

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

**WALL STREET CORP. and
ABRAHAM SHADEH,
Plaintiffs,**

v.

**Case No. 19-172687-CB
Hon. James M. Alexander**

**HAWK INVESTMENT COMPANY, and
ESTATE OF JOHN MACKOVER by
BONNIE MACKOVER,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendants' motion for summary disposition.

In their Complaint, Plaintiffs allege that the Wall Street and Hawk Investment entered into a land contract for the same of certain real estate located in Wixom, Michigan. Subsequent to the execution of the land contract, Hawk Investment assigned its rights to John Mackover, who is now deceased. And Wall Street assigned its rights to Abraham Shadeh. Under the terms of the contract, the entire balance would be currently due and owing.

Plaintiffs, however, claim that on October 10, 2017, the parties entered into an Amendment to Land Contract. Plaintiffs allege that the Amendment extended the land contract for a period of ten years and modified the payments. Despite the same, Plaintiffs allege that Defendants have breached the Amendment and have declared the entire balance due and owing.

On these general allegations, Plaintiffs filed a Complaint on claims titled (Count I) declaratory relief; (Count II) breach of contract – specific performance; and (Count III) breach of contract – monetary damages.

Defendants now move for summary disposition of Plaintiffs' claims – arguing that the same fail because they are barred by the statute of frauds.

And Defendants do so under MCR 2.116(C)(7) and (C)(10). A (C)(7) motion determines whether a claim is barred, among other grounds, by the statute of frauds.”¹ And a (C)(10) motion tests the factual support for a plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).²

Specifically, Defendants argue that Plaintiffs' claims are barred because the parties did not sign the alleged Amendment. Further, Defendants argue that Mackover never intended to grant an extension. Since the statute of frauds requires that the contract for the conveyance of land be in writing and signed by the party granting the same, Defendants argue that the alleged Amendment does not comply and is not enforceable.

Michigan law is clear and provides:

No estate or interest in lands, other than leases for a term not exceeding 1 year, nor any trust or power over or concerning lands, or in any matter relating thereto, shall hereafter be created, granted, assigned, surrendered, or declared unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing. MCL 566.106.

¹ When analyzing a (C)(7) motion, the Court accepts the plaintiff's well-pleaded allegations as true and construes them in the plaintiff's favor unless the allegations are contradicted by documentary evidence. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999); *Huron Tool & Eng'g Co v Precision Consulting Services, Inc*, 209 Mich App 365, 376-77; 532 NW2d 541 (1995).

² In such a motion, the moving party must specifically identify the issues that he believes present no genuine issue of material fact. *Maiden*, 461 Mich at 120. The opposing party may not rest on mere allegations or denials in his pleadings, but must, by affidavits or as otherwise provided in the rule, set forth specific facts showing a genuine issue for trial. *Id.* at 120-121. Where the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* at 120.

Further,

Every contract for the leasing for a longer period than 1 year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof be in writing, and signed by the party by whom the lease or sale is to be made, or by some person thereunto by him lawfully authorized in writing. . . . MCL 566.108.

In response, Plaintiffs argue that although the original land contract was set to expire on November 1, 2018, the parties agreed to an Amendment to Land Contract, which provided for a ten-year extension. Based on the Amendment, the land contract would expire on November 1, 2028. It is Plaintiffs' position that the Amendment was sent to them via email, and the email contained the electronic signature of Defendants' authorized agent, their attorney. Plaintiffs argue that the attorney's signature on the email provided a signed memorandum indicating Defendants' agreement to enter into the Amendment. As such, Plaintiffs argue that there is a valid, binding, and enforceable contract between the parties, and, therefore, the statute of frauds does not apply.

In support of their respective positions, both parties attach an unsigned Amendment to Land Contract. Plaintiffs include an email from Marc Hallowell, attorney for Hawk Investment and Mackover, to Raymond Salloum. The email states (in relevant part):

Attached is the proposed Land Contract Extension for the Hawk Investment/Wall Street Corp. contract and a copy of the Seller's assignment from Hawk Investment to Jack Mackover. As I indicated, I will need to see a copy of the assignment from Wall Street Corp. to your client. Please let me know if the amendment is acceptable. (Plaintiffs' Response Exhibit 1).

But Defendants claim that the Hallowell's email was meant to be only preliminary negotiations. Regardless, Defendants argue that neither Hallowell or Mackover signed the email. Further, Defendants allege that the email was sent six months prior to Mackover's death. And Defendants argue that Mackover had time to sign the Amendment prior to his death, and had he

intended to enter into the Amendment, he would have. Finally, Defendants argue that there is no evidence that Hallowell was “authorized” to sign the Amendment as Mackover’s agent. The Court agrees.

“Contracts conveying an interest in land made by an agent having no written authority are invalid under the statute of frauds unless ratified by the principal.” *Forge v Smith*, 458 Mich 198, 208-09; 580 NW2d 876 (1998). An attorney representing a client is not exempt from this requirement. Nor does the attorney-client relationship create a situation where consent is assumed or implied. Indeed, “when a client retains an attorney to represent the client in a transaction, the attorney has implied authority to negotiate the terms of an agreement or operative papers to their final form. But custom of the relationship does not imply an authority for the attorney to execute the documents on behalf of the client.” *Schafer v Barrier Island Station, Inc*, 946 F2d 1075, 1079 (4th Cir. 1991).

Here, it is undisputed that Jack Mackover did not sign the Amendment to Land Contract. Further, Plaintiff did not present any evidence, or even allege, that Hallowell had written authority to act as Mackover’s agent. Additionally, there is no evidence that Mackover ratified Hallowell’s actions. To the contrary, Defendants submitted Bonnie Mackover’s affidavit, which indicated that Jack Mackover never signed or intended to sign the Amendment. (Defendants’ Motion Exhibit A).

Based on the foregoing, if the Court were to find that the email created a valid contract, the contract would be void, as Hallowell did not have written authority to act as Mackover’s agent. As such, the unsigned Amendment to Land Contract does not comply with the statute of frauds and is not enforceable.

For the foregoing reasons and viewing all evidence in the light most favorable to Plaintiffs, the Court concludes that (1) the statute of frauds bars Plaintiffs' claims and (2) there are no material questions of fact in dispute, so Defendants are entitled to judgment matter of law. As such, Defendants' motion for summary disposition is GRANTED and Plaintiffs' Complaint is DISMISSED.

This is a final order that resolves the last pending claim and closes the case.

IT IS SO ORDERED.

June 5, 2019
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge