

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

ENTERPRISE ROMEO, LLC,

Plaintiff,

vs.

Case No. 2013-3220-CK

GJERGJ G. GOJCAJ and NATURAL 1
CORP, d/b/a TIMES SQUARE FAMILY
DINING,

Defendants.

and

NATURAL 1 CORP, d/b/a TIMES SQUARE
DINING,

Counter-Plaintiff,

vs.

ENTERPRISE ROMEO, LLC, RROK GOJCAJ
And MARA GOJCAJ,

Counter/Third Party Defendant.

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OPINION AND ORDER

Defendants/Counter-Plaintiffs Natural 1 Corp., d/b/a Times Square Family Dining (“Natural 1”) and Gjergj Gojcaj (collectively, “Defendants”) have filed a motion to amend their counterclaim. Plaintiff/Counter-Defendant Enterprise Romeo, LLC (“Plaintiff”) and Third Party Defendants Rrok Gojcaj and Mara Gojcaj have filed a joint response and request that the motion be denied.

Facts and Procedural History

This matter involves the purchase of real estate commonly known as 70927 Van Dyke, Bruce Twp., MI 48065 (“Subject Property”). Specifically, on February 28, 2011 Third Party Defendant Rrok Gojcaj (“R. Gojcaj”) purchased the Subject Property from Bender and Harlow Holdings, LLC (“Bender”) for \$110,000.00 pursuant to a “Real Estate Purchase Agreement” (“Purchase Agreement”). R. Gojcaj allegedly subsequently deeded the Subject Property to Plaintiff/Counter-Defendant Enterprise Romeo, LLC (“Enterprise”), an entity in which he is a member.

Since November 29, 2010, Natural 1 has operated a restaurant at the Subject Property pursuant to a lease between Natural 1 and Bender (“Lease”) and guaranteed by Defendant Gjergj Gojcaj (“G.Gojcaj”) and non-party Fron Gojcaj.

On May 3, 2013, Enterprise filed its complaint in this matter seeking to remove Defendants from the Subject Property pursuant to MCL 600.5714(1). On May 30, 2012, Defendants filed their joint counter and third party complaint (“Counter Complaint”). In the Counter Complaint, Defendants assert claims for: Count I- tortious interference with a business relationship against R. Gojcaj and Third Party Defendant Mara Gojcaj (“M. Gojcaj”) and Count II- Tortious Interference with a business expectancy against R. Gojcaj, M. Gojcaj.

On April 30, 2014, Defendants filed their instant motion to amend the Counter-Complaint to add a claim for reformation.

Standard of Review

MCR 2.118(A)(2) provides that leave to amend a pleading shall be freely given when justice so requires. A motion to amend ordinarily should be granted, unless one of the following particularized reasons exists: (1) undue delay, (2) bad faith or dilatory motive on the part of the movant, (3) repeated failure to cure deficiencies by amendments previously allowed, (4) undue

prejudice to the opposing party by virtue of allowance of the amendment, and (5) futility of amendment. *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 239-240; 615 NW2d 241 (2000). Delay alone does not justify denying a motion to amend, but a court may deny a motion to amend if the delay was in bad faith or if the opposing party suffered actual prejudice as a result. *Franchino v Franchino*, 263 Mich App 172, 191; 687 NW2d 620 (2004).

Arguments and Analysis

In their motion, Defendants contend that G. Gojcaj and R. Gojcaj had agreed, before the Purchase Agreement was executed, that R. Gojcaj's role in the transaction would be as a financier/mortgagee, with G. Gojcaj being the mortgagor/owner. Further, Defendants assert that R. Gojcaj's name was placed on the Purchase Agreement by mistake and that G. Gojcaj was the intended purchaser. As a result of the alleged mistake, Defendants seek to add a claim for reformation of the Purchase Agreement.

In their response to Plaintiffs' motion, Defendants contend that the motion should be denied as the amendment would be futile and would be filed in bad faith. While a trial court should freely grant leave to amend when justice so requires, leave should be denied where amending the complaint would be futile. *Jenks v Brown*, 219 Mich App 415, 420; 557 NW2d 114 (1996). An amendment is futile where, ignoring the substantive merits of the claim, it is legally insufficient on its face. *McNees v Cedar Springs Stamping Co*, 184 Mich App 101, 103; 457 NW2d 68 (1990).

Although Defendants do not attach a proposed amended counter/third party complaint to their motion, Defendants' proposed claim appears to be based on their assertion that R. Gojcaj agreed to fund Defendants' purchase of the Subject Property in exchange for a mortgage on the Subject Property. Further, Defendants contend that the Purchase Agreement mistakenly did not

reflect their agreement with R. Gojaj and should be reformed in order to properly reflect the agreement. However, it is undisputed that Defendants were not parties to the Purchase Agreement. A non-party to a contract may not obtain reformation of that contract. *Mate v Wolverine Mut Ins Co*, 233 Mich App 14; 592 NW2d 379 (1998). Since Defendants were not parties to the Purchase Agreement they may not reform it. As a result, Defendants' proposed amendment is futile and their motion must be denied.

Conclusion

Based upon the reasons set forth above, Defendants' motion for leave to file an amended counter-complaint is DENIED. This *Opinion and Order* does not resolve the last claim and does not close the case. See MCR 2.602(A)(3).

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: May 19, 2014

JCF/sr

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