

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

**OLD SCHOOL ORGANICS, LLC,
Plaintiff,**

v

**Case No. 23-200414-CB
Hon. Victoria Valentine**

**LEE INDUSTRIAL CONTRACTING, INC.
Defendant.**

**OPINION AND ORDER REGARDING
PLAINTIFF’S MOTION FOR PARTIAL SUMMARY DISPOSITION
PURSUANT TO MCR 2.116(C)(9) AND (10)**

At a said session of Court
held in Oakland County, Michigan
on 6/5/24
PRESENT: Judge Victoria A. Valentine

This matter is before the Court on Plaintiff’s Motion for Partial Summary Disposition.

This Court reviewed the pleadings as well as each motion, response and reply brief. Oral argument was held on the motion.

OPINION

**I.
Background**

Plaintiff is a commercial cannabis grow facility. Plaintiff entered into a contract with Defendant for extensive services to Plaintiff’s building on January 7, 2020.

Plaintiff’s Allegations

In February 2023, plumbing lines installed beneath the concrete ruptured, and the property flooded with water and sewer backup (Complaint, ¶ 13). Because of the flooding, there was a mold outbreak (Complaint, ¶ 14). A plumber investigated the flood and found that a sub-grade supply line compression coupling was executed improperly, and that caused the leak and flooding in the

storage room where the cannabis was stored (Complaint, ¶ 15). Mold was found under the lower wallboard (Complaint, ¶ 16).

The plumber found that the flooding occurred because of an O-ring coupler that was not crimped, “causing water to trickle over the course of several months” after Defendant finished installation (Complaint, ¶ 17). Because the water trickled within the walls, it was undetectable until the flooding occurred and mold had grown (Complaint, ¶ 17).

Plaintiff also alleges that Defendant improperly installed the HVAC system, causing difficulties in maintaining the building temperature and humidity, which has damaged Plaintiff’s products (Complaint, ¶ 20-21).

Defendant’s Defenses

Defendant has denied any wrongdoing in any of their services. Defendant argues that any problems that may have occurred would be based upon a failure in the plans and specifications, which Defendant did not create. Defendant also argues that the problem with the O-Ring could not have gone on for two years, so that there must be a failure in the product, for which Defendant would not be responsible. Defendant also argues that the plumbing work passed inspection in March 2020, relieving Defendant of liability.

Plaintiff’s Expert Report

Plaintiff argues there can be no genuine issue that the Defendant’s improper installation of the O-Ring (the failure to crimp it) was the cause of the flooding and damages. To support their position, Plaintiff offers a variety of evidence. Plaintiff first relies upon a moisture and microbial assessment done by MoldQuest. MoldQuest’s Report states:

Per the client, Product stored in the subject area was found to contain elevated levels of *Aspergillus* sp. Client stated they discovered water on the floor in the NE Storage room. A plumber confirmed that a sub-grade supply line compression coupling was

not sealed, resulting in a slow leak and flooding in the Storage Room and adjacent Men's Shower and Break Rooms.

...

At the request of the Client, the scope of this investigation was limited to non-invasive visual observations and moisture meter testing within the NE Storage Room and adjacent areas...

Plaintiffs also rely upon an insurance loss report from Specialty Adjusting International dated March 1, 2023. The report contains the following statements:

The principal focus of the inspection was to identify, examine and report the cause of loss and associated damages for the above-referenced claim.

CAUSE OF LOSS

The insured reports an underground pipe was slowly leaking over time and manifested itself causing damage to the framing. The insured reports the building is less than 3 years old and was built for their business operation.

...

The insured reports that their product was testing positive for mold (aspergillus). The insured did not have any explanation for these testing results.

Then, the insured discovered water puddling in the Hot Water Tank Room. The insured initially explored the wall and flooring where the water was puddling... At that time, a supply line was identified to be leaking as a result of a fitting not being crimped. (See Photo 26 and 27).

The leak had reportedly saturated the ground to the point that it was manifesting itself on the floor.

...

The water leak has been ongoing for such a time that mold has resulted, which has reportedly found infiltrated its product.

INVESTIGATION

The loss location is a multi-structure complex with 2 large grow house areas (not inspected) and a 1-story office building with a break room, showers and restrooms.

On 2/28/23, this adjuster arrived at the loss location. Our inspection found damage consistent with the exploration to identify the cause of the loss as detailed by the insured and summarized above.

Defendant argues that Plaintiff received a Certificate of Occupancy after passing all inspections on February 5, 2021, or more than two years before the leak was discovered. Defendant further states that the plumbing at issue was installed in March 2020 and was subjected to pressure tests for 24 hours (Brief in Response, and Exhibit F). Finally, Defendant argues that the plumbing passed inspection on March 20, 2020 (Brief in Response, Exhibit K).

Plaintiff brought its Complaint alleging Breach of Contract (Count I), Negligence (in the alternative to Breach of Contract) (Count II), and Tortious Interference with Business Expectancy (Count III). Plaintiff is seeking partial summary disposition as to liability on its Breach of Contract claims only.

II Standards of Review

MCR 2.116(C)(9)

MCR 2.116(C)(9) permits summary disposition when “the opposing party has failed to state a valid defense to the claim against him or her.” A motion for summary disposition under MCR 2.116(C)(9) tests the sufficiency of the defendant’s pleadings and is decided by the pleadings alone. *In re Smith Estate*, 226 Mich App 285, 288 (1997). All well-pled allegations must be accepted as true, and only if the non-moving party’s defenses are so clearly untenable as a matter of law that no factual development could possibly deny a plaintiff’s right to recovery, should the motion be granted. *Grebner v Clinton Charter Twp*, 216 Mich App 736, 740 (1996).

MCR 2.116(C)(10)

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim or defense. See, e.g., MCR 2.116(G)(3)(b); *Quinto v Cross & Peters Co*, 451 Mich 358, 362 (1996). Accordingly, “[i]n evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other

evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion.” *Maiden v Rozwood*, 461 Mich 109, 119 (1999); MCR 2.116(C)(10); MCR 2.116(G)(4); *Quinto*, 451 Mich at 362. The moving party “must specifically identify the issues” as to which it “believes there is no genuine issue” of material fact and support its position as provided in MCR 2.116. MCR 2.116(G)(4).

Under Michigan law, the moving party may satisfy its burden of production under MCR 2.116(C)(10) by demonstrating to the court that the non-moving party’s evidence is insufficient to establish an essential element of the nonmoving party’s claim. *Quinto*, 451 Mich at 362. If the moving party properly supports its motion, the burden “then shifts to the opposing party to establish that a genuine issue of disputed fact exists.” *Id.* at 362. If the moving party fails to properly support its motion for summary disposition, the nonmoving party has no duty to respond and the trial court should deny the motion. MCR 2.116(G)(4). See also *Meyer v City of Center Line*, 242 Mich App 560, 575 (2000) (concluding that the trial court erred when it granted an improperly supported motion for summary disposition under MCR 2.116[C][10]).

In all cases, MCR 2.116(G)(4) squarely places the burden on the parties, not the trial court, to support their positions. A reviewing court may not employ a standard citing mere possibility or promise in granting or denying the motion. *Maiden*, 461 Mich at 120-121 (citations omitted), and may not weigh credibility or resolve a material factual dispute in deciding the motion. *Skinner v Square D Co*, 445 Mich 153, 161 (1994). Rather, summary disposition pursuant to MCR 2.116(C)(10) is appropriate if, and only if, the evidence, viewed most favorably to the non-moving party fails to establish any genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362, citing MCR 2.116(C)(10) and (G)(4); *Maiden*, 461 Mich at 119-120 (1999). A genuine issue of material fact exists when the

record leaves open an issue upon which reasonable minds might differ. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160 (2019) (citation omitted). Granting a motion for summary disposition under MCR 2.116(C)(10) is warranted if the substantively admissible evidence shows that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362-363.

III Analysis

Defendant has denied the allegations in the Complaint and put forth viable defenses to those allegations in the way of Ordinary Defenses and Affirmative Defenses. Summary disposition under MCR 2.116(C)(9) is not appropriate.

A claim for breach of contract lies when the following elements are established: “(1) parties competent to contract; (2) a proper subject matter; (3) a legal consideration; (4) mutuality of agreement; and (5) mutuality of obligation.” *Thomas v Leja*, 187 Mich App 418, 422 (1991). A plaintiff may recover in a breach of contract action when it proves that the defendant’s breach was the proximate cause of the harm the plaintiff suffered. *Chelsea Inv Group LLC v City of Chelsea*, 288 Mich App 239, 254 (2010).

Plaintiff argues that there is no genuine issue of any material fact because the experts have determined that the failure to crimp the O-Ring caused the flooding, which is in turn what caused Plaintiff’s damages. Plaintiff’s Complaint indicates that a plumber, Jeff Bliss, investigated the flood event and made that determination (Complaint, ¶ 15). The Expert Report relies upon that assumption, but it does not make any finding that the failure to crimp the line caused the damage. Mr. Bliss’s information was relayed to the experts by the Plaintiff and then relied upon. There is no evidence before the Court that the failure to crimp the line caused the damage.

The mold reports likewise rely upon Plaintiff's representations as to the cause of the water that led to the mold. Although the report finds that the water led to the mold, it makes no finding as to the source of the water.

There are additional questions of fact regarding the HVAC unit. Plaintiff alleges that Defendant was responsible for the entirety of the system. Defendant argues that portions of it were excluded from the contract and the issues complained about are ordinary maintenance.

In the end, there are genuine issues of material fact as to whether the Defendant breached the contract between the parties. Accordingly, summary disposition of the Plaintiff's Breach of Contract (Count I) is not warranted.

ORDER

Based upon the foregoing Opinion,

IT IS HEREBY ORDERED that Plaintiff's Motion for Partial Summary Disposition under MCR 2.116(C)(9) and (10) is DENIED.

This Order does not resolve the last pending matter and does not close the case.

/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
CIRCUIT COURT JUDGE

Dated: 6/5/24