STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

MS LAND AND BUILDINGS, LLC,

Plaintiff,

v.

HIGHVIEW INVESTMENT, LLC

Defendant.

_____/

Case No. 2019-178172-CB

Hon. Martha D. Anderson

OPINION AND ORDER RE: DEFENDANT'S MOTION TO DISMISS

This matter is before the Court on Defendant's Motion to Dismiss Plaintiff's Complaint pursuant to MCR 2.116(C)(8). The Court dispenses with oral argument in accordance with MCR 2.119(E)(3).

By way of background, Defendant entered into a lease agreement with nonparty MS Property & Equipment, LLC on May 9, 2012 for the lease of an industrial building located at 1101 Highview Drive in Webberville, Michigan. Defendant was the owner of the industrial building and the landlord under the lease agreement with MS Property & Equipment, LLC. On December 10, 2018, MS Property & Equipment, LLC assigned its option to purchase rights under the lease agreement to Plaintiff. Thereafter, on January 1, 2019, Plaintiff exercised this option to purchase the building from Defendant for the sum of eight million dollars. A warranty deed to the industrial building was subsequently issued to Plaintiff and recorded on January 14, 2019.

In the Complaint, Plaintiff claims to be the successor in interest to the lease agreement between MS Property & Equipment, LLC and Defendant in consideration of the April 5, 2019 Quit Claim Bills of Sale and Assignments between Plaintiff, MS Industries, Inc., and MS Property & Equipment, LLC. On November 25, 2019, Plaintiff initiated this lawsuit on allegations that Defendant breached the parties' lease agreement by failing to repair and maintain structural portions of the premises, specifically, the parking lot, the roof, and the HVAC system.

In its motion, Defendant is seeking the dismissal of Plaintiff's Complaint pursuant to MCR 2.116(C)(8). A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). When analyzing such a motion, all well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dept of Corrections*, 439 Mich 158, 162-163; 483 NW2d 26 (1992). A (C)(8) motion 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.* And, when deciding such a motion, the Court considers only the pleadings. MCR 2.116(G)(5).

Defendant argues that Plaintiff has failed to state a claim upon which relief can be granted since Defendant's obligations under the lease agreement automatically terminated once Plaintiff exercised its option to purchase the industrial building. The Option to Purchase provision, namely Section 3.4, in the lease agreement provides as follows:

> So long as Lessee is not in default under any of the terms, covenants or conditions of this Lease beyond any applicable notice and cure period, Lessee shall, as consideration for entering into this Lease, have an option to purchase the Premises after the initial six (6) year term of this Lease (the "Option to Purchase")...

A. If Lessee exercises the Option to Purchase, the purchase price for the Premises shall be Eight Million and 00/100 ($8,000,000.00) Dollars cash (the "Purchase Price") and shall be paid by Lessee to Lessor at closing concurrently with the conveyance of the Premises by Lessor to Lessee by a warranty deed subject only to easements and building and use restrictions existing as of the date of this Lease plus any other encumbrances to which Lessee has consented in writing, and zoning ordinances. Lessee is responsible for the payment of all real property taxes and assessments covering the Premises under this Lease so current real estate taxes shall not be prorated and Lessee shall pay at the closing any outstanding real property taxes and assessments that have become a lien on the Premises. The closing on the sale of the Premises shall occur on January 1, 2019, or the next business day if January 1, 2019 is a Saturday, Sunday, or holiday.

B. If Lessee exercises its Option to Purchase the Premises, Lessor shall furnish Lessee, within fifteen (15) days after receipt of the Notice, a commitment for an ALTA owner's policy of title insurance issued by a reputable title company in an amount not less than the full purchase price, guaranteeing title in the condition required thereunder. The title policy shall be ordered at closing and paid for by Lessor. Lessor shall also pay all expenses normally incurred by a seller of real estate in the State of Michigan in connection with the conveyance of the Premises to Lessee including, but not limited to, real estate transfer tax fees, closing and escrow fees and any recording fees or other costs incurred to remedy any defects in title.

Once the option to purchase the building was exercised in this matter, Defendant contends that the lease agreement terminated, leaving Plaintiff without any right to enforce that agreement. Moreover, the option to purchase provision did not reserve any claims under the lease agreement. As such, Defendant asserts that Plaintiff's Complaint is fundamentally defective as a matter of law and so the Complaint should be dismissed in its entirety with prejudice. Defendant is also seeking attorney fees and costs pursuant to MCR 1.109(E)(5)(b) or (c).

In response, Plaintiff argues that Defendant's motion should be denied for the reason that its repair and maintenance obligations existed prior to Plaintiff's purchase of the commercial building. Plaintiff asserts that its predecessor, MS Property & Equipment, LLC,

notified Defendant of its intent to exercise its option to purchase on June 25, 2018. Contemporaneously, MS Property & Equipment, LLC issued a notice of default to Defendant with regard to its obligations concerning repairs and maintenance of the roof, the parking lot, and the HVAC system. Therefore, Plaintiff maintains that Defendant's repair and maintenance obligations vested or accrued before the option to purchase was exercised and so those obligations were not extinguished upon the sale of the property. Plaintiff does concede that on January 1, 2019, the parties closed on the sale of the industrial building and the Warranty Deed was provided to Plaintiff. Plaintiff asserts, however, that the Warranty Deed does not waive or release its rights under the lease agreement. To the extent the Court considers sanctions, Plaintiff contends that sanctions should be instituted against Defendant.

In its Reply Brief, Defendant calls attention to Plaintiff's concession[1] that the lease terminated upon the sale of the property. Defendant argues further that Michigan law does not support Plaintiff's position that Defendant's repair and maintenance obligations are preserved since they vested prior to the exercise of the option to purchase.

Upon review of the Complaint, the Court observes that Plaintiff has alleged a Breach of Contract claim and it is also seeking contractual attorney fees on the premise that Defendant has breached the parties' lease agreement. "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 damages to the party claiming breach." *Miller-Davis Co. v Ahrens Const., Inc.*, 495 Mich 161, 178; 848 NW2d 95 (2014).

Whereas Plaintiff argues that Defendant has breached the parties' lease agreement, Defendant asserts that the lease agreement automatically terminated when Plaintiff exercised

[1] See page 5 of Plaintiff's Response.

its option to purchase the industrial building. Both parties have offered caselaw in support of their respective positions. Defendant argues in its motion that it is not bound by the terms of the lease because "the exercise of a purchase option by a tenant during the term of his lease automatically terminates the lease." *Glocksine v Malleck*, 372 Mich 115, 118; 125 NW2d 298 (1963).[2]

In the case of *Rosenthal v Shapiro*, 333 Mich 302, 315, 52 NW2d 859 (1952), the Michigan Supreme Court found that the plaintiff's obligations under the lease terminated on the exercise of the option to purchase. The Michigan Supreme Court determined that once an option to purchase is exercised, the landlord/tenant relationship ceases to exist and the rights of the parties are determined by the purchase or sales agreement or in the *Rosenthal* case, the land contract. "The exercise of the option extinguishes the lease and terminates the relation of landlord and tenant. The lease and all its incidents, express and implied, are blotted out of existence, and the relation of vendor and vendee created." R*osenthal, supra*. See also *Holt v Stofflet*, 334 Mich 272, 275; 54 NW2d 593 (1952). Notably, the *Rosenthal* Court does not distinguish between existing obligations or future obligations. Rather, the lease in its entirety, including all obligations, is extinguished once the option to purchase is exercised. The rights of the parties are then determined by the purchase or sales agreement between the parties.

In 2009, the Michigan Court of Appeals based its decision in *Carrols Corp. v Cain Rest. Co.*, an unpublished opinion per curiam of the Court of Appeals, issued September 29, 2009 (Docket No. 3199166),[3] on the *Glocksine* holding that "the exercise of a purchase option by a

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[2] The main issue in *Glocksine* was whether an option to purchase provision during the term of the lease could be exercised by the tenants during the holdover tenancy. The Court determined that the tenants could not exercise this option to purchase during the holdover tenancy because the option expired at the end of the lease term.

[3] In *Carrols*, the Court held that the defendant was entitled to the fair market value of the subject properties on the date that the plaintiff exercised its option to purchase. The Court also granted the plaintiff an adjustment to the purchase price to account for the rental payments the plaintiff made after it exercised the option to purchase.

tenant during the term of his lease automatically terminates the lease." *Glocksine, supra.* The Michigan Court of Appeals also deferred to the *Rosenthal* determination that once the option to purchase is exercised, "the landlord/tenant relationship ceased to exist and the rights of the parties must be determined upon the basis of a contract to sell and convey on one side and purchase on the other." *Rosenthal, supra.*

In opposition, Plaintiff attempts to distinguish the current case from Defendant's caselaw by arguing that Defendant's lease obligations arose before Plaintiff exercised its option to purchase and are therefore, preserved. Plaintiff relies on the case of *Goodspeed v Nichols*, 231 Mich 308; 204 NW 122 (1925), to argue that preceding obligations survive the purchase of property. However, the *Goodspeed* case dealt with a contract of sale in relation to a vacant residence. Within the contract of sale was the representation that the plumbing, heating and lighting systems for the subject home were in proper usable condition. The *Goodspeed* Court determined that "where a contract of sale provides for the performance of acts other than the conveyance, it remains in force as to such acts, until full performance." *Goodspeed, supra* at 316.

The present case is factually distinct from *Goodspeed* as this case concerns the attempted enforcement of a lease agreement with an option to purchase and not a contract for sale. Additionally, the Court agrees with Defendant's argument that the lease agreement does not include any representations that the industrial building will be presented in a certain condition at the time of sale.

Plaintiff also relies on a case from Utah, namely *Richard Barton Enterprises, Inc. v Tsern*, 928 P2d 368, 379 (Utah 1996), in which the defendant was obligated to repair the elevator following the plaintiff's exercise of the purchase option. Plaintiff attempts to draw a

correlation between the factual circumstances in *Tsern* to those in the present case in order to argue that Defendant is not released from its previously existing repair and maintenance obligations.

Typically, Michigan courts rely on caselaw from other states as persuasive authority when analyzing an area of unsettled law or an issue of first impression. "Michigan courts may view the decisions of other states as instructive and use them as a guide." *Tabernacle-The New Testament Church v State Farm Fire & Cas. Co.*, 616 F App'x 802, 807 (6th Cir 2015), citing *Wells Fargo Bank, N.A. v. Null,* 304 Mich App 508, 847 NW2d 657, 674 (2014). See also, *A & E Parking v Detroit Metro. Wayne Cty. Airport Auth.*, 271 Mich App 641, 645; 723 NW2d 223 (2006).

There is no question that the Michigan Supreme Court has addressed the issue concerning the cessation of a lease agreement once an option to purchase is exercised. That is, the landlord/tenant relationship automatically terminates on the exercise of an option to purchase within the lease agreement. Thereafter, the parties' rights are determined by the purchase or sales agreement and not the lease agreement. As such, there is no need to look outside of Michigan to determine how this Court should rule. With regard to the remaining caselaw[4] cited by Plaintiff, none of those cases involve a lease agreement with an option to purchase.

Based upon the foregoing analysis, the Court finds that Plaintiff has not pled adequate factual allegations to sufficiently support its Breach of Contract claim against Defendant because that claim is based upon the lease agreement, which automatically terminated once

[4] *Ottawa Cty. v Jaklinski*, 423 Mich 1; 377 NW2d 668 (1985) (right to grievance arbitration of an unjust discharge claim); *Seyburn, Kahn, Ginn, Bess, Deitch & Serlin, P.C. v Bakshi*, 483 Mich 345; 771 nW2d 411 (2009) (breach of contract action for unpaid legal fees); *Wisconsin Fire & Marine Ins. Co. Bank v Manistee Salt & Lumber Co.*, 77 Mich 76; 43 NW 907 (1889) (voluntary assignment); *First of Am. Bank v. Thompson*, 217 Mich App 581; 552 W2d 516 (1996) (deficiency action/repossession and sale of a vehicle).

Plaintiff exercised its option to purchase the industrial building. As noted by the *Rosenthal* Court, exercising an option to purchase extinguishes the lease agreement in its entirety, including all obligations, as well as any rights of the parties under that lease agreement. For the same reasons, Plaintiff's claim for contractual attorney fees fails as a matter of law since that claim is based upon the lease agreement's lawsuit provision, namely Section 8.5, and premised on Defendant's purported breach of the lease agreement.

Considering only the pleadings, accepting all well-pled factual allegations as true, and construing the allegations in a light most favorable to Plaintiff, the Court finds that Plaintiff's claims are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Wade, supra*. Accordingly, Defendant's Motion to Dismiss is GRANTED under MCR 2.116(C)(8).

It is hereby ordered that Plaintiff's Complaint against Defendant is DISMISSED with prejudice.

It is further ordered that the parties' respective request for attorney fees, expenses, and/or sanctions under MCR 1.109(E) is DENIED.

IT IS SO ORDERED.

This Opinion and Order resolves the last pending matter and closes the case.

/s/ Martha Anderson
HON. MARTHA D. ANDERSON
Business Court Judge

Dated: 4/21/2020.