STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT FOR INGHAM COUNTY

WILLIAM D. HARDIGAN AND JANET L. HARDIGAN LIVING TRUST C/O PETE HARDIGAN, TRUSTEE,

Plaintiff,

v

CAPITAL AREA REALTY SERVICES, INC., a Michigan corporation d/b/a KELLER WILLIAMS REALTY LANSING, CLEARVIEW PROPERTY MANAGEMENT SERVICES, LLC, a Michigan limited liability company, PROFESSIONAL COMPLIANCE SERVICES, LP, a Michigan limited partnership, and STACY M. KLABAK, an individual, JOINTLY AND SEVERALLY,

Defendants,

and

CLEARVIEW PROPERTY MANAGEMENT SERVICES, LLC, a Michigan limited liability company, PROFESSIONAL COMPLIANCE SERVICES, LP, a Michigan limited partnership, and STACY M. KLABAK, an individual,

Cross-Plaintiffs/Cross Counter Defendants,

v

CAPITAL AREA REALTY SERVICES, INC., a Michigan corporation, d/b/a KELLER WILLIAMS REALTY LANSING, CLEARVIEW PROPERTY MANAGEMENT SERVICES, LLC, a Michigan limited liability company,

Cross-Defendant/Cross Counter Plaintiffs.

OPINION & ORDER

CASE NO. 24-495-CB

HON. JAMES S. JAMO

At a session of said Court
held in the city of Lansing, county of Ingham,
this __13______day of June, 2025.

PRESENT: HON. JAMES S. JAMO, Circuit Court Judge

This matter comes before the Court on Defendant/Cross-Defendant/Counter Cross-Plaintiff Capital Area Realty Services Corporation, d/b/a Keller Williams' (Keller Williams) Motion for

Summary Disposition. This Court, being fully apprised of the premises, GRANTS Keller Williams' motion in part and DENIES Keller Williams' motion in part.

FACTS

This case arises out of the sale of residential property located at 418 Red Cedar Boulevard (the Property), which is part of the Red Cedar Cooperative. Prior to October of 2023, the Property was owned by the William D. Hardigan and Janet L. Hardigan Revocable Trust (the Trust). The Red Cedar Cooperative is managed by Defendant Clearview Property Management Services (Clearview).

Pete Hardigan (Hardigan), as trustee of the Trust, entered into a Listing Agreement with Defendant Keller Williams to list and market the property for sale. Tom Barrett, a licensed salesperson affiliated with Keller Williams, acted as the Listing Agent. On October 21, 2023, non-party Connie Thering offered $173,000 for the unit in a cash sale. Thering's offer was accepted and closing was scheduled for November 1, 2023. Defendant Professional Compliance Service (PCS) acted as the closing and escrow agent for the transaction; Defendant Stacy Klabak serves as both the General Partner of Professional Compliance Service and the Director of Operations for Clearview.

On November 1, 2023, Hardigan, who was unable to attend the closing in person, electronically signed the closing documents. Rather than an agent of Keller Williams attending the closing in person, an employee of Keller Williams, transaction coordinator Marie Wasson, emailed Hardigan to ask if he wanted funds wired to him or to have a check overnighted. Defendant Klabak was copied on this exchange. Hardigan responded to ask if funds could be wire transferred. Defendant Klabak indicated, "Absolutely." Hardigan then emailed Klabak directly, asking if she had the account information and asking for confirmation when the wire was initiated. Klabak asked for the bank name and account and routing numbers, which Hardigan provided, and indicated she would look up the wiring routing number. No one from Keller Williams warned Hardigan of the risks associated with wire transfers or confirmed any part of the proposed transaction.

The purchaser had provided PCS with the purchasing monies, to be divided between the Trust and Keller Williams in pre-determined amounts. PCS prepared a check payable to the Trust in the amount of $159,311.30, which Klabak brought to the closing and then took back to PCS' offices to effectuate the wire transfer. The monies were intended to come from Chase Bank and go to Hardigan's account at DFCU Financial.

The wire transfer was initiated on November 2, 2023, but the monies never arrived to Hardigan's account at DFCU. It was instead wired to an account at Citibank as a result of a fraudulent redirection of the wire transfer, apparently arising from a fraudulent email received by PCS and/or Klabak with incorrect information. The monies were never recovered. It was later discovered that PCS and Klabak had previously been informed by Keller Williams of some suspicious activity with PCS' emails.

This suit followed.

STANDARD OF REVIEW

Summary disposition under MCR 2.116(C)(8) is proper when "[t]he opposing party has failed to state a claim on which relief can be granted." In considering a motion under MCR 2.116(C)(8), "[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Id.* at 119-120. A motion brought under MCR 2.116(C)(8) may only be granted where the alleged claims are unenforceable to the extent that no factual development will justify recovery. *Id.* (citing *Wade v Dept of Corr*, 439 Mich 158, 162; 483 NW2d 26 (1992)).

Summary disposition under MCR 2.116(C)(10) is proper when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." In determining whether a genuine issue of material fact exists, the Court asks "whether the kind of record which might be developed, giving the benefit of reasonable doubt to the opposing party, would leave open an issue upon which reasonable minds might differ." *Skinner v Square D Co*, 445 Mich 153, 162; 516 NW2d 475 (1994).

ANALYSIS

I. Negligence, Breach of Contract, and Breach of Fiduciary Duty

In Count I of the Complaint, Plaintiffs allege Keller Williams committed negligence or gross negligence where Keller Williams[1] owed Plaintiffs a duty of reasonable care and where Keller Williams failed to comply with industry standards regarding warning clients about the risks of wire fraud and taking various actions to prevent or mitigate wire fraud, such as failing to print warnings on various documents, failing to confirm or verify wire transfer instructions and banking information, and failing to take action to recover funds in a timely fashion.[2] Count I additionally alleges negligence or gross negligence in Keller Williams' failure to attend the closing proceedings and retrieve the monies owed to Plaintiffs in the form of a check. Count II alleges a breach of fiduciary duty for the same actions or failure to act, and Count IV alleges a breach of contract for the same actions or failures to act as well.

MCL 339.2512d(2) states that a listing agent owes the following duties to a client:

a. The exercise of reasonable care and skill in representing the client and carrying out the responsibilities of the agency relationship.
b. The performance of the terms of the service provision agreement.
c. Loyalty to the interest of the client.
d. Compliance with the laws, rules, and regulations of this state and any applicable federal statutes or regulations.
e. Referral of the client to other licensed professionals for expert advice related to material matters that are not within the expertise of the broker.
f. An accounting in a timely manner of all money and property received by the broker in which the client has or may have an interest.
g. Confidentiality of all information obtained in the course of the agency relationship, unless disclosed with the client's permission or as provided by law, including the duty not to disclose confidential information to any licensee who is not an agent of the client.

[1] Keller Williams concedes the potential applicability of liability through a vicarious liability theory arising out of its agency relationship with realtor Tom Barrett or other agents or employees, should those agents or employees be found negligent or otherwise liable through their actions or inactions. Brief in Support, pg 6.
[2] The full list of alleged duties is listed in paragraph 48 of the Complaint.

The Listing Agreement entered into by Plaintiffs and Keller Williams listed further duties owed by Keller Williams to Plaintiffs, including listing the Property for sale and marketing that Property.

Keller Williams argues that neither MCL 339.2512d nor the Listing Agreement requires that a listing agent attend a closing or that a listing agent engage in the actions to prevent or mitigate wire fraud enumerated by Plaintiffs. A claim of negligence requires a plaintiff to establish the defendant owed plaintiff a duty, followed by a breach of that duty such that the breach proximately caused the plaintiff's injuries, and damages to the plaintiff. *Jeffrey-Moise v Williamsburg Towne Houses Cooperative, Inc,* 336 Mich App 616, 624 (2021). Keller Williams argues that under a plain reading of MCL 339.2125d and the Listing Agreement, Plaintiffs cannot meet the first prong of the negligence test to establish Keller Williams owed the alleged actions as a duty to Plaintiffs. Furthermore, even if Keller Williams did have a duty to Plaintiffs, its failure to attend the closing was not the proximate cause of Plaintiffs' damages; rather, Hardigan's failure to attend the closing and his request that the funds be wired to him were the proximate cause of those damages.

Similarly, Keller Williams argues Plaintiffs cannot sustain a claim for breach of contract where the action or failure to act alleged, that being failure to attend closing and failure to warn regarding the risks of wire transfers, were not required by the contract. Finally, Keller Williams argues Plaintiffs cannot sustain a claim for breach of fiduciary duty where Plaintiffs cannot establish that a listing agent has fiduciary duties to a client, and thereby Keller Williams had no duty to warn regarding the risk of wire transfers; rather, Keller Williams again argues its duties are limited to listing the Property and marketing the Property to secure a buyer.

Plaintiffs argue there exists a genuine question of material fact as to each of these claims where there is a question regarding the duties owed by a listing agent to a client and whether Keller Williams failed in its duties. Plaintiffs point to the broad language of MCL 339.215d(2)(a), which requires the "exercise of reasonable care and skill" in representing a client and carrying out the relationship, and argue this requires an agent to act with the level of care, skill, and diligence that a reasonable and competent agent would use in similar circumstances. Furthermore, Michigan law establishes that a listing agent has a fiduciary duty to its clients, including "loyalty, fidelity, care, and disclosure," and this duty includes exercising care and diligence in ensuring that funds due to a client are delivered. *Brotman v Roelofs,* 70 Mich App 719, 729 (1976). Notably, Michigan law notes this fiduciary duty "may arise impliedly from the agent's position or out of an express agency contract in a listing agreement." *Id.* Plaintiffs also cite to a bulletin published by the National Association of Realtors to establish the industry standards surrounding wire transfers and the prevention and mitigation of wire fraud, which demonstrates the type of expert testimony that may be presented at trial on these issues.

The Court finds a genuine question of material fact does exist regarding the duties owed between Keller Williams and Plaintiffs, and whether Keller Williams discharged those duties with the reasonable care and skill required of it, in light of its statutory, contractual, and fiduciary obligations to Plaintiffs. The Court therefore DENIES Keller Williams' motion as to Counts I, II, and IV.

II. Unjust Enrichment

Count V of the Complaint alleges a claim of unjust enrichment, arguing it is unjust and inequitable for Defendants to retain the commission payments they received in relation to the transaction at issue where the Trust itself received no monies from the transaction as a result of Defendants' actions, inactions, or negligence; and for Defendants to not have to reimburse Plaintiffs' legal costs and expenses in attempting to collect the monies owed where the Trust has incurred such costs as a result of Defendants' actions, inactions, or negligence.

Keller Williams argues it received its commission pursuant to the terms and conditions of the Listing Agreement. Defendant Keller William's Exhibit A, ¶11. Keller Williams further argues that unjust enrichment is a cause of action that functions to "imply a contract" where one does not exist in order to prevent an inequity between two parties. *Belle Isle Grill Corp v City of Detroit*, 256 Mich App

463 (2003). "However, a contract will only be implied if there is no express contract covering the same subject matter." *Id.* In *Belle Isle*, the Court of Appeals held that where a lease agreement expressly contemplated and covered capital improvements to the subject property in lieu of rent payments, the plaintiff could not recover costs of those improvements by implied contract and therefore unjust enrichment could not apply.

The same is true in this case. Where the Listing Agreement established an express contract between Plaintiffs and Keller Williams that covered the commission to be earned by Keller Williams, Plaintiffs cannot recover the cost of that commission by implied contract. While Plaintiffs point to the Michigan Supreme Court's ruling in *Wright v Genesee County*, 504 Mich 410 (2019) as eliminating any consideration of whether a contract exists, the Court declines to read such a broad conclusion into the Supreme Court's ruling. *Wright* considered whether the Government Tort Liability Act (GTLA) bars claims for unjust enrichment, and found that where unjust enrichment claims sound neither in tort nor contract, the GTLA did not. Here, where an express contract *does* exist governing the subject matter, the claim is appropriately pursued under the terms of that contract, rather than through an unjust enrichment claim. Note that this ruling does not indicate whether the contract was violated in any way; only that the contract exists; this ruling has no impact on Plaintiffs' remaining claims as to Keller Williams, or to any unjust enrichment claim Plaintiffs have raised against any other Defendant.

The Court finds Count V of the Complaint therefore fails to state a claim upon which relief can be granted under MCR 2.116(C)(8). Keller Williams' motion is GRANTED as to Count V.

III. Effect of the Release Provision in Plaintiffs' Purchase Agreement

Keller Williams also argues the Release contained within the Purchasing Agreement signed by the parties bars this litigation. Paragraph 17 of the Purchasing Agreement reads:

> Buyer and Seller acknowledge that neither Listing Broker nor Selling Broker, nor their respective agents, have made any representations concerning the condition of the property covered by this Agreement or the marketability of title, and Buyer and Seller release the Listing Broker and Selling Broker and their respective agents with respect to all claims arising out of or related to this Agreement, any addendums or counteroffers; all

> claims arising from any purported representations as to the physical and environmental condition of the property covered by this agreement or the marketability of title; and all claims arising from any special assessment and/or utility bills which have been or may in the future be charged against the property covered by this Agreement and, in addition, agree to indemnify and hold harmless the Listing Broker and Selling Broker and their respective agents from any and all claims related to those matters.

Keller Williams argues that this Release broadly releases any claim a client may have against it; essentially, as long as a client uses Keller Williams' services to the natural conclusion of its intended purpose—to enter into a real estate transaction—such client releases Keller Williams from any liability, however tangentially related to the actual transaction.[3] Plaintiffs argue the plain reading of the Release, in its full context, clearly limits the release to the condition of the property and marketability of title.

The Court finds the Release is reasonably read, in its plain language with consideration of its context, to bar claims arising directly out of the Purchasing Agreement, such as the condition of the property, the marketability of title, special assessments and/or utility bills, and other concerns listed in the Agreement—for example, the list of inclusions, the contingency of the Buyer's "review and satisfaction of association bylaws," assurances that the property does not require mandatory well and septic inspections, the Buyer's waiver of a risk assessment for lead-based paint, and so on. The Purchasing Agreement, in paragraph 4, indicates the method of payment will be completed in cash, "in the form of certified check, cashier's check, or bank transfer." The Agreement does not govern, and the Release therefore does not extend to, any of the alleged contractual or fiduciary duties previously discussed in this Opinion. The Court finds there is no genuine question of material fact that the Release does not bar Plaintiffs' claims.

[3] During oral argument, for example, the Court questioned whether this Release would bar a premises liability claim where a client was injured on Keller Williams' office premises while attending an initial consult with a realtor, provided that client continued using Keller Williams' services to their intended purpose and entered into a real estate transaction. Counsel argued it would, because the client would have been on the premises for a purpose arising out of the transaction.

IV. Frivolity and Sanctions

Keller Williams finally argues this litigation is frivolous and should be subject to sanction under MCR 1.109(E)(5), (6), and (7). Keller Williams also argues the indemnification clause included in the Purchase Agreement requires Plaintiffs to indemnify it for all costs and attorney fees, under the same analysis Keller Williams adopted with regard to the Release provision. For the reasons discussed above, this Court cannot agree. Keller Williams' motion for sanctions, costs, and attorney fees is thus denied.

V. Case Schedule

Discovery will be continued for an additional 90 days. All discovery must be completed on or before September 12, 2025.

The final pretrial will be set for December 15, 2025 at 3:00 p.m.

The jury trial will be set for January 12, 2026, at 8:30 a.m.

THEREFORE IT IS ORDERED that Keller Williams' motion is DENIED as to Counts I, II, and IV, as well as to the request for sanctions. Keller Williams' motion is GRANTED as to Count V. This Opinion & Order does not resolve the last pending claims in this case.

/James S. Jamo
Hon. James S. Jamo
Circuit Court Judge

PROOF OF SERVICE

I hereby certify that I mailed a copy of the above ORDER to each attorney of record, or upon the parties, by placing the true copy in a sealed envelope, addressed to each, with full postage prepaid and placing said envelope in the United States mail in Lansing, Michigan, on _June 13, 2025.

__/s Kacie Smith__________________________
Kacie Smith (P78903)
Law Clerk to the Hon. James S. Jamo