STATE OF MICHIGAN

COURT OF CLAIMS

SUN BUGGY FUN RENTALS, INC.,

Plaintiff,

v

DEPARTMENT OF NATURAL RESOURCES,

Defendant.
_____/

OPINION AND ORDER

Case No. 23-000176-MZ

Hon. Sima G. Patel

OPINION AND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

On August 5, 2025, midway through discovery, defendant, Department of Natural Resources (DNR), moved for summary disposition of plaintiff's, Sun Buggy Fun Rental Inc., January 9, 2025 first amended complaint. The Court GRANTS IN PART and DENIES IN PART that motion as discussed in detail within.

I. BACKGROUND

Sun Buggy is an off-road vehicle (ORV) rental company that was awarded one of three exclusive ORV rental concession contracts with the DNR to provide rentals at Silver Lake State Park (the Park) in Golden Township, Oceana County, for the 2022 through 2028 seasons in exchange for 12% of its gross sales. Sun Buggy's owner and president negotiated and signed the contract.

Over the next several months, the DNR issued three violation notices against Sun Buggy, for offenses such as failure to properly label their ORVs, using improper lanes for entering the Park or to park and wait for customers, towing ORVs within the Park, and keeping gas cans and repair equipment within the Park.

In October 2022, the DNR issued Amendment 7 to Land Use Order of the Director (LUOD) 5.9 which impacted the use of ORVs at the Park. Subsection (1)(e) of the amended LUOD prohibits any person from "[u]tiliz[ing] a rental vehicle in the ORV area, except for those permitted for use pursuant to Administrative Rule 299.922(dd)." Mich Admin Code, R 299.922(dd) provides that "it is unlawful" to "[u]se state-owned land for a commercial operation unless the commercial operation is conducted pursuant to a permit issued by the [DNR]." Read together, LUOD 5.9 and the administrative rule "prohibit the use of rental [ORVs] in the [the Park's] ORV area unless the vehicles are rented from a vendor that possesses a concession contract from the [DNR]."

During the 2023 season, the DNR issued four violations against Sun Buggy for offenses such as using improper lanes to enter the Park, operating ORVs on the public street, using ORVs without spark arresters or with malfunctioning brakes, conducting repairs on ORVs within the Park without permission, operating commercial vehicles without proper permits, employees using profanity against other visitors, and parking to wait for customers in improper areas. These violations led to short-term suspensions and fines. The DNR then terminated Sun Buggy's contract "for convenience" with 30 days' notice.

During the 2024 season, the DNR allowed visitors to operate Sun Buggy-rented ORVs in the Park despite that its concession contract had been terminated, but denied Sun Buggy employees

access to assist their customers. The DNR issued two citations against Sun Buggy employees who entered the Park to retrieve disabled ORVs.

Sun Buggy alleged that the DNR did not issue the violations against it in good faith. Rather, it alleged that the DNR retaliated against it for raising safety concerns involving other vendors and DNR staff. Sun Buggy further alleged that when it requested copies of the evidence supporting its violations, DNR officials required it to file a Freedom of Information Act (FOIA) request and then withheld information.

On December 30, 2024, the Court granted in part Sun Buggy's motion to file a first amended complaint. In that amended complaint, Sun Buggy alleged three counts of breach of contract: (1) bad-faith termination, (2) failure to perform, and (3) partial repudiation. Sun Buggy raised a procedural due process count based on the process employed by the DNR in its repeated entry of violations against it and ultimate termination of the contract. Sun Buggy raised a substantive due process claim based on the DNR's amendment of LUOD 5.9. Sun Buggy also contended that the DNR engaged in ultra vires activity and violated the separation of powers by exceeding its authority to regulate ORV rental businesses through the improper amendment of LUOD 5.9, and by exceeding its authority in purporting to be in charge of all traffic on Fox Road abutting the Park after entering the Fox Road Agreement with Oceana County in 2018.[1] Sun

[1] The Fox Road Agreement refers to a cooperative agreement entered between the DNR and the Oceana County Road Commission (OCRC) on November 30, 2018, giving the DNR authority over "all traffic" on Fox Road from "the eastern boundary of the Right-of-Way (ROW) of Ridge Road to the western boundary of the ROW of 24th Ave in Golden Township." Sun Buggy contended that the DNR relied on this agreement to allow unauthorized ORV use on this portion of the county road, limited to its favored ORV rental companies. Sun Buggy asserted that the OCRC erected ORV signs on Fox Road just north of Sun Buggy's property. The DNR then

Buggy further contended that the DNR issued violations against it in retaliation for Sun Buggy employees reporting safety concerns, violating Sun Buggy's First Amendment rights.

Discovery continued following the Court's acceptance of the first amended complaint. The DNR filed an answer and affirmative defenses, along with a counterclaim for breach of contract. The DNR contended that Sun Buggy failed to pay 12% of its gross sales in September and October 2023, incurring late fees, and failed to pay $3,500 in fines.

II. ANALYSIS

The DNR seeks summary disposition of Sun Buggy's first amended complaint under MCR 2.116(C)(8). Summary disposition under (C)(8) "tests the *legal sufficiency* of a claim based on the factual allegations in the complaint." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). The Court "must accept all factual allegations as true, deciding the motion on the pleadings alone." *Id.* at 160. Summary disposition "may only be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery." *Id*.

Some of the parties' arguments rely on evidence beyond the complaint. Those challenges are more properly considered under MCR 2.116(C)(10). *Cary Investments, LLC v Mt Pleasant*, 342 Mich App 304, 312-313; 994 NW2d 802 (2022). A motion under (C)(10) tests the factual support for a claim. *El-Khalil*, 504 Mich at 160. The Court "must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion" and grant summary

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ticketed Sun Buggy employees for entering the ROW "mere feet further south than" one of its competitors.

disposition if the plaintiff failed to establish a genuine issue of material fact upon which relief could be granted. *Id*.

A. BAD-FAITH TERMINATION

In its count for bad-faith termination of the contract, Sun Buggy alleged the DNR unilaterally drafted the contract with its "significantly superior bargaining power." Sun Buggy further alleged that it fully performed its duties under the contract without any material breach by providing ORV rental services and paying 12% of its revenues to the DNR as required under the contract for the first two seasons. Sun Buggy accused the DNR of violating the implied covenant of good faith and fair dealing by relying "on rules and regulations not included in the Contract and not in effect at the time the Contract was entered" in imposing repeated violations against it and subsequently terminating the contract.

The DNR contends Sun Buggy cannot state a claim for breach of contract because the DNR terminated the contract consistent with its terms. Section IX of the parties' contract governs its termination. Subsections C and D state, in relevant part:

> **C. <u>Termination.</u>**
>
> **1.** Upon the failure of the Contractor to comply with any provision, stipulation, or condition of the Contract, including the regular payment of rent and fees as agreed upon, this Contract and concession may be terminated at the option of the [DNR].
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> * * *
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> **D. <u>Cancellation for Convenience.</u>**
>
> **1.** The [DNR] may cancel this Contract for its convenience, in whole or part, if the [DNR] determines that such a cancellation is in the [DNR's] best interest.
>
> **2.** Reasons for such cancellation shall be left to the sole discretion of the [DNR] and may include, but not necessarily be limited to:

a. The [DNR] no longer needs the services or products specified in the Contract.

b. Changes in laws, rules, or regulations that make implementation of the Contract services no longer practical or feasible.

c. Change in ownership of the State property or damage to the Premises.

d. Unacceptable prices for additional services requested by the [DNR].

3. The [DNR] may cancel the Contact for its convenience, in whole or in part, by giving the Contractor written notice thirty (30) days prior to the date of cancellation.

4. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.

The DNR officially terminated the contract with Sun Buggy for its convenience. The reasons for terminating a contract for the DNR's convenience are left to the sole discretion of the DNR under the plain language of Subsection D. The implied covenant of good faith and fair dealing is not a separate and independent cause of action but may be raised by an injured contracting party to argue that the other party made the manner of its performance under the contract a matter of its own discretion and failed to exercise that discretion honestly and in good faith. *Kircher v Boyne USA, Inc*, ___ Mich ___; ___ NW3d ___ (2025) (Docket No. 166459), slip op at 7.

Sun Buggy alleged that its president and owner, Randy Jordan, visited the Park in October 2021, during the bidding process, and observed another concessionaire committing serious safety and traffic violations. Jordan notified Park officials. During Sun Buggy's first season, Jordan again reported safety violations committed by other ORV rental vendors and suggested the implementation of other safety protocols, such as requiring all riders to wear helmets. Sun Buggy alleged that the DNR ignored Jordan's concerns and declined to provide definitive answers about

what amounted to a citable violation. Sun Buggy contended that while it received written violations for minor infractions, the other two concessionaires received verbal warnings. It further alleged that the DNR withheld information about the conduct underlying the imposed violations. Overall, Sun Buggy accused the DNR of exercising "unilateral authority to create, waive, and/or enforce any rules it deemed appropriate against Sun Buggy without notice or specific terms in the Contract." Through this conduct, Sun Buggy alleged that the DNR essentially set Sun Buggy on a course for contract termination.

Taking these allegations as true, Sun Buggy sufficiently stated a claim for breach of contract based on the DNR's bad-faith termination of the parties' contract. The Court DENIES the DNR's motion for summary disposition on this ground at this time.

B. FAILURE TO PERFORM

In its count for failure to perform its duties under the contract, Sun Buggy alleged that although the DNR promised its concession vendors exclusive contracts during the bidding process, companies without concession contracts planned to provide ORV rentals for Park visitors in 2022. Sun Buggy admitted that the DNR took action to prevent another vendor's provision of services in the Park—Silver Lake Adventures (SLA)—and SLA filed suit against the DNR in *Silver Lake Adventures, Inc v Dep't of Natural Resources*, Court of Claims Docket No. 23-000015-MM. By failing to prevent SLA and its customers from operating rented ORVs in the Park, Sun Buggy alleged that the DNR failed to provide the main benefit conferred by its contract.[2]

[2] At the time Sun Buggy filed its amended complaint, the SLA action was still pending. The parties later settled that suit through a stipulated permanent injunction that prevented the DNR from 1)

The DNR contends that the exclusivity promise was not included in the parties' contract. Rather, as also alleged by Sun Buggy, the promise was made during the bidding phase. Subsection IX.G of the contract provided an "integration clause" stating: "This Contract constitutes the complete and exclusive agreement and understanding of the parties as it relates to this transaction. This Contract supersedes all proposals or other prior agreements and all other communications between the parties relating to this transaction."

In rebuttal to the motion for summary disposition, Sun Buggy cites Subsection II.D of the contract, which provides that the DNR "grants the Contractor the exclusive rights to provide the goods and services authorized by this agreement in Section IV." Subsection IV.B grants Sun Buggy a concession contract for ORV rentals and provided that tours may be offered.

Contrary to the DNR's assertions, and even Sun Buggy's allegation in the first amended complaint, the exclusivity provision was included in the parties' contract, making the integration clause irrelevant to this dispute. Sun Buggy appended the contract to its complaints and its response to the DNR's summary disposition motion. Sun Buggy challenged the summary disposition motion by arguing that the DNR violated that exclusivity provision by allowing SLA to operate in the Park without a concessions contract. The DNR's motion for summary disposition of this count is DENIED at this time.

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enforcing LUOD 5.9(1)(e) against SLA, (2) prohibiting or limiting the use of ORVs rented from SLA in the Park, or (3) interfering with SLA's business or its customers' access to and use of the Park.

C. PARTIAL REPUDIATION

In its third breach-of-contract count, Sun Buggy alleged that it was contractually permitted to provide not only rental services, but also ORV tours. To provide those tours, Sun Buggy shipped seven custom trams from one of its California locations to its site near the Park at "significant" cost. The DNR then notified Sun Buggy that it would not be permitted to conduct tours in the Park, preventing Sun Buggy from benefiting from that portion of its contract.

Subsection IV.B of the parties' contract governs the "sale of products and services" covered by the contract. It states:

> Products and services to include: Rental of [ORVs]. Each customer shall receive safety, operation, and regulation training from the Contractor off-site, prior to arrival on the Premises. Training must be pre-approved by the [DNR]. *Tours may be offered,* and safety monitoring must be provided by the Contractor. [Emphasis added.]

The DNR argues that the contract used the permissive term "may" rather than a mandatory term in relation to tours inside the Park. Therefore, the DNR asserts, it was not required to permit these activities. The DNR further relies upon the preface to the contract, which states, "It is also understood that the [DNR] is charged with the management of the property and shall make all decisions as to what concessions shall or shall not be located on the property and where these concessions shall be located." Further, Subsection II.C.1 states "The [DNR] has the exclusive authority to restrict access to areas of the Premises the [DNR] deems necessary for any safety or environmental concerns."

The Court does not find, as a matter of law, that the use of the word "may" in the contractual provision at issue granted the DNR discretion to deny Sun Buggy the right to hold tours. A plain reading of the contract leads to another interpretation: the DNR granted permission to Sun Buggy

to conduct tours if Sun Buggy so chose. See *Manuel v Gill*, 481 Mich 637, 647; 753 NW2d 48 (2008) (interpreting statutory language stating "The entity may sue and be sued in its own name" as granting "permission to persons injured to sue the entity"). Accordingly, Sun Buggy has stated a legally cognizable claim that the DNR breached this provision of the contract. The Court DENIES the DNR's motion for summary disposition of this count as well.

D. PROCEDURAL DUE PROCESS

In alleging that the DNR violated its right to procedural due process under US Const, Am XIV, Sun Buggy asserted that it "had a property interest in the bargained-for rights under the Contract." The DNR interfered with that interest through regulatory actions "purportedly made pursuant to the Contract." But, Sun Buggy contended, the violation notices cited "alleged breaches of rules and regulations established by the DNR" and not provisions of the contract. Sun Buggy continued that the DNR relied on an over broad interpretation of the contract as permitting the DNR to enter a violation against Sun Buggy "at any time, for any reason, without prior notice or the opportunity to challenge its validity," relying on rules and regulations promulgated by the DNR as a state agency. The reliance on rules and regulations, Sun Buggy contended, removed these violation notices and ultimately the contract termination from the realm of contractual transactions and into the realm of state action, requiring due process of law.

In seeking summary dismissal of Sun Buggy's procedural due process claim, the DNR correctly contends that Sun Buggy has not established a constitutionally protected interest. A procedural due process claim "requires that deprivation of life, liberty, or property by adjudication must be preceded by notice and an opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Bonner v Brighton*, 495 Mich 209, 235; 848 NW2d 380 (2014) (cleaned up).

The first step is to determine if there was a deprivation of "life, liberty, or property." To support any due process challenge, a plaintiff must demonstrate a "vested" right or "enforceable property interest." *Cary Investments, LLC*, 342 Mich App at 315; *Cove Creek Condo Ass'n v Vistal Land & Home Dev, LLC*, 330 Mich App 679, 701; 950 NW2d 502 (2019).

The United States Court of Appeals for the Sixth Circuit has held that claims sounding simply in breach of contract are insufficient to support a protected property interest for due process purposes:

> Our case law makes clear that a claim for a due-process violation does not lie where the thrust of the plaintiffs' argument is simply breach of contract. "This court has held that 'state breach of contract action may . . . provide an adequate remedy for some deprivations of a contractually created property interest.' " *Taylor Acquisitions, LLC v City of Taylor*, 313 F App'x 826, 831 (CA 6, 2009), quoting *Ramsey v Bd of Ed*, 844 F2d 1268, 1273 (CA 6, 1988). Because a due-process claim is predicated on the deprivation of a constitutionally protected interest without due process of law, the availability of a state breach-of-contract remedy defeats the due-process claim. As the *Ramsey* court explained, "it is neither workable nor within the intent of [§] 1983 to convert every breach of contract claim against a state into a federal claim." *Ramsey*, 844 F2d at 1273 (citations omitted). Consequently, "[a] state breach of contract action is most clearly an adequate remedy for a property deprivation when the only basis for federal jurisdiction is that a state actor is one of the contracting parties." *Ibid.* [*Kaminski v Coulter*, 865 F3d 339 (CA 6, 2017).]

Here, the parties had a comprehensive contract. Sun Buggy focuses on Section V.G. which states that Sun Buggy is "responsible for adhering to all state laws, traffic laws, and local ordinances on the Premises." This provision, Sun Buggy contends, converts this suit from a simple breach-of-contract action to an action based on the State's application of statutes, rules, and regulations. However, the parties' contract does provide guidelines for Sun Buggy's performance, many of which were the basis of the violations imposed against it. See, e.g., Section IV.C.13 (requiring Sun Buggy and its customers to "enter the Premises in a legal fashion by waiting their turn in any queuing lane/lan[e]"); Section V.B (prohibiting Sun Buggy from storing equipment on

Park property); Section V.D (requiring Sun Buggy "to maintain equipment in a safe and workable condition").

Ultimately, this is a breach-of-contract action and Sun Buggy does not have a constitutionally protected property interest to support a procedural due process claim. Accordingly, the Court GRANTS the DNR's motion for summary disposition in this regard.

E. SUBSTANTIVE DUE PROCESS

Sun Buggy's substantive due process claim focused on the 2022 amendment to LUOD 5.9(1)(e). Sun Buggy contends that the DNR permits individuals to operate their personally owned ORVs in the Park without restriction, but unconstitutionally limits the use of rented ORVs to those rented from companies with concession contracts. Sun Buggy contended it "has a fundamental right to conduct its business within a legitimate regulatory scheme." It characterized the amendment to the LUOD as "an arbitrary and capricious exercise of purported government authority that violates Sun Buggy's fundamental right to operate its business."

A claim of substantive due process must also be based on the interference with a "significant property interest." *Bonner*, 495 Mich at 226. "Substantive due process analysis must begin with a careful description of the asserted right, for there has always been reluctance to expand the concept of substantive due process given that the doctrine of judicial self-restraint requires us to exercise the utmost care whenever we are asked to break new ground in this field." *Id*. at 226-227 (cleaned up). "[T]he guarantee of substantive due process just serves as a safeguard against governmental conduct that is so arbitrary and capricious as to shock the conscience." *Cary Investments*, 342 Mich App at 317 (cleaned up).

However, as already noted, Sun Buggy has not asserted a constitutionally protected interest. Rather, Sun Buggy had, and lost, the contractual right to provide services at the Park. This claim must be resolved in the breach-of-contract context, not as a due process challenge. Accordingly, the Court GRANTS the DNR's motion for summary disposition in this regard as well.

F. ULTRA VIRES ACTIVITY/SEPARATION OF POWERS

The DNR contends that Sun Buggy's claim that the DNR engaged in ultra vires activity in violation of the separation of powers in adopting LUOD 5.9 and the Fox Road Agreement must be dismissed because these activities were squarely within the DNR's authority.

The subject portion of the 2022 Amendment to LUOD 5.9 is the addition of section (1)(e), which states: "A person shall shall not . . . Utilize a rented vehicle in the ORV area, except for those permitted for use pursuant to Administrative Rule 299.922(dd)." The Rule states: "On land owned or under the control of the [DNR], it is unlawful to":

> Use state-owned land for a commercial operation unless the commercial operation is conducted pursuant to a permit issued by the [DNR]. The [DNR] may waive the requirement for a permit for a commercial operation if the [DNR] determines that the commercial operation will not require [DNR] oversight and the commercial operation is anticipated to have a minimal impact on the resource or facilities and the use of state-owned land by others.

Accordingly, the amendment to LUOD 5.9 limited the use of rental ORVs in the Park to those rented from exclusive concession contractors. Once Sun Buggy's contract was terminated, it could no longer rent ORVs to customers to use on the land as a matter of right, although the DNR permitted Sun Buggy customers access for an additional season. On March 17, 2025, however,

the DNR entered a stipulated permanent injunction preventing it from blocking the customers of another vendor—SLA—from using their rented ORVs in the Park despite this rule.

The DNR entered the Fox Road Agreement with the OCRC on November 30, 2018. Between April 1, and October 31, in the years 2019-2023, OCRC ceded authority to "operate Fox Road" between two specified points. The agreement stated that the DNR "shall be in charge of all traffic and shall continue to allow use of this ROW to public travel." The DNR agreed to install signage, construct a parking lot to reduce traffic buildup and vehicle parking along Ridge Road, and "take, provide and maintain all necessary precautions to prevent injury or damage" on the designated portion of Fox Road. The OCRC agreed to continue maintenance of Fox Road. On February 8, 2024, the DNR and OCRC extended the agreement through the 2028 season. The managing director of the OCRC testified in a deposition that his agency entered the agreement with the DNR in an attempt to alleviate traffic from visitors towing ORVs to use at the Park. He understood that the OCRC had no authority to allow unlicensed ORV use on Fox Road, but agreed that under the agreement, the DNR could monitor visitors who parked in the newly constructed Fox Road lot and drove their ORVs across the roadway into the Park.

The DNR was created by and given its powers through the Natural Resources and Environmental Protection Act (NREPA), MCL 324.501 *et seq*. MCL 324.502(2) grants the DNR authority, in relevant part, to

> (a) Promulgate and enforce reasonable rules concerning the use and occupancy of lands and property under its control in accordance with section 504.
>
> (b) Provide and develop facilities for outdoor recreation.

MCL 324.503(1)(a) requires the DNR to "provide and develop facilities for outdoor recreation" and "provid[e] access to and use of the public land for recreation and tourism." MCL 324.504(4)

"urge[s]" the DNR "to promote public enjoyment of this state's wildlife and other natural resources by providing public access to lands under the control of the [DNR] for outdoor recreation activities dependent on natural resources, providing reasonable consideration for both motorized and nonmotorized activities." And MCL 324.504(6) permits the DNR to work in cooperation with local units of government: "Upon request from a local unit of government, the [DNR] shall work with the local unit to allow use of state land managed by the [DNR] and located within the local unit that will benefit the local community by increasing outdoor recreation opportunities and expanding access to and appropriate use of the natural resources and outdoors."

These provisions of the NREPA support the DNR's authority to enter into the Fox Road agreement with OCRC. The agreement allowed the DNR to develop a facility—a parking lot—to ease access for enjoying outdoor recreation at the Park. Similarly, taking control of Fox Road adjacent to the Park during the peak season allowed the DNR to ease access and allow enjoyment of the Park for both motorized and nonmotorized activities. Sun Buggy cannot establish that the DNR entered into the Fox Road agreement in violation of separation-of-powers principles or that this amounted to ultra vires activities. The Court GRANTS the DNR's motion for summary disposition of this claim.

The promulgation and amendment of LUOD 5.9 also was not an ultra vires act or an act taken in contravention of the separation of powers. Limiting commercial use of the property to concessionaires who have entered contracts assists the DNR in protecting the natural resources within a state park. Absent such agreements, providers of services like rental ORVs could overwhelm a state park's infrastructure and damage the natural resources within. This is consistent with the DNR's statutory powers. Accordingly, the Court GRANTS defendant's motion for summary disposition in this regard as well.

G. FIRST AMENDMENT RETALIATION

Finally, the DNR contends that this Court must dismiss Sun Buggy's retaliation claim because it is raised under the First Amendment through 42 USC 1983. A state department is not a "person" against whom a § 1983 claim can be raised. *Will v Mich Dep't of State Police*, 491 US 58, 65-66; 109 S Ct 2304; 105 L Ed 2d 45 (1989). As such, the Court of Claims lacks jurisdiction to consider this count, the DNR contends.

Sun Buggy sought to add this count of retaliation in its May 17, 2024 motion to file a first amended complaint. At that time, the DNR argued that the addition of this claim would be futile because the termination of the contract was the result of Sun Buggy's violations rather than an act of retaliation. The Court granted Sun Buggy's motion to file a first amended complaint, determining that the allegations supported a legally cognizable claim. Not at issue at that point was Sun Buggy's reliance on § 1983 to raise this claim, as cited in ¶ 133 of the then-proposed first amended complaint. Sun Buggy does not contest the DNR's position and instead argues it should be allowed to amend the complaint to add individual defendants responsible for the retaliation. This would be Sun Buggy's second amended complaint.

MCR 2.118(A)(2) provides that leave to file an amended complaint "shall be freely given when justice so requires." MCR 2.118(D) states that "[a]n amendment that adds a claim or defense relates back to the date of the original pleading" under certain conditions. However, an amendment that adds new parties does *not* relate back to the original filing date. *Miller v Chapman Contracting*, 477 Mich 102, 107; 730 NW2d 462 (2007). Sun Buggy did not seek this amendment until its August 26, 2025 response to the DNR's motion for summary disposition. Sun Buggy's claims accrued on November 3, 2023, when the termination of its contract went into effect. MCL

600.6431(1) requires a plaintiff to file either a written claim or notice of a claim within one year of accrual. Sun Buggy did not seek to amend the complaint to add individual defendants until more than nine months after the one-year notice period had passed. Accordingly, amendment of the complaint would be futile.

The Court GRANTS the DNR's motion to summarily dismiss Count VII Retaliation Under the First Amendment of the United States Constitution.

III. CONCLUSION

IT IS ORDERED:

1. The Court GRANTS IN PART AND DENIES IN PART defendant's motion for summary disposition of the first amended complaint.
2. The Court DISMISSES Counts IV, V, VI, VII, and VIII in their entirety and with prejudice.
3. The court directs the parties to present an amended stipulated scheduling order within 14 days of the entry of this opinion and order.
4. This is not a final order.

Date: August 13, 2026

Sima G. Patel
Judge, Court of Claims