

STATE OF MICHIGAN
IN THE 14TH CIRCUIT COURT

* * * * *

CANNA KOALA GROUP, LLC,
Plaintiff/Counter-Defendant,

Case No. 23-4331-CB

v

HON. KENNETH S. HOOPES

SIGUARD RUDHOLM; FRS MUSKEGON,
LLC; STEVE FRANKLIN;
and ROGER SCHMIDT;
Defendant/Counter-Plaintiff.

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Opinion and Order Denying Defendant's Motion for Summary Disposition

Plaintiff/Counter-Defendant, Canna Koala Group, LLC, has moved under MCR 2.116(C)(10) and (I)(2) for disposition in its favor of all claims and counterclaims. Disposition under MCR 2.116(C)(10) is appropriate if there is no genuine issue of material fact. If the movant supports the motion as provided in MCR 2.116, then the opponent must show facts establishing a genuine issue for trial. MCR 2.116(G)(4). The court makes all reasonable inferences from the evidence and in favor of the non-movant. *Skinner v Square D Co*, 445 Mich 153, 161–62; 516 NW2d 475 (1994). Canna Koala also invokes MCR 2.116(I)(2), but the court will treat this motion as one under (C)(10), because (I)(2) is a rule allowing for judgment in favor of the party opposing a motion. See *Johnston v Livonia*, 177 Mich App 200, 208; 441 NW2d 41 (1989).

Canna Koala argues that it is not liable for breach of the disputed land contract because Defendant, FRS Muskegon, LLC, breached first by not owning the property it was to sell to Canna Koala and because FRS owed delinquent taxes on the property.

For its first proposition, Canna Koala assumes without evidence, argument, or authority that a third party owned the disputed real estate until that party recorded a quitclaim deed conveying it to FRS in November 2021. The deed is dated January 30, 2019. A deed takes effect when it is delivered to the grantee, not from the time of its date, execution, or recording. *Ligon v Detroit*, 276 Mich App 120, 128; 739 NW2d 900 (2007). Canna Koala has not offered any evidence on when the deed was delivered. FRS asserts that delivery happened on January 30, 2019. But contrary to MCR 2.119(B)(1)(b), the averment on which it relies is vague and conclusory. Therefore, the question of whether FRS owned the disputed property when it agreed to sell that parcel to Canna Koala remains a question of fact.

For its other proposition, Canna Koala relies on the contract's terms at ¶ 14. The paragraph provides, however, that FRS warranted to Canna Koala that as of the date of the contract, there were no obligations or liabilities, including tax liabilities, relating to the property for which Canna Koala "would or will be liable." Canna Koala has presented no evidence to show that it has ever been liable for anything related to the disputed property that existed at the time the parties made the agreement.

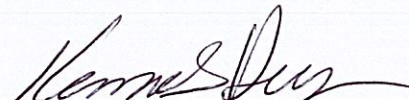
Having shown no evidence that it became liable to a tax debt that existed at the time it made the agreement with FRS, Canna Koala is not entitled to judgment on the question of whether FRS breached that contract.

The question of who owned the property when FRS agreed to sell it to Canna Koala remains one of fact. And Canna Koala has not established that it took on a tax liability related to the property that existed when it agreed to buy that parcel from FRS. The motion is therefore DENIED.

FRS invoked both MCR 2.116(C)(10) and (I)(2) in its response to the motion and asks for disposition of this action in its favor under those authorities. FRS did not bring a proper motion under MCR 2.119 for its summary-disposition request. And the response raises issues that Canna Koala did not raise in the instant motion. This request is therefore DENIED.

IT IS SO ORDERED. This is neither a final order nor does it close the case.

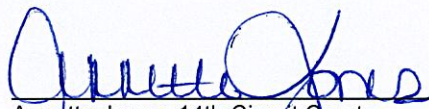
May 17, 2024



Kenneth S. Hoopes (P53469)
Circuit Judge

CERTIFICATE OF MAILING

I hereby certify that on the 17 day of May 2024 I personally handed or mailed copies of this order to the parties above named at their respective addresses by ordinary mail.



Annette Jones, 14th Circuit Court
Assistant to the Hon. Kenneth S. Hoopes