

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

**8 MILE WOODLAND LLC,  
Plaintiff,**

**v.**

**Case No. 19-173382-CB  
Hon. James M. Alexander**

**CHARLES WALKER, ET AL,  
Defendants.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Defendant R-T Specialty, LLC's motion for summary disposition. Under MCR 2.119(E)(3), there will be no oral argument.

According to Plaintiff's Complaint, Plaintiff contacted Defendant Charles Walker, an insurance agent, inquiring about commercial liability insurance for general liability and property damages coverage on its apartment complexes. After Walker submitted a proposal to Plaintiff, Plaintiff entered into a Commercial General Liability Contract (CGL) for a period of May 28, 2014 through May 28, 2015. Plaintiff alleges that the policy was renewed from May 28, 2015 to May 28, 2016.

Plaintiff alleges that, without its knowledge or approval, Walker sent an email to Defendant R-T Specialty with a change request form stating that Plaintiff wanted to cancel its general liability coverage retroactive to September 1, 2014. Plaintiff alleges that the change request form was fraudulently executed by Walker. Plaintiff further claims it was never notified that its general liability coverage had been cancelled.

On September 1, 2014, tenants were injured on the property and initiated suit against Plaintiff for their injuries. On November 17, 2014, Plaintiff received court documents from the injured tenants. Plaintiff claims that it forwarded the documents to Walker to be forwarded to Plaintiff's insurance provider, Defendant CIBA for indemnification of the claims. Plaintiff claims that it was not notified that Defendants would not be defending the suit on the basis that there was no coverage under the policy. Plaintiff learned that Defendants failed to defend the suit upon receiving a default judgment. Plaintiff was required to hire outside counsel and ultimately settled with the tenants.

On these general allegations, Plaintiff filed its Complaint on claims titled (Count I) breach of contract; (Count II) declaratory judgment; (Count III) failure to defend and indemnify; (Count IV) negligence; and (Count V) bad faith.

As stated, Defendant R-T Specialty now moves for summary disposition under MCR 2.116(C)(10). A (C)(10) motion tests the factual support for a plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).<sup>1</sup>

Defendant argues that Plaintiff's Complaint against R-T Specialty should be dismissed because there was no contract between the parties, and Defendant was not Plaintiff's insurer, so it had no duty to indemnify Plaintiff. Further, Defendant argues that, as a third party, it is not liable for any alleged fraud committed by Walker. Additionally, Defendant argues that Plaintiff has failed to properly plead any negligence claim against Defendant.

In response, Plaintiff argues that "[t]here are many unanswered questions regarding the extent of the Defendant's exact role and its relationship with all of the named parties in this case."

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<sup>1</sup> 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

(Plaintiff's Response, p. 8). Plaintiff argues that until discovery is complete, it cannot fully conclude Defendant's role in the case. As it relates to its negligence claim, Plaintiff alleges that Defendant was aware of the alleged fraud perpetrated by Walker, and as such, is liable for the same. Plaintiff argues that it is mere speculation by Defendant to conclude that Defendant did not owe a duty to Plaintiff.

In support of its position Plaintiff attaches: (1) an email string between Defendant and Charles Walker, (2) an email string between Defendant and Claims Adjusting Group, Inc., (3) what appears to be an expert of requests to admit, (4) an Agency Detail of R-T Specialty, and (5) page two of Defendant's motion. Noticeably absent is a contract or any communication between Plaintiff and Defendant.

The overriding theme of Plaintiff's response is that further discovery is needed to prove its case against Defendant. Plaintiff argues that at this stage in litigation, it is simply too early to dismiss Defendant as a party. Plaintiff indicates that depositions are scheduled to occur in late November and December, and Plaintiff expects to submit interrogatories to Defendants. This case, however, was filed on April 18, 2019. On July 12, 2019, the Court issued a Scheduling Order that provided all discovery must be completed by December 31, 2019.

First, Defendant argues that Plaintiff's claims for breach of contract, declaratory judgment, and failure to indemnify should be dismissed because there was not contract between Plaintiff and Defendant. In order to prove breach of contract, a plaintiff must establish: (1) the existence of a contract; (2) a breach of that contract; and (3) damages resulting from that breach. *Stoken v JET Electronics & Technology, Inc*, 174 Mich App 457, 463; 436 NW2d 389 (1988).

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moving party is entitled to judgment as a matter of law. *Id.* at 120.

As previously stated, Plaintiff has not provided a contract between Plaintiff and Defendant. Instead, Plaintiff argues that because Defendant holds licenses as a producer and resident surplus line producer, those classifications could affect the parties' relationship and contractual duties. This conclusory statement coupled with the fact that Defendant holds certain licenses does not provide any evidentiary support that a contract, or any contractual duties exists between the parties.

Indeed, the Michigan Court of Appeals has held that:

A party opposing a motion brought under C(10) may not rest upon the mere allegations or denials in that party's pleadings, but must by affidavit, deposition, admission, or other documentary evidence set forth specific facts showing that there is a genuine issue for trial. . . . [W]here the opposing party fails to come forward with evidence, beyond allegations or denials in the pleadings, to establish the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993) (internal citations omitted).

Plaintiff has failed to come forward with any evidence beyond allegations or denials to establish the existence of a material factual dispute as it related to Counts I-III of its Complaint.

Next, Defendant argues that Plaintiff's negligence claim should be dismissed because (1) Defendant is not liable for any alleged fraud committed by Defendant Walker, (2) Defendant does not owe any duties to Plaintiff, and (3) Plaintiff has not properly plead negligence against Defendant.

In order to establish a prima facie case of negligence, a plaintiff must establish that "(1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached that duty; (3) that the defendant's breach of duty was a proximate cause of the plaintiff's damages; and (4) that the plaintiff suffered damages." *Graves v Warner Bros*, 253 Mich App 486, 492; 656 NW2d 195 (2002). Whether a duty exists is a question of law for the Court. *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995). And, if the Court determines as a matter of law that Defendant owed no duty to Plaintiff, summary disposition is appropriate. *Dykema v Gus Macker Enterprises, Inc*, 196 Mich

App 6, 9; 492 NW2d 472 (1992).

In response, Plaintiff argues that since Defendant was aware of the alleged fraud perpetrated by Walker, Defendant could be liable for the same. Further, Plaintiff argues that as a sales representative, Defendant could owe a duty to Plaintiff. And, Plaintiff argues that further discovery is needed because it is “not confirmed that the Defendant did not owe a duty to the Plaintiff.” (Plaintiff’s Response, p. 10). But, like its contract claims, Plaintiff does not provide any evidence to support its allegations. As such, Plaintiff has failed to establish that a genuine issue of material fact exists as it relates to its negligence claim against Defendant.

As it related to Plaintiff’s bad faith claim, it is well-settled that “[u]nlike some other jurisdictions, ‘Michigan does not recognize a cause of action for breach of the implied covenant of good faith and fair dealing.’” *In re Leix Estate*, 289 Mich App 574, 591; 797 NW2d 673, 683 (2010); citing *Dykema Gossett PLLC v Ajluni*, 273 Mich App 1, 13; 730 NW2d 29 (2006). As such, Plaintiff’s claim for the same is dismissed.

As stated, the crux of Plaintiff’s argument is that summary disposition is premature if granted before discovery is complete. The Court of Appeals has explained:

Generally, summary disposition under MCR 2.116(C)(10) is premature if it is granted before discovery on a disputed issue is complete. However, the mere fact that the discovery period remains open does not automatically mean that the trial court’s decision to grant summary disposition was untimely or otherwise inappropriate. The question is whether further discovery stands a fair chance of uncovering factual support for the opposing party’s position. In addition, a party opposing summary disposition cannot simply state that summary disposition is premature without identifying a disputed issue and supporting that issue with independent evidence. The party opposing summary disposition must offer the required MCR 2.116(H) affidavits, with the probable testimony to support its contentions. *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 292-93; 769 NW2d 234 (2009).

As stated, the question is whether further discovery stands a fair chance of uncovering factual support for Plaintiff's claims. Here, the Court finds that no amount of discovery could justify recovery on Plaintiff's claims. Although Plaintiff states that further discovery is needed, Plaintiff fails to identify any specific disputed issue while supporting that issue with independent evidence. Further, Plaintiff has failed to comply with the requirements of MCR 2.116(H). As such, even though discovery is ongoing, summary disposition is appropriate based on the facts and circumstances present.

Based on the foregoing, Plaintiff has not established that there are genuine issues of material fact as it relates to Defendant R-T Specialty, LLC. As such, Defendant R-T Specialty, LLC's motion for summary is GRANTED, and Plaintiff's Complaint against Defendant R-T Specialty, LLC is DISMISSED.

**IT IS SO ORDERED.**

November 19, 2019  
Date

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