

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

BIOTECH CLINICAL LABORATORIES,
INC., a Michigan corporation,

Plaintiff/Counter-Defendant,

Case No. 24-205547-CB
Hon. Victoria A. Valentine

v

RSL MEDICAL MARKETING, LLC,
a Michigan limited liability company,

Defendant/Counter-Plaintiff.

and

~~RSL MEDICAL MARKETING, LLC,
a Michigan limited liability company,~~

~~*Third Party Plaintiff,*~~

vs

~~GIOVANNI KHALIFEH and JOSEPH
KHALIFEH, jointly and severally,~~

~~*Third Party Defendants.*~~

**OPINION AND ORDER REGARDING
SUMMARY DISPOSITION AS TO LIQUIDATED DAMAGES**

At a session of said Court, held in the
County of Oakland, State of Michigan
July 1, 2025

HONORABLE VICTORIA A. VALENTINE

Counterclaim Count III (Breach of Contract–Restrictive Covenant–Liquidated Damages)

Both sides argue that they are entitled to summary disposition of RSL’s Counterclaim for Breach of Contract—Restrictive Covenant--Liquidated Damages (Count III).

A. Michigan Law Regarding Liquidated Damages

A liquidated damage clause allows the parties to fix the amount of damages if there is a breach of contract when actual damages are not easily proven or ascertainable. *Moore v St Clair County*, 120 Mich App 335, 339-340; 328 NW2d 47 (1982). “If the amount stipulated is reasonable with relation to the possible injury suffered, the courts will sustain such a stipulation.” *Curran v Williams*, 352 Mich 278, 282; 89 NW2d 602 (1958). However, if the parties stipulate to an unreasonable sum that is designed to penalize the breaching party, the court will decline to enforce the provision. *Id.* at 282-283.

The Supreme Court has elaborated:

Where damages are difficult of ascertainment, courts will respect the honest attempt of the parties themselves to compute as best they can the just compensation from loss of the bargain by breach. Before accepting as conclusive the convention of the parties, it must be examined, and the court must determine whether the predetermined figure is really in the nature of an attempted computation of the actual damages likely to result, or whether it has the effect of exacting a penalty from the contract breaker.

[*Nichols v Seaks*, 296 Mich 154, 161; 295 NW 596 (1941).]

Whether a liquidated damages provision is valid and enforceable is a question of law. *St Clair Med, PC v Borgiel*, 270 Mich App 260, 270; 715 NW2d 914 (2006). “The validity of a liquidated damages clause depends on the conditions existing when the contract was signed rather than at the time of the breach.” *Barclae v Zarb*, 300 Mich App 455, 485; 834 NW2d 100 (2013) (citation omitted).

B. Analysis

The Marketing Agreement contains the following liquidated damages provision, which RSL now asks the Court to enforce:

In addition, to any equitable remedy in the event of any breach of this Agreement including, but not limited to, the failure of Provider to pay Contractor any earned compensation Provider shall pay to Contractor as liquidated damages an amount equal to the last twelve months compensation paid to Contractor multiplied by three.¹

As noted above, the Court must examine this provision in light of the conditions when the contract was signed rather than at the time of the breach. *Barclae*, 300 Mich App at 485. Under the terms of the Marketing Agreement, Biotech would be obligated to pay the liquidated damages provision for “any breach this Agreement,” including Biotech’s failure to pay the monthly compensation.

The Michigan Supreme Court has announced a rule that applies in such a situation:

Where, in a contract which provides for the performance of several acts of different degrees of importance, there is a stipulation that one designated sum shall be paid in case of a breach of the contract, and the actual damages for part or all of the breaches can be computed, and the sum designated would be excessive for any of the breaches, such sum will be regarded as a penalty and not as liquidated damages.

Fed Elec Co v Nat’l Serv Stations, 255 Mich 425, 427; 238 NW 174, 174–75 (1931) (citations and quotations omitted).

Under the Marketing Agreement, there are several conditions under which liquidated damages would be payable, including both Biotech’s failure to pay compensation and Biotech’s misuse of RSL’s confidential information. Under the Marketing Agreement, Biotech would pay the same liquidated damages sum if Biotech failed to pay two months of monthly contributions or twelve months of monthly contributions, even though in both cases the amount of damages

¹ Complaint, Exhibit A Marketing Agreement § 4(E).

sustained by RSL would be readily ascertainable. Because the liquidated damages provision would apply in situations where RSL's damages can be computed and the sum designated would be excessive in light of actual damages sustained by RSL, it constitutes a penalty under the rule in *Fed Elec Co v Nat'l Serv Stations*. Consequently, this provision is an unenforceable penalty, and summary disposition in Biotech's favor is warranted.

