

STATE OF MICHIGAN

IN THE OAKLAND COUNTY CIRCUIT COURT

JOHN R14 LLC,

Plaintiff and Counter-Defendant,

vs.

Honorable Victoria A. Valentine

COMPREHENSIVE PAIN MANAGEMENT
OF MICHIGAN, LLC,

Case No.: 2022-195027-CB

Defendant and Counter-Plaintiff.

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**OPINION AND ORDER REGARDING DEFENDANT/COUNTER-PLAINTIFF'S MOTION FOR
SUMMARY DISPOSITION**

At a session of said Court held on the
17th day of November 2022 in the County of
Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter is before the Court on Defendant/Counter-Plaintiff ("Defendant"), Comprehensive Pain Management of Michigan LLC's Motion for Partial Summary Disposition under MCR 2.116(C)(10). This motion seeks dismissal of Plaintiff/Counter-Defendant ("Plaintiff"), John R14 LLC's, claim for reconciliation payments for liabilities arising before August 1, 2020; the effective date of the lease assignment.

This motion also seeks an order relating to Counter-Plaintiff's counterclaim regarding Plaintiff's liability for a leaking roof. Plaintiff/Counter-Defendant responds and seeks summary disposition under MCR 2.116 (I)(2). The Court, having read the briefs, having heard oral argument, and otherwise being advised in the premises, hereby DENIES in part and GRANTS in part Defendant/Counter-Plaintiff's motion and Plaintiff/Counter-Defendant's motion.

PERTINENT FACTS

Plaintiff is owner of a commercial building. On September 1, 2018, it executed a 10-year lease with Maxem Health Urgent Care Madison Heights LLC.¹ Section 2.03 of the lease provides that in addition to monthly rent, tenant is to pay tax and assessment obligations in monthly installments as estimated by landlord. Within 60 days after each calendar year, landlord shall provide tenant with an itemized statement showing all disbursements and charges. If the amount paid by tenant was less than the actual amount due, tenant shall pay the difference of the deficiency (reconciliation).²

On November 1, 2020, an Assignment, Assumption and Amendment of the Lease dated 11/1/2020, and **effective 8/1/2020**, was signed by Plaintiff Landlord, Maxem Health, the assignor, and Defendant Comprehensive Pain Management, the assignee.³ Pertinent provisions of the Assignment provide:

2. Assignor warrants, covenants, and agrees, for the benefit of both the Assignee and the Landlord, that:

¹ Exhibit B, attached to Defendant's Brief.

² Exhibit B, pp 2-3, attached to Defendant's Brief.

³ Exhibit A, attached to Defendant's Brief.

(c) Assignor shall indemnify and hold Assignee harmless from and against all obligations, expenses, costs and liabilities arising from or related to any obligations due under said Lease on or before the date hereof.

3. Assignee, for the benefit of Assignor and Landlord, hereby assumes all obligations, expenses, costs, and liabilities arising from or related to any obligations due under the Lease subsequent to the Effective Date, agrees to be bound by the terms of the Lease.

5. Upon delivery of this Assignment, fully executed by the Assignor and the Assignee, together with the Lease Guaranty attached hereto as Exhibit B, fully executed by Michael Papio, the Assignor, and its lease guarantor, Ronnie Ali, DO., shall be released and forever discharged from any all liabilities under the Lease and Lease Guaranty, which first accrue on or after the Effective Date.

In January of 2021 and 2022, Plaintiff Landlord prepared the Reconciliations of rent and expenses for the 2020 and 2021 calendar years. According to the reconciliations, \$6,877.79 was owed for 2020⁴ and \$1,235.72 was owed for 2021.⁵

Defendant allegedly disputed and failed to pay the 2020 Reconciliation, claiming it was not responsible for amounts prior to August 1, 2020, the effective date of the Lease Assignment. And Defendant admittedly failed to pay rent for the months of February, March, and April of 2022.⁶ Plaintiff then filed this lawsuit in district court, which was removed to this Court. Defendant filed a counterclaim relating to damages incurred from a leaking roof.

Defendant now files this motion for partial summary disposition regarding Plaintiff's Complaint that seeks money owed based on the reconciliations. Defendant argues the language of the assignment provides that it is not responsible for pre-August 1, 2020, obligations.

In response, Plaintiff seeks summary disposition on this issue under MCR 2.116 (I)(2). It

⁴ Exhibit C, attached to Defendant's Brief.

⁵ Exhibit D, attached to Defendant's Brief.

⁶ Exhibit 6: Responses to Requests to Admit #1, attached to Plaintiff's Brief in Response.

argues that the language of the assignment and the lease indicate that Maxem would indemnify Defendant for any obligations arising prior to the assignment—including the obligation to pay the difference in the reconciliation, which is calculated in January.

Defendant/Counter-Plaintiff also seeks summary disposition on its counterclaim relating to the leaking roof, for which it seeks damages for landlord's alleged breach to "repair and maintain the roof in good order." It specifically seeks a ruling from the Court that damages caused by the roof leaks are the landlord's responsibility. Plaintiff/Counter-Defendant responds and seeks summary disposition on this issue under MCR 2.116 (I)(2). Counter-Defendant argues that there is no evidence supporting Counter-Plaintiff's position regarding alleged damages due to the roof leak.

STANDARD OF REVIEW

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim. *St. Paul Fire & Marine Ins Co v Quintana*, 165 Mich App 719, 722 (1988). The trial court must consider not only the pleadings but also any documentary evidence submitted by the parties. MCR 2.116(G)(5). The test is whether the kind of record which might be developed, giving the benefit of any reasonable doubt to the nonmoving party, would leave open an issue upon which reasonable minds could differ. *Linebaugh v Berdish*, 144 Mich App 750, 754 (1985). If the moving party properly supports its motion, the burden "then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Id.* at 362.

"Summary disposition is properly granted [under MCR 2.116(I)(2)] to the opposing party if it appears to the court that that party, rather than the moving party, is entitled to

judgment.'" *Michelson v Voison*, 254 Mich App 691, 697 (2003), quoting *Sharper Image Corp v Dep't of Treasury*, 216 Mich App 698, 701 (1996).

ANALYSIS

The parties do not dispute the black letter law that contracts must be construed as a whole. *Village of Edmore v Crystal Automation Sys, Inc*, 322 Mich App 244, 262 (2017). Courts must "give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory." *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468 (2003).

Here the Court finds that reading the lease along with the Assignment, which was effective August 1, 2020, supports Plaintiff's position. Paragraph 2(e) of the Lease Assignment states that Assignor, which is Maxem, shall "indemnify and hold Assignee (Defendant) harmless from and against all obligations, expenses, costs and liabilities arising from or related to any obligations due under said Lease on or before the date hereof." This provision cannot be ignored; rather it must be read in conjunction with the other paragraphs of the assignment as well as with paragraph 2.03 of the Lease, which provides that in January the landlord is to prepare a reconciliation for the preceding calendar year.

Here, in both January of 2021 and 2022, landlord prepared the reconciliations of rent and expenses for the 2020 and 2021 calendar years. These reconciliation amounts became due and owing after the August 1, 2020, effective date of the assignment. Therefore, Defendant's motion for partial summary disposition is DENIED and Plaintiff's motion under MCR 2.116(I)(2) is GRANTED. The Court notes that undersection 2(e) of the assignment, Defendant shall be

indemnified by Maxem Health, the assignor, for the reconciliation liability arising prior to the August 1, 2020, the effective date of the Assignment.

As to Counter-Plaintiff's motion for summary disposition regarding its counter-claim, it is undisputed that the roof leaked. The lease provides as follows:

(d) Notwithstanding anything to the contrary contained in this Lease, Landlord, at its cost and expense, shall: (i) repair and maintain in good order, structural walls, roof and foundation of the Leased Premises (excluding exterior painting and caulking which shall remain Tenant's responsibility), (ii) be responsible for necessary repairs and replacements to the Leased Premises' HVAC system, provided, however, that the Tenant, on an annual basis, shall be responsible for the first \$1,500.00 of any required repairs/replacements to the Leased Premises' HVAC system and (iii) be responsible for any required repairs to the Leased Premises' plumbing and electrical systems for a period of ninety (90) days from the Commencement Date, and thereafter shall remain responsible only for repairs and replacements to the Leased Premises' plumbing system beneath the Leased Premises' foundation. Notwithstanding anything to the contrary set forth in this Section 4.02(d), Landlord shall have no responsibility for any repairs and/or replacements to the Leased Premises to the extent any such repairs and/or replacements were necessitated as a result of the acts, omissions or negligence of Tenant, its agents, employees, licensees or invitees (in which event such repair and/or replacement shall be the Tenant's responsibility at the Tenant's sole cost and expense regardless of the provisions of this Section).

The Court finds, as a matter of law, that the "Landlord at its cost and expense shall: (i) repair and maintain in good order, structural wall, **roof** and foundation of the Leased Premises . . ." Accordingly, damages caused by the roof leaks are the Landlord's responsibility. Therefore, Defendant's motion for partial summary disposition on this issue is GRANTED and Plaintiff's motion under MCR 2.116(I)(2) is DENIED.

CONCLUSION

Based on the above:

- Defendant/Counter-Plaintiff's motion for partial summary is DENIED as to Plaintiff's complaint relating to reconciliation payments;
- Plaintiff/Counter-Defendant's motion under MCR 2.116(I)(2) is GRANTED as relating to reconciliation payments;
- Defendant/Counter-Plaintiff's motion for partial summary is GRANTED as to a ruling by this Court that damages caused by the roof leaks are Counter-Defendant's responsibility; and

- Plaintiff/Counter-Defendant's motion under MCR 2.116(l)(2) is DENIED as to the Counterclaim relating to the roof leaks.

IT IS SO ORDERED.

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

