

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

R&M Financing, LLC,

Plaintiff,

Case No: 2021-191738-CB
Hon. Victoria Valentine

v.

BREEZER HOLDINGS, LLC,
MARKIMA, LLC,
MARK A. PAPAK, and
BLACKWELL, INC.

Defendants

At a session of said Court held on the
18th day of October 2022 in the County of
Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter is before the Court on Defendant BREEZER HOLDINGS, LLC's Motion for Summary Disposition under MCR 2.116 (C)(8) and MCL 600.745(3). Defendant did not bring a motion under MCR 2.116(C)(10). The Court waives oral argument pursuant to MCR 2.119(E)(3). After reviewing the pleadings, the briefs and being otherwise advised in the premises the Court DENIES Defendant's Motion and reserves Plaintiff's request for sanctions.

PERTINENT FACTS

R&M Financing, LLC's First Amended complaint against Breezer Holdings, LLC ("Breezer") seeks the repayment of various loans R&M allegedly made to Breezer¹, which are evidenced by

¹ ¶¶ 19-20, 24, 26-32, 43-44, 49-50 of First Amended Complaint ("FAC").

various promissory notes from Breezer, LLC as “Maker” to R&M as “Holder.” These notes are attached to the First Amended Complaint.² It is alleged that the outstanding balance on these loans, plus additional loans, total \$27,300,000.00.³ R&M filed this lawsuit to which Breezer files this Motion for Summary Disposition. R&M responds and seeks sanctions for Breezer’s filing of this “frivolous” motion.⁴

Breezer claims that while several promissory notes identify R&M as the lending entity, nearly all of the funds were advanced by Raymond J. Nicholson Sr. and his wife. Breezer argues that, thus, the real party interest with respect to the advanced funds was Mr. Nicholson’s entity, Nicholson Ventures. Breezer argues that, therefore, these are Member Loans that are governed by Breezer’s Operating Agreement. In support, Defendant Breezer attaches its bank statements⁵ and its Operating Agreement,⁶ the latter of which contains a Delaware forum selection clause (Section 15.15).

R&M argues that while this is a (C)(8), Defendant Breezer goes outside the pleadings by attaching exhibits, including bank statements and Breezer’s Operating Agreement; that Breezer fails to identify any insufficiency in the First Amended Complaint; and despite Breezer going outside the pleading, R&M was not a party to Breezer’s operating agreement that contains a Delaware forum selection clause.

² Exhibits 7-11 attached to FAC.

³ ¶ 19 of FAC.

⁴ The Court file does not reflect that Breezer filed a reply.

⁵ Exhibit 3 attached to Breezer’s Brief in Support of its MSD.

⁶ Exhibit 2 attached to Breezer’s Brief in Support of its MSD.

STANDARD OF REVIEW

MCR 2.116(C)(8) "requires the court to consider evidence only from the pleadings, while (C)(10) motions denounce a claim's factual sufficiency and allow the court to consider evidence beyond the pleadings." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160 (2019). All well-pleaded factual allegations are accepted as true and construed in the light most favorable to the nonmovant. *Wade v Dep't of Corrections*, 439 Mich 158, 162-63 (1992). A motion under MCR 2.116(C)(8) may be granted when the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* at 163. And once a document is attached as part of the pleading, the instrument becomes part of that pleading "even for purposes of review under MCR 2.116(C)(8)." See *Laurel Woods Apartments v Roumayah*, 274 Mich App 631, 635 (2007).

ANALYSIS

The Court agrees with Plaintiff that instead of identifying any deficiency in Plaintiff's First Amended Complaint, Breezer goes outside the pleadings. Breezer attaches bank statements and its Operating Agreement to which Plaintiff is *not* party. MCR 2.116(C)(8), however "requires the court to consider evidence only from the pleadings, while (C)(10) motions denounce a claim's factual sufficiency and allow the court to consider evidence beyond the pleadings." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160 (2019).

The Court further finds that Breezer's motion fails to articulate any deficiency contained in R&M's First Amended Complaint to support its (C)(8) Motion for Summary Disposition. Plaintiff's First amended Complaint alleges loans were made by Breezer to R&M; Breezer

defaulted on its obligations to repay loans; and Breezer owes R&M in excess of \$27 million dollars in principal and interest.⁷

And, because R&M was not a party to the Operating Agreement that contains a Delaware forum selection clause, MCL 600.745(3) is inapplicable.

Lastly, Plaintiff seeks sanctions for Breezer's filing of this motion in violation of MCR 1.109(E), which Plaintiff claims is frivolous. The Court file does not reflect that Breezer filed a reply to Plaintiff's request.

The Court notes that Breezer's counsel did not appear at its previously scheduled October 5, 2022, hearing while Plaintiff's Counsel did appear.

IT IS HEREBY ORDERED for the reasons set forth above and set forth in Plaintiff's Response, that Defendant Breezer's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Motion for Sanctions is RESERVED.

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

IT IS SO ORDERED.



⁷ To prevail on a claim for breach of contract, a plaintiff must establish by a preponderance of the evidence that "(1) there was a contract, (2) the other party breached the contract, and (3) the breach resulted in damages to the party claiming breach." *Bank of Am, NA v First Am Title Ins Co*, 499 Mich 74, 100 (2016). See ¶¶ 19-20, 24, 26-54 of FAC.