STATE OF MICHIGAN
IN THE 6TH CIRCUIT COURT FOR THE COUNTY OF OAKLAND

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JJA WOODWARD PROPERTIES LLC,

Plaintiff,

v

JEFFREY S. DILLINGHAM, DDS, P.C. and JEFFREY S. DILLINGHAM,

Defendants.

Case No.: 24-211552-CB

Hon. Victoria A. Valentine

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**OPINION AND ORDER REGARDING DEFENDANTS MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(4) and (8)**

At a session of said Court, held in the
County of Oakland, State of Michigan
July 9, 2025

HONORABLE VICTORIA A. VALENTINE

This matter is before the Court on Defendants' Motion for Summary Disposition pursuant to MCR 2.116(C)(4) and (8), which seeks dismissal of Plaintiff's one-count Complaint alleging Breach of Contract. Plaintiff filed a Response. The Court has reviewed

the parties' submissions and heard oral arguments. For the reasons below, the Court DENIES Defendant's motion.

***FACTUAL OVERVIEW***

This case involves a landlord-tenant dispute between JJA Woodward Properties LLC (Plaintiff) and Jeffrey S. Dillingham, DDS, P.C. and Jeffrey S. Dillingham (Defendants).

Plaintiff JJA Woodward Properties LLC is the assignee of Summit Bloomfield, LLC, which owns commercial property located at 39520 N. Woodward Avenue, Bloomfield Hills, Michigan 48304.[1] Defendants Jeffrey S. Dillingham, DDS, P.C. and Jeffrey S. Dillingham are the assignees of the original tenant, Craig M. Hanson, DDS.[2]

A written lease was initially executed on February 2, 2000, between Summit Bloomfield, LLC and Craig M. Hanson, DDS. The original term was for five years, ending April 30, 2005.[3] The lease was subsequently amended several times, extending the term.[4] The most recent extension was through March 31, 2024.[5]

The lease contains a holdover provision, which provides:

> It is hereby agreed that in the event of Tenant *holding over* after the termination of this Lease, thereafter the tenancy *shall be from month to month* in the absence of a written agreement to the contrary at a rental equal to 150% of that provided for in Paragraph 3 hereof.[6]

The lease also contains an "Entire Agreement" provision, which provides:

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[1] Complaint, ¶¶1-2.
[2] Complaint, ¶3.
[3] Complaint, ¶2 and attached Exhibit A: Lease attached thereto.
[4] Complaint, ¶ ¶ 3-5 and attached Exhibit B: Lease Amendment, Exhibit C: Assignment, Assumption, Extension and Guaranty of Lease. Under Exhibit C, §8b monthly rent for the extended term was in the amount of $4,364.50.
[5] Complaint, ¶ 7 and attached Exhibit D: 10/31/23 email.
[6] Complaint Exhibit A: §23.

> This Lease cannot be changed, modified, or discharged orally, but only by an agreement in writing, signed by the party against whom enforcement of the change, modification or discharge is sought.[7]

And it contains the following "Non-Waiver" provision:

> NON-WAIVER
>
> 20. One or more waivers of any covenant or condition by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by Landlord to or of any act by tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant.
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> No payment by Tenant or receipt by Landlord or a lesser amount than the monthly rent herein stipulated shall be deemed to be than on account of the earlies stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction and landlord shall accept such check or payment without prejudice to landlord's right to recover the balance of an such rent or pursue any other remedy in this lease provided.[8]

On October 31, 2023, Defendants sent an email indicating their intent to hold over in the current space until June 2024:

> Pursuant to our call, Dr. Dillingham plans to hold over in their current space until June, 2024. We will provide updates over the coming months to further assist the transition. We understand your interest to have a lease in place upon or prior to our departure and will support your effort to do so however we can. In the meantime, please feel free to call or write with questions.[9]

On June 17, 2024, counsel for Plaintiff sent a letter to Defendant Dillingham, stating that the lease had expired on March 31, 2024, and that Defendants are holdover, month-to-

[7] Complaint Exhibit A: §24.
[8] Complaint Exhibit A: §20.
[9] Complaint, ¶9, and attached Exhibit D.

month tenants.[10] The letter requested Defendants to vacate the premises no later than July 31, 2024. It further stated that if they did not vacate by August 1, 2024, their monthly rent would increase to $17,458.008 and that if they did not vacate by August 31, 2024, the monthly rent would increase to $35,000.00.[11] This letter provides:

> As you are aware, your current lease expired March 31, 2024, and you are a holdover, month-to-month tenant pursuant to section 23 of your lease. The notice your agent sent to landlord on October 31, 2023 asked if you could holdover through June of 2024. Landlord acquiesced to that request and will honor the same holdover rate for July 2024. This letter shall serve as notice to you that you are to vacate the premises no later than July 31, 2024; landlord is hereby terminating your month-to-month holdover tenancy. If you do not vacate by August 1, 2024, your monthly rent will increase to $17,458.00. If you have not vacated the space by August 31, 2024, September monthly rent will be $35,000.00. Please contact the undersigned if you have any questions.

Plaintiff alleges Defendants maintained possession of the property until mid-September 2024.[12] However, Defendants did not pay the increased rent for the month of August 2024.[13] Rather, Defendant made a payment [in the amount $6,546.75] due for August, resulting in a balance for August of $10,911.25.[14] Defendants also did not pay the $35,000 rent for September 2024, leaving a total amount of $45,911.25 due.[15]

Defendants assert—without conceding that any amount is actually due—that Plaintiff would, at most, be entitled to $6,546.75, representing the amount allegedly owed for September 2024.

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[10] Complaint, ¶12, and attached Exhibit E.
[11] Complaint, ¶9, and attached Exhibit E.
[12] Complaint, ¶14.
[13] Complaint, ¶15.
[14] Complaint, ¶15.
[15] Complaint, ¶16.

Plaintiff filed this lawsuit, alleging a single claim of breach of contract. Plaintiff seeks a Judgment in the amount of $45,911.25 together with costs, attorney fees and expenses. Defendants file their Motion for Summary Disposition in lieu of an Answer, seeking dismissal of the complaint in its entirety with prejudice under MCR 2.116(C)(4) and (8).

***STANDARD OF REVIEW***

Summary disposition may be granted where "[t]he court lacks jurisdiction of the subject matter." MCR 2.116(C)(4). "Whether subject-matter jurisdiction exists is a question of law for the court." *Dep't of Natural Resources v Holloway Constr Co*, 191 Mich App 704, 705 (1991). The court must consider the pleadings, affidavits, depositions, admissions, and documentary evidence submitted by the parties. MCR 2.116(G)(5).

A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, not whether the complaint can be factually supported. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160 (2019); *Pawlak v Redox Corp,* 182 Mich App 758, 763 (1990). A motion for summary disposition based on the failure to state a claim upon which relief may be granted is to be decided on the pleadings alone. *Bailey v Schaaf*, 494 Mich 595, 603; (2013); *Parkhurst Homes, Inc v McLaughlin*, 187 Mich App 357, 360 (1991).

"All well-pleaded factual allegations are accepted as a true and construed in a light most favorable to the nonmovant." *Maiden v Rozwood*, 461 Mich 109, 119 (1999); *Wade v Dep't of Corrections*, 439 Mich 158, 162 (1992). Summary disposition is proper when the claim is so clearly unenforceable as a matter of law that no factual development can justify a right to recovery. *Parkhurst Homes,* 187 Mich App at 360; *Spiek v Dep't of Transportation,*

456 Mich 331, 337 (1998). "A mere statement of a pleader's conclusions and statements of law, unsupported by allegations of fact, will not suffice to state a cause of action." *Varela v Spanski,* 329 Mich App 58, 79 (2019) (plaintiff failed to plead facts in support of his claim but instead made conclusory statements and conclusions of law).

***ANALYSIS***

Defendants move to dismiss the Complaint on three primary grounds. First, they argue that there was no breach of contract, asserting that any alleged modification to the lease—namely, Plaintiff's June 2024 letter—constituted a unilateral attempt to alter the agreement, which was not signed by Defendants and is therefore unenforceable. Second, Defendants invoke the Statute of Frauds, contending that the purported modification is invalid in the absence of a written instrument signed by the party to be charged. Third, they assert that the Court lacks subject matter jurisdiction, maintaining that the amount in controversy does not meet the $25,000 jurisdictional threshold.

Plaintiff counters that a new contract was formed when Defendants accepted the offer set forth in Plaintiff's counsel's June 17, 2024, letter and by remaining on the premises through mid-September 2024. Plaintiff further asserts that the Statute of Frauds is inapplicable under these circumstances and that the amount in controversy exceeds the $25,000 jurisdictional threshold.

This dispute centers on whether the June 2024 letter constitutes a modification of the original lease or an offer to enter into a new contract. Resolution of that issue will, in turn, determine the amount of rent owed by Defendants for the months of August and/or September 2024—the period following the termination of the holdover tenancy**.** Pertinent

allegations in the Complaint, which, as Defendants concede, must be accepted as true for purposes of this motion, include the following:

- The Lease contained a holdover provision, which provides that in the event of holding over, the tenancy shall be from month-to-month thereafter. ("It is hereby agreed that in the event of *tenant holding over after the termination of the lease, thereafter the tenancy shall be from month-to month* in the absence of a written agreement to the contrary at a rental equal to 150%..."[16]).

- The term of the initial Lease was modified to continue through March 31, 2024.[17]

- Defendants were holdovers until June 2024, pursuant to their own October 31, 2023 email to Plaintiffs.[18]

- Plaintiff's June 17, 2024,[19] letter ("June 2024 Letter") expressly terminated the month-to-month holdover tenancy and notified Defendants of the following:
  - the lease expired on March 31, 2024;
  - Defendants were thereafter holdover, month-to-month tenants;
  - Defendants' month-to-month holdover tenancy was terminated;
  - Defendants were to vacate the premises no later than July 31, 2024;
  - Failure to vacate by August 1, 2024 would result in monthly rent increasing to $17,458;
  - Failure to vacate by August 31, 2024, will result in monthly rent increasing to $35,000.

- Defendants never objected to the June 17, 2024 termination letter nor took issue with the statements therein.[20]

- Defendants did not vacate the property until mid-September 2014 [sic 2024].[21]

*MCR 2.116(C)(8)*

Defendants move to dismiss Plaintiff's breach of contract claim, which does not allege a breach of the original Lease agreement. Rather, Plaintiff's claim is based on a

[16] Complaint, ¶10, quoting paragraph 23 of the Lease, attached thereto as Exhibit A. (Emphasis added).
[17] Complaint, ¶¶3-5, 7, citing to Exhibits B, C, and D, attached thereto.
[18] Complaint, ¶9, quoting Exhibit D attached thereto.
[19] Complaint, ¶12, quoting Exhibit E attached thereto.
[20] Complaint, ¶13.
[21] Complaint, ¶14.

separate agreement allegedly formed after the holdover tenancy had been terminated—specifically, a post-lease contract arising from Defendants' acceptance of Plaintiff's offer, as set forth in the June 2024 letter, allowing Defendants to remain on the premises for August and September 2024. The Court notes, however, that Defendants' brief fails to address the actual allegations in the Complaint concerning this post-lease agreement and the asserted breach thereof. Instead, Defendants' arguments focus on the original Lease, contending that it could not be unilaterally modified by Plaintiff's June 2024 letter because:

- Plaintiff was required to file an action to evict Defendants or allow the holdover tenancy on the same terms as the prior lease;
- MCL 566.1 requires modifications to be in writing; and
- the Lease's express modification-in-writing clause precludes the unilateral modification of the Lease without a writing signed by Defendants.

Defendants rely on the Michigan Supreme Court's decision in *Kokalis v Whitehurst*, 334 Mich 477, 481 (1952), to support their contention that the June 2024 letter constitutes a unilateral modification, unenforceable absent a writing signed by Defendants. Defendants assert that Plaintiff allegedly terminated the Lease as of July 31, 2024. By that time, Defendants were already holdover tenants and, according to Plaintiff, remained in possession through mid-September 2024.[22]

Defendants argue that, under these circumstances and under *Kokalis*, Plaintiff was faced with only two options: initiate legal proceedings to evict Defendants or acquiesce to their continued possession and treat them as holdover tenants subject to the terms of the original Lease. Because Plaintiff allegedly chose the latter course, Defendants claim that Plaintiff is bound by the rent specified in the Lease, and may not impose a higher rent based

[22] Defendants' Brief p 7.

on what Defendants characterize as a unilateral modification. Accordingly, Defendants maintain that their rent obligation continued at the holdover rate established by the original Lease.[23]

Plaintiff argues that Defendants admit they were holdover tenants through at least June 2024, as evidenced by statements made in their brief[24] and in their own October 31, 2023 email, which acknowledges:

> *Pursuant to our call, Dr. Dillingham plans to hold over in their current space until June, 2024*. We will provide updates over the coming months to further assist the transition. We understand your interest to have a lease in place upon or prior to our departure and will support your effort to do so however we can. In the meantime, please feel free to call or write with questions.[25]

Plaintiff further argues that Defendants misconstrue the holding of *Kokalis v Whitehurst*, 334 Mich 477 (1952), the case upon which they rely. This Court agrees. *Kokalis* involved a dispute over *possession* of commercial property. There, the plaintiffs leased the premises to the defendant under a five-year lease expiring December 31, 1950, with rent set at $500 per month. The lease contained an express provision stating that the acceptance of rent after expiration of the lease term would not reinstate, extend, or continue the lease.

Despite that provision, the defendant remained in possession and continued to pay rent at the agreed rate for January, February, and March 1951, which the plaintiffs accepted. The plaintiffs then filed for eviction. In response, the defendant argued that the plaintiffs'

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[23] Defendants' Brief, pp 7-8

[24] Defendants' Brief, page 1 ("Defendants were then treated as holdover tenants on a month-to-month basis at a fixed rental rate set in the lease."); page 3 ("On October 31, 2023, Defendants indicated via email they intended to holdover after the March 2024 Lease expiration until June 2024."); and page 7 ("[defendants] were already holdover tenants.")

[25] Complaint, ¶9, and attached Exhibit D. (Emphasis added).

acceptance of rent created a month-to-month tenancy, thereby requiring one month's notice of termination before eviction proceedings could commence. The trial court rejected that argument and ruled in favor of the plaintiffs—a decision the Michigan Supreme Court affirmed, holding that:

> It is a general rule that where a tenant under a valid lease for years holds over, the law *implies a contract to renew the tenancy on the same terms for another year*.
>
> It is also the rule that a *presumption* arises from the holding over by the tenant and acceptance of rent by the landlord that the parties intend to renew the tenancy. See *Faraci v. Fassulo*, 212 Mich. 216, 180 N.W. 497.
>
> In *Rice v. Atkinson, Deacon, Elliott Co.*, 215 Mich. 371, 183 N.W. 762, 19 A.L.R. 1399, we announced the following rule relative to the rights of landlords:
>
> > Where there is no express agreement for a renewal of an annual lease, and the tenant remains in possession after the term has expired, the landlord may treat him as a trespasser or may acquiesce in his continuing in possession, and in the latter event the law *presumes* that the tenant holds for another year subject to the terms of the previous lease.
>
> Under such circumstances notice to quit was not necessary. See *Teft v. Hinchman, 76 Mich. 672, 43 N.W. 680,* and *Smith v. Smith*, 144 Mich. 139, 107 N.W. 894.
>
> In the case at bar the parties, by written agreement, have defined the relationship after the lease by providing that no receipt for money by the landlord from the tenant after the termination of said term 'in any way shall reinstate, continue, or extend the term above demised.' In the case at bar, at the expiration of the five year lease, the parties had negotiations for a new lease, but no agreement was arrived at. Meanwhile defendant continued to pay what he termed rent for the premises, and plaintiffs accepted it without acknowledging that it was received as rent.
>
> A similar situation existed in *Detroit Free Press v. Miller,* 217 Mich. 118, 185 N.W. 682, 683. We there said:

> It was the claim of the defendant in the court below, and it is his claim here, that because he occupied the offices after the three-year lease expired, and paid to the plaintiff the monthly rent, he thereby became a tenant from year to year, which tenancy could not be terminated without a year's notice, citing section 11812 [3] C.L.1915, and the case of *Faraci v. Fassulo*, 212 Mich. 216, 180 N.W. 497.
>
> In the case at bar no facts are presented that in any way modify the agreement of the parties. Under the lease the payment and acceptance of so-called rent did not constitute the relationship of landlord and tenant. The judgment is affirmed with costs to plaintiff. *Kokalis*, supra at 480-482. (Emphasis added).

The issue in this case, however, is not whether a notice to quit was necessary to effectuate eviction and regain possession of the property.[26] It is undisputed that Defendants had vacated the premises. Rather, the question pertaining to Defendants' argument is whether the holdover rent rate under the Lease continued after Plaintiff's June 17, 2024 letter, which terminated the holdover tenancy and unequivocally notified Defendants that rent would increase for August and September if they remained in possession. For this reason, the Court agrees with Plaintiff that Defendants' argument lacks merit and that its reliance on *Kokalis* is misplaced.

Additionally, even under *Kokalis*, Defendants' argument fails. As Plaintiff points out, Defendants rely on *Kokalis* for the proposition that "Michigan law is well-settled that a landlord has two options with regard to a holdover tenant: (1) treat the tenant as a trespasser or (2) acquiesce in the tenant's continued possession subject to the terms of the previous lease." *Kokalis*, 334 Mich at 481 (emphasis added).[27] The Court in *Kokalis* further explained

[26] Contrary to Defendant's arguments, the issue in this case also does not involve resorting to "self-help' to dispose of a tenant in possession. (See Defendants' Brief, p 7).
[27] Defendant's Brief p 7.

that "in the latter event, the law *presumes* that the tenant holds for another year subject to the terms of the previous lease." *Kokalis*, supra. (Emphasis added).

However, as Plaintiff argues, Plaintiff did not acquiesce to Defendants' continued holdover tenancy. Instead, Plaintiff's June 17, 2024 letter explicitly terminated the month-to-month holdover tenancy, thereby rebutting any presumption that the tenancy—and rent obligation—continued under the terms of the original Lease. The letter further and unequivocally stated that if Defendants remained in possession, the rent would increase to the amount specified therein.

Lastly, Section 23 of the Lease explicitly allowed for a month-to-month holdover tenancy, which Plaintiff's June 17, 2024 letter effectively terminated. Consistent with *Kokalis*, this termination ended the landlord-tenant relationship and Defendants' right to possession as of July 31, 2024. Based on the foregoing, Defendants' arguments fail. The June 17, 2024 letter terminated the holdover tenancy and, contrary to Defendants' assertion, did not constitute a unilateral modification of the Lease.[28]

Based on the above, the Court does not find the Defendants' arguments meritorious and DENIES its Motion for Summary Disposition under MCR 2.116(C), which seeks to dismiss Plaintiff's Breach of Contract claim.

*MCR 2.116(C)(4)*

Summary disposition may be granted where "[t]he court lacks jurisdiction of the subject matter." MCR 2.116(C)(4). Defendants argue that this Court lacks jurisdiction

[28] Consequently, because the Court finds that the June 2024 letter does not constitute a modification of the Lease, the Court need not address whether the letter—unsigned by Defendants—is barred by the Statute of Frauds (MCL 566.1) or whether it violates the Lease's modification-in-writing clause.

because the amount due under the lease is $6,546.75[29]—an amount below the Court's jurisdictional threshold. However, in *Michigan Head and Spine Institute, P.C. v Auto Owners Insurance Co*, 338 Mich App 721, 726 (2021), the Court held that the amount in controversy is determined based on the prayer for relief.

> Under MCL 600.8301(1), "[t]he district court has exclusive jurisdiction in civil actions when the amount in controversy does not exceed $25,000.00." Although MCL 600.8301(1) is silent as to how the "amount in controversy" should be determined, our Supreme Court held that, absent bad faith in the pleadings, the amount in controversy is determined from the prayer for relief in the plaintiff's pleadings. *Hodge v. State Farm Mut. Auto. Ins. Co.*, 499 Mich. 211, 223-224, 884 N.W.2d 238 (2016). In its complaint, Michigan Head & Spine alleged that the amount in controversy exceeded $25,000, and there is no evidence indicating that the pleading was done in bad faith. Therefore, under *Hodge*, the jurisdictional threshold for an action before the circuit court is satisfied.

Similarly here, Plaintiff's complaint alleges that the amount in controversy is $45, 911.25 and there is no evidence suggesting that the pleading was done in bad faith. Based on the above, Defendants' Motion for Summary Disposition under MCR 2.116(C)(4) is DENIED.

**CONCLUSION**

For the reasons set forth above:

IT IS HEREBY ORDERED that Defendants' Motion for Summary Disposition under MCR 2.116(C)(4) is DENIED.

IT IS HEREBY ORDERED that Defendants' Motion for Summary Disposition under MCR 2.116(C)(8) is DENIED.

*This is not a final order and does not close the case.*

IT IS SO ORDERED.

[29] This amount represents 150% of the base rent under the Lease. Complaint, Exhibit A §23.


/s/Victoria A. Valentine

DATED: 7/9/25