found to have engaged in fraudulent misrepresentation regarding the lease amendment, Plaintiffs may also have a claim for tortious interference. Again, Plaintiffs’ allegations do not relate to the Lease Agreement itself, but to the Defendants’ actions after the Lease Agreement was executed. Defendants’ reliance on the executed Lease Agreement as a total defense to all claims in this matter is misplaced.

Based on the foregoing, there is a genuine issue of material fact relating to the claims for tortious interference. Accordingly, summary disposition under MCR 2.116(C)(10) is not warranted.

Violation of MCL 445.83 (Count III)

Defendants argue that Plaintiffs have failed to state a claim for violation of MCL 445.83 because Plaintiffs have not alleged actual damages and failed to provide the requisite notice before filing the civil suit. As Defendants noted in their Motion, the Michigan Court of Appeals examined the issue of whether a party is entitled to the statutory amount of \$1,000 without proof of actual damages. The court held that a claim under MCL 445.83 requires proof of actual damages from the publication whether seeking actual damages or the statutory amount of \$1,000. *Nyman v Thomson Reuters Holdings, Inc*, 329 Mich App 539, 545-56; 942 NW2d 696 (2019). Plaintiffs make no attempt to distinguish *Nyman*. Plaintiffs also do not argue that they have plead actual damages.

This Court takes seriously the publication of sensitive information. The Court notes that Defendants have published Plaintiff's personal information numerous times throughout this lawsuit in documents filed with the Court. On March 20, 2024, this Court ordered that Defendants immediately rectify the improper filings of complete social security numbers, personal addresses, and driver's license information. A Stipulation was filed with the Court on March 25, 2024, detailing the many instances of the filing of sensitive information. It is Defendants' burden to be sure that the exhibits are replaced and no longer available to the public.

Because Plaintiffs have failed to state a claim upon which relief can be granted by failing to allege actual damages, summary disposition as to Count III is appropriate under MCR 2.116(C)(8).

Unjust Enrichment (Count IV)

A claim for unjust enrichment requires a plaintiff to establish a defendant's receipt of a benefit from plaintiff and an inequity resulting to plaintiff because of the retention of that benefit. *Belle Isle Grill Corp v City of Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003).

Plaintiffs have failed to establish that Defendants have received a benefit from anything Plaintiff has done to the space. Plaintiffs' only argument is that they have "improved" the unit and spent money to do so. That alone does not mean that Defendants have received a benefit. Plaintiffs provide a list of loan amounts, but no evidence as to what changes were made or what the loan amounts were used to improve. Plaintiffs have failed to establish that the "improvements" to the space will provide a benefit to the Defendants, who may simply have to remove those updates for a future tenant.

Based upon the foregoing, the Court concludes that Plaintiffs fail to state a claim for unjust enrichment and summary disposition pursuant to MCR 2.116(C)(8) is granted as to Count IV of the Amended Complaint.

Plaintiffs' Motion for Summary Disposition of Defendants' Amended Counter Complaint Breaches of Contract (Count I and II)

Plaintiffs seek dismissal of Defendants' claim for breach of contract against each of the Plaintiffs, as set forth in the Counter Complaint.

Defendants' Counter Complaint alleges two distinct breaches by both Defendants: failure to pay rent and improper use of the space in violation of the lease. Plaintiffs argue that the breach relating to the failure to pay rent should be dismissed because Defendants are seeking the same relief in the District Court. Defendants argue that the District Court case seeks only possession of the leased space, but the Complaint filed in the 47th District Court specifically requests a money judgment in the amount of \$14,731.00, for non-payment of rent beginning with rent due in August 2023. The District Court Complaint was filed in November 2023, when this Counter Complaint was already pending. Defendants' counsel signed the District Court Complaint indicating an amount due as of November 13, 2023, in the amount of \$14,731, which on the face of the

Complaint includes “Late Fees, CAM, Water” in addition to past due rent. Yet, in this matter, Defendants claim the amount due exceeds \$30,000. Both parties agree that there is an Escrow Order in the District Court case, and that Plaintiffs have deposited funds into the court monthly.

Defendants’ Response to the Plaintiffs’ Motion for Summary Disposition implies that Defendants seek only possession for nonpayment in the District Court. Although Defendants’ Response acknowledges an escrow order in the District Court matter, they fail to provide the amount of funds on deposit or provide any credit to Plaintiffs. Defendants’ ledger in this Court (Exhibit B to Defendants’ Response) is completely different from the invoice provided to the District Court (Exhibit A to Plaintiffs’ Motion).

Based upon the District Court filings, Plaintiffs were current on the obligations under the Lease Agreement through August 24, 2023. The Amended Counter Complaint was filed in this matter on August 10, 2023, so the Plaintiffs were current on their rent on August 10, 2023, and certainly must have been when the initial Counter Complaint was filed in May 2023. Yet, Defendants filed both pleadings in this Court alleging in multiple paragraphs Plaintiffs had failed to pay rent.

Defendants are seeking redress in the District Court, which is the proper Court for summary proceedings. Based on Defendants filings in that court, the District Court can also grant an appropriate money judgment, this Court declines to take superintending control over the issue from the District Court and dismisses the breach of contract actions to the extent it seeks damages for the failure to pay rent, CAM charges, or any other monetary amounts due under the Lease Agreement. The District Court is the proper venue for those claims.

Defendants have alleged that Plaintiffs’ misuse of the leased space has caused damages separate and apart from the failure to pay rent but does not differentiate the request for relief

between the two theories. Defendants have failed to articulate any type or amount of damage sustained because of a use other than the exclusive use under the Lease Agreement. In fact, Defendants have not established that Plaintiffs are using the space in a manner not contemplated by the Lease. Plaintiffs have asserted that they are unable to use the space at all. Defendants have alleged sale of alcohol, events hosted, and citations by the City to Defendants for the use of the space. But Defendants have failed to provide a single piece of evidence or an affidavit to substantiate those allegations. Given the lack of evidence that the space is being used for an improper use, and the lack of articulation of any damage sustained for such improper use, summary disposition is appropriate.

Based on the foregoing, Defendants' Counter Complaint for Breach of Contract against each of the Plaintiffs is dismissed under MCR 2.116(C)(8).

ORDER

Based upon the foregoing Opinion:

IT IS HEREBY ORDERED that Defendants' Motion for Summary Disposition under MCR 2.116(C)(8) is **GRANTED** as to Count III of the Amended Complaint (Violation of MCL 445.83) and Count IV (Unjust Enrichment);

IT IS FURTHER ORDERED that Defendants' Motion for Summary Disposition under MCR 2.116(C)(8) and (C)(10) is **DENIED** as to Count I of the Amended Complaint (Fraudulent Misrepresentation) and Count II (Tortious Interference);

IT IS FURTHER ORDERED that Plaintiffs' Motion for Summary Disposition under MCR 2.116(C)(8) is **GRANTED** as to Count I of the Counter Complaint (Breach of Contract – Glam House Productions, LLC) and Count II (Breach of Contract – Jewelette Estes).

IT IS SO ORDERED.

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



/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
CIRCUIT COURT JUDGE

Dated: 3/27/24