STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

POWER IN THE PRAISES CHURCH and PERCY HENDERSON II,

Plaintiffs, **Case No. 22-005025-CB**

-v- **Hon. Annette J. Berry**

DETROIT PUBLIC SCHOOLS COMMUNITY DISTRICT, NIKOLAI VITTI, FELICIA VENABLE, and SYLVESTER MCINTOSH,

Defendants.

OPINION AND ORDER

At a session of said Court held in the Coleman A. Young Municipal Center, Detroit, Wayne County, Michigan,
on this: 4/30/2024

PRESENT: Hon. Annette J. Berry
Circuit Judge

This civil matter is before the Court on a motion for summary disposition on Plaintiff's breach of contract claim filed by Plaintiff Power in the Praises Church ("the Church"). Additionally, before the Court is a second motion for summary disposition filed by Defendant Detroit Public Schools Community District ("DPSCD"). For the reasons stated below, the Court denies the Plaintiff's motion and grants in part and denies in part Defendant's motion.

I. BACKGROUND

The instant matter arises out of a complaint filed by Plaintiffs Power in the Praises Church and Percy Henderson II ("Bishop Henderson") in connection with a lease of the former Bellevue Elementary School beginning in October 2013 through October 2018 when the lease expired. The property is located at 1501 Canton, Detroit, MI 48207. The parties entered into a second lease agreement in November 2018 which ended October 31, 2021. Plaintiffs allege that the November 2018 lease agreement contained an option to purchase the property for $100,000.00 if Plaintiffs exercised the option prior to October 31, 2019. Plaintiffs claim that, on August 22, 2019, the Church exercised its "option to purchase" and that, on October 21, 2019, Bishop Henderson informed DPSCD that the Church had secured the purchase price and was ready to buy the property. The "option to purchase" provided in relevant part:

> At any time during (sic) following period of the Term, commencing on the Commencement Date and ending on October 31, 2019 (the "First Option Period"), provided the Tenant is not in default hereunder, the Tenant shall have the right to purchase the Premises for the purchase price of One Hundred Thousand and 00/100 Dollars ($100,000.00) plus any past due amounts remaining unpaid under Section 3.01(b) of this Lease, subject to the execution of a purchase agreement, substantially in the form attached hereto as Exhibit B, satisfactory to the Landlord and its legal counsel. The Option shall be exercised by delivering written notice from Tenant to Landlord before the expiration of the First Option Period. ...
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> [Plaintiff's Exhibit 5, Lease Agreement, Section 4.01(a)].

On August 22, 2019, Bishop Henderson notified DPSCD via email that the Church was exercising the option and was prepared to purchase the property. [Plaintiff's Exhibit 6]. Plaintiffs further allege that, on December 8, 2020, the full DPSCD Board of

Education unanimously approved the sale of the former Bellevue Elementary School to Power in the Praises Church for $110,667.00. The Purchase Agreement and the Recommendation were approved by the full board at the December 8, 2020 DPSCD Board of Education Meeting, without objection.

The Church also contends that DPSCD delayed and did not begin the closing process until June 2021, when DPSCD'S Director of Real Estate Sylvester McIntosch told Bishop Henderson that, to consummate the sale, the Church had to pay an earnest money deposit in the amount of $10,000.00 along with $16,139.00 for past due rent. The Church allegedly paid the requested $26,139.00.

Defendants purportedly never complied with the repeated requests of its realtor, Robert Johnson, to be provided with (1) a signed "Resolution" giving Defendant Vitti the authority to sign the closing papers and bind DPSCD to the deal; and (2) the executed 2020 Purchase Agreement that had been submitted and approved by the board. According to Plaintiffs, after it received an email promising that a quitclaim deed would be issued to it, the Church fulfilled all of its obligations, including, delivering to the realtor the purchase price balance of $90,000.00.

Plaintiffs assert that DPSCD did not keep its promise. They claim that, on March 24, 2022, Defendant McGary told Bishop Henderson that, because the Church refused to sign a "new" purchase agreement with "new" terms, the Church could no longer purchase the property.

Preliminarily, the Court notes that this case was originally presided over by Hon. David Groner until his retirement when it was assigned to this Court. Upon cross motions for summary disposition filed by the parties, Judge Groner concluded the following:

In considering these arguments, the Court first notes that Plaintiff does not dispute that it was behind on its rent and utilities obligations when it invoked the Purchase Option. At the same time, however, the school system did not object to the enforceability of the Purchase Option on this basis prior to this litigation. Instead, the school system negotiated for the sale of the property, which included accepting a $10,000 earnest money deposit as well as payment of past due rent. Plaintiff has also submitted evidence that Defendant McIntosh explicitly represented that the October 2020 Purchase agreement had been signed by Defendant Vitti and that the sale was ready to close. Indeed, as late as mid-2021 the school system continued to indicate that it was willing to sell the property, and hired a realtor to handle the closing.

When the foregoing evidence is considered in the light most favorable to Plaintiff (as it must when assessing Defendants' motion), the Court cannot rule out the possibility that Defendants waived their rights to enforce the contractual prerequisites by continuing to negotiate for the sale of the property, particularly as Defendants have not identified what aspects of the proposed purchase agreements it found "unsatisfactory." Thus, summary disposition in favor of Defendants is inappropriate. At the same time, however, when the evidence is viewed in the light most favorable to Defendants (as it must when considering Plaintiff s motion), the Court cannot rule out the possibility that Defendants had legitimate grounds to object to the proposed purchase agreement or their timing. Thus, Plaintiffs are likewise not entitled to summary disposition.

[J. Groner Opinion, p. 2] [Emphasis added].

… Moreover, Plaintiff's allegations are insufficient to state a claim for intentional infliction of emotional distress, and the allegations regarding the individual Defendants' conduct are not sufficient to state a claim against them on any of the theories pled in the complaint. Finally, Defendants note that Plaintiff Henderson is not a party to any of the contracts at issue in this case, and that there is otherwise no indication that he was acting in his personal capacity with engaging with Defendants or that he incurred any sort of damages, from which Defendants infer that Plaintiff Henderson lacks standing to recover on these theories.

> ... Even more problematic, however, is that Plaintiff's response to Defendants' motion does not defend the tort claims in any way, or otherwise address why Plaintiff Henderson would have standing to assert these claims. Thus, this portion of Defendants' motion is granted.
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> In light of the foregoing, Defendants' motion for summary disposition is granted to the extent that: (1) Plaintiff Henderson lacks standing to pursue any of the theories of liability in his individual capacity; (2) Plaintiff's evidence is insufficient to recover on a fraud theory; (3) Plaintiff's complaint fails to state a claim for intentional infliction of emotional distress; and (4) Plaintiff's complaint fails to state a claim against any of the individual defendants. Thus, Plaintiff's tort claims are dismissed. On the other hand, neither party is entitled to summary disposition on Plaintiff's breach of contract claim.
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> [Id, p. 3-4] [Emphasis added].

Hence, Judge Groner dismissed Plaintiffs' claims for fraud and intentional infliction of emotional distress. He found that Plaintiff Henderson lacked standing to pursue any of the claims, including the contract claim. Finally, Judge Groner found that a genuine issue of material fact exists as to the contract claim. Discovery in this lawsuit closed on June 29, 2023. Now again before the Court are cross motions for summary disposition. Each motion will be addressed separately below.

II. STANDARDS FOR DETERMINING MOTIONS FOR SUMMARY DISPOSITION

Defendant DPSCD bases its motion on MCR 2.116(C)(7), MCR 2.116(C)(8), and MCR 2.116(C)(10). Plaintiff Power in the Praises also bases its motion on MCR 2.116(C)(10).

Under MCR 2.116(C)(7), the Court may grant summary disposition on the basis of the following: "Entry of judgment, dismissal of the action, or other relief is appropriate because of release, payment, prior judgment, immunity granted by law, statute of

limitations, statute of frauds, an agreement to arbitrate or to litigate in a different forum, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action." Because Defendant does not specify its argument under MCR 2.116(C)(7), it is unclear which of these bases apply to its motion. "It is not sufficient for a party "simply to announce a position or assert an error and 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." *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) [Internal quotation marks and citation omitted]. Thus, the Court may decline to address Defendant's citation of this court rule. *Id.*

MCR 2.116(C)(8) provides for summary disposition where "[t]he opposing party has failed to state a claim on which relief can be granted." A motion for summary disposition under (C)(8) tests the legal sufficiency of the complaint. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). The trial court may consider only the pleadings in rendering its decision. *Id.* All factual allegations in the pleadings must be accepted as true. *Dolan v Continental Airlines/Continental Express*, 454 Mich 373, 380-381; 563 NW2d 23 (1997). "The motion should be granted if no factual development could possibly justify recovery." *Beaudrie*, *supra* at 130.

In reviewing a motion under MCR 2.116(C)(10), a court must consider the pleadings, admissions, affidavits, and other relevant documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). If no genuine issue of material fact is established, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). "A genuine issue of material fact exists when the

record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

The moving party has the initial burden of supporting its position through documentary evidence. *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the opposing party to establish the existence of a genuine issue of material fact. *Id.* The non-moving party ". . . may not rest on the mere allegations or denials of his or her pleadings, but must, by affidavit or otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial." MCR 2.116 (G)(4). If the opposing party fails to do so, the motion for summary disposition is properly granted. Id.; *Quinto, supra* at 363. Finally, a "reviewing court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial. A mere promise is insufficient under our court rules." *Maiden, supra* at 121.

III. DISCUSSION

A. The Church's Motion

In support of its motion, the Church first argues that because the sale of the property is being implemented by a governmental entity, the "intent of the parties," is explicitly set forth in the December 8, 2020 Directive to sell the property to Power in the Praises Church. In response, DPSCD contends that the parties did not enter into a contract on December 8, 2020.

To establish a breach of contract, Plaintiff herein must show that "(1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party

claiming breach." *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich 161, 178; 848 NW2d 95 (2014).

In the Court's view, the relevant contract is the "option to purchase" contained in the second lease agreement, which was executed in November 2018 and which ended on October 31, 2021. As explained above, that lease agreement contained an option to purchase the property for $100,000.00 if the Church exercised the option prior to October 31, 2019. The Church claims that, on August 22, 2019, it exercised the option to purchase when its representative Bishop Henderson informed DPSCD that the Church had secured the purchase price and was ready to buy the property.

After much delay by DPSCD, the Church was told that it was required to pay an additional $26,139.00 (including a $10,000 earnest money deposit and $16,139 for lease arrearages), which it paid on October 20, 2020 along with the purchase price balance of $90,000.00. Also noted above is that, on December 8, 2020, the DPSCD Board approved the sale of the elementary school to the Church for a total of $110,667.00.

Ultimately, on March 24, 2022, DPSCD refused to go forward unless the Church agreed to new terms and signed a new purchase agreement. DPSCD argues that the Church delayed in making the earnest money deposit and balance price. There is no indication in a prior purchase agreement that there was a time limit for doing so. In addition, neither of the parties have submitted to the Court a copy of the alleged proposed new purchase agreement. However, there is evidence that a new purchase agreement was being drafted on or about February 15, 2022. In an email to Percy Henderson II, Kim McGary, Associate General Counsel for DPSCD, asked Bishop Henderson if there were any terms in the purchase agreement that he would like to discuss. McGary also said that

the purchase agreement would be finalized if there were no issues to discuss by February 28, 2022. [Defendant's Exhibit D].

Robert Johnson, President of Real Estate Title Agency, was hired to do title work and close the sale. Johnson also testified that he attempted to close the sale without success. He stated:

> Well, we couldn't get Detroit to sign a closing package and they kept saying this thing and every time they request a change, we did it, and even though we're not insuring them, we're insuring him. So I didn't understand all the changes that Detroit wanted us to do. All right? And we're sitting with the closing package and nobody is willing to help us at Detroit Public Schools. ...
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> [Plaintiff's Exhibit 2, p. 22-23].

Johnson also testified that he was unable to get anyone from DPSCD to sign the purchase agreement and title package. He said that he also sent a request "100 times" for a document saying that the superintendent could sign the documents on behalf of DPSCD. On the other hand, he said that Bishop Henderson complied with his request for $3,000 to do the title work. He said that Bishop Henderson complied with all his requests. Johnson also testified that he needed a copy of the board's resolution approving the sale and was unable to get one from DPSCD. Emails show that Johnson's office requested a copy of the resolution, without success. He said he attempted several times to talk directly with the superintendent of DPSCD about the transaction, also without success. He said that he believed that the superintendent was unaware of the sale of the property to the Church. Thus, Johnson's testimony establishes a genuine issue of material fact that DPSCD breached the option agreement.

As Judge Groner ruled, the breach of contract claim is dependant upon the enforceability of the 2018 purchase option. In his opinion, Judge Groner stated in relevant part:

> … the Court first notes that Plaintiff does not dispute that it was behind on its rent and utilities obligations when it invoked the Purchase Option. At the same time, however, the school system did not object to the enforceability of the Purchase Option on this basis prior to this litigation. … Indeed, as late as mid-2021 the school system continued to indicate that it was willing to sell the property, and hired a realtor to handle the closing.
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> …the Court cannot rule out the possibility that Defendants waived their rights to enforce the contractual prerequisites by continuing to negotiate for the sale of the property … Thus, summary disposition in favor of Defendants is inappropriate. At the same time, however, … the Court cannot rule out the possibility that Defendants had legitimate grounds to object to the proposed purchase agreement or their timing. Thus, Plaintiffs are likewise not entitled to summary disposition.
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> This analysis also renders the enforceability of the 2019 and 2020 Purchase agreements largely irrelevant. Specifically, even if those agreements are unenforceable under the statute of frauds, such a finding would not divest Plaintiff of its rights under the 2018 Purchase Option, nor excuse the school system from honoring the option if it was properly invoked. On the other hand, if Plaintiff did not satisfy the prerequisites for exercising the option, then the school system would have no obligation to sell the property. Thus, liability on Plaintiff's breach of contract claim turns exclusively on the enforceability of the 2018 Purchase Option, and it is not necessary to address the enforceability of the unsigned purchase agreements.
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> [Defendant's Exhibit B] [Emphasis added].

Thus, as this Court noted above, this case turns on the enforceability of the only relevant contract, which is the purchase option in the 2018 lease. Moreover, the Court sees no reason to conclude that Judge Groner's assessment was incorrect. Thus, the Board

of Education's resolution to sell the property is not the enforceable contract at issue here. Therefore, Plaintiff's argument lacks merit. Nevertheless, the Court still finds that the parties have demonstrated a genuine issue of material fact as to the enforceability of the purchase option and whether the parties have satisfied their duties thereunder. Therefore, as a whole, the parties have demonstrated that there is a genuine issue of material fact whether DPSCD breached the option agreement. Accordingly, the Court denies Plaintiff's motion.

B. DPSCD's Motion

The focus of DPSCD's motion is primarily on the specificity of the damages alleged by the Church. DPSCD contends that the Church's claim for lost profits is too speculative. DPSCD asserts that "Plaintiff has yet to and cannot articulate a basis for its claim of lost profits." In support, it cites *Fera v Village Plaza, Inc*, 396 Mich 639, 644 (1976), quoting *Shropshire v Adams,* 40 Tex Civ App 339, 344; 89 SW 448, 450 (1905).

In *Fera,* the court noted that a plaintiff must show a basis for a reasonable estimate of the extent of his harm, as measured in money, if he or she is to be entitled to a judgment for damages for breach of contract. *Id* at 643. The court also noted that, as damages, lost future profits from an "interrupted business" are more easily ascertainable than future profits of a "new business." *Id* at 644. However, it also noted that "'[i]n any case when by reason of the nature of the situation they may be established with reasonable certainty they are allowed.'" *Id*, quoting *Shropshire, supra.*

In response, the Church argues that DPSCD fails to acknowledge that there are two separated bases for damages, which are: "(1) the difference between the purchase price and the value of the property at the time of the breach; and (2) loss of business opportunity

contemplated by the parties at the time the agreed upon contract was executed, resulting in lost profits."

The Court agrees that, in the instant circumstances, damages are not limited to loss of profits. "Ordinarily, the measure of damages for breach of a contract to sell or convey real estate is the difference between the contract and market prices at the time. However, consequential damages may be recovered in addition to general damages where the damage was foreseeable and was a natural consequence of the breach." 7 Mich Civ Jur Damages § 101, citing *McNeal v Tuori,* 107 Mich App 141; 309 NW2d 588 (1981) [Footnotes omitted]. As to damages related to market value of property, the *McNeal* court stated:

> Where there is some evidence of the market value of the property around the time of the breach, the factfinder should weigh all the evidence in an effort to make a reasonable determination of market value and, hence, damages. In weighing such evidence, the proximity of a particular offer, listing, or opinion of market value to the time of the breach is a factor to be weighed. The source of the evidence is also to be considered in assessing its weight.
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> *Id* at147.

In this case, as to the first basis for damages, an appraisal was provided to DPSCD's Director of Real Estate, Sylvester McIntosh, by Marc Nassif, a certified appraiser. Nassif valued the property at $850,000.00 as of June 18, 2020. [Plaintiff's Exhibit 1]. The agreed upon purchase price was $110,677.00. It also asserts that "Defendant's brief concentrates entirely on whether the Church is entitled to the consequential damages resulting from DPSCD's undisputed failure to sell the property it was explicitly directed and authorized to sell to Power in the Praises Church on December 8, 2020."

As noted above, "[t]he measure of damages recoverable by a vendee for nonperformance of a contract for the sale of land by the vendor is the difference between the actual or market value of the premises at the time of the breach, and the sum agreed to be paid by the terms of the contract. … Where a vendor in a contract for the sale of land acts in bad faith, the proper measure of damages is the value of the land at the time of the breach." 7 Mich Civ Jur Damages § 102. The court in *Soloman v W Hills Dev Co*, 110 Mich App 257, 266; 312 NW2d 428 (1981) [Citations omitted] explained that "a seller acts in 'bad faith' sufficient to justify loss of bargain damages when, having title, the seller nevertheless refuses to convey, or when the seller is unable to convey due to a voluntary act such as conveying to a third party. This is the situation in the instant case and the trial court was correct in determining damages on the basis of plaintiff's loss of bargain." *Soloman v W Hills Dev Co*, 110 Mich App 257, 266; 312 NW2d 428 (1981) [Citations omitted].

Here, the Church has presented sufficient evidence that DPSCD continually refused to go forward with the sale of the subject property to create a genuine issue of material fact as to an alleged breach of contract. As to the first basis for damages, an appraisal was provided to DPSCD's Director of Real Estate, Sylvester McIntosh, by Marc Nassif, a certified appraiser. Nassif valued the property at $850,000.00 as of June 18, 2020. [Plaintiff's Exhibit 1]. The agreed upon purchase price was $110,677.00. The Church also asserts that "Defendant's brief concentrates entirely on whether the Church is entitled to the consequential damages resulting from DPSCD's undisputed failure to sell the property it was explicitly directed and authorized to sell to Power in the Praises Church on December 8, 2020." However, in the Court's view, the option to purchase

contained in the lease is DPSCD's authorization to sell the property. The question then is when the alleged breach of contract occurred. On November 5, 2021, after agreeing to changes in the terms of the purchase agreement, Bishop Henderson appeared for the closing located at Robert Johnson's office in Southfield, Michigan, but no one appeared on behalf of DPSCD. Bishop Henderson again appeared at the closing on November 8, 2021 and, again, no one appeared on behalf of DPSCD. He provided a cashier's check for the $90,000.00 balance of the purchase price.

Also, the Court believes that, if DPSCD did in fact breach the contract, it occurred the first time DPSCD failed to appear at the closing on November 5, 2021. Thus, the fact finder must determine damages as the difference between the agreed upon purchase price of $110,677.00 and the market value of the property at the time of the closing on November 5, 2021.

As to the issue of loss of profits, DPSCD argues that the proposed daycare facility is a "new business" and the measure of loss of profits damages is too speculative. In answers to interrogatories, Bishop Henderson said that he expected the following:

> 25 classrooms x 30 children=750 children x $1,100.00 cost of daycare per month equals $825,000.00 x 28 months (December 2019 through March 2022) equals gross lost profits of $3,100,000.00 minus operational costs 0f 75% equals a net profit loss of $5,775,000.00.
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> [Defendant's Exhibit F, Interrogatory 5].

He was unable to determine how the Church would identify 750 children, how each child would pay, and what the operational costs of running the daycare center would be. The Church contends that it would be able to provide a jury with a basis for a reasonable estimate of the extent of the Church's harm. *Fera, supra.* DPSCD contends

that the alleged damages are too speculative. The Court agrees that the daycare center is a "new business" that has not yet functioned. The court in *Joerger v Gordon Food Serv, Inc*, 224 Mich App 167, 176; 568 NW2d 365 (1997) explained:

> In examining a new business versus an interrupted business, the Supreme Court has indicated that "'[i]f the business ... has not had such a history as to make it possible to prove with reasonable accuracy what its profits have been in fact, the profits prevented are often but not necessarily too uncertain for recovery.'" *Fera, supra* at 645, 242 NW2d 372, quoting 5 Corbin on Contracts, § 1023, pp. 150–151. Several cases have allowed a party to prove loss of future profits by pointing to profits made in previous months or years. See, e.g., *Stimac v Wissman,* 342 Mich 20, 28; 69 NW2d 151 (1955); *Nat'l Pharmaceutical Services, supra* at 293; 241 NW2d 76; *Gongola v Yaksich,* 3 Mich App 676; 143 NW2d 601 (1966). The instant case, however, is easily distinguishable.

The *Joerger* court also stated:

> Furthermore, plaintiffs' argument that Joerger properly could base his proposed testimony on another operation known as the "Market Day" program because that business operation and this business operation were "substantially similar" is without merit.
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> *Id* at 176-177.

In other words, the Church may not base its estimate of loss of profits on the operations of other similar businesses. As proof, the Church offers an article outlining the cost of childcare in various communities. [Plaintiff's Exhibit 10]. The article indicates that the average cost of childcare in Detroit is $700.00 for infants and $600.00 for toddler. This is insufficient to establish any reasonable estimate for loss of profits. As DPSCD argues, citing *Fredonia Farms, LLC v Enbridge Energy Partners, LP*, No. 1:12-CV-1005, 2014 WL 3573723, at *5 (WD Mich, July 18, 2014), the Church has not produced financing commitments, budgets, forecasts, marketing materials, or market studies.

"In general, a new business may recover lost profits '[w]here estimates of lost profits are based on objective facts or data and there are firm reasons to expect a business to yield a profit.'" *Id*, quoting 22 Am Jur2d Damages § 459. "The law requires that this evidence shall not be so meager or uncertain as to afford no reasonable basis for inference, leaving the damages to be determined by sympathy and feelings alone." *Fera, supra* at 644. Here, the Church has not provided sufficient evidence for a jury to decide loss of profits without speculation or conjecture. Therefore, as to damages for loss of profits, the Court grants DPSCD's motion. However, if a breach of contract may be proven, the Church may still be entitled to damages in the form of the difference between the actual or market value of the premises at the time of the breach. *McNeal, supra.*

The Court notes that neither party has addressed the remedy of specific performance, which the Church requests as an alternate form of relief in its complaint. Although specific performance may be the proper method to resolve this case if a breach of contract can be found, because the parties have not addressed this form of relief at this time, the Court will not address such relief.

IV. CONCLUSION

The parties have demonstrated that there is a genuine issue of material fact whether DPSCD breached the option agreement. MCR 2.116(C)(10). Accordingly, the Court denies Plaintiff's motion.

As to damages, the measure of damages for breach of a contract to sell or convey real property is the difference between the contract and market prices at the time of the breach. *McNeal, supra.* The Church has provided sufficient evidence of the value of the property to create a genuine issue of material fact. As to the time of the breach, the Court

finds that the first instance of failure to attend a closing of the sale is the proper point for measurement purposes and is sufficient to show a genuine issue of material fact as to the value of the property at the time of the breach. Thus, to this extent, DPSCD's motion is denied. Conversely, the Church may not recover lost profits because, as a new business, it is unable to establish the measure of lost profits with reasonable certainty. Such lost profits are based on conjecture and speculation. Hence to this extent, the Court grants DPSCD's motion.

For the reasons stated in the foregoing Opinion,

IT IS ORDERED that the motion for summary disposition filed by Plaintiff Power in the Praises Church is hereby **DENIED;**

IT IS FURTHER ORDERED that the motion for summary disposition filed by Defendant Detroit Public Schools Community District is hereby **GRANTED** as to damages for loss of profits;

IT IS FURTHER ORDERED that the motion for summary disposition filed by Defendant Detroit Public Schools Community District is hereby **DENIED** as to the form of damages as the measure of the value of the property;

IT IS FURTHER ORDERED that this **DOES NOT** resolve the last pending claim and **DOES NOT CLOSE** the case.

IT IS SO ORDERED.

DATED: 4/30/2024

/s/ Annette J. Berry
April 30, 2024

Circuit Judge