

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

640 TEMPLE INVESTOR, LLC,

Plaintiff,

No. 22-013484-CB

-v-

Hon. Annette J. Berry

**CHRISTOS MOISIDES, BYZANTINE
HOLDINGS, LLC, DAVID P.
SUTHERLAND, and THE DAVID
P. SUTHERLAND LIVING TRUST
DATED SEPTEMBER 3, 1998,**

Defendants.

AND

**CHRISTOS MOISIDES AND BYZANTINE
HOLDINGS, LLC,**

Counter-Plaintiffs,

-v-

640 TEMPLE INVESTOR, LLC,

Counter-Defendant,

AND

**CHRISTOS MOISIDES AND BYZANTINE
HOLDINGS, LLC,**

Cross-Plaintiffs,

-v-

**DAVID P. SUTHERLAND and THE
DAVID P. SUTHERLAND LIVING
TRUST DATED SEPTEMBER 3, 1998,**

Cross-Defendants.

OPINION AND ORDER

At a session of said Court held in the Coleman
A. Young Municipal Center, Detroit, Wayne
County, Michigan,
on this: 5/31/2024

PRESENT: Honorable Annette J. Berry
Circuit Judge

This civil matter is before the Court on a motion for summary disposition filed by Plaintiff 640 Temple Investor. For the reasons stated below, the Court will grant the motion for summary disposition and enter judgment in favor of 640 TI on its Guaranty claim against Defendants.

1. Facts and Procedural History

Plaintiff/Counter-Defendant 640 TI initially filed a complaint against Defendants/Counter-Plaintiffs Christos Moisides (“Moisides”), Byzantine Holdings, LLC (“Byzantine”), David Sutherland (“Sutherland”), and the Donald P. Sutherland Living Trust dated September 3, 1998 (“Sutherland Trust”) to enforce a guaranty provision in the parties’ amended operating agreement. Moisides and Byzantine filed a counter-complaint against 640 Temple Investor, LLC (“640 TI”) on March 14, 2023. Moisides and Byzantine also filed a Third-Party Complaint against Sutherland and the Sutherland Trust on March 14, 2023.

Non-Party Temple Group Holdings, LLC (“TGH”) owns real property at 640 Temple Street, Detroit, Michigan. TGH is often referred to in their pleadings by Counter-Plaintiffs as “Property Owner.” TGH reorganized in 2019 to help fund a renovation of the property (“the Project”) and 640 TI became the Investor Member of TGH. Non-party Temple Group Management Company, LLC (“TGM”) was the Managing Member of TGH under the Operating Agreement.

Byzantine owns a 50% interest in TGM. Moisesides owns a 50% interest in Byzantine. Neither Byzantine nor Moisesides directly owns any portion of TGH.

On March 9, 2023, 640 TI exercised its rights under the Operating Agreement and removed TGM as Managing Member of TGH. [640 TI's Exhibit 1, Operating Agreement Sections 8.13(a) and (b), p. 40-42].

Under the TGH Operating Agreement,¹ TGM agreed to repurchase 640 TI's interest in TGH upon the occurrence or non-occurrence of certain events. Those events may be:

(a) If (i) the conditions precedent to the Placed-in-Service Installment as set forth in Section 5.01(c)(iii)² have not been

1

The "AMENDED AND RESTATED OPERATING AGREEMENT" is dated as of May 8, 2019 and is attached as 640 TI's Exhibit 1.

2

Section 5.01(c)(iii) of the Operating Agreement provides:

(c) Subject to the provisions of this Agreement, including, without limitation, the provisions of Sections 5.01(d), 5.01(9) and 5.08, the Investor Member shall be obligated to make a Capital Contribution to the Company in the aggregate amount of \$9,866,588 in four (4) Installments, which Installments shall be due and payable in cash by the Investor Member, as set forth below.

...

(iii) \$8,746,612 (the "Placed-in-Service Installment") shall be payable within ten (10) business days after the satisfaction of all of the following conditions: (A) payment by the Managing Member of any amounts then owed by the Managing Member pursuant to Section 5.01(9); (B) receipt of evidence of the approval by the National Park Service of any amendments to the Part 2 Approval satisfying any conditions to the Part 2 Approval; (C) delivery to the Investor Member of certification (acceptable to the Investor Member) by the Architect that the Rehabilitation is one hundred percent (100%) completed and has been done in a manner consistent with the Part 2 Approval, including all tenant improvements and change orders; (D) delivery to the Investor Member of the final certificate of occupancy for the Property; (E) delivery to the Investor Member of the Tax Certificate; (F) receipt of an updated Title Policy which does not contain any exception for construction lien rights; (G) a complete set of as-built drawings for the Property, all in form reasonably satisfactory to the Investor Member; (H) delivery to the Investor Member of a final unconditional lien waiver from the Contractor indicating that all amounts payable to the Contractor have been paid in full and that the Company is not in violation of the Construction Contract; and (I) delivery to the Investor Member of a Lender's Estoppel Certificate.

satisfied by December 31, 2020, or such later date as may be Consented to by the Investor Member; (ii) the Company has not received Part 8 Approval prior to June 30, 2021, or such later date as may be Consented to by the Investor Member; (iii) the Property will qualify for less than seventy-five percent (75%) of the Projected Credits; or (iv) an event of Bankruptcy has occurred with respect to any Developer Entity (each a “Repurchase Event”), then the Managing Member shall, within fifteen (15) days of the occurrence or notification thereof, as applicable, deliver to the Investor Member notice of such event and of its obligation, at the option of Investor Member, to purchase the Interest of the Investor Member hereunder and return to the Investor Member its Adjusted Capital Contribution, in the event the Investor Member, in its sole discretion requires such purchase of its Interest.

[640 TI’s Exhibit 1, Operating Agreement, Section 5.04(a), p. 32] [Emphasis added].

Hence, the events are: (1) conditions set forth in Section 5.01(c)(iii) have not been satisfied by December 31, 2020; (2) the Company has not received Part 8 Approval by June 30, 2021; (3) qualification for less than 75% of the Projected Credits; or (4) bankruptcy.

Moisides, Byzantine, Third-Party Defendants, and Defendants David P. Sutherland and the David P. Sutherland Living Trust dated September 3, 1998 entered into an Unconditional Guaranty (“the Guaranty”) for the benefit of 640 TI, guaranteeing TGM’s repurchase obligation under the Operating Agreement. The Guaranty provides:

UNCONDITIONAL GUARANTY

THIS UNCONDITIONAL GUARANTY (the “Guaranty”), is made as of May 8, 2019, by Temple Group Management Company LLC, a Michigan limited liability company (“Manager”), Byzantine Holdings, LLC, a Michigan limited liability company (“Developer”), Gretchen Valade, an individual (“Valade”), The Gretchen Valade Irrevocable Trust Dated January 15, 2009 (“Valade Irrevocable Trust”), The Gretchen Valade Revocable Trust dated May 5, 1982

(“Valade Revocable Trust”), The David Sutherland Revocable Trust dated September 3, 1998 (“Sutherland Trust”), Christos Moisides, an individual (“Moisides”), and David Sutherland, an individual (“Sutherland”, each a “Guarantor” and collectively, the “Guarantors”), for the benefit of 640 Temple Investor, LLC, a Michigan limited liability company (the “Investor”).

WHEREAS, as a condition of acquiring an interest in the Company, Investor has required the Guarantors to guarantee unconditionally to Investor the payment in full of all of the payment obligations of Manager under the Operating Agreement and certain other items as herein set forth.

...

1. Guarantors irrevocably and unconditionally fully guarantee the due, prompt and complete performance of each and every one of the following obligations in all material respects (collectively, the “Indebtedness”): (a) the payment and performance by Manager of each and every obligation of Manager due under the Operating Agreement; (b) the payment and performance by Developer under the Development Agreement; (c) the due, prompt and complete payment of all costs and expenses (including, without limitation, reasonable attorneys’ fees) incurred by Investor in collection of the enforcement of this Guaranty against the Guarantors; (d) intentionally omitted; (e) the payment and performance under that certain Option Agreement (the “Option Agreement”) dated as of even date herewith between Investor and Manager, as “Purchaser”) of each and every obligation of the Purchaser thereunder; and (f) intentionally omitted.

2. The Guarantors hereby acknowledge, consent and agree that, Investor has reserved the power and authority to, in its absolute discretion, and without notice to Guarantors deal in any lawful manner with the Indebtedness and the other obligations guaranteed hereby. Without limiting the generality of the foregoing, the liability of the Guarantors hereunder shall not be affected, impaired or reduced in any way by any action taken by Investor involving any of the following powers or authorities or pursuant to any other provision hereof, or by any delay, failure or refusal of Investor to exercise any right or remedy it may have against Manager or any other person, firm or corporation, including other guarantors, if any, liable for all or any part of the Indebtedness or any of the other obligations guaranteed hereby:

(a) to renew, compromise, extend, accelerate or otherwise change the time or place of payment of or to otherwise change the terms of the Indebtedness, subject to the express terms governing the Indebtedness;

(b) to (i) modify any of the terms of the Operating Agreement, the Development Agreement and/or any other obligations guaranteed ... or (ii) waive any of the terms thereof;

...

(e) to grant any indulgence, forbearance or waiver with respect to the Indebtedness or any of the other obligations guaranteed hereby;

(f) to release or waive rights against any person without releasing or waiving any rights against Guarantors; ...

...

3. The Guarantors agree that if any of the Indebtedness is not fully and timely paid or performed according to the tenor thereof, whether by acceleration or otherwise, the Guarantors Shall immediately upon receipt of written demand therefor from Investor pay all of the Indebtedness hereby guaranteed in like manner as if the Indebtedness constituted the direct and primary obligation of the Guarantors. The Guarantors Shall not have any right of subrogation...

4. This Guaranty and the obligations of the Guarantors hereunder shall be continuing and irrevocable until the Indebtedness has been satisfied in full. ...

5. The Guarantors hereby waive notice of acceptance of this Guaranty by Investor and this Guaranty shall immediately be binding upon the Guarantors. Any Guarantor who executes this Guaranty Shall be fully bound hereby regardless of whether or not any other Guarantor subsequently execute this Guaranty.

...

(g) any election by Investor to exercise any right or remedy it may have against the Company or any security, including, without limitation, the right to foreclose upon any such security by judicial or non-judicial sale, without affecting or impairing in any way the liability of any Guarantor hereunder, except to the extent the indebtedness has been paid, and

Guarantors waive any default arising out of the absence, impairment or loss of any right of reimbursement, contribution or subrogation or any other right or remedy of any Guarantor against the Company or any such security whether resulting from such election by Investor or otherwise. The Guarantors understand that if all or any part of the liability of the Company to Investor for the Indebtedness is secured by real property the Guarantors shall be liable for the full amount of their liability hereunder, notwithstanding foreclosure on such real property by trustee sale or any other reason impairing the Guarantors' right to proceed against the Company; ...

...

7. This Guaranty shall be effective as a waiver of, and the Guarantors hereby expressly waive, any and all rights to which Guarantors may otherwise have been entitled under any suretyship laws in effect from time to time in the State.

...

10. The liability of the Guarantors under this Guaranty shall be an absolute, direct, immediate and unconditional guarantee of payment and not of collectability. The obligations of the Guarantors hereunder are independent of the obligations of Manager or any other party which may be initially or otherwise responsible for performance or payment of the obligations hereunder guaranteed and each other Guarantor and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against any Guarantor, whether or not Manager is joined therein or a separate action or actions are brought against Manager. Investor may maintain successive actions for other defaults. ...

...

12. The Guarantors hereby agree to pay to Investor, upon demand, reasonable attorneys' fees and all costs and other expenses which Investor expends or incurs in collecting or compromising the Indebtedness or in enforcing this Guaranty against any Guarantor whether or not suit is filed, ...

[640 TI's Exhibit 2].

On November 10, 2022, 640 TI initiated the instant lawsuit seeking to enforce the Guaranty in the amount of \$2,575,796.30. 640 TI alleges that the Project did not reach

the milestones set forth in the contract and that 640 TI demanded that TGM honor the contract and repurchase 640 TI's membership interest. When TGM failed to do so, 640 Temple sought payment from Moises and Byzantine under the guarantee, but Moises and Byzantine failed to honor the guaranty. After 640 TI filed its complaint, Moises and Byzantine filed a counter-complaint against 640 TI and cross-claims against Sutherland and the Sutherland Living Trust. Moises and Byzantine's counter-claims and crossclaims were previously dismissed by this Court.

Now before the Court is a motion for summary disposition filed by 64 TI.

2. Standards for Determining Motions for Summary Disposition

640 TI brings its motion for summary disposition pursuant to MCR 2.116(C)(10). A motion under MCR 2.116(C)(10) "tests the factual sufficiency of a claim." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019). In considering a motion under MCR 2.116(C)(10), a court "must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion." *Id.* Such a motion "may only be granted when there is no genuine issue of material fact." *Id.* "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *Id.*

3. Analysis

A. Count I: Breach of Guaranty

640 TI first argues that it is entitled to summary disposition on its breach of guaranty claim because the Guaranty is unambiguous and the undisputed facts show that 640 Temple has established its claim for breach as a matter of law. In response, Defendants argue that Gretchen C. Valade's mental competence at the time the relevant contracts were entered into is an issue that must be resolved before this case can go

forward and, alternatively, that there remains a question of fact as to Defendants' understanding as to their obligations relating to the Guaranty.

“The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties. To this rule all others are subordinate. In ascertaining the meaning of a contract, we give the words used in the contract their plain and ordinary meaning that would be apparent to a reader of the instrument. [U]nless a contract provision violates law or one of the traditional defenses to the enforceability of a contract applies, a court must construe and apply unambiguous contract provisions as written. If the language of a contract is ambiguous, testimony may be taken to explain the ambiguity.” *Bronson Health Care Group, Inc v USAA Cas Ins Co*, 335 Mich App 25, 32; 966 NW2d 393 (2020) [Internal quotation marks and citations omitted]. “When contractual language is unambiguous reasonable people cannot differ concerning the application of disputed terms to certain material facts, and summary disposition should be awarded to the proper party.” *Island Lake Arbors Condo Ass'n v Meisner & Assoc, PC*, 301 Mich App 384, 393; 837 NW2d 439 (2013) [Citations and quotation marks omitted].

In addition, evidence from outside the four corners of a contract “is limited by the parol-evidence rule.” *Coosard v Tarrant*, 342 Mich App 620, 635; 995 NW2d 877 (2022). “The parol evidence rule may be summarized as follows: ‘[p]arol evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary the written contract, is not admissible to vary the terms of a contract which is clear and unambiguous.’” *UAW-GM Human Res Ctr v KSL Recreation Corp*, 228 Mich App 486, 492; 579 NW2d 411 (1998), quoting *Schmude Oil Co v Omar Operating Co*, 184 Mich App 574, 580; 458 NW2d 659 (1990). “When... parties include an integration clause in their written contract, it is conclusive, and parol evidence is not admissible to show that

the agreement is not integrated, except in cases of fraud that invalidate the integration clause, or where an agreement is obviously incomplete on its face and, therefore, parol evidence is necessary for the filling of gaps.” 5A Mich. Civ. Jur. Contracts § 223. “A prerequisite to the application of the parol evidence rule is a finding that the parties intended a written instrument to be a complete expression of their agreement as to the matters covered.” 4A Mich Pl & Pr § 36:737 (2d ed) [Footnote omitted]. Thus, an integration clause is “[a] contractual provision stating that the contract represents the parties' complete and final agreement and supersedes all informal understandings and oral agreements relating to the subject matter of the contract.” INTEGRATION CLAUSE, Black's Law Dictionary (11th ed 2019).

In this case, both the Operating Agreement and the Guaranty include integration clauses. The Operating Agreement’s Section 16.05 provides:

This Agreement and the documents referred to herein set forth all (and is intended by all parties to be an integration of all) of the representations, promises, agreements and understandings among the parties hereto with respect to the Company, the Company business and the property of the Company, and this Agreement supersedes all prior written or oral agreements regarding the subject matter thereof, including, without limitation, the Original Agreement.

[640 TI’s Motion, Exhibit1] [Emphasis added].

Paragraph 19 of the Guaranty also provides in relevant part:

...This Guaranty shall constitute the entire agreement of the Guarantors with Investor with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Investor or the Guarantors unless expressed herein.

Hence, both the Operating Agreement and the Guaranty provide that the contracts represent the parties' complete and final agreements and supersede all informal understandings and oral agreements.” Id.

This Court has already determined that the Guaranty is clear and unambiguous. Because it is clear and unambiguous, no extrinsic evidence can be considered by this Court as to Defendants’ purported understanding of their obligations under the Guaranty.

Further, all other provisions in the Guaranty are clear and unambiguous in that it “is made ... for the benefit of 640 Temple Investor, LLC, a Michigan limited liability company (the “Investor”).” [640 TI’s Motion, Exhibit 2]. It also provides that, “as a condition of acquiring an interest in the Company, Investor has required the Guarantors to guarantee unconditionally to Investor the payment in full of all of the payment obligations of Manager under the Operating Agreement and certain other items as herein set forth.” [Id]. The Guaranty also provides the following:

3. The Guarantors agree that if any of the Indebtedness is not fully and timely paid or performed according to the tenor thereof, whether by acceleration or otherwise, the Guarantors shall immediately upon receipt of written demand therefor from Investor pay all of the Indebtedness hereby guaranteed in like manner as if the Indebtedness constituted the direct and primary obligation of the Guarantors.

4. This Guaranty and the obligations of the Guarantors hereunder shall be continuing and irrevocable until the Indebtedness has been satisfied in full. ...

...

7. This Guaranty shall be effective as a waiver of, and the Guarantors hereby expressly waive, any and all rights to which Guarantors may otherwise have been entitled under any suretyship laws in effect from time to time in the State.

...

[640 TI's Motion, Exhibit 2] [Emphasis added].

It is clear in paragraph 3, that, upon demand from the Investor (640 TI) the Guarantors must pay the unpaid indebtedness. Pursuant to paragraph 4, their obligations are “continuing and irrevocable until the Indebtedness has been satisfied in full.” Finally, the Guarantors waive any and all rights they may have had under “suretyship laws.” There is nothing ambiguous about the obligations of Defendants’ obligations as Guarantors as set forth in the Guaranty.

It is uncontested in this case that the conditions in Section 504(a) of the Operating Agreement were triggered, granting 640 TI the option to have TGM “acquire the entire interest” of 640 TI at the designated purchase price of \$2,575,796.30. 640 TI issued a Repurchase Notice to TGM on May 19, 2022, exercising the option. After TGM failed to remit the purchase price, 640 TI issued TGM a Notice of Default on October 14, 2022. 640 TI then sought payment of the purchase price from Defendants under the Guaranty, which Defendants failed to pay. Because there is no issue of fact that the Guaranty required Defendants to pay 640 TI’s purchase price, plus interest and any other costs 640 TI has incurred in relation to the transaction, the Court will grant 640 TI summary disposition and enter judgment in favor of 640 TI on Count I of its Complaint.

The Court finds unavailing and irrelevant Defendants’ arguments regarding the mental capacity of Gretchen Valade. Whether or not Gretchen Valade was competent to contract has no bearing on Defendants’ obligations under the Guaranty and Defendants’ own capacity to execute the Guaranty.

B. Count II: Promissory Estoppel

Finally, the Court will dismiss Plaintiff’s alternative claim of promissory estoppel, as it is pleaded in the alternative to their breach of contract action. Quasi-contractual

remedies such as promissory estoppel are inapplicable when the parties have made an express contract covering the same subject matter. See *HJ Tucker & Assoc, Inc v Allied Chucker and Engineering Co*, 234 Mich App 550, 573; 595 NW2d 176 (1999).

For the reason stated in the foregoing Opinion,

IT IS ORDERED that the motion for summary disposition filed by Plaintiff 640 Temple Investor, LLC is hereby **GRANTED**;

IT IS FURTHER ORDERED that **JUDGMENT** in the amount of \$2,575,796 plus interest, costs, and attorney's fees, is hereby entered in favor of 640 Temple Investor, LLC and against Defendants Christos Moisides, Byzantine Holdings, LLC, David P. Sutherland, and the David P. Sutherland Living Trust dated September 3, 1998 on Count I of 640 Temple Investor, LLC's Complaint.

IT IS FURTHER ORDERED that Plaintiff 640 Temple Holdings, LLC's claim for Promissory Estoppel is hereby **DISMISSED**.

IT IS FURTHER ORDERED that a separate hearing will be set to determine a final computation of damages.

THIS IS A FINAL ORDER AND DOES CLOSE THE CASE.

IT IS SO ORDERED.

DATED: 5/31/2024

/s/ Annette J. Berry
May 31, 2024
Circuit Judge

The seal of the Third Judicial Circuit of Michigan is circular. It features an eagle with spread wings in the center, perched on a shield. The shield contains a scale of justice and a book. The words "THIRD JUDICIAL CIRCUIT" are written around the top inner edge, and "OF MICHIGAN" is written around the bottom inner edge. The word "CIRCUMSPICE" is written at the bottom of the seal.