STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

HUNT'S GYMNASTICS ACADEMY, LLC,

Plaintiff/Counter-Defendant,

vs. Case No. 2022-004426-CB

STATEWIDE GROESBECK, LLC,

Defendant/Counter-Plaintiff

vs.

MAXIM HOMES, INC.,

Third Party Defendant.
_____/

OPINION AND ORDER

Plaintiff/Counter-Defendant Hunt's Gymnastics LLC ("Plaintiff") has filed a motion for entry of judgment on order granting partial summary disposition and for imposition of costs and attorney fees under MCR 2.405 for rejection of offer for judgment. Defendant/Counter-Plaintiff Statewide Groesbeck LLC ("Defendant") has filed a response requesting that the motion be denied.

I. Factual and Procedural History

On May 31, 2024, this Court issued an Opinion and Order granting Plaintiff's motion for partial summary disposition. In the interests of judicial economy, the factual and procedural statements set forth in the Court's May 31, 2024 Opinion and Order are incorporated herein. On September 16, 2024, Plaintiff filed the instant motion for entry of judgment on order granting partial summary disposition and for imposition of costs and attorney fees under MCR 2.405 for rejection of offer for judgment. On September 19, 2024, Defendant filed its response in opposition

to the motion. On September 23, 2024, this Court heard the motion and took the matter under advisement.[1]

II. Arguments and Analysis

In its motion, Plaintiff argues that it is entitled to 1) entry of judgment in the amount of $86,845.33 for the damages caused by Defendant's breach of contract regarding the roof and 2) an award of costs and attorney fees in the amount of $25,736.81 pursuant to MCR 2.405 due to Defendant's rejection of Plaintiff's offer for judgment.

A. Damages – Breach of Contract (Roof)

"The remedy for breach of contract is to place the nonbreaching party in as good a position as if the contract had been fully performed." *Corl v Huron Castings, Inc,* 450 Mich 620, 625; 544 NW2d 278 (1996). Plaintiff argues that it is entitled to the following damages in the amount of $86,845.33 as a result of Defendant's breach of contract regarding the roof.

Damages Caused Due to 2021 Upper and Lower Roof Leak	
Top Beam Exchanges (x3) Replacement (February 2021 Loss)	$ 2,550.00
Gymnastics Equipment Replacement Cost (July 2021 Loss)	72,852.00
Dehumidifier Rentals and Purchases (July 2021 Loss)	1,868.99
Damages Related to 2022 and 2023 Lower Roof Leaks [2]	
Four Seasons Inspection Roofing Inspection/Report	$ 750.00
Riha/Detroit Roofing Inspection Service Roof Testing/Report	2,500.00
Patch Guyz Invoices or Drywall Repairs (May 2022 Loss)	1,484.64
Damages Related to Office Closure on 6/25/2024	
See attached Spreadsheet	4,839.70
TOTAL DAMAGES:	$86,845.33

This damages amount is supported by an affidavit from Shannon Hunt ("Hunt"), Plaintiff's owner, receipts, and invoices. See Plaintiff's Exhibit A at p. 16 and Exhibit 12, Exhibit E, and Exhibit F. In response, Defendant argues that "the correct calculation of damages under Michigan

[1] On October 8, 2024, this Court entered a stipulated order dismissing third party claim against Maxim Homes, Inc. only.

law is not the replacement cost of the damaged equipment with brand new items, as Plaintiff demands. Instead, the proper measure is the difference between the market value of the property immediately before the injury and its market value immediately afterward." See Defendant's Response, p. 4. In support of this position, Defendant relies on *Wolverine Upholstery v Ammerman,* 1 Mich App 235, 242; 135 NW2d 572 (1965), in which the Court explained the following:

> The general rule in cases such as this is that the measure of damages to which the tenant is entitled, for permanent injuries caused to his goods due to breach of lessor's covenant to repair, is the difference between the market value of the goods immediately preceding the injury and their market value immediately thereafter. 32 Am.Jur. Landlord & Tenant § 721 (1959).

However, *Wolverine* is distinguishable as it was a negligence action, not a breach of contract action. *Id.* at 242. Additionally, as previously noted in this Court's May 31, 2024 Opinion and Order, a defendant who breaches its contractual obligations is "liable for any damages arising 'naturally' from the breach or in the contemplation of the parties at the time the contract was made.'" *Stockdale v Jamison,* 416 Mich 217, 225; 330 NW2d 389 (1982). Here, Hunt's affidavit states, in relevant part, the following:

> 5. In June 2021, the entire roofing system failed, and water was pouring in the Leased Premises after heavy rain, which destroyed Hunts' gymnastics equipment and had to be replaced by Hunts, at the cost of $72,852.00, which was a special discounted rate offered to Hunts by Midwest Gym Supply, Inc. (See attached Damages Summary, Receipts and Invoices).
>
> 6. All of Hunts' gymnastics mats, beams, and other equipment that was destroyed by rainwater was new, high quality competition grade equipment that could easily last no less than 20-25 years.
>
> 7. As a result of all this equipment being destroyed Hunts was forced to purchase the identical equipment new. (See attached Damages Summary, Receipts and Invoices).
>
> 8. There is no market for used or partially used gymnastics equipment like that Hunts' for compelled to replace, and therefore the only way for Hunts to be made whole after the loss caused by [Defendant's] breach of contract was to purchase identical, new equipment from the same supplier, which was sold to Hunts at a substantially discounted price by Midwest Gym Supply, Inc. because the supplier

took sympathy on Hunts for the loss. (See attached Damages Summary, Receipts and Invoices).

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22. On June 24, 2024, Rockstar Roofing appeared to remove and replace only a portion of the lower roof, leaving the rest of the roof improperly sealed and exposed to the elements even though there was several days of rain predicted in the weather forecast for the remainder of the week.

23. The following day, on June 25, 2024, heavy rains came in and the roof severely leaked, flooding the entire front office area of the Leased Premises, destroying the drywall ceiling and causing other damages to the inside of the gym. (See Exhibit F, 6.25.24 Roof Leak Photos).

24. On June 25, 2024, rainwater flooded the Lease Premises all the way into the basement area, causing Hunts to close the gym and cancel all gymnastics classes for the day.

25. Hunts was then forced to utilize its staff and gymnastics coaches just to clean up the gym and try to prevent the rainwater from causing further damage, and as a result Hunts' lost $4,839.70 from cancelling all its classes for that day and paying its employees to clean up the rainwater that flooded the Leased Premises. (See attached spreadsheet).

See Plaintiff's Exhibit E, p. 2-3, 6.

Regarding the dehumidifier that Plaintiff purchased from Amazon, Defendant argues that "[a]warding Plaintiff both the monetary value of the dehumidifier and allowing them to retain the item would result in an unjust windfall, which is inconsistent with the principles of fairness and equity in damages awards." See Defendant's Response, p. 8. This Court agrees with Defendant's position regarding the dehumidifier. Plaintiff paid $1,127.84 for the dehumidifier. See Defendant's Exhibit 9. Therefore, Plaintiff is entitled to retain the dehumidifier, but this amount is not awarded and is subtracted from Plaintiff's damages. Based on the evidence presented, this Court finds that Plaintiff is entitled to a damages award in the amount of $85,717.49 ($86,845.3-$1,127.84) as a result of Defendant's breach of contract regarding the roof.

B. Costs and Attorney Fees – MCR 2.405

Plaintiff argues that it is entitled to an award of all costs and attorney fees incurred from April 3, 2024 through the present date due to Defendant's rejection of an offer for judgment in the amount of $75,000. See Plaintiff's Exhibit C. Specifically, Plaintiff is seeking the amount of $25,736.81. See Plaintiff's Exhibit D. In support of this position, Plaintiff relies on MCR 2.405. Under MCR 2.405(C)(2)(b), if an offer is not accepted within 21 days after service, it is considered rejected. MCR 2.405(D) reads, in relevant part, as follows:

> (D) Imposition of Costs Following Rejection of Offer. If an offer is rejected, costs are payable as follows:
>
> > (1) If the adjusted verdict is more favorable to the offeror than the average offer, the offeree must pay to the offeror the offeror's actual costs incurred in the prosecution or defense of the action.
> >
> > (2) If the adjusted verdict is more favorable to the offeree than the average offer, the offeror must pay to the offeree the offeree's actual costs incurred in the prosecution or defense of the action. However, an offeree who has not made a counteroffer may not recover actual costs unless the offer was made less than 42 days before trial.
> >
> > (3) The court shall determine the actual costs incurred. The court may, in the interest of justice, refuse to award an attorney fee under this rule. Interest of justice exceptions may apply, but are not limited to:
> >
> > > (i) cases involving offers that are token or de minimis in the context of the case; or
> > > (ii) cases involving an issue of first impression or an issue of public interest.

"The purpose of MCR 2.405 is 'to encourage settlement and discourage protracted litigation.'" *Luidens v 63rd Dist Court,* 219 Mich App 24, 31; 555 NW2d 708 (1996) (citation omitted). This Court acknowledges that MCR 2.405(D)(3) provides an "interest of justice" exception. However, "a grant of fees under MCR 2.405 should be the rule rather than the exception. To conclude otherwise would be to expand the 'interest of justice' exception to the point where it would render the rule ineffective." *Butzer v Camelot Hall Convalescent Centre, Inc (After*

Remand), 201 Mich App 275, 278-279; 505 NW2d 862 (1993). The interest of justice exceptions laid out in MCR 2.405(D)(3)(i) and (ii) are not applicable to the present matter.

In this case, "Defendant acknowledges receiving an offer of judgment from Plaintiff under MCR 2.405 on April 11, 2024, and rejecting the same." See Defendant's Response, p. 10. Defendant simply argues that based on its "evaluation of Michigan law and the facts of this case, the amount offered by Plaintiff was significantly higher than the anticipated damages, even if liability were established. As detailed herein, Plaintiff is not entitled to damages equal to or greater than the amount proposed in the offer of judgment." See Defendant's Response, p. 10. However, as is discussed above, Plaintiff is entitled to a damages award in the amount of $85,717.49 regarding Defendant's breach of contract related to the roof, which is "more favorable" to Plaintiff than the offer for judgment in the amount of $75,000 that Defendant rejected. Therefore, Defendant's argument fails. Accordingly, pursuant to MCR 2.405, Plaintiff is entitled to costs and attorney fees in the amount of $25,736.81.

III. Conclusion

For the reasons set forth above, Plaintiff's motion is GRANTED as follows: $85,717.49 in damages related to the breach of contract regarding the roof and $25,736.81 in costs and attorney fees pursuant to MCR 2.405 for a total amount of $111,454.30. Pursuant to MCR 2.602(A)(3), this Opinion and Order does not resolve the last pending claim and does not close the case.

IT IS SO ORDERED.

HONORABLE RICHARD L. CARETTI
Circuit Court Judge

DATE: November 6, 2024

cc: Paul Zalewski, Esq.
Victor T. Van Camp, Esq.
Jonathan B. Eadie, Esq.

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