

STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

HUNT'S GYMNASTICS ACADEMY, LLC,

Plaintiff/Counter-Defendant,

vs.

Case No. 2022-004426-CB

STATEWIDE GROESBECK, LLC,

Defendant/Counter-Plaintiff, Third Party Plaintiff

vs.

MAXIM HOMES, INC.,

Third Party Defendant.

OPINION AND ORDER

Plaintiff/Counter-Defendant Hunt's Gymnastics LLC ("Plaintiff") has filed a motion for partial summary disposition pursuant to MCR 2.116(C)(10). Defendant/Counter-Plaintiff Statewide Groesbeck LLC ("Defendant") has filed a response requesting that the motion be denied and seeking partial summary disposition in its favor pursuant to MCR 2.116(C)(1)(2). Plaintiff filed a reply brief in further support of its motion.

I. Factual and Procedural History

This case arises out of the Parties' Commercial Lease Agreement dated May 1, 2019 ("the lease"). See Plaintiff's Exhibit 1. Plaintiff is the tenant and Defendant is the landlord. *Id.* at 1. The property is located at 35700 Groesbeck, Clinton Township, MI 48035. *Id.* Defendant's sole member and manager is Michael DeMil ("DeMil"). Plaintiff alleges that Defendant has failed to repair the property's roof despite its obligation to do so pursuant to the Parties' lease terms. The

property has a “lower roof” over a small office area and an “upper roof” over the large gymnasium area. Plaintiff is seeking \$86,137.27 in damages due to Defendant’s alleged failure to maintain the roof in a good state of repair. See Plaintiff’s Exhibit 12.

On December 4, 2023, Plaintiff filed its two count amended complaint against Defendant alleging the following: count I – breach of contract and count II – breach of implied contract (unjust enrichment). On January 3, 2023, Defendant filed its two count counter complaint against Plaintiff alleging the following: count I – breach of contract (plumbing system) and count II – breach of contract (structural supports). On May 6, 2024, Plaintiff filed the instant motion for partial summary disposition arguing that it is entitled to summary disposition as it relates to Plaintiff’s breach of contract claim regarding the roof and as to Defendant’s counterclaims. On May 17, 2024, Defendant filed a response requesting that the motion be denied and seeking partial summary disposition in its favor pursuant to MCR 2.116(C)(I)(2). On May 23, 2024, Plaintiff filed a reply brief in further support of its motion. On May 28, 2024, this Court heard the motion and took the matter under advisement.

II. Standard of Review

A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass’n*, 491 Mich 200, 206; 815 NW2d 412 (2012). The Court reviews a “motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party.” *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). “A litigant’s mere pledge to establish an issue of fact at trial cannot survive summary disposition under MCR 2.116(C)(10).” *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). “The court rule plainly requires the adverse party to set forth specific facts at the time of the motion showing

a genuine issue for trial.” *Id.* “Summary disposition under MCR 2.116(C)(10) is appropriately granted if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” *Greene v AP Products, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006). “A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds could differ. *Debano-Griffin v Lake Co*, 493 Mich 167, 175; 828 NW2d 634 (2013).

III. Arguments and Analysis

In its motion, Plaintiff argues that it is entitled to summary disposition as it relates to Plaintiff’s breach of contract claim regarding the roof and as to Defendant’s counterclaims. “A party asserting a breach of contract must establish by a preponderance of the evidence 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 Const*, 495 Mich 161, 178; 848 NW2d 95 (2014). “The party asserting a breach of contract has the burden of proving its damages with reasonable certainty, and may recover only those damages that are the direct, natural, and proximate result of the breach.” *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003).

A. Plaintiff’s Breach of Contract Claim Regarding the Roof

In this case, the Parties’ lease contains the following provision: “Defendant shall, at its expense, keep in good order and repair the roof...of the building in which the Premises are located.” See Plaintiff’s Exhibit 1, p. 4. Plaintiff argues that this provision was specifically included in the lease because “[a]t the inception of the Lease, it was known to both parties that the Leased Premises were in poor condition and that the roof needed replacement.” See Plaintiff’s

Motion, p. 3. In support of Plaintiff's position that Defendant has violated this provision, it points to the following:

- The affidavit of Plaintiff's sole member and manager, Shannon Hunt ("Hunt"), details the extensive history of roofing issues, her numerous requests to Defendant to have the roof repaired, and the damages incurred. See Plaintiff's Exhibit 8.
- In June 2021 a major roof leak occurred damaging \$72,852.00 worth of gymnastics equipment. See Plaintiff's Exhibit 13 – Photos.
- In September 2021, Plaintiff hired Four Seasons Kanga Roof to inspect the roof and provide a report to Defendant. The report states "[i]t is our recommendation that this roof be replaced as soon as possible." See Plaintiff's Exhibit 16.
- On October 31, 2023, the Clinton Township Building Department issued an ordinance complaint against Defendant stating "[l]andlord refusing to repair leaking roof." See Plaintiff's Exhibit 3.
- On January 24, 2024 the Clinton Township Building Department issued a misdemeanor ordinance complaint against Defendant for "[failure] to obtain permit to restore overloaded roof structure to a safe state of 1 layer" and "failure to obtain permit to perform work on roof." See Plaintiff's Exhibit 3. This matter is currently pending in the 41-B District Court and is scheduled for a pre-trial hearing on June 26, 2024. See 41-B District Court Case No. 24-0400CT-OM.

In response, Defendant points to the provision in the lease that states "[a]ny personal property kept on the Premises by the Tenant shall be kept at the Tenant's sole risk." See Plaintiff's Exhibit 1, p. 5. Defendant argues that "[t]his clause does not absolve the Landlord from all obligations or liabilities arising from the Lease but does clearly and unambiguously shift all liability for loss or injury of the Tenant's personal property located on the Property to the Tenant alone." See Defendant's Response, p. 8-9. However, Defendant cannot rely on this provision when the damage to the personal property was directly caused by its own breach of the lease in failing to repair the roof. As explained in *Stockdale v Jamison*, 416 Mich 217; 330 NW2d 389 (1982), a defendant who breaches its contractual obligations is "liable for any damages arising 'naturally from the breach or in the contemplation of the parties at the time the contract was made.'" *Id.* at 225. As is laid out above, Plaintiff has provided this Court with ample evidence regarding Defendant's failure to keep the roof in good repair, including the fact that the Clinton Township

Building Department issued a misdemeanor ordinance complaint against Defendant that remains pending due to the state of the roof. Accordingly, Plaintiff's motion for partial summary disposition as it relates to its breach of contract claim regarding the roof is granted.

B. Defendant's Counterclaims – Plumbing System and Structural Supports

Plaintiff also argues that it is entitled to summary disposition as it relates to Defendant's counterclaims. Defendant's counter complaint contains two breach of contract claims—one relating to the plumbing system and one relating to the structural supports.

Regarding the plumbing system, Defendant alleges that Plaintiff "allowed flooring tile to accumulate in the plumbing system causing sewage backups" which resulted in Defendant spending \$6,695.15 in plumbing repair costs. See Plaintiff's Exhibit 23, p. 4. Regarding the structural supports, Defendant alleges that Plaintiff "intentionally removed structural supports for a second-floor mezzanine area causing an unsafe condition" which resulted in Defendant spending \$2,045.00 in contractor repair costs. See Plaintiff's Exhibit 23, p. 4. In its motion, Plaintiff denies having caused the issues with the plumbing system and structural supports. In support of this position, Plaintiff points to the statement of Curtis Williams ("Williams"), the plumber who addressed the sewage backup at the property. In his statement, Williams explains the following:

Prior to 6/28/21, I was contacted by Mile DeMil and he stated that there was a problem in the lot, just outside the doors and the sewer pipe was only 6ft down. I came into the building to look for an access before excavation and I did see that hot tub drains were covered up.

The day of the excavation, when I opened up the pipe the problem was actually farther out. The pipe was a lot deeper than Mike stated. There was a lot of mortar dust, paint at the bottom the pipe and a soft blockage farther out than what he told me. I contact Mike at the end of the job and explained that I had to bring in another truck of stone to fill the hole, because it was deeper than what he told me. He did everything he could to make things difficult to pay for the extra truck. I didn't mark anything up, I even sent him pics showing him the depth of the hole showing him that it was deeper than 6ft and he ignored me.

The material that was in the pipe, in my opinion, was in there a lot longer than what Mike's claim is suggesting, since he is claiming that Shannon deposited that stuff. I'm saying this because it was hardened in the bottom of the pipe (the mortar dust, paint and whatever other renovation-type materials, were hardened up in the pipe—we had to use root hooks to loosen and break it up and then clear it out with the fire hose). The inspector, Toni witnessed all of this and allowed us access to the hydrant to help us out. Everything that I was told by Mike about the job was incorrect; depth, where the problem was, etc. Unfortunately, I didn't save the pictures that I had sent Mike. But I would say that the drains for the old hot tubs go right into the main sewer line that leaves the building. So when whoever filled those tubs did that renovation work, it is likely that the mortar dust, paint, etc. was deposited into that line. Both the inspector and myself agreed that the deposits had been in there for a long time.

See Plaintiff's Exhibit 24.

Notably, Defendant's response does not even acknowledge or attempt to discredit Williams' statement: Defendant has failed to provide this court with any evidence in support of its counterclaims against Plaintiff for breach of contract regarding the plumbing system and the structural supports. Therefore, Plaintiff's motion as it relates to Defendant's counterclaims is granted.

IV. Conclusion

For the reasons set forth above, Plaintiff's motion for partial summary disposition is GRANTED. Defendant's request for partial summary disposition in its favor pursuant to MCR 2.116(C)(1)(2) is DENIED. Pursuant to MCR 2.602(A)(3), this Opinion and Order does not resolve the last pending claim and does not close the case.

IT IS SO ORDERED.



HONORABLE RICHARD L. CARETTI
Circuit Court Judge

DATE: May 31, 2024

cc: Paul J. Zalewski, Esq.
Jonathan B. Eadie, Esq.

