

STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

ROBERT ORAHA,

Plaintiff,

vs.

Case No. 2024-000663-CB

RAED GORGIS,

Defendant.

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OPINION AND ORDER

Defendant Raed Gorgis (“Defendant”) has filed a motion for summary disposition in lieu of answer pursuant to MCR 2.116(C)(8). Plaintiff Robert Ohara (“Plaintiff”) filed a response in opposition to the motion.

I. Factual and Procedural History

Plaintiff alleges that in June of 2016 the Parties entered into a partnership agreement to operate a marijuana grow facility at Defendant’s home. Plaintiff alleges that as the operation grew, they purchased a larger property located at 2688 Reeves Road, Riley, MI 48041 (“the property”). Plaintiff alleges that the Parties were to make equal contributions and equally split the profits. Defendant purchased the property, and the property is titled solely in his name. See Defendant’s Exhibit B. Plaintiff moved into the property in August of 2019. The Parties ran their business at the property from 2019 to April of 2023. Plaintiff alleges that he spent \$119,134.29 to develop the property in furtherance of the Parties’ business, that Defendant has failed to pay Plaintiff, and that Defendant improperly evicted Plaintiff from the property.¹

¹ Plaintiff did not attach a written partnership agreement or lease agreement to his Complaint.

On February 21, 2024, Plaintiff filed his three-count complaint in this matter alleging the following: count I – breach of contract, count II – common law and statutory conversion, and count III – retaliatory termination of tenancy. On March 26, 2024, Defendant filed the instant motion for summary disposition in lieu of answer arguing that Plaintiff’s claims are barred by the wrongful conduct rule and the statute of frauds. On April 30, 2024, Plaintiff filed a response in opposition to the motion. On May 6, 2024, this Court heard the motion and took the matter under advisement.

II. Standard of Review

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party has failed to state a claim on which relief can be granted. *Carter v Ann Arbor City Attorney*, 271 Mich App 425, 426-427; 722 NW2d 243 (2006). A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone. *Beaudrie v Henderson*, 465 Mich 124, 129-130; 631 NW2d 308 (2001). All factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Carter*, Mich App at 427. The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Cork v Applebee’s Inc*, 239 Mich App 311, 315-316; 608 NW2d 62 (2000).

III. Arguments and Analysis

In his motion, Defendant argues that Plaintiff’s claims are barred by the wrongful conduct rule and the statute of frauds.

A. The Wrongful Conduct Rule

Defendant argues that Plaintiff's claims are barred by the wrongful conduct rule. In *Orzel by Orzel v Scott Drug Co*, 449 Mich 550, 558; 537 NW2d 208 (1995), the Michigan Supreme Court discussed the wrongful-conduct rule:

When a plaintiff's action is based, in whole or in part, on his own illegal conduct, a fundamental common-law maxim generally applies to bar the plaintiff's claim:

[A] person cannot maintain an action if, in order to establish his cause of action, he must rely, in whole or in part, on an illegal or immoral act or transaction to which he is a party.

When a plaintiff's action is based on his own illegal conduct, and the defendant has participated equally in the illegal activity, a similar common-law maxim, known as the "doctrine of in pari delicto" generally applies to also bar the plaintiff's claim:

[A]s between parties in pari delicto, that is equally in the wrong, the law will not lend itself to afford relief to one as against the other, but will leave them as it finds them.

Id. (Internal citations omitted).

Collectively, these maxims are referred to as the "wrongful-conduct rule." *Id.* "The rationale that Michigan courts have used to support the wrongful-conduct rule are rooted in the public policy that courts should not lend their aid to a plaintiff who founded his cause of action on his own illegal conduct." *Id.* at 559. "This rule will bar recovery if (1) the plaintiff's conduct [is] prohibited or almost entirely prohibited under a penal or criminal statute, (2) a sufficient causal nexus ... exist[s] between the plaintiff's illegal conduct and the plaintiff's asserted damages, and (3) the defendant's culpability is not greater than the plaintiff's culpability. *Varela v Spanski*, 329 Mich App 58, 73; 941 NW2d 60 (2019) (citation and quotations omitted). In this case, Defendant argues that Plaintiff's conduct is barred by the wrongful conduct rule because it is prohibited by a criminal statute, because there is a causal nexus between his claims and his asserted damages, and because Defendant's culpability is not greater than Plaintiff's.

1. Plaintiff's Conduct is Prohibited by Criminal Statute

Defendant argues that Plaintiff's conduct is prohibited by a criminal statute. Section 33.27961 of the Marihuana Regulation and Taxation of Marihuana Act provides that a marijuana establishment cannot cultivate or grow marijuana at a location other than a physical address that has been approved by the Cannabis Regulatory Agency. Section 333.27965 states that a person who possesses more than twice the amount of marihuana allowed by the statute, which is 2.5 ounces or more than 12 plants, shall be responsible for a misdemeanor. Section 333.27407a requires that a person obtain a license to operate as a marijuana facility and that if an individual holds themselves out as operating a medical marijuana facility without a license, that person is subject to a criminal misdemeanor. Defendant argues that state records show that Plaintiff is not a licensed caregiver. See Defendant's Exhibit C. Defendant also notes that Riley Township ordinance #58-18 prohibits all marihuana establishments. See Defendant's Exhibit E.

In response, Plaintiff argues that his actions were lawful pursuant to MCL 333.27955, which reads, in relevant part, as follows:

1. Notwithstanding any other law or provision of this act, and except as otherwise provided in section 4 of this act, the following acts by a person 21 years of age or older are not unlawful, are not an offense, are not grounds for seizing or forfeiting property, are not grounds for arrest, prosecution, or penalty in any manner, are not grounds for search or inspection, and are not grounds to deny any other right or privilege:

(a) except as permitted by subdivision (b), possessing, using or consuming, internally possessing, purchasing, transporting, or processing 2.5 ounces or less of marihuana, except that not more than 15 grams of marihuana may be in the form of marihuana concentrate;

(b) within the person's residence, possessing, storing, and processing not more than 10 ounces of marihuana and any marihuana produced by marihuana plants cultivated on the premises and cultivating not more than 12 marihuana plants for personal use, provided that no more than 12 marihuana plants are possessed, cultivated, or processed on the premises at once;

(c) assisting another person who is 21 years of age or older in any of the acts described in this section; and

(d) giving away or otherwise transferring without remuneration up to 2.5 ounces of marihuana, except that not more than 15 grams of marihuana may be in the form of marihuana concentrate, to a person 21 years of age or older, as long as the transfer is not advertised or promoted to the public.

2. Notwithstanding any other law or provision of this act, except as otherwise provided in section 4 of this act, the use, manufacture, possession, and purchase of marihuana accessories by a person 21 years of age or older and the distribution or sale of marihuana accessories to a person 21 years of age or older is authorized, is not unlawful, is not an offense, is not grounds for seizing or forfeiting property, is not grounds for arrest, prosecution, or penalty in any manner, and is not grounds to deny any other right or privilege.

Plaintiff argues that pursuant to MCL 333.27956, a violation of a municipality ordinance may result in only a civil fine of not more than \$500. Further, Plaintiff argues that “as discovery proceeds, Plaintiff will demonstrate that he possessed a license for marijuana and then applied for a renewal of his license. However, due to a clerical mistake, the pertinent authority failed to renew the license. At most, Plaintiff’s misconduct is properly characterized as operating without a license.” See Plaintiff’s Response, p. 6.

In Defendant’s reply, he argues that Plaintiff has mischaracterized Michigan law and that the Michigan legislature created a misdemeanor criminal penalty for the cultivation of more than the permitted amount of marijuana for a commercial purpose. MCL 333.27965(4). This Court agrees. Additionally, Plaintiff’s own response acknowledges that he was operating without a license. MCL 333.27407a. For these reasons, this Court finds that Plaintiff’s conduct is prohibited by criminal statute.

2. There is a Causal Nexus Between Plaintiff’s Claims and His Asserted Damages

Defendant argues that Plaintiff’s claims “are the result of the alleged agreement to engage in an illegal grow operation and profit from the illegal sale of the resulting harvest.” See

Defendant's Motion, p. 6. In response, Plaintiff argues that "the [c]omplaint is consistent with Plaintiff demonstrating (upon discovery) that there is no causal connection between Defendant's misconduct, including but not restricted to theft/conversion and the alleged wrongful conduct." See Plaintiff's Response, p. 9.

In this case, Plaintiff's complaint alleges that Defendant breached an alleged partnership agreement to maintain an illegal grow operation, that Defendant converted various equipment including lights, CO2 burners, metal shelves, water tanks, fans, and a dehumidifier, and that Defendant retaliatorily terminated Plaintiff's tenancy. See Plaintiff's Complaint, p. 2-4. However, Plaintiff's complaint specifically states that "Plaintiff solely purchased the following equipment to begin the operation" and that "[t]he agreement was that Plaintiff would lease the property, remodel the living area, and construct the basement and barns into a grow facility." *Id.* at 2. Here, this Court finds that there is a causal nexus between Plaintiff's claims and his asserted damages because they are the direct result of the Parties' alleged agreement to operate an illegal marijuana grow operation.

3. Defendant's Culpability is Not Greater than Plaintiff's

Defendant argues that "[t]here is nothing in [Plaintiff's] complaint that suggests that [Defendant] is somehow more culpable than [Plaintiff] in carrying out the business..." See Defendant's Motion, p. 7. This Court agrees. Plaintiff's complaint alleges that Defendant financed and purchased the property while Plaintiff resided at the property and was primarily responsible for the day-to-day operations. This Court finds that Defendant's culpability is not greater than Plaintiff's.

For the reasons laid out above, as all three prongs of the wrongful conduct rule have been satisfied, Plaintiff's claims are barred by the wrongful conduct rule. Therefore, Defendant's motion for summary disposition is granted.²

IV. Conclusion

For the reasons set forth above, Defendant's motion for summary disposition is GRANTED. Pursuant to MCR 2.602(A)(3), this Opinion and Order resolves the last pending claim and closes the case.

IT IS SO ORDERED.



HONORABLE RICHARD L. CARETTI
Circuit Court Judge

DATE: September 6, 2024

cc: Fred E. Sackllah, Esq.
Keith C. Jablonski, Esq.



² Defendant also argues that Plaintiff's claim for retaliatory termination of tenancy is barred by the statute of frauds. In support of this position, Defendant relies on MCL 566.132(1)(e) which reads as follows:

(1) In the following cases an agreement, contract, or promise is void unless that agreement, contract, or promise, or a note or memorandum of the agreement, contract, or promise, is in writing and signed with an authorized signature by the party to be charged with the agreement, contract or promise:

(e) An Agreement, promise, or contract to pay a commission for or upon the sale of an interest in real estate.

Defendant argues that "[Plaintiff] has not attached a written lease agreement or pled that the alleged lease agreement was written. [Plaintiff's] claim for retaliatory termination of tenancy and unlawful lockout expressly relies on an alleged lease agreement between the parties...However, [Plaintiff] has not attached an agreement or indicated that a written lease agreement even exists to demonstrate the rights and interests of the parties." See Defendant's Motion, p. 10. In response, Plaintiff argues that the complaint "asserts the parties 'entered into a valid and binding lease agreement and partnership agreement,' with no allegation as to whether the lease agreement was written. Accordingly, Defendant has no basis, prior to discovery, to assert there is no written lease agreement." See Plaintiff's Response, p. 4. Notably, Plaintiff did not attach a written lease agreement to his Complaint or to his response. Further, Plaintiff's response does not even allege that a written lease agreement exists. Therefore, the statute of frauds provides another basis on which Defendant's motion for summary disposition as it relates to Plaintiff's retaliatory termination of tenancy claim is granted.