

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

BAYDOUN MEDICAL BUILDING, LLC,

Plaintiff,

Case No. 23-012029-CB

-v-

BECKMAN VENTURES, LLC,

Hon. Annette J. Berry

Defendant.

AMENDED OPINION AND ORDER

At a session of said Court held in the Coleman A. Young Municipal Center, Detroit, Wayne County, Michigan,

on _____ 6/17/2024
this: _____

PRESENT: _____ Honorable Annette J. Berry
Circuit Judge

This civil matter is before the Court on a motion to amend the complaint filed by Plaintiff Baydoun Medical Building, LLC (“Baydoun”) and a motion for summary disposition filed by Defendant Beckman Ventures, LLC (“Beckman”). Each motion will be addressed separately below. The Court also notes that Beckman requests sanctions in the form of costs and attorney fees. For the reasons stated below, the Court grants Plaintiff’s motion to amend the complaint and denies Defendant’s motion for summary disposition.

I. BACKGROUND

Plaintiff Baydoun filed a complaint against Defendant Beckman on September 18, 2023 alleging that Beckman has failed to perform its obligations under the contract by refusing to close.

On August 10, 2023, Dalal Baydoun (“Dalal”), who is the sole owner of Baydoun, and Defendant entered into a contract under which Dalal agreed to purchase and Beckman agreed to sell certain real estate located at 35540 W. Michigan Avenue in Wayne, Michigan 48184 (“the subject property”). The purchase price under the contract is \$450,000.00. Dalal provided an earnest money deposit of \$5,000.00. The purchase agreement provided that closing would take place on September 10, 2023. Maya Chami was both the listing agent of the property and selling agent for Dalal. Dalal signed the purchase agreement and Mounir Ownen signed on behalf of Beckman. Sam Bazzy was also the co-listing agent of Beckman for the sale of the property.

Thereafter, an addendum to the purchase agreement provided: “Buyer and seller agree to change the buyer name from Dalal Baydoun to Baydoun Medical Building, LLC.” The addendum was signed by Dalal on August 29, 2023, by Beckman Ventures, LLC on August 31, 2023, and by real estate agent Chami on August 29, 2023. Beckman disputes that its owner, Mounir Ownen, authorized the signature of Beckman Ventures, LLC on the addendum.

Plaintiff has submitted an affidavit executed by real estate agent Chami. In the affidavit, Chami avers in relevant part:

4. It was Mr. Owen’s (sic) intention to sell the building.
5. Mr. Owen (sic) did also intend to and did authorize the signing of the addendum on 08/31/2023 by myself as his agent.
6. Shortly after entering into these agreements, Mr. Owen (sic) reneged on his decision to sell and attempted to get out of the contract.

[Plaintiff’s Response to Motion for Summary Disposition, Exhibit A].

In addition, Plaintiff submits as evidence a letter dated September 8, 2023 from its attorney to Beckman, which states in relevant part:

Please allow this letter to serve as notice of Baydoun Medical's readiness to perform according to the contract. She has taken all the necessary steps and fulfilled all conditions to ensure a smooth and efficient process.

To reiterate the critical terms of the Purchase Agreement, the closing is scheduled to take place by September 20, 2023. My client remains steadfast in her commitment to this agreement and expects that both parties will abide by the stipulated timeline. Any deviation from this may be viewed as a breach of the agreement.

[Id, Exhibit B].

Also, of importance is a text message received by agent Chami on September 13, 2023 which states:

We are not interested to cell (sic) our building 35540 W Michigan Ave Wayne please inform the buyer. Thanks.

[Id, Exhibit C].

It is unclear from this submission who sent the text message. Finally, an email dated September 18, 2023 was also sent to Plaintiff's counsel by someone named Anwar Baker. The email stated:

Hello Mr. Zaarour,

I told Sam Bazzi from the first week after sign the purchase agreement to cancel the deal because we need the building for our business.

Again from our end we don't like to Sell our property and please cancel the deal.

Thanks

[Plaintiff's Motion to Amend, Exhibit B].

This case essentially involves an alleged breach of contract. Now before the Court is Plaintiff's "Motion to Amend Complaint to Add Plaintiff" and Defendant's motion for summary

disposition and a request for sanctions. As indicated above, each motion will be addressed separately below.

II. MOTION TO AMEND

Plaintiff's motion to amend contends that Dalal Baydoun is the party to the contract for Plaintiff in this instant matter and she is the 100% owner of the plaintiff entity, Baydoun. The motion also avers, "The amendment does not seek to introduce new facts or claims but merely to add a party who has a direct interest in the subject matter of the lawsuit" and "Defendant will not be prejudiced by the amendment as it does not alter the factual or legal basis of the claims set forth in the original complaint."

In response to the motion, Beckman argues:

2. Admit. However, this motion is five months after the agreed closing date was supposed to have taken place and after the original party to the contract had transferred her right to purchase the property without the consent of the seller.

...

5. Deny. Dalal Baydoun was supposed to close on 9/10/2023 but wrongfully transferred her right to purchase the property.

...

8. Deny, Dalal Baydoun may not be prejudiced but Defendant is prejudiced as the closing date was supposed to take place five months ago.

9. Deny, Ms. Baydoun willingly breached the original agreement by not closing on 9/10/2023 and unilaterally transferred the right to purchase the property without the consent of the seller.

10. Deny. The closing was to take place on 9/10/2023 and did not take place because of Ms. Baydoun's wrongful actions.

Although somewhat unclear, it appears that Beckman is contending that the addendum to the purchase agreement was somehow wrongful because, as Beckman claims, it never consented or authorized its signature on the addendum. Otherwise, Beckman fails to specify what the

“wrongful actions” are. Beckman, contrary to Plaintiff’s complaint, also contends that it was Plaintiff that breached the contract by failing to close the sale on September 10, 2023.

Under MCR 2.118(A)(2), “a party may amend a pleading only by leave of the court.... Leave shall be freely given when justice so requires.” “Trial courts have discretion to grant or deny motions for leave to amend, but leave ‘should ordinarily be denied only for particularized reasons such as undue delay, bad faith or dilatory motive, repeated failures to cure by amendments previously allowed, or futility.’” *Decker v Rochowiak*, 287 Mich App 666, 682; 791 NW2d 507 (2010), quoting *In re Kostin Estate*, 278 Mich App 47, 52; 748 NW2d 583 (2008). “Delay, alone, does not warrant denial of a motion to amend.” *Weymers v Khera*, 454 Mich 639, 659; 563 NW2d 647 (1997) [Citation omitted]. “However, a court may deny a motion to amend if the delay was in bad faith or if the opposing party suffered actual prejudice as a result.” *Id.* “‘Prejudice’ in this context does not mean that the allowance of the proffered amendment may cause the opposing party to ultimately lose on the merits. Rather, ‘prejudice’ exists if the amendment would prevent the opposing party from receiving a fair trial...” *Id.*

Here, there is no reason why amending the complaint to add Dalal Baydoun as a plaintiff would prevent Defendant from receiving a fair trial. In addition, the “misnomer doctrine” applies to correct inconsequential deficiencies or technicalities in the naming of parties. *Salem Springs, LLC v Salem Twp*, 312 Mich App 210, 224-225; 880 NW2d 793 (2015). Generally, a misnomer of a plaintiff or defendant in a complaint is amendable unless the amendment is such as to effect an entire change of parties. *Id.* “Misnomer” is defined as “[a] mistake in naming a person, place, or thing, esp. in a legal instrument...” MISNOMER, Black’s Law Dictionary (11th ed. 2019).

An example is of application of the “misnomer doctrine is “[w]here the right corporation has been sued by the wrong name, and service has been made upon the right party, although by a

wrong name....” *Id*, quoting *Wells v Detroit News, Inc.*, 360 Mich 634, 641; 104 NW2d 767 (1960), quoting *Daly v Blair*, 183 Mich 351, 353; 150 NW 134 (1914).

The case of *Vander Bossche v Valley Pub*, 203 Mich App 632, 641-642; 513 NW2d 225 (1994) explained the “mismomer doctrine:”

The present case is also similar to *Wells v Detroit News, Inc*, 360 Mich 634; 104 NW2d 767 (1960). In that case, the plaintiff sought to amend the complaint to name “The Detroit News” or “The Evening News Association, a Michigan corporation,” rather than “The Detroit News, Inc.” The Evening News Association, Inc., and The Detroit News, Inc., were actually separate corporations, although engaged in a similar business and employing most of the same officers. Noting that the corporate officer actually served was a proper representative of both corporations, and that the officers of The Evening News Association were informed of facts indicating that their corporation was the proper subject of the plaintiff's suit, our Supreme Court held that “the right party was served by the wrong name, that no one was misled thereby to his detriment and that the Michigan statute of amendments contains authorization for correction of the mismomer by amendment.” *Id* at 641; 104 NW2d 767.

[Emphasis added].

Here, there is little doubt that adding Dalal, as a named plaintiff, will not effect an entire change of parties because Dalal is the sole owner of Plaintiff Baydoun Medical Building, LLC and she is the “proper representative” of the company. In essence, the company and Dalal, as to the instant action, are one in the same. She clearly was the only party that could bind the company. Finally, there is no indication of undue delay, bad faith, or dilatory motive for Plaintiff's motion to amend. *Decker, supra*. Accordingly, the Court grants the motion.

III. MOTION FOR SUMMARY DISPOSITION

A. Standards for Determining Motions for Summary Disposition

Defendant bases its motion on MCR 2.116(C)(8). MCR 2.116(C)(8) provides for summary disposition where “[t]he opposing party has failed to state a claim on which relief can be granted.”

A motion for summary disposition under (C)(8) tests the legal sufficiency of the complaint. *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006). The trial court may consider only the pleadings in rendering its decision. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). All factual allegations in the pleadings must be accepted as true. *Dolan v Continental Airlines/Continental Express*, 454 Mich 373, 380-381; 563 NW2d 23 (1997). “A motion under MCR 2.116(C)(8) may only be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery. *Adair v Michigan*, 470 Mich 105, 119; 680 NW2d 386 (2004).” *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019).

Here, the Court finds it necessary to explain summary disposition under MCR 2.116(C)(8) in more detail. Preliminarily, it should be noted that under MCR 2.116(C)(8), Plaintiff need not demonstrate or show proof of an allegation but must allege facts supporting his claims. Under MCR 2.111(B), a “complaint, counterclaim, cross-claim, or third-party complaint must contain... a statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend...” [Emphasis added].

In other words, one must plead facts sufficient to inform a defendant of the cause of action, which includes making statements of fact that support the elements of a particular cause of action. A complaint will be subject to dismissal if it amounts to “no more than conclusions and generalities unsupported by any statement of facts ... upon which allegations were based.” *State ex rel Reading v WU Tel Co*, 336 Mich 84, 90; 57 NW2d 537 (1953).

In the instant case, some of Defendant’s stated grounds for summary disposition appear to require evidence rather than the pleading of facts to support the elements of a cause of action. As indicated above, a motion for summary disposition under (C)(8) tests the legal sufficiency of the

complaint, *Beaudrie, supra*, and the Court may only consider the pleadings in rendering its decision. *Id.* All factual allegations in the pleadings must be accepted as true. *Dolan, supra*. Hence, Plaintiff need not have proof of a claim or proof of the elements of a claim, but must allege sufficient facts to support the elements of a claim.

B. Discussion

In support of its motion, Defendant makes two arguments: (1) there can be no contract where it did not sign the addendum; and (2) emails between the parties do not comply with the statute of frauds to make the purchase contract valid.

In response, Plaintiff argues that, in this case, there is no question that a good faith contract was entered into between Dalal Baydoun and Beckman Ventures, LLC. Plaintiff also argues that it has satisfied each prong required to amend the complaint to add Dalal Baydoun and that, if the Court grants the amendment, Defendant's argument regarding the contract addendum is without merit. The Court agrees.

As indicated above, the Court believes that amending the complaint to add Dalal Baydoun as a plaintiff is proper. Thus, with Dalal as a plaintiff, the addendum to the contract is unnecessary and, whether or not Defendant signed the addendum makes no difference. Therefore, having determined that amending the complaint is proper, the Court need not address Defendant's statute of frauds argument regarding the addendum to the purchase agreement.

Having determined that, the Court finds that, pursuant to MCR 2.116(C)(8), Plaintiff will have stated a claim for which relief can be granted. As noted above, the Court accepts all well pleaded factual allegations as true and construes them in the light most favorable to the nonmoving party. MCR 2.116(C)(8). *Dalley v Dykema Gossett*, 287 Mich App 296, 304-305; 788 NW2d 679

(2010); *Dolan v Continental Airlines/Continental Express*, 454 Mich 373, 380-381; 563 NW2d 23 (1997).

A party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in injury to the party claiming breach. *El-Khalil, supra* at 164. In the complaint, Plaintiff alleges that the parties entered into a purchase agreement for the sale of the subject property, that Defendant breached the agreement by refusing to close the sale, and that, as a result of the breach, Plaintiff has suffered damages of lost profits and interference with the success of Plaintiff's business.

As Plaintiff explains, Defendant purportedly committed an anticipatory breach by refusing to close on the sale of the subject property. “[T]o invoke doctrine of anticipatory breach of contract, it must be demonstrated that a party to a contract *unequivocally* declared the intent not to perform.” *Washburn v Michailoff*, 240 Mich App 669, 673-674; 613 NW2d 405 (2000) [Italics in original] [Citation omitted]. At this point, in the present action, this is merely an allegation to satisfy the element of breach in a claim for breach of contract. Whether or not Plaintiff has conclusively established a breach is more appropriately determined under MCR 2.116(C)(10), which is not before the Court at this time. Nevertheless, Plaintiff has properly pled a claim for breach of contract and the Court denies Defendant's motion. Because the Court denies the motion, it need not address Defendant's request for sanctions.

IV. CONCLUSION

As indicated above, the Court grants Plaintiff's motion to amend its complaint to add Dalal Baydoun as a plaintiff. In addition, the Court having accepted all well pleaded factual allegations as true and having construed them in the light most favorable to the nonmoving party, *Dolan, supra*, Plaintiff has properly pled a claim for breach of contract. MCR 2.116(C)(8).

For the reasons stated in the foregoing Opinion,

IT IS ORDERED that the Court **GRANTS** the motion to amend the complaint filed by Plaintiff Baydoun Medical Building, LLC;

IT IS FURTHER ORDERED that a motion for summary disposition filed by Defendant Beckman Ventures, LLC is hereby **DENIED**;

IT IS FURTHER ORDERED that this **DOES NOT RESOLVE** the last pending claim and **DOES NOT CLOSE** the case.

IT IS SO ORDERED.

DATED: 6/17/2024

Circuit Judge



/s/ Annette J. Berry
June 17, 2024