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

COUNTRY GLENN, LLC d/b/a
MARKET PLACE SPECIALTY CENTER,
Plaintiff,

v. **Case No. 15-147540-CB**
Hon. James M. Alexander

ROMO, LLC a/k/a
ROMO HOUSE OF INDIA, LLC, ET AL,
Defendants.
_____/

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendants House of India, Inc, Narayan Sharma, Gopal Basnet, and Gobinda P. Gautam's ("the House of India Defendants") motion for partial summary disposition.

Plaintiff brought this case to collect past-due rents on a lease agreement. House of India was the original lessee under the terms of a December 2001 lease agreement, and Sharm, Basnet, and Gautam were guarantors on said lease. These Defendants ran a restaurant that occupied the leased premises. The Lease term was for ten years and set to expire in 2011.

In 2006, the House of India Defendants sold the restaurant and assigned the lease to Defendant Romo, which was guaranteed by Romo's owner, Defendant Armardeep Singh ("the Romo Defendants"). When Romo took over the restaurant, it also entered into a lease extension via an Addendum that added five years to the lease – thereby extending it to 2016.

Apparently, the Romo Defendants almost immediately had difficulty making the lease payments. And, for unknown reasons, Plaintiff appears to have simply let the debt grow

(although accepting partial payments from time to time) over the years. In its Complaint, Plaintiff seeks over $305,000 in unpaid lease payments from all Defendants.

Plaintiff's theory of recovery under against the House of India Defendants is that the personal guarantees contained in the 2001 Lease extend past the expiration of said lease and cover the 2006 Addendum executed by the Romo Defendants. On this theory, Plaintiff brings claims of breach of contract and quantum meruit/unjust enrichment.

The House of India Defendants now move for partial summary disposition – seeking a ruling that Plaintiff's alleged damages against them must be limited to the specific timeframe of June 12, 2009 through November 30, 2011 (the expiration of the 2001 Lease). These Defendants also seek dismissal of Plaintiff's unjust enrichment claim because an express contract covers the subject matter of the current dispute.

The House of India Defendants seek these rulings under MCR 2.116(C)(8) and (C)(10). A (C)(8) motion tests the legal sufficiency of the complaint, and a (C)(10) motion tests the factual support for a plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).

1. Quantum Meruit/Unjust Enrichment (Count II)

The Court will first address Plaintiff's quantum meruit/unjust enrichment claim. With respect to such a claim, it is well settled that, "A contract will be implied **only where no express contract exists**. There cannot be an express and implied contract covering the same subject matter at the same time." *Campbell v Troy*, 42 Mich App 534, 537; 202 NW2d 547 (1972), citing *Superior Ambulance Service v Lincoln Park*, 19 Mich App 655; 173 NW2d 236 (1969).

In this case, Plaintiff claims that it is suing on an express contract – the Lease Agreement and Addendum. These express contracts form the basis for its allegations of unpaid lease

payments. Because there is an express contract that covers the subject matter of the dispute, Plaintiff's only recourse in this Court is based in contract.

For the foregoing reasons, considering only the pleadings and viewing all well-pled factual allegations in the light most favorable to Plaintiff, this Court concludes that Plaintiff's Count II is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. As a result, the House of India Defendants' motion for summary disposition of said claim under (C)(8) is GRANTED, and Plaintiff's Count II (as to the House of India Defendants only) is DISMISSED.

2. Breach of Contract (Count I)

The House of India Defendants next seek a ruling that Plaintiff's alleged damages under its breach of contract claim are limited to the specific timeframe of June 12, 2009 through November 30, 2011.

a. Statute of Limitations

Defendants first argue that Plaintiff can only seek back to June 12, 2009 because that is six years before the present lawsuit was filed, based on the six-year statute of limitations for actions based in contract, citing MCL 600.5807(8).

Plaintiff responds that its claims are not limited by the statute of limitations because the clock on the same did not begin until the Romo Defendants vacated the premises in June 2015 because they had been promising all along that they would honor the lease agreement and pay all arrearages once the business stabilized.

But Defendants argue that claims on an installment contract accrue as each installment falls due, citing MCL 600.5836. Defendants further cite *Cordova Chem Co v Dept of Nat Res*,

212 Mich App 144, 153; 536 NW2d 860, 865 (1995) for the proposition that "a claim of breach of contract accrues when the promisor fails to perform under the contract." But this argument fails to acknowledge that the breach of the individual guarantees was not the failure to make the lease payments.[1]

The breach of guaranty claim is based on the individual guarantors' failure to pay the tenant's accrued debt when requested to do so. And neither party states exactly when Plaintiff requested that the guarantors do so. This was the guarantors' obligation – guaranty the tenant's performance under the lease. When the guarantors failed to do so, Plaintiff's claim accrued.

In any event, the Defendants' argument that Plaintiff's breach of contract claims are limited to six years before the filing of the Complaint misses the mark, and the Court DENIES summary on this issue.

b. Guaranty limited to 2001 Lease?

The House of India Defendants next argue that Plaintiff may only seek damages through November 30, 2011 (the end of the original lease term), citing *Wilson Leasing Co v Seaway Pharmacal Corp*, 53 Mich App 359; 220 NW2d 83 (1974).

The *Wilson Leasing* Court reasoned: "Any material alteration of a principal debt or obligation operates to completely discharge any guaranty of that debt or obligation, unless the guarantor consented to the alteration. Any alteration that increases the debt or obligation or extends the time for performance is material." *Wilson Leasing*, 53 Mich App at 369-70 (internal citations omitted).

This reasoning is consistent with our Supreme Court's caution regarding personal guarantees: "a personal guarantee cannot be implied from language that fails to clearly and

[1] The Court notes that failure to pay rent is the tenant's (House of India, and later, Romo's) breach of the Lease.

unambiguously reflect an intention to assume such a responsibility." *Bandit Indus, Inc v Hobbs Intern, Inc*, 463 Mich 504, 514; 620 NW2d 531 (2001). The *Bandit Industries* Court reasoned that "a guaranty contract-like a surety contract-is a special kind of contract." *Id*. at 512. As a result, "a court must approach with caution a claim that the parties have formed a guaranty contract." *Id*. at 512. And a court must apply "strict interpretation to the construction of such a contract" in order to find "an unambiguous expression of the guarantor's intention to accept that responsibility." *Id*. at 512, 514. Absent these findings, no guaranty can exist.

In our case, it is undisputed that none of the House of India Defendants signed the Addendum extending the lease for an additional five years beyond the November 30, 2011 termination date.

Plaintiff argues that the 2001 Lease's Guaranty applies to the Addendum because the Assignment refers to both the 2001 Lease and the Addendum, collectively as the Lease. Plaintiff also points to a Partial Release executed at the same time and signed by all of the House of India Defendants. But Plaintiff's arguments miss the mark.

First, the Assignment's reference to the Lease and Addendum does not contain any individual guaranty. The only express guaranty that applies to the House of India Defendants is contained in the 2001 Lease. This guaranty, by its own terms, guarantees performance of said lease and nothing more.

Second, the Partial Release of certain claims under the 2001 Lease does not contain any language that would indicate that it extends the prior guaranty to the Addendum (and lease extension). Plaintiff's argument to the contrary is confused.

The Addendum added another five years to the assigned Lease's term. The extension was a "material alteration" of the obligation under the Lease that began at the Lease's original expiration date. The parties do not dispute that none of the House of India Defendants signed or

consented to the Addendum. As a result, under *Wilson Leasing*, this material alteration operates to discharge the Guarantors' obligation at the end of their original express promise – November 30, 2011.

This finding is consistent with the cautions of the *Bandit Industries* Court. Plaintiff fails to convince this Court that the House of India Defendants "clearly and unambiguously" intended to assume the responsibility to guaranty the Romo Defendants' performance under the Lease Addendum.

For all of the foregoing reasons and viewing all evidence in the light most favorable to the Plaintiff, the Court finds that there are no material questions of fact in dispute and the House of India Defendants are entitled to judgment as a matter of law. Therefore, the Court GRANTS said Defendants' motion for summary disposition under (C)(10) and holds that Plaintiff's claimed damages (as to these Defendants) are limited to those accruing through the end of the original Lease (November 30, 2011).

IT IS SO ORDERED

January 13, 2016
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge