

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

CREEM MAGAZINE, LLC, a  
Delaware limited liability company,

Plaintiff/Counter-Defendant,

Case No. 2023-202167-CB

v.

Hon. Victoria Valentine

JOSEPH PERAZZA, an individual, and  
SUSAN PERAZZA, an individual,

Defendants/Counter-Plaintiffs.

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

At a session of said Court held on the  
15<sup>th</sup> day of December 2023 in the County of  
Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter is before the Court on Plaintiff/Counter-Defendant, Creem Magazine, LLC’s Motion for Summary Disposition under MCR 2.116(C)(7) and (C)(8) with regard to the counterclaim filed against it by Defendants/Counter-Plaintiffs Joseph and Susan Perazza. The

Court, having reviewed the briefs, having considered the merits, having heard oral argument, and being fully advised in the premises, GRANTS Plaintiff/Counter-Defendant's motion.

## INTRODUCTION

A "Settlement Agreement, Option Agreement and Release of Liability" (the "Settlement Agreement") was entered into by the parties to resolve a previous dispute between them concerning Defendant Joseph Perazza's standing as a member of Plaintiff Creem and Defendants' objections to the management of Creem. The Settlement Agreement contains numerous provisions.

Thereafter, Creem filed this 3-count lawsuit against Defendants alleging, *inter alia*, that Defendants breached the non-disparagement and confidentiality provisions contained in the Settlement Agreement. In response, Defendants filed a counterclaim seeking declaratory relief, claiming that the consideration for the Settlement Agreement is illusory. Creem now files this motion for summary disposition under MCR 2.116(C)(7) and (C)(8).

## RELEVANT FACTS

### A. The Parties.

Plaintiff/Counter Defendant Creem Magazine LLC ("Creem") is a media and entertainment company that publishes a magazine about music and culture.<sup>1</sup> Defendants/Counter-Plaintiffs Joseph Perazza ("Joseph") and Susan Perazza ("Defendants" or "Perazzas") jointly own 40,000 membership units (14.94%) in Creem.<sup>2</sup> Defendants are not involved in the management or operations of Creem.<sup>3</sup>

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<sup>1</sup> Complaint, ¶16; Answer, ¶16.

<sup>2</sup> Complaint, ¶17; Answer, ¶17.

<sup>3</sup> Complaint, ¶17; Answer, ¶17.

## B. The Settlement Agreement

Creem and Defendants entered into the Settlement Agreement, with effective date of May 21, 2022.<sup>4</sup> Provision 1 of the Settlement Agreement specifically provides that it was entered into to resolve pending disputes between the parties related to "Joseph's standing as a Member of Creem" and "the Perazzas' objections to the operations and management of Creem's business and governance documents ...and the authority of Jacob Kramer as the Manager of Creem:"

### **SETTLEMENT AGREEMENT, OPTION AGREEMENT AND RELEASE OF LIABILITY**

\* \* \*

1. **Dispute.** Disputes have arisen between the Parties related to Joseph's standing as a Member of Creem as the result of certain allegations by Creem and the Perazzas' objections to the operations and management of Creem's business and governance documents, being the Limited Liability Company Agreements of Creem signed by Joseph or the Perazzas in December of 2016, December of 2019, and May of 2021, and the authority of Jacob Kramer as the Manager of Creem (collectively, the "Dispute").

Provision 2 specifically provides that the parties release, waive, and forever discharge each other from any and all claims, demands, actions, liabilities, and causes of action, which the Parties have or ever had arising out of or relating to the Dispute:

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<sup>4</sup> Exhibit A attached to Complaint and referenced in Counterclaim.

2. **Complete Release.** The Parties specifically release, waive, and forever discharge each other, their successors in interest, and their past, present, and future heirs, assigns, officers, directors, members, managers, employees, subsidiaries, affiliates, partners, consultants, investors, insurers, underwriters, manufacturers, and customers, from any and all claims, demands, actions, liabilities, and causes of action, of every kind and character, whether asserted or unasserted, whether known or unknown, suspected or unsuspected, in law or in equity, for or by reason of any matter, cause, or thing whatsoever, which the Parties, their affiliates, partners, successors, and assigns have or ever had arising out of or relating to the Dispute. For the avoidance of doubt, this release shall cover any and all claims related to Creem's December 2016 and December 2019 Limited Liability Company Agreements.

Provisions 3 and 4 of the Settlement Agreement address Consideration:

3. **Consideration for Settlement.** In consideration for the release and other promises by the Perazzas contained in this Agreement, Creem agrees to provide the Perazzas certain options related to the Perazzas' ownership units in Creem as provided herein (collectively, the "Perazza Options").

4. **Non-Voting Membership Units Consideration.** In consideration for the release and other promises by Creem contained in this Agreement, the Perazzas agree that their 40,000 membership units of Creem (the "Perazza Units") shall be converted to non-voting units upon all Parties execution of this Agreement. For the avoidance of doubt, the Perazza Units shall maintain their economic rights. Notwithstanding the foregoing, the Perazzas shall not have the right or authority to negotiate, conclude or execute any contract on behalf of Creem, to assume, create, or incur any liability of any kind in the name of Creem, to utilize Creem assets in any manner (including Creem's intellectual property), or to otherwise act as a representative and/or speak on behalf of Creem.

Provision 5, which is central to this lawsuit, relates to Creem obtaining "Qualified Financing," and provides in pertinent part:

5. **Sequential Put Option.** For a period of two (2) years following execution of this Agreement ("Put Option Period"), the Perazzas shall have the ability to exercise the Perazza Options in a sequential manner:

(a) **First Option:** In the event Creem consummates an equity financing round during the Put Option Period (a "Qualified Financing"), the Perazzas shall have the ability to sell, and Creem shall be obligated to purchase, up to fifty percent (50%) of the Perazza Units (i.e., 20,000 Units) ("Unit Cap") at a per unit price that shall be calculated as follows:

Provision 7 acknowledges Creem's receipt of magazines in consideration for Creem's \$10,000 payment to Defendants:

7. **Magazines.** Creem acknowledges receipt of various CREEM Magazines (the "Magazines") shipped by the Perazzas on April 21, 2022. In consideration for the Magazines, Creem shall remit a one-time payment of \$10,000 to the Perazzas concurrently with the execution of this Agreement.

Provision 11 is the non-disparagement clause, which Creem alleges in its Complaint that Defendants breached:

11. **Non-Disparagement.** The Parties agree that they will not, either directly or indirectly, make any disparaging statements about the other Party. The Perazzas shall not, at any time make statements or representations, or otherwise communicate, directly or indirectly, in writing, orally, or otherwise, or take any action which may, directly or indirectly, disparage Creem or any of its known subsidiaries or affiliates or their respective officers, managers, members, directors, employees, advisors, or agents. For the avoidance of doubt, "disparage" shall mean any negative, false or misleading statement, whether written or oral.

Provision 13 addresses the event of a breach by Defendant Perazzas; in such an event Creem would be immediately entitled to exercise its right to purchase Defendants' 40,000 membership units for \$1.00 each. The Court notes that there is not a corresponding provision relating to breach by Plaintiff Creem:

13. **Breach by the Perazzas.** In the event that the Perazzas breach the terms of this Agreement, Creem may immediately exercise its Call Option under Section 6 of this Agreement at a discounted Call Option Unit Purchase Price of \$1 per unit. All Put Options shall become null and void. For clarity, the Perazzas shall not be deemed to be in breach of any of their obligations hereunder unless Creem provides written notice of such alleged breach and the Perazzas fail to cure such breach (if curable) within five (5) business days following receipt of such written notice.

Provision 14 acknowledges and represents that each party voluntarily executed the Settlement Agreement, received *sufficient consideration*, and received advice “of its own counsel,” “especially the release and confidentiality provisions”:

14. **Voluntary Execution of Agreement.** Each Party acknowledges that it has read this Agreement carefully and fully understands the terms and effect of this Agreement, and voluntarily agrees to and accepts the terms of this Agreement. Each Party acknowledges that it understands that this Agreement constitutes and is intended as a general and comprehensive release, and that when each Party signs the Agreement, it will be legally bound by all of its terms.

Finally, each Party acknowledges and represents that it has received sufficient consideration for this Agreement, is voluntarily entering into this Agreement and, before signing this Agreement, has received the advice of its own counsel concerning the meaning and legal effect of this Agreement's terms, especially the release and confidentiality provisions.

Provision 16 recognizes that each Party agrees to not challenge the validity or enforceability of any provision of the Settlement Agreement:

16. **Challenge of Validity.** Notwithstanding any provision of this Agreement to the contrary, each Party covenants and agrees that such Party will not (i) file any claim, lawsuit, demand for arbitration, or other proceeding challenging the validity or enforceability of any provision of this Agreement or the May 2021 Limited Liability Company Agreement attached hereto as Exhibit B, or (ii) raise, as a defense, the validity or enforceability of any provision of this Agreement or the May 2021 Limited Liability Company Agreement. In addition, the Perazzas hereby ratify and reaffirm the May 2021 Limited Liability Company Agreement. The Parties agree

that Creem's December 2016 and December 2019 Limited Liability Company Agreements have been superseded by the May 2021 Limited Liability Company Agreement.

In Provision 18 each Party acknowledges that they and their counsel participated jointly in the negotiation and preparation of the Settlement Agreement:

18. **Entire Agreement.** By their signatures below, the Parties each acknowledge that this Agreement constitutes the entire agreement between them with respect to its subject matter, and supersedes and replaces any previous or contemporaneous representations or agreements, whether oral or written, and may not be amended or modified except by a subsequent agreement set forth in a written document signed by the Parties which references their intent to change this Agreement. The Parties further acknowledge that they and their counsel have participated jointly in the negotiation and preparation of this Agreement so that no rule of construction shall apply against any Party or in favor of any Party. Instead, this Agreement shall be construed as if the Parties jointly prepared this Agreement, and any uncertainty or ambiguity shall not be interpreted against one Party and in favor of another Party.

Lastly, Provision 19 provides that each provision of the Settlement Agreement is severable unless the invalidity or unenforceability of a provision would materially destroy the purpose of the Settlement Agreement:

19. **Severability of Provisions.** Each provision of this Agreement is intended to be severable. If any term or provision is held to be invalid, void or unenforceable by a court of competent jurisdiction for any reason, such ruling shall not affect the validity of the remainder of this Agreement, unless the purpose of this Agreement is materially destroyed.

### C. The Counterclaim

After Creem filed its Complaint against Defendants alleging violations of the disparagement and confidentiality provisions in the Settlement Agreement, Defendants filed their counterclaim. Their counterclaim requests the Court to declare the Settlement Agreement invalid and unenforceable because the purported consideration is illusory. Defendants filed this counterclaim despite their acknowledgment in the Settlement Agreement that the consideration

therein was sufficient and despite their agreement to not challenge the validity or enforceability of any provision of the Settlement Agreement.

The counterclaim alleges the following:

5. Paragraph 3 of the Alleged Agreement purports to contain the “Consideration for Settlement,” which is nothing more than “certain options” provided to the Perazzas by Creem Magazine as further discussed in paragraph 5 of the Alleged Agreement.

6. The purported consideration is illusory, however, because Counter-Defendant is under no obligation to exercise its options and bares no liability or consequence if it fails to exercise its options.

7. Indeed, Counter-Defendant admitted it has no obligation to the Perazzas under the Alleged Agreement in paragraphs 24 and 32 of its Complaint:

24. The Agreement did not require CREEM to seek or obtain any financing and only provided for a buy-out of the Perazzas’ member units if “Qualified Financing” as defined in the Agreement was obtained during the two-year period after execution of the Agreement.

32. On January 5, 2023 CREEM further responded to Defendant Joseph Perazza explaining, among other things, that (a) there was no obligation for CREEM to raise capital upon his demand or per the Agreement, (b) raising capital for the sole purpose of buying out the Perazzas would put their individual financial interest ahead of the company and its other unit holders and (c) that CREEM would consider raising capital in the future provided it maximized value to the company and all its unitholders.

8. Because the Alleged Agreement fails to provide any value to the Perazzas or recourse to the Perazzas in the event Counter-Defendant fails to exercise its options, the Perazzas did not receive the necessary consideration to create an enforceable contract.

9. Because Counter-Defendant has no obligation to the Perazzas under the Alleged Agreement, the mutual consideration required to create an enforceable contract is not present.

10. Absent consideration and/or mutuality of obligation, the Alleged Agreement is not an enforceable contract.

11. Counter-Plaintiffs seek a declaratory judgment pursuant to MCR 2.605 declaring the Alleged Agreement to be invalid and unenforceable.

WHEREFORE, Counter-Plaintiffs, Joseph and Susan Perazza, respectfully request this Honorable Court enter a declaratory judgment against Counter-Defendant declaring the Alleged Agreement invalid and unenforceable, and award them their costs and attorney fees, and any other relief the Court deems just and equitable under the circumstance, for having to bring this action.

#### D. The Motion

Creem now files its motion for Summary Disposition arguing that:

- Summary Disposition under (C)(7) is appropriate because Defendants admit in the Settlement Agreement that they received "sufficient consideration" and further agreed not to challenge that admission. (§16 of Settlement Agreement).
- Summary Disposition under (C)(8) is appropriate because the express and unambiguous terms of the Settlement Agreement clearly articulate "sufficient consideration" including:
  - a release of Creem's claims against Defendants, which Creem argues includes Creem's claim that Defendant Joseph Perazza had no standing to be a member of Creem;
  - \$10,000 for various Creem magazines; and
  - a series of options that would afford Defendants preferential treatment not available to any other company unitholder by requiring Creem to purchase some or all of their membership units if Creem engaged in an equity financing round (i.e., a sale of membership units) within two years of the effective date of the Settlement Agreement. (See provision 5a).

Defendants argue:

- Creem's circular argument under (C)(7) neglects the fact that, if the Settlement Agreement is unenforceable, then §16 cannot be enforced.
- Creem's motion under (C)(8) should be denied because:
  - Creem accepts the allegations of the Counterclaim as true. (Creem's Brief, p 3 fn 1), which alleges that Defendants did not receive the necessary consideration to create an enforceable agreement.
  - There was not sufficient consideration because:

- Provision 3, not provision 14, to which Creem refers, is the consideration provision.
  - Provision 7 is not a consideration for settlement; it merely acknowledges Creem’s obligation to pay for magazines owned by Defendants that had been sent to Creem.
- Whether there is a valid consideration to support a contract is a fact question.
- While the Settlement Agreement includes a “Breach by the Perazzas” provision, it does not contain a “Breach by Creem” provision.
- Creem had no obligation to exercise the options under provision 5a, which would have paid Defendants \$45/unit under provision 6. Yet, Creem is now trying to impose \$1.00/unit under provision 13, claiming breach.

#### STANDARD OF REVIEW

MCR 2.116(C)(7) allows for summary disposition where:

[t]he claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action.

Under MCR 2.116(C)(7) a party is not required to submit any material in support of the motion; the motion can be evaluated on the pleadings alone. *Maiden v Rozwood*, 461 Mich 109, 119 (1999). “The contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant.” *Id.* “A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence.” *Maiden*, 461 Mich at 119. “In reviewing the motion, a court must review all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict them.” *Yono v Dep’t of Transp (Yono I)*, 495 Mich 982, 982-983 (2014); see also MCR 2.116(G)(5). “If the movant properly supports his or her motion by presenting facts that, if left un rebutted, would show that there is no genuine issue of

material fact that the movant [is entitled to summary disposition], the burden shifts to the nonmoving party to present evidence that establishes a question of fact.” *Yono v Dep’t of Transp (On Remand) (Yono II)*, 306 Mich App 671, 679-680 (2014), rev’d on other grounds, 499 Mich 636 (2016).<sup>22</sup> “If the trial court determines that there is a question of fact as to whether the movant [is entitled to summary disposition], the court must deny the motion.” *Yono II*, 306 Mich App at 680, citing *Dextrom v Wexford Co*, 287 Mich App 406, 431 (2010).

Summary disposition under MCR 2.116(C)(8) may be granted where “[t]he opposing party has failed to state a claim on which relief can be granted.” When deciding a motion on this ground, a court may consider only the parties’ pleadings. MCR 2.116(G)(5). “[A]ll well-pleaded allegations are accepted as true and construed most favorably to the non-moving party.” *Wade v Dep’t of Corrections*, 439 Mich 158, 162-163 (1992). “A mere statement of a pleader’s conclusions and statements of law, unsupported by allegations of fact, will not suffice to state a cause of action.” *Varela v Spanski*, 329 Mich App 58, 79 (2019) (plaintiff failed to plead facts in support of his claim but instead made conclusory statements and conclusions of law). A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Wade*, 439 Mich at 163. Because Michigan is a notice-pleading jurisdiction, a complaint is required to contain only enough information “reasonably to inform the defendant of the nature of the claim against which he must defend.” *Veritas Auto Machinery, LLC v FCA Int’l Operations, LLC*, 335 Mich App 602, 615 (2021); MCR 2.111(B)(1).

## ANALYSIS

A valid contract requires the following elements: “(1) parties competent to contract, (2) a proper subject matter, (3) legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation.” *AFT Mich v Michigan*, 497 Mich 197, 235 (2015). Mutuality of agreement requires “a meeting of the minds on all the essential terms,” which is judged by an objective standard, looking to the express words of the parties and their visible acts, not their subjective state of mind.” *Kloian v. Domino's Pizza LLC*, 273 Mich App 449, 454 (2006).

Concerning consideration, in *General Motors Corp. v. Dep't of Treasury*, 466 Mich 231, 238-239 (2002), our Michigan Supreme Court stated:

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.” *Plastray Corp. v. Cole*, 324 Mich. 433, 440, 37 N.W.2d 162 (1949). Courts do not generally inquire into the sufficiency of consideration, *Harris v. Bond & Mtg. Corp.*, 329 Mich. 136, 145, 45 N.W.2d 5 (1950). It has been said “[a] cent or a pepper corn, in legal estimation, would constitute a valuable consideration.” *Whitney v. Stearns*, 16 Me. 394 (1839).

Consideration exists “if the promisee in return for a promise does anything legal which he is not bound to do or refrains from doing anything which he has a right to do, whether there is any actual loss or detriment to him or actual benefit to the promisor or not.” *Stott v. Stott*, 258 Mich 547, 552 (1932). Mere inadequacy of consideration, unless it be so gross as to shock the conscience of the court, is not ground for rescission. *Hake v. Youngs*, 254 Mich. 545, 550 (1931). And “[u]nder the preexisting duty rule, it is well settled that doing what one is legally bound to do is not consideration for a new promise.” *46th Circuit Trial Court v. Crawford Co*, 476 Mich 131, 158 (2006) (quotation marks omitted). *Yerkovich v. AAA*, 461 Mich 732, 740–741 (2000). NW 660; *Olson v. Rasmussen*, 304 Mich 639, 8 N.W.2d 668; 12 Am.Jur. 614.

“[A]n illusory promise is one where the promisor is ‘not obligated to do anything in consideration of’ the other party's promise or performance.” *Ile v. Foremost Ins. Co.*, 293 Mich App. 309, 332 (2011) (citation omitted), rev'd on other grounds sub nom *Ile ex rel. Estate of Ile v. Foremost Ins. Co.*, 493 Mich 915 (2012). With an illusory promise, a purported contract will lack the necessary mutual obligation, see *Hess v. Cannon Twp.*, 265 Mich App 582, 592 (2005) (to be enforceable, a contract must have competent parties, a legal subject matter, consideration, mutual agreement and mutual obligation) (citing *Thomas v. Leja*, 187 Mich App 418, 422 (1991)).

It is further settled that “[a] promise which is made conditional on the will of the promisor is generally of no value, for one who promises to do a thing only if it pleases him to do it is not bound to perform it at all.” *Carlson v. Johnson*, 275 Mich 35, 37 (1936); see also RESTATEMENT (SECOND) OF CONTRACTS § 77, Comment A (1981) (“Words of promise which by their terms make performance entirely optional with the ‘promisor’ do not constitute a promise....Where the apparent assurance of performance is illusory, it is not consideration for a return promise”).

But See also *Gen. Motors Corp. v. Dept. of Treasury*, 466 Mich 231, 239 (2002), where our Michigan Supreme Court stated that “[p]romissory words are not nullified by making the promise conditional on some event within the promisor's own power, if at the same time the promisor impliedly promises to make a reasonable effort to bring the event about.” (quotation omitted). See also *Burkhardt v. City Nat'l Bank of Detroit*, 57 Mich App 649, 652 (1975) (“[w]here a party to a contract makes the manner of its performance a matter of its own discretion, the law does not hesitate to imply the proviso that such discretion be exercised honestly and in good faith.”).

In the instant case, Defendants' counterclaim focuses on provisions 3 and 5 of the Settlement Agreement, which Defendants argue constitutes illusory consideration "because Counter-Defendant is under no obligation to exercise its options and bares no liability or consequence if it fails to exercise its options."<sup>5</sup> Defendants' counterclaim, however, overlooks the fact that the options themselves are supported by consideration because Creem agreed to do something that it had no pre-existing obligation to perform *before* entering into the Settlement Agreement --to provide Defendants with the means to force Creem to purchase their membership interests when pre-conditions were met.

Defendants' counterclaim also overlooks other provisions of the Settlement Agreement, including provisions 1 and 2. These two provisions provide a bargained-for exchange whereupon each party undertook a legal detriment—i.e. Creem released its claim against Joseph Perazza that he had no standing to be a member of Creem and Defendants released their objection against Creem relating to the operations and management of Creem's business and governance documents and the authority of Jacob Kramer as the Manager of Creem.

Defendants' counterclaim also overlooks Provision 7, which again provides a bargained-for exchange whereupon each party undertook a legal detriment --Creem's receipt of magazines in consideration for Creem's \$10,000 payment to Defendants. Defendants' counterclaim also overlooks Provision 14 where Defendants agreed that they received "sufficient consideration for this Agreement" and where they acknowledged that they received the advice of its own counsel concerning the meaning and legal effect of the Settlement Agreement. And then there is Provision 16 where Defendants agreed not to challenge the validity or enforceability of any

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<sup>5</sup> Defendants' counterclaim ¶16.

provision of the Settlement Agreement; and Provision 18 where Defendants acknowledged that they were represented by counsel in negotiating and preparing the Settlement Agreement and that the Agreement constitutes the entire agreement with respect to its subject matter and supersedes and replaces any previous or contemporaneous representations or agreements.

Based on the above, the Court finds that there was bargained-for exchange whereupon each party undertook a legal detriment. Again, as our Michigan Supreme Court has articulated in *General Motors*, supra:

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.” *Plastray Corp. v. Cole*, 324 Mich. 433, 440, 37 N.W.2d 162 (1949). Courts do not generally inquire into the sufficiency of consideration, *Harris v. Bond & Mtg. Corp.*, 329 Mich. 136, 145, 45 N.W.2d 5 (1950). It has been said “[a] cent or a pepper corn, in legal estimation, would constitute a valuable consideration.” *Whitney v. Stearns*, 16 Me. 394 (1839).

Here, as stated above, there are pepper corns that constitute sufficient consideration, which court is not to inquire into its sufficiency, and which constitute a bargained-for exchange whereupon each party undertook a legal detriment. The fact that the Settlement Agreement did not *require* Creem to seek or obtain financing does not negate the existence of these pepper corns. Further, although Creem did not expressly promise to obtain financing in good faith, “[w]here a party to a contract makes the manner of its performance a matter of its own discretion, the law does not hesitate to imply the proviso that such discretion be exercised honestly and in good faith.” *Burkhardt v. City Nat'l Bank of Detroit*, 57 Mich App 649, 652 (1975); see also 3A Corbin, Contracts, § 644, pp 78-84.

CONCLUSION

For the reasons set forth above Plaintiff/Counter-Defendants' Motion is GRANTED under MCR 2.116(C)(7) and (C)(8).

IT IS SO ORDERED

THIS IS NOT A FINAL ORDER AND DOES NOT CLOSE THE CASE.

