

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

RAMCO HOOVER ELEVEN LLC

Plaintiff,

vs.

Case No. 2013-325-CK

WASIM SHAMASHA, RANNIE MATTI and  
THE PIZZA BOXX, INC.,

Defendants.

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OPINION AND ORDER

Defendants Wasim Shamasha, Rannie Matti and The Pizza Boxx, Inc. (collectively, “Defendants”) have filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). Plaintiff has filed a response and requests that the motion be denied or, in the alternative, that it be granted leave to file an amended complaint.

*Factual and Procedural Background*

This matter involves the commercial lease of a space within the Hoover Eleven Shopping Center in Warren, MI (“Leased Premises”). On September 23, 2010, a lease was executed by Plaintiff and non-party Grinderz of Warren, Inc. (“Lease”). Pursuant to the Lease, Grinderz of Warren, Inc. (“Grinderz of Warren”) contracted to lease the Leased Premises from Plaintiff for 5 years.

In early 2012, Defendant Wasim Shamasha created Grinderz on Hoover, Inc. (“Grinderz Hoover”) Defendant Ronnie Matti joined Defendant Wasim Shamasha in a business venture to purchase and assume the Lease and open a restaurant at the Leased Premises called “The Pizza Boxx.” During the course of their negotiations with Plaintiff, Defendants paid Plaintiff

\$5,500.00. Further, Defendants allegedly occupied the Leased Premises for 3 months while they negotiated with Plaintiff. The negotiations ultimately ended without a deal. In August 2012, Plaintiff delivered a demand for possession addressed to Grindorz of Warren to the Leased Premises. Defendants vacated the Leased Premises shortly after receiving the demand for possession.

In late 2012, Plaintiff filed an action with the 37<sup>th</sup> District Court seeking, *inter alia*, to evict Grindorz of Warren from the Leased Premises as a result of Grindorz of Warren's alleged default(s) under the Lease ("District Case"). On December 7, 2012, the parties to the District Case executed a "Confidential Settlement Agreement and Release" pursuant to which Grindorz of Warren and the other defendants agreed to consent to a judgment of possession in favor of Plaintiff relative to the Lease Premises. Further, the defendants agreed to pay \$12,000.00 to Plaintiff. In exchange for the consent judgment of possession and \$12,000.00, Plaintiff agreed to dismiss the District Case and release and discharge the defendants from "any and all claims, debts, demands, rights, charges, causes of action, or alleged causes of action in connection with [the Lease] and the guarantees of Nawal Garmo and Sabah Garmo executed in connection with [the Lease]."

On January 25, 2013, Plaintiff filed its complaint in this matter asserting claims for Count I- Failure to Pay Rent Under the Lease, Count II- Breach of Contract and Count III- Account Stated. On August 27, 2013, Defendants filed their instant motion for summary disposition. Plaintiff has since filed a response. On September 30, 2013, the Court held a hearing in connection with Defendants' motion. At the conclusion of the hearing, the Court took the matter under advisement. The Court has reviewed the materials submitted by the parties, as well as the arguments made at the hearing, and is now prepared to render its decision.

### *Standards of Review*

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party has failed to state a claim upon which relief may be granted. *Radtke v Everett*, 442 Mich 368, 373-374; 501 NW2d 155 (1993). A motion under MCR 2.116(C)(10), on the other hand, 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.

### *Arguments and Analysis*

In support of their motion, Defendants contend that they were not parties to the Lease or any other contract with Plaintiff, and that as a result Plaintiff's claims fail. In response, Plaintiff concedes that it refused to allow the Lease to be assigned to Defendants. Nevertheless, Plaintiff contends that Defendant should be bound under the Lease because they occupied the Leased Premises for 3 months and paid it \$5,500.00.

Plaintiff's argument sounds in privity of estate. Possession of property alone may create a privity of estate; however, privity of estate obligates the possessor to perform only those covenants that run with the land. *Buhl Land Co v Franklin Co*, 258 Mich 377, 379; 242 NW 772 (1932.) Payment of rent is a covenant that runs with the land. *Id.*

It is undisputed that Defendants possessed the Leased Premises for roughly three months during the course of the Lease. The Lease provides Grindorz of Warren was obligated to pay rent for the Leased Premises at a rate of \$1,756.15 per month during the period that Defendants possessed the Leased Premises. (*See* Defendants' Exhibit A.) Accordingly, the Court is satisfied that privity of estate existed for the period of time that Defendants possessed the Leased Premises, thereby requiring Defendants to pay the rent owed for the period of time that they were in possession. However, the Court is also convinced that Defendants' obligation to pay rent ended at the time that they vacated the Leased Premises. *See Riverbend Investors v Progressive Surface Preparation, LLC* 255 Mich App 327; 660 NW2d 373 (2003) (Because neither an assignment existed between defendant and plaintiff, nor was a privity of contract created, defendant's obligation for rent ceased upon vacating the property.) Consequently, since Defendant possessed the Leased Premises for three months, they were obligated to pay Plaintiff \$5,268.45. However, it is undisputed that Defendants in fact paid Plaintiff \$5,500.00. As a result, Defendants paid Plaintiff the amount that was properly due. Therefore, Plaintiff has not sustained any damages and as a result Defendants are entitled to summary disposition of Plaintiff's claims.

In its response, Plaintiff requests it be given leave to amend its complaint in the event that the Court grants Defendants' motion. However, given the fact that Plaintiff's request was made in response to Defendants' motion for summary disposition Defendants have not been given an opportunity to respond to Plaintiff's request. Accordingly, the Court is satisfied that appropriate manner to resolve Plaintiff's request is to deny the request without prejudice, which will allow it to file a motion for leave to file an amended complaint while allowing Defendants an opportunity to respond to the motion.

*Conclusion*

For the reasons set forth above, Defendants' motion for summary disposition is GRANTED. Plaintiff's request for leave to file an amended complaint is DENIED WITHOUT PREJUDICE. Pursuant to MCR 2.602(A)(3), this Opinion and Order resolves the last pending claim and CLOSES this case.

IT IS SO ORDERED.

/s/ Judge John C. Foster 28189

JCF/sr

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