**S T A T E O F M I C H I G A N**

**IN THE CIRCUIT COURT FOR THE COUNTY OF KENT**

GJWD ENTERPRISES, LLC, a Texas limited liability company; and CHERRY STREET CAPITAL, LLC, a Michigan limited liability company,

Plaintiff,

v.

DOUBLE BARREL PARTNERS RE LLC, a Michigan limited liability company; ONE BEER AT A TIME, LLC, a Michigan limited liability company; JASON SPAULDING, an individual; and KRIS SPAULDING, an individual,

Defendant,
_____/

Case No. 25-20074-CBB

Hon. Curt A. Benson

**OPINION AND ORDER**

## INTRODUCTION

GJWD Enterprises, LLC and Cherry Street Capital, LLC filed a civil action against two companies (Double Barrel Partners RE, LLC and One Beer at A Time, LLC) and two individuals (Jason Spaulding and Kris Spaulding.) In response, each defendant, represented by the same law firm, filed a separate motion for summary disposition.

This opinion addresses only the motion filed by Double Barrel Partners RE, LLC.

***A word about procedure***

The motion was filed under MCR 2.116(C)(8). Under that rule, "[o]nly the pleadings may be considered…" MCR 2.116(G)(5); see also *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159–160; 934 NW2d 665 (2019).

Despite this familiar limitation, in their respective briefs, both parties relied on matters outside the pleadings and attached documents not properly before the Court.

In response to Defendant's motion, Plaintiffs attached several "redemption agreements" in an effort to show that consideration existed for the First Amendment to the Construction Loan

Agreement. Because these documents were not part of the pleadings, the court will not consider them.

Likewise, in its reply brief, Double Barrel Partners RE, LLC attached the Affidavit of Jason Spaulding, apparently to challenge the accuracy of paragraphs 15 through 19 of the Complaint. That, too, is improper, and the Court will disregard the affidavit.

## FACTS

In 2010, Cherry Street Capital ("Cherry Street") made a commercial construction loan of about $929,680 to Double Barrel Partners RE, LLC ("Double Barrel") for two buildings located at 925 Cherry Street in Grand Rapids. The loan was secured by the property itself and formalized through several standard documents: a promissory note, a loan agreement, and a mortgage. Collectively, the Complaint labels these documents as "the Loan Security Agreements." See Complaint, ¶24. Together, the Loan Security Agreements gave Cherry Street the right to be repaid and to foreclose if Double Barrel defaulted. Cherry Street claims that Jason and Kris Spaulding personally guaranteed the loans.

About a year later, Cherry Street alleges that Double Barrel signed an amendment to the loan agreement, called the First Amendment to Construction Loan Agreement ("First Loan Amendment"). This amendment was supposedly related to the Small Business Administration's refinancing of its own first-priority mortgage on the property. The amendment added a new clause - labeled "Article 20" - requiring Double Barrel, once the loan was paid off, to transfer an 80% ownership interest in the property to Cherry Street for one dollar. This provision, referred to as the "Equity Kicker," stated that Cherry Street didn't have to do anything to make the transfer happen and that Double Barrel's obligation to give up 80% ownership was absolute. It even gave Cherry Street an irrevocable power of attorney so it could sign the transfer documents itself if Double Barrel refused. Cherry Street valued this 80% share at about $1.92 million, based on a total property value of $2.4 million.

***A word about contract enforcement***

Plaintiff begins with what in Michigan law is a truism: "A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be *enforced as written.*" *Rory v. Cont'l Ins. Co.*, 473 Mich. 457, 468, 703 N.W.2d 23, 30 (2005) (emphasis in original). An unambiguous contractual provision, as a matter of law, reflects the parties' intent. *Coates v. Bastian Bros., Inc.*, 276 Mich. App. 498, 503, 741 N.W.2d 539, 543 (2007).

Plaintiffs treat this principle as conclusive of Count I of their claims:

> Plaintiffs are therefore entitled to a dispositive judgment in their favor on Count I of the Complaint as this Court, as a matter of law, must enforce the clear terms of the First Loan Amendment as written and enter a declaratory order confirming Double Barrel's obligation to convey the agreed to Equity Kicker.

*See Pl. Br., p. 8.*

This framing, however, does a disservice to the defendants. Nothing in their brief suggests that the Court should disregard this long-standing rule. Rather, defendants maintain that the agreement fails for lack of consideration and therefore no contract exists to enforce. In the alternative, they argue that even if a contract was formed, it is unenforceable. After all, even *Rory* - while reaffirming "the bedrock principle of American contract law that parties are free to contract as they see fit," *Id.* at 469 - recognized that there are "some highly unusual circumstances" in which a contract may nonetheless be unenforceable. *Rory* notably identified six traditional contract defenses: unconscionability, duress, fraud, waiver, estoppel, and violations of public policy. *Id.* Other defenses, while not always rendering a contract void, may substantially limit or alter the remedies available for its breach. These include the defenses of usury,[1] clogging the equity of redemption,[2] and restraints on alienation.[3]

In other words, the question before the Court is not whether to enforce the First Loan Amendment "as written," but whether it constitutes a valid contract and, if so, whether it is enforceable.

***Double Barrel's Argument***

The defendants argue that Michigan's parol evidence rule bars the plaintiffs from introducing extrinsic evidence - such as an unsigned "Investment Opportunity Summary" - to add an "Equity Kicker" term to the parties' written Loan Agreement. The 2010 Loan Agreement is fully integrated, containing a merger clause that supersedes all prior or contemporaneous oral or written agreements. Because of this, the alleged Equity Kicker cannot be treated as part of the original deal.

It also argues that the First Loan Amendment was made in connection with an additional $467,820 advance. But that advance was not a new loan; it was a required disbursement under the original Loan Agreement once certain conditions were met. Since the lender was already contractually obligated to provide that advance, it cannot serve as consideration for the new Equity Kicker term. The nominal $1 recited in the Amendment is likewise insufficient consideration for an equity interest allegedly worth nearly $2 million. Therefore, the Amendment fails for lack of consideration and cannot be enforced.

***Plaintiffs' Response***

Plaintiffs maintain that the First Loan Amendment is supported by valid consideration and is therefore enforceable. They begin by noting that the amendment itself expressly recites that it was made "in consideration of the mutual covenants herein contained and other good and

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[1] See generally, *Soaring Pine Cap. Real Est. & Debt Fund II, LLC v. Park St. Grp. Realty Servs., LLC*, 511 Mich. 89, 100, 999 N.W.2d 8, 15 (2023)

[2] "Chancery will never uphold an arrangement which was designed for and will result in cutting off mortgagor's right of redemption." *Batty v. Snook*, 5 Mich. 231, 235–36 (1858)

[3] "Michigan follows the common-law rule against unreasonable restraints on alienation of property." *LaFond v. Rumler*, 226 Mich. App. 447, 451, 574 N.W.2d 40, 42 (1997)

valuable consideration," and that Double Barrel's obligation to convey an eighty-percent interest in the Brewery Vivant property constituted "additional consideration for the Loan." By executing this document, both Double Barrel and the Spauldings acknowledged the existence of consideration. Plaintiffs argue that a party that signs such an acknowledgment may not later deny it. Plaintiffs further contend that Double Barrel's argument regarding the alleged inadequacy of the consideration is legally irrelevant as Michigan law does not permit courts to evaluate the adequacy of consideration.

Plaintiffs also assert that Double Barrel is equitably estopped from denying the amendment's validity after having accepted the benefits of the underlying transaction. They note that Double Barrel signed the amendment, received and used Cherry Street's loan proceeds to construct and operate its brewery, and for more than a decade performed under the amended agreement without objection.

## ANALYSIS

### *The shade of the First Loan Amendment and the Equity Kicker*

This case presents a nuanced issue concerning consideration. The immediate question before the Court is whether valid consideration existed for the First Loan Amendment, which memorialized the Equity Kicker. As pleaded, none of the Loan Security Agreements make any reference to an Equity Kicker or similar provision. Moreover, the parties did not formally agree to the Equity Kicker until nearly a year after executing the Loan Security Agreements. On its face, therefore, and absent the allegations in the Complaint, the First Loan Amendment could appear as a new, stand-alone agreement rather than a continuation of prior obligations. Or, as it references the earlier loans, it might be regarded as a modification of an existing contract, and thus governed by *Quality Prods. & Concepts Co. v. Nagel Precision, Inc.*, 469 Mich. 362; 666 N.W.2d 251 (2003).

The Complaint, however, paints a different picture. It alleges that the Equity Kicker was neither a new bargain, nor a modification of an existing one. Rather, it was an element of the parties' original understanding from the outset of the project. According to the pleading, the parties intentionally refrained from memorializing the Equity Kicker in writing or incorporating it into the Loan Security Agreements. See Complaint ¶¶ 17, 32–36. But, the plaintiffs allege, notwithstanding its absence from the controlling contracts, the Equity Kicker has *always* been a part of the deal.

### *Consideration in contract law generally*

As every first-year law student knows, a valid contract requires five elements: (1) parties competent to contract, (2) a proper subject matter, (3) legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation. See generally, *AFT Mich v Michigan*, 497 Mich. 197, 235, 866 N.W.2d 782 (2015). Courts describe the third element as follows:

> To have consideration there must be a bargained-for exchange. There must be a benefit on one side, or a detriment suffered, or service done on the other.

*Gen. Motors Corp. v. Dep't of Treasury, Revenue Div.,* 466 Mich. 231, 238–39, 644 N.W.2d 734, 738 (2002)(Citations and quote marks omitted).

And "[c]ourts do not *generally* inquire into the sufficiency of consideration." *Id.,* (Emphasis added).

***The recitation "other good and valuable consideration" cannot substitute for real, bargained-for value; nonetheless, consideration has been properly pled.***

The plaintiffs first argue that, inasmuch as the First Loan Amendment references "as additional consideration for the loan," and "other good and valuable consideration," Double Barrel is precluded from claiming the opposite. To support this argument, they offer a snippet of a quote from *Mercurio v. Huntington Nat'l Bank,* 347 Mich. App. 662, 678, 16 N.W.3d 748, 759 (2023). But the quote chosen is selective. Here is the full quote:

> The very first sentence of the guaranty begins with the language, "For good and valuable consideration ...." At the end of the guaranty, plaintiff acknowledged reading all of the provisions contained in the document and agreed to all the terms. Given plaintiff's contractual admission that her guaranty was in exchange for good and valuable consideration, ***one could argue*** that she is estopped from claiming an absence of consideration. ***We do understand, though, that the contractual language regarding "good and valuable consideration" could be viewed as boilerplate absent any true effect.***

*Id.,* at 678.(Emphasis added)(quotation marks and citations omitted).

The *Mercurio* Court went on to state, "[r]egardless, even without contemplating the "consideration" language in the guaranty, we conclude that the guaranty was supported by sufficient consideration."

So clearly the court took pains to avoid deciding whether the term, "[f]or good and valuable consideration ...." found in a contract necessarily estops a party to the contract from later claiming the contract lacked consideration.

Accordingly, the court rejects plaintiffs' argument that the mere recitation of consideration in the First Amended Loan Agreement estops Double Barrel from arguing otherwise, or conclusively establishes consideration.[4]

When a contract formalistically recites consideration, whether there was consideration is a question of fact:

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[4] To be clear, this court is not suggesting that so-called "boilerplate" language in contracts have no "true effect." Quite the contrary, contracts must be construed to give effect to every word or phrase as far as practicable. *Klapp v. United Ins. Grp. Agency, Inc*., 468 Mich. 459, 467, 663 N.W.2d 447, 453 (2003). This court is unaware of a "boilerplate" exception to this rule.

> The correct rule is that a written acknowledgment of receipt of consideration or other form of payment in a contract merely creates a rebuttable presumption that consideration has, in fact, passed. Neither the parol evidence rule nor the doctrine of estoppel bars the presentation of evidence to contradict any such acknowledgment.

*Claire-Ann Co. v. Christenson & Christenson, Inc.,* 223 Mich. App. 25, 32, 566 N.W.2d 4, 7 (1997)

Plaintiff's complaint alleges consideration clearly enough to state a claim; whether there was consideration is a question of fact.

***MCL 566.1 is inapplicable.***

Plaintiffs, citing MCL 566.1, also argue that, even if the First Loan Amendment was not supported by consideration, none was needed. The statute reads in its entirety as follows:

> An agreement hereafter made to change or modify, or to discharge in whole or in part, any contract, obligation, or lease, or any mortgage or other security interest in personal or real property, shall not be invalid because of the absence of consideration: Provided, That the agreement changing, modifying, or discharging such contract, obligation, lease, mortgage or security interest shall not be valid or binding unless it shall be in writing and signed by the party against whom it is sought to enforce the change, modification, or discharge.

*Id.*

The Supreme Court, relying on Random House Webster's College Dictionary, (2nd ed.1997), defines "modify" as follows: "[T]o change somewhat the form or qualities of; alter partially; amend; *to modify a contract." In re Hathaway,* 464 Mich. 672, 685, 630 N.W.2d 850, 857 (2001)

In this case, the Complaint makes clear that the First Loan Amendment, regardless of its label, did not amend or modify an existing contract. As discussed above, it was neither a new bargain nor an alteration of the earlier agreement. Rather, it embodied a term that had been part of the parties' original understanding from the outset of the project. The Amendment may have modified the written document by adding language the parties had initially agreed to omit, but it did not alter the substance of the contract itself.

> In contract law, a contract is fundamentally the agreement itself - the meeting of the minds (mutual assent) on the terms. The written document that parties sign serves as evidence of that agreement. "That is, the paper evidences the agreement, but the agreement exists separately from the piece of paper."

*Phillips v. Grace Hosp.,* 228 Mich. App. 717, 723, 580 N.W.2d 1, 4 (1998)

As pleaded, the First Loan Amendment did not alter, amend, or modify the parties' mutual assent to the terms of the agreement. Consequently, MCL 566.1 has no application here.

***The "integration clause" argument warrants additional briefing.***

The plaintiffs' response to the Double Barrel's "integration clause" argument is unsatisfying for two reasons.

First, they conflate "integration clause" with "parol evidence." This confusion appears on page 10 of their brief, where they assert, incorrectly, that "[a]n integration clause simply means that parol evidence is inadmissible to determine whether a contract was integrated." *Pl. Br.*, p. 10. In making this statement, plaintiffs quote *Barclae v. Zarb*, 300 Mich. App. 455, 834 N.W.2d 100 (2013). But in the paragraph from which they lift the quote, the *Barclae* Court was not discussing "integration clauses." It was discussing parol evidence. The quoted sentence is an example of when parol evidence is inadmissible.

Though they overlap, an integration clause is distinct from parol evidence:

> The purpose of an integration clause is to give effect to the intent of contracting parties to establish a written agreement as the exclusive basis for determining their intentions concerning the subject matter of the contract."

*UAW–GM Human Resource Ctr. v. KSL Recreation Corp.*, 228 Mich.App. 486, 497, 579 N.W.2d 411 (1998).

In other words, a properly drafted integration clause prevents either party from later claiming that there were other promises, statements, or understandings, especially oral ones, outside the written document that should affect how the contract is interpreted. An integration clause "locks in" the written agreement as the exclusive source of the parties' intentions about whatever the contract covers, excluding prior drafts, negotiations, or side conversations.

The plaintiffs' second error is their overreliance on labels. What is an integration clause? It's part of a written contract. And "[i]n ascertaining the meaning of a contract, we give the words used in the contract their plain and ordinary meaning that would be apparent to a reader of the instrument." *Rory v. Cont'l Ins. Co.*, 473 Mich. 457, 464, 703 N.W.2d 23, 28 (2005).

Paragraph 18.4. of the Construction Loan Agreement states in relevant part as follows:

> This Agreement and the Loan Documents contain the entire agreement between the parties relating to the subject matter hereof and supersede all oral statements and prior writings with respect thereto.

This is a simple straightforward sentence. The sentence is structured to address what the agreement *contains* and what the agreement *supersedes*. It *contains* the "entire agreement between the parties relating to the subject matter" of the contract. It *supersedes* "oral statements" and "prior writings." By its plain terms, this provision establishes the Construction Loan Agreement as the exclusive statement of the parties' intentions concerning the loan, and it expressly excludes reliance on prior drafts, negotiations, or side conversations. In other words,

Paragraph 18.4 "locked in" the written Construction Loan Agreement as the exclusive source of the parties' intentions about the loan. It clearly excludes prior drafts, negotiations, or side conversations.

It is impossible to square the language of the Construction Loan Agreement with the allegations in the complaint that there existed "side conversations" or "oral statements" about an Equity Kicker. There may have been, but they were supplanted by the writing. Moreover, applying the ordinary language of the agreement, there simply cannot be an unwritten agreement "relating to" the construction loan. The Construction Loan Agreement contain the *entire* agreement between the parties.

How this incongruity affects the enforceability of the First Loan Amendment is unclear. It might well constitute an ambiguity which, of course, triggers a whole new set of rules of construction. Though Double Barrel did an admirable job of explaining its position, the court respectfully requests that after the close of discovery, and in the context of a (C)(10) motion, Double Barrel briefs the issue anew, in light of the holdings contained in this opinion and order. Obviously, the plaintiffs are invited to respond with their own new brief.

***The Complaint does not, as a matter of law, establish that the First Loan Amendment is an unreasonable restraint of alienation.***

The First Amended Loan document specifically states that the Equity Kicker constitutes "additional consideration for the loan." The reference to "the loan," is apparently a reference to the Loan Security Agreements executed nearly a year earlier. If the Equity Kicker was tied solely to the loan, it could arguably be an unreasonable restraint on alienation.

Michigan recognizes a strong public policy against restraints on alienation. *In re Est. of Hoppert,* 347 Mich. App. 450, 466, 15 N.W.3d 337, 347 (2023). Michigan follows the common-law rule against unreasonable restraints on alienation of property. *Id.*

> A restraint on alienation of property is defined as an attempt by an otherwise effective conveyance or contract to cause a later conveyance (1) to be void (disabling restraint), (2) to impose a contractual liability upon the conveyance for conveying in breach of the agreement not to convey (promissory restraint), or (3) to terminate all or part of a conveyed property interest (forfeiture restraint). Michigan recognizes a strong public policy against restraints on alienation. Michigan follows the common-law rule against unreasonable restraints on alienation of property.

*Id.*(Citations and quote marks omitted)

No Michigan case provides trial courts specific guidance on how they should evaluate reasonableness in this setting. But "reasonableness" is ordinarily understood as an objective test, determined by considering the totality of the circumstances. See generally, *Radtke v. Everett*, 442 Mich. 368, 391, 501 N.W.2d 155, 166 (1993). Certainly, there is persuasive authority for this proposition in the context of unreasonable restrains on alienation:

> In applying this test, we must look at the totality of the circumstances taking into account the respective interests of the parties and the duration and nature of the restraint used to enforce those interests.

*Perry v. Brundage*, 200 Colo. 229, 235, 614 P.2d 362, 367 (1980).

> In all cases, the reasonableness of a restraint on alienation is examined from the totality of the circumstances, including the purpose, duration, scope, nature of the restraint, and marketability of the property restrained.

Ronald C. Link & Kimberly A. Licata, *Perpetuities Reform in North Carolina: The Uniform Statutory Rule Against Perpetuities, Nondonative Transfers, and Honorary Trusts*, 74 N.C. L. Rev. 1783, 1850 (1996).

Under the totality of the circumstances test, no single feature of the arrangement, such as the "due on sale" clause, would likely, by itself, constitute an unreasonable restraint on alienation. See, e.g., *Capitol Fed. Sav. & Loan Ass'n, Inc. v. Glenwood Manor, Inc.*, 235 Kan. 935, 944, 686 P.2d 853, 860 (1984); *Mills v. Nashua Fed. Sav. & Loan Ass'n*, 121 N.H. 722, 725, 433 A.2d 1312, 1314 (1981).

But when the financial arrangement is read as a whole, it might run afoul of the law. As Double Barrel argues in its brief, the Term Note expressly prohibits prepayment, contractually barring Double Barrel from repaying the Loan ahead of schedule. The Mortgage, in turn, contains a due-on-sale clause - meaning that if Double Barrel attempts to sell or refinance the Property before the Term Loan Maturity Date, the Lender may declare a default and exercise its remedies.

At the same time, if the Lender accelerates the Loan, that acceleration applies only to the indebtedness, not to the Term Loan Maturity Date itself. Consequently, the Term Loan Maturity Date remains fixed at April 1, 2031, under all circumstances. The alleged Equity Kicker, by its terms, is tied specifically to that date - it triggers on the Term Loan Maturity Date regardless of the Loan's status.

This analysis, however, tells only part of the story. As alleged in the Complaint, the Equity Kicker was not simply consideration for a loan; it was a component of a broader investment opportunity allowing potential investors to share in the brewery's profits. See Complaint ¶¶ 15–19 and Ex. 3. Viewed in that light, it is neither unusual nor improper for investors to acquire an ownership stake in the enterprise they are funding.

In short, more discovery is needed to determine whether the arrangement between the plaintiffs and Double Barrel unlawfully restrained Double Barrel's right to alienate its property.

The court finds that to the extent it is the responsibility of the court to decide the question, it cannot do so on the pleadings. This issue is more properly brought before the court on an MCR 2.116(C)(10) motion.

***The analysis for clogging the equity of redemption is similar to the analysis for unreasonable restraint of alienation.***

For more than 160 years, Michigan law has stood firmly against any "clog" on the equity of redemption. *See Batty v Snook*, 5 Mich 231, 239 (1858). Yet few Michigan cases provide detailed guidance on how to determine when a mortgage offends that principle. After an exhaustive review of mortgage history and numerous decisions addressing clogs on the equity of redemption, one respected treatise explains:

> The cases and authorities reviewed in the foregoing sections indicate that clogs on the equity of redemption have been found where the facts of the case indicate the presence of one or more of the following factors (collectively referred to in this Article as 'Clogging Factors'): (i) unconscionability, oppression or unfairness, (ii) usury, (iii) evasion of foreclosure procedure, (iv) forfeiture or penalty, and (v) lack of independent consideration. Although the English and American authorities often may appear contradictory, the principles upon which virtually all the decisions rest can be summarized and explained by reference to the five Clogging Factors, the presence or absence of which will determine the result of the case. Accordingly, the following analysis may serve as the basis for structuring multipurpose commercial financing transactions in order to avoid a clogging contention.

Laurence G. Preble David, *Convertible and Shared Appreciation Loans: Unclogging the Equity of Redemption*, 20 Real Prop. Prob. & Tr. J. 821, 847–48 (1985).

None of these factors can be determined on the pleadings alone. The court finds that to the extent it is the responsibility of the court to decide the question, it cannot do so on the pleadings. This issue is more properly brought before the court on an MCR 2.116(C)(10) motion.

CONCLUSION

Double Barrel's motion for summary disposition is DENIED.

**IT IS ORDERED.**

This order does not resolve all pending claims. It is not a final order. MCR 2.602(A)(3).

Dated: October 27, 2025
at Grand Rapids, Michigan.

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Honorable Curt A. Benson