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STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

MERRIWEATHER, LTD,

Plaintiff,

vs.

Case No. 19-1833-CB
Hon Richard L. Caretti

NEW METHOD STEEL STAMPS, INC.,

Defendant.

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OPINION AND ORDER

Defendant New Method Steel Stamps, Inc. ("New Method") filed a motion for summary disposition under MCR 2.116(C)(7), (8) and (10) in lieu of an answer to Merriweather, LTD's ("Merriweather") Complaint.

I. Factual and Procedural Background

This breach of contract case arises from a settlement agreement following litigation regarding a tenancy. Merriweather, as landlord, leased commercial property to Defendant New Method. Merriweather subsequently brought an eviction action and other litigation against New Method.

In 2018, in settlement of various claims, the parties entered into a confidential Settlement Agreement and Mutual Release ("Settlement Agreement"). In the Settlement Agreement, New Method agreed to vacate the property, pay a certain sum in settlement of rent and maintenance, and leave the property in "broom clean" condition by September 30, 2018. It appears undisputed that New Method timely vacated the property and paid the settlement.

Instead, Merriweather alleges that New Method breached the Settlement Agreement by failing to leave the property in "broom clean" condition. Merriweather complains that New Method left the premises damaged and in a state of disrepair including damage to the floors, roof, bathrooms, lighting, wallpaper, thermostats and the asphalt in need of resurfacing.

On May 13, 2019, Merriweather filed its Complaint alleging: count I, breach of contract and count II, unjust enrichment. On June 7, 2019, New Method filed a motion for summary disposition. On July 22, 2019, the Court heard oral argument on the motion and took the matter under advisement.

II. Standards of Review

Summary disposition is proper where a release bars a claim. MCR 2.116(C)(7). "In analyzing a motion for summary disposition pursuant to MCR 2.116(C)(7), the contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant." *Pusakulich v Ironwood*, 247 Mich App 80, 82; 635 NW2d 323 (2001). The court must consider the pleadings, affidavits, depositions, admissions and documentary evidence filed or submitted by the parties to determine whether a genuine issue of material fact exists. MCR 2.116(G)(5); *Watts v Polaczyk*, 242 Mich App 600, 603; 619 NW2d 714 (2000).

Summary disposition under MCR 2.116(C)(8) is appropriate where a party fails to state a claim upon which relief can be granted. *Carter v Ann Arbor City Attorney*, 271 Mich App 425, 426-427; 722 NW2d 243 (2006) (citation omitted). A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 119-20; 597 NW2d 817 (1999). The court accepts all well-pleaded factual

allegations as true and construes them in a light most favorable to the non-moving party. *Id.* citation omitted. A court will only grant a motion under MCR 2.116(C)(8) where the claims alleged are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Id.* When deciding a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5).

A motion under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.* at 121. Indeed, “an adverse party may not rest upon the mere allegations or denials of his or her pleadings, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial.” MCR 2.116(G)(4).

III. Arguments

New Method argues that the release clause in the confidential Settlement Agreement bars the present action. Specifically, the Settlement Agreement contained broad release language that resolved three lawsuits—one in this Court, one in district court, and one in Wayne County Probate Court. Before entering the Settlement Agreement, according to New Method, the parties toured the premises with their

attorneys. In settlement of any claims that could have been brought, Merriweather released and discharged New Method. New Method argues that the “broom clean” condition referenced in the Settlement Agreement does not involve repairs to the roof, floor or parking lot.

In response, Merriweather argues that defendant New Method breached the Settlement Agreement because it did not leave the property in “broom clean” condition. Merriweather states that the release does not apply to enforcement of the Settlement Agreement.

IV. Law and Analysis

A. The Release, MCR 2.116(C)(7)

A release of liability is valid if it is fairly and knowingly made. *Denton v Utley*, 350 Mich 332, 342; 86 NW2d 537 (1957). The intent of the parties as expressed in the release governs the scope of a release. *Jaffa v Shacket*, 114 Mich App 626, 637; 319 NW2d 604 (1982). “If the language of the release is unambiguous, it must be construed, as a whole, according to its plain and ordinary meaning.” *Radu v Herndon & Herndon Investigations, Inc*, 302 Mich App 363, 374; 838 NW2d 720 (2013).

As part of the Settlement Agreement in this case, the parties mutually released each other. However, they did not release claims arising out of breach of the Settlement Agreement itself.¹ The release broadly states, in pertinent part, that Merriweather (and those generally related to that entity such as heirs, assigns, agents, etc.),

¹ Merriweather attaches the confidential Settlement Agreement as Exhibit A to its Judge's Copy. The parties have quoted, in their briefing, from section 2 of the Settlement Agreement relating to release.

[H]ereby releases, discharges and acquits, NMSS [New Method] . . . from any and all manner of action . . . and claims of every kind . . . accrued or unaccrued, known or unknown . . . which the releasing party ever had, now has or hereafter may in the future have against any person or entity released hereunder as a result of any fact, matter or thing existing as of the effective Date . . .

Merriweather does not dispute the scope of the release clause in the Settlement Agreement. Instead, Merriweather relies on the last sentence of the Release clause which states, “[n]otwithstanding the foregoing, nothing shall prevent the parties from enforcing this Agreement, which is the only remaining agreement between the parties.” Merriweather’s Exhibit A. Merriweather claims that New Method breached the Settlement Agreement itself by failing to leave the property in “broom clean” condition.

Yet much of Merriweather’s Complaint relates to alleged “significant damage to the property.” Complaint ¶12. In its Complaint, Merriweather seeks recovery for damage to the floors, roof repairs, damage to the bathrooms, lighting, wallpaper, asphalt, thermostats and “additional damage throughout the building.” *Id.* ¶13. Merriweather identifies no provision in the Settlement Agreement where New Method made any promise regarding property damage or maintenance. Moreover, according to the Settlement Agreement, the parties conducted a “walkthrough” and agreed upon payment of a certain sum to “be deemed full and final payment of any and all rent and or maintenance payments owed” by New Method. Merriweather’s Exhibit A at 2.

Therefore, the release clause in the Settlement Agreement bars Merriweather’s claims to the extent they rest on alleged property damage or maintenance obligations that may have existed apart from the Settlement Agreement. To the extent Merriweather seeks to recover for maintenance or property damage by enforcing the Settlement Agreement itself, Merriweather fails to state a claim because no provision in

the Settlement Agreement obligates New Method to repair or maintain the property. Thus, Merriweather is left with only the portion of its Complaint where it alleges New Method failed to leave the property in sufficiently clean condition.²

B. MCR 2.116(C)(10)

Regarding the condition in which it left the property, New Method also moved for summary disposition under MCR 2.116(C)(10). “A motion under MCR 2.116(C)(10) is generally premature if discovery has not been completed unless there is no fair likelihood that further discovery will yield support for the nonmoving party’s position.” *Liparoto Const, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 33–34; 772 NW2d 801 (2009) citation omitted. A court may grant summary disposition when further discovery does not stands a fair chance of uncovering factual support for the opposing party’s position. *Marilyn Froling Revocable Living Tr. v Bloomfield Hills Country Club*, 283 Mich App 264, 292; 769 NW2d 234 (2009). “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.” *Id.*

Here, New Method attaches two photographs to show that it left the property in clean condition. New Method’s Exhibit 2. In response, Merriweather argues that whether New Method breached the Settlement Agreement is “obviously” a disputed fact, yet Merriweather cites no evidence regarding the condition of the property upon New Method’s exit. While the parties have not conducted full discovery, Merriweather identifies no specific issue that requires further factual development. See again *Marilyn*

² The Settlement Agreement does not define “broom clean” and although commonly used, the phrase has no legal definition. Using an ordinary and plain reading, “broom clean” means the return of the property in clean condition, containing no debris.

Froling Revocable Living Tr, 283 Mich App at 292 (Summary disposition not per se inappropriate before discovery complete; a party opposing summary disposition cannot simply state that summary disposition is premature). Merriweather has not shown that further discovery would uncover additional support for its claims. See MCR 2.116(H). What's more, it stands to reason that Merriweather, as landlord, already possesses all necessary information to demonstrate the condition in which New Method left the property.

At oral argument Merriweather presented several additional photographs to the Court depicting, for example, alleged damage to the parking lot, roof or floor. As discussed in the previous section of this Opinion, the parties released those claims relating to property damage and maintenance issues. Regarding whether New Method breached the Settlement Agreement by failing to leave the property in broom clean condition, Merriweather failed to produce evidence sufficient to create a question of material fact. Put differently, Merriweather produced no evidence that New Method left the property in an unclean condition or with debris. For the above-stated reasons, Merriweather's claim in count I of its Complaint is dismissed.

C. Count II, Unjust Enrichment


The law will imply a contract to prevent unjust enrichment when one party inequitably receives and retains a benefit from another. *Martin v East Lansing School Dist*, 193 Mich App 166, 177, 483 NW2d 656 (1992). "Generally, an implied contract may not be found if there is an express contract *between the same parties* on the same subject matter." *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 194; 729 NW2d 898 (2006).

Here, the parties agree that the Settlement Agreement is a written contract between them. Merriweather's Complaint alleges that New Method obtained the benefit of the mutual release and the benefit of leasing the premises. Complaint ¶23. Given that the Settlement Agreement expressly releases all claims other than those arising under the Settlement Agreement, and that the Settlement Agreement has express provisions regarding the mutual release, without question, a written contract exists covering the same subject matter as the unjust enrichment claim. Therefore, count II of Merriweather's Complaint is also dismissed.

V. Conclusion

For the reasons set forth above, New Method's motion is GRANTED. In accordance with MCR 2.602(A)(3), this *Opinion and Order* resolves the last pending claim and closes this case.

IT IS SO ORDERED.


HONORABLE RICHARD L. CARETTI
Circuit Court Judge

DATE: August 15, 2019

cc: Mark W. Peyser, Esq.
Robert C. Davis, Esq.

