

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

312 REDFORD, LLC, a Michigan Limited Liability
Company,

Plaintiff/Counter-Defendant,

Case No. 2023-198933-CB
Hon. Victoria Valentine

v

RADIANT SIGN COMPANY, LLC, a Michigan
Limited Liability Company; and PAUL L.
WEINSTOCK, an Individual,

Defendants/Counter-Plaintiffs.

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, PC

By: Brian E. Etzel (P54905)
William C. DiSessa (P81906)

Attorneys for Plaintiff

380 North Old Woodward Avenue, Suite 300
Birmingham, MI 48009
(248) 642-0333

bee@wwrplaw.com

wcd@wwrplaw.com

SARAH PROUT RENNIE

By: Sarah Prout Rennie (P58869)

Attorneys for Defendants

2330 Earlmont

Berkley, MI 48072

(517) 599-9939

sarah@sarahproutrennielaw.com

OPINION AND ORDER RE DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

At a session of Court
held in Oakland County, Michigan
on June 30, 2023

PRESENT: HON. VICTORIA A. VALENTINE

The matter before the Court is on Defendants' Motion for Summary Disposition under MCR 2.116(C)(8) and (10), which seeks to dismiss Plaintiff's 3-count complaint that alleges breach of the lease agreement, breach of the renovation contract and declaratory judgment. Defendants claim that the contracts are *void ab initio* and that the court lacks venue and subject matter jurisdiction. The Court has reviewed the Motion, Response and Court file and heard oral

argument on June 28, 2023. For the reasons set forth below, Defendants' motion is DENIED. The Court finds that at the very least there is a question of fact as to whether the contracts are illegal.

PERTINENT FACTS

The instant matter relates to two contractual agreements between the parties. Each contract related to certain real property located in Wayne County at 27312 W. 7 Mile Rd., Redford, Michigan 48240 (the "Subject Property").¹

Plaintiff/Counter-Defendant, 312 Redford, LLC ("Plaintiff" or "312 Redford"), owns certain real property (the "Subject Property") located in the Charter Township of Redford, Michigan ("Redford" or the "Township"). Defendants/Counter-Plaintiffs Radiant Sign Company, LLC ("RSC") and Paul L. Weinstock (collectively, "Defendants") became interested in the Subject Property as a potential location from which they could operate a sign-making business and a state-regulated medical marijuana grow operation as a primary caregiver of qualified patients². Thus, the parties entered into two contracts: (1) a Commercial Lease Agreement (the "Lease Agreement");³ and (2) a Renovation Contract (the "Renovation Contract").⁴ Pertinent provision in the Lease Agreement provide as follows:

A. Tenant is leasing the premises identified herein for the purpose of conducting a sign making business and growing state regulated medical marijuana, as a qualified patient's primary caregiver. Tenant and all tenant personal are strictly forbidden to use marijuana in any form for human consumption or to traffic in marijuana and or any illegal substance in any form while on or in the premises.

¹ See Complaint, ¶1.

² See Complaint, ¶11 and attached Exhibit A: Commercial Lease.

³ See Exhibit A attached to Complaint.

⁴ See Exhibit B attached to Complaint.

* * *

11. Defendants became interested in the Subject Property as a potential location at which they could operate: (1) their sign-making business; and (2) a state-regulated medical marihuana grow operation as a primary caregiver of qualified patients. **Exhibit A: Commercial Lease Agreement, p 1, p 3 ¶ 12.**

* * *

Use and Occupancy

12. Tenant shall use the premises for the use and occupancy as a sign making business and/or medical marijuana caregiver grow facility. It is understood and agreed between the parties hereto that said premises during the continuance of this Lease shall be used and occupied for and for no other purpose or purposes than stated herein without the written consent of the Landlord, and that the Tenant will not use the premises for any purpose or purposes in violation of any state law, municipal ordinance or regulation, excluding specifically federal laws or regulations, and that on any breach of the agreements provided in this Paragraph, the Landlord may at his option terminate this Lease forthwith and re-enter and repossess the leased premises. Landlord may forthwith and re-enter and repossess the leased premises in Landlord's sole, absolute and unfettered discretion if the operations of Tenant are challenged under Federal law.

Compliance with Laws and Orders

21. The Tenant shall at his own expense under penalty, forfeiture and damages, promptly comply with all lawful laws, orders, regulations, ordinances of all Municipal, County and State authorities affecting the premises hereby leased and the cleanliness, and safety, occupation and use of same.

If, during the term of this lease agreement, the Township of Redford shall deem the business of Tenant of growing state regulated medical marihuana, to be contrary to their zoning or ordinance and require that tenant cease such business activity, then and in that event, this lease shall cancel and the same shall be declared null and void and possession of the premises shall be returned to Landlord forthwith.

The complaint alleges that after the property was successfully leased to Defendants, the parties needed to negotiate the completion of certain renovations and repairs necessary to establish a marihuana grow room within the Subject Property.⁵ The Complaint further alleges that on or about May 13, 2022, Plaintiff and RSC (with Defendant Weinstock acting as the signatory for RSC) executed a contract memorializing these negotiations (the "Renovation Contract"), under which Plaintiff would pay RSC a lump sum of \$150,000 to cover RSC's completion of various repairs and renovations to the Subject Property (the \$150,000 was specifically meant to cover the cost of repairs and renovations that RSC had ostensibly already paid for prior to execution of the Renovation Contract).⁶

Defendants allegedly occupied the property until August 2022 at which time they vacated the property.⁷ Thereafter, Plaintiff filed this Complaint, alleging that Defendants breached both the Lease Agreement by failing to pay rent for six months and failing to pay costs associated with utilities, real estate taxes, insurance and maintenance expenses and the Renovation Agreement by failing to perform under the Agreement.

Defendants now file this Motion for Summary Disposition under MCR 2.116(C)(8) and (10). For the reasons below, the Court respectfully DENIES Defendants' Motion.

STANDARD OF REVIEW

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 119, 597 NW2d 817 (1999). All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dep't of*

⁵ See Complaint, ¶21 and attached Exhibit B: Renovation Contract.

⁶ See Complaint, ¶22 and attached Exhibit A ¶38 and Exhibit B, pp 1, 3.

⁷ See Complaint, ¶¶ 25-26.

Corrections, 439 Mich 158,162,483 NW2d 26 (1992). 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." *Id.* at 163. When deciding a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5).

Summary disposition under MCR 2.116(C)(10) may be granted where "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." This motion tests the factual sufficiency of the complaint and "must specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact." MCR 2.116(G)(4). The moving party bears the initial burden of supporting its position. *Smith v Globe Life Ins Co*, 460 Mich 446, 455 (1999). "Affidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted in the motion are required . . . when judgment is sought based on [MCR 2.116(C)(10)]." MCR 2.116(G)(3)(b).

"The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rest on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in the pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted." *Smith*, 460 Mich at 455 (citations omitted; emphasis added).

If the motion for summary disposition is properly made and supported, an adverse party must, by affidavit or otherwise, "set forth specific facts showing there is a genuine issue

for trial.” MCR 2.116(G)(4). If the adverse party fails to respond, and if appropriate, the court shall grant the summary disposition motion. MCR 2.116(G)(4).

ANALYSIS

Contracts at Issue

Defendants argue that both the Lease Agreement and the Renovation Contract at issue were for the purpose of growing marijuana on the property, which is located in the Township of Redford. Defendants claim, however, that Redford enacted ordinance No. 355, which rendered the operation of a grown room illegal. Therefore, Defendants argue that the contracts at issue are illegal and void *ab initio*.

This Ordinance provides in part:

Sec. 22-361. Marihuana Establishments

Pursuant to Sec. 6.1 of the Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951, et seq, the Township of Redford completely prohibits marihuana establishments, as defined in the Act, within the Township's municipal boundaries.

Plaintiff argues that the above Ordinance prohibits marihuana establishments created under the *Michigan Taxation and Regulation Act (MRTMA)* not under the *Michigan Medical Marihuana Act (MMMA)*. Here, the Lease Agreement expressly provides that the parties intended to use the property to operate as a primary caregiver under the MMMA **and** as a sign-making business. The lease provides in pertinent part:

A. Tenant is leasing the premises identified herein for the purpose of conducting a sign making business and growing state regulated medical marihuana, as a qualified patient's primary caregiver. Tenant and all tenant personal are strictly forbidden to use marihuana in any form for human consumption or to traffic in marihuana and or any illegal substance in any form while on or in the premises.

MCL 333.26423 of the MMMA defines “medical use of marihuana” and primary caregiver as follows:

(i) "Medical use of marihuana" means the acquisition, possession, **cultivation, manufacture**, extraction, use, internal possession, delivery, transfer, or transportation of marihuana, marihuana-infused products, or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

(l) "Primary caregiver" or "caregiver" means a person who is at least 21 years old and **who has agreed to assist with a patient's medical use of marihuana** and who has not been convicted of any felony within the past 10 years and has never been convicted of a felony involving illegal drugs or a felony that is an assaultive crime as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a. (emphasis added).

The Michigan Supreme Court in *DeRuiter v Bryon Twp*, 505 Mich 130, 147-148 (2020), held that the MMMA does not nullify a local unit of government’s authority to regulate land as long as the unit of government does not prohibit or penalize all medical cultivation and as long as the unit of government does not impose regulations that are unreasonable and inconsistent with regulations established by state law. If, however, the ordinance prohibits or penalizes all medical marihuana cultivation or imposes regulations that are unreasonable or inconsistent with regulations established by state laws then the ordinance is conflict preempted. See also *Charter Township of York v Miller*, 335 Mich App 539 (2021).

Here, it is undisputed that Redford’s Ordinance No. 355 completely prohibits marihuana establishments within its boundaries under *the MRTMA*. It, however, is unclear whether Redford has an Ordinance regarding the MMMA. If Redford’s Ordinance No. 355 is a blanket prohibition on medical use of marihuana, it may be preempted as it may conflict with the MMMA. Therefore, the Court finds that there is a question of fact as to whether the Lease Agreement and the Renovation Contract are illegal.

Venue & Subject Matter Jurisdiction

Defendants' Motion also argues that the Court lacks venue and subject matter jurisdiction. The proper motion, however, would be a motion for change of venue, which Defendants have **not** filed. Further, under MCR 2.221, such a motion would need to have been filed before or at the time Defendant filed the answer—on or before April 17, 2023. And even if this Motion for Summary Disposition is construed as a motion for change of venue, Defendant does not establish any facts that were and could not with reasonable diligence have been known to Defendants more than 14 days before this motion was filed.

MCR 2.221 (Motion for Change of Venue) provides as follows:

(A) Time to File. A motion for change of venue must be filed before or at the time the defendant files an answer.

(B) Late Motion. Untimeliness is not a ground for denial of a motion filed after the answer if the court is satisfied that the facts on which the motion is based were not and could not with reasonable diligence have been known to the moving party more than 14 days before the motion was filed.

(C) *Waiver. An objection to venue is waived if it is not raised within the time limits imposed by this rule. (Emphasis added).*

As to Defendants' argument regarding subject matter jurisdiction, the proper motion would be under MCR 2.116(C)(4), which Defendants do not address. Further, Defendants' counsel in fact agreed in the joint case management plan filed on May 12, 2023 (*after* Defendants' May 9, 2023, filing of this Motion for Summary Disposition), that "the parties do not dispute that this Court is the Court of proper jurisdiction and venue."

In addition, this is a business court dispute under MCL 600.8035 and MCL 600.8031(1)(c)(ii). MCL 600.8035 provides that "(1)[a] business court has jurisdiction over

business and commercial disputes in which equitable or declaratory relief is sought or in which the matter otherwise meets circuit court jurisdictional requirements.” Here Plaintiff seeks damages as well as declaratory relief. Further, this is a business or commercial dispute under MCL 600.8031(1)(c)(ii), which provides:

(ii) An action in which 1 or more of the parties is a business enterprise and the other parties are its or their present or former owners, managers, shareholders, members of a limited liability company or a similar business organization, directors, officers, agents, employees, suppliers, guarantors of a commercial loan, or competitors, and the claims arise out of those relationships. 600.8031(1)(c)(ii)

Here, Plaintiff and Defendant Radiant Sign Company are limited liability companies and Defendant Weinstock is Defendant Radiant Sign Company’s resident agent or upon info and belief its member.⁸ Therefore, this case qualifies as a business court decision over which the Court has jurisdiction.

Based on the above, Defendants’ Motion for Summary Disposition is DENIED. At the very least, there is a question of fact as to whether the contracts are illegal.



/s/Victoria A. Valentine

IT IS SO ORDERED.

⁸ Complaint, ¶¶ 4 and 7.