

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

M & M 8 MILE 13109 ENTERTAINMENT LLC,  
a Michigan Limited Liability Company,  
M & M 8 MILE 13109 ENTERTAINMENT  
PROPERTIES LLC, a Michigan Limited Liability  
Company, 20516 WARD STREET PROPERTIES  
LLC, a Michigan limited Liability Company and  
MELISSA HASHEM, an individual,

Plaintiffs,

vs.

Case No. 2014-225-CK

JOYCE A. TROTTIER, an individual,  
TROTTIER, INC., a Michigan Corporation,  
CHARLENE BERTHIAUME SCHUPBACH,  
an individual, and MICHAEL BERTHIAUME,  
an individual, jointly and severally,

Defendants.

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OPINION AND ORDER

Plaintiffs and Defendants have filed cross motions for summary disposition pursuant to MCR 2.116(C)(10).

*Factual and Procedural History*

Defendants are the owners of a bar establishment and two parcels of real property associated with the bar. Defendants hold a Class C license (“the License”) issued by the Michigan Liquor Control Commission (“the Commission”). The bar and each parcel of property are subject to separate purchase agreements, (collectively, “the Purchase Agreements”), where Plaintiffs agreed to purchase, and Defendants agree to sell the bar and parcels of real property. When the Purchase Agreements were executed in June 2012, Plaintiffs tendered to Defendants deposits totaling \$100,000.00 dollars to keep the purchase open. The purchase and sale were

subject to various contingencies. The contingency that is now in dispute, and is expressly in the parties' Purchase Agreement, was securing the Commission's approval of the License transfer from Defendants to Plaintiffs. The Purchase Agreements expressly state, among other provisions, that the date of closing will take place within fourteen days after all of the contingencies in the parties' agreement are fulfilled. Plaintiffs requested the transfer of the License after completing the final deposit payment, but was subsequently denied by the Commission. On March 13, 2013, Plaintiffs appealed the Commission's denial and that appeal is pending.

The instant litigation arises out of the parties' dispute as to whether the Purchase Agreements expired after a reasonable time, and are no longer binding on Defendants. The parties have filed cross motions for summary disposition pursuant to MCR 2.116(C)(10).

#### *Standard of Review*

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.

#### *Arguments and Analysis*

In support of their motion, and in response to Plaintiffs' motion, Defendants aver that because there was no deadline stated in the Purchase Agreements for a time for performance, a "reasonable time" is presumed. Accordingly, Defendants argue that they are relieved of their

obligations under the Purchase Agreements because closing of the sale did not take place within a “reasonable time”.

In response, Plaintiffs contend that the Purchase Agreements do specify a time for performance and that the obligation to perform by paying the balance of the sale must occur only after securing the Commission’s approval of the license transfer because that was the principal contingency of the agreements between the parties. Section IV and IX of the Purchase Agreement related to the sale of the bar govern the transfer of the liquor license and the time for performance. Specifically, section IV and IX provide:

**IV. TRANSFER OF MLCC LICENSES:** It is agreed and understood between the parties herein that immediately after the execution of this Agreement, both parties will take whatever steps shall be necessary in a diligent and expeditious manner to have the Liquor Licenses transferred from the Seller to the Purchaser by the MLCC and the City of Detroit. The parties further agree to deliver to each other or the appropriate governmental agencies any legal instruments and applications requested, including the right for an appeal hearing of any denial of the Purchaser’s request to transfer which may be necessary to effectuate and consummate this transaction.

**IX. DATE OF CLOSING:** It is further agreed between the parties herein that this transaction shall be consummated within fourteen (14) calendar days after all of the contingencies in this agreement and all companion offers to purchase real estate are fulfilled. At closing the Seller shall deliver to Purchaser a fully executed Bill of Sale, Assignment of Interest in the Liquor Licenses with all assignable Permits and take possession of the Liquor Licenses, along with furniture, fixtures and equipment recited on Exhibit “A”. Closing shall be conducted at the offices of Frank J. Palazzolo, Esq., 33830 Harper, Clinton Township, Michigan 48035 or at such other location as agreed to by the parties.

Further, section IV governs the Purchaser’s inability or failure to consummate, and provides:

It is agreed that in the event the MLCC, after exhaustion of all appellate rights of the purchaser, shall finally refuse to transfer the liquor licenses after the Purchaser has complied with all of the terms of this Agreement, then Purchaser may assign all of the Purchaser’s rights pursuant to this asset P.A. to a Third Party Purchaser which assignment shall not require the approval of Seller. Furthermore the sole

Member of Purchaser may assign all or a portion of her membership interest to a person or persons of her sole choosing without the consent of Seller.

Defendants contend that it was not in contemplation of the parties to take this long to close the sale because the normal time to obtain a liquor license from the State of Michigan is no longer than six months and that, as of now, it has been over twenty-two months that Plaintiffs have failed to obtain the License. It is well settled law in Michigan that if a contract is unambiguous, a court is to look to the plain meaning of the contract and not create ambiguity where none previously existed. *Smith v Physicians Health Plan, Inc*, 444 Mich 743, 759; 514 NW2d 150 (1994). In this current matter, the language in the Purchase Agreements are clear and unambiguous. The explicit terms of the Purchase Agreements provide that the closing of the sale would not take place until fourteen days after all of the contingences in the Purchase Agreement, including the transfer of the License, took place. The Purchase Agreement expressly provides that if the request for the License was denied, the Plaintiffs are permitted to appeal the decision. After the Commission denied Plaintiffs' request for the license, Plaintiffs filed their first appeal that is currently pending. In reading the parties' Purchase Agreement as a whole the Court is convinced that the parties intended to give Plaintiffs as much time as was needed to obtain the License and consummate the sale.

Additionally, there is nothing in the written contract, or in the conduct of the parties, that establishes the fact that time is of the essence of the contract. Where a contract for the sale of land does not include provision making time of the essence, time will not be held to be of the essence of the contract, where the seller did not insist on prompt payment by purchaser. *Waller v Lieberman*, 214 Mich 428; 183 NW2d 235 (1921). In this case, the Purchase Agreements state that the sale takes place after the contingencies are met and since the contingences have not been met the sale does not need to be closed.

Even assuming the Purchase Agreements did not expressly provide that the parties' agreements were conditioned upon the Commission's approval of Plaintiffs' transfer of the License, the Defendants' obligations under the Purchase Agreements became fixed when they accepted Plaintiffs' \$100,000.00 deposit to keep the sale open. Therefore, the Court believes that Defendants' argument that the closing of this sale did not take place within a "reasonable time" is meritless. Accordingly, Defendants are not entitled to summary disposition.

Defendants also argue that it would be a "gross injustice" that the Purchase Agreements be binding without a determination date. However, Defendants have failed to explain their assertions and have not cited supporting authority. This Court will not search for authority to sustain a party's position. As it has not been properly presented, this Court declines to address this issue. *Byrne v Schneider's Iron & Metal, Inc*, 190 Mich App 176, 183; 475 NW2d 854 (1991). Further, as discussed above the Purchase Agreements do provide a determination date, i.e. within 14 days after all contingencies are met or Plaintiffs' appellate rights are extinguished. Accordingly, Defendant's contention is without merit. For these reasons, Defendants have failed to establish that a genuine issue of material fact exists as to whether the contingencies in the Purchase Agreements must be met within a reasonable time; therefore, Defendants' motion for summary disposition must be denied and the Plaintiff's motion for summary disposition must be granted.

#### *Conclusion*

For the reasons set forth above, Plaintiffs' motion for summary disposition is GRANTED. Further, Defendants' motion for summary disposition is DENIED. 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/ John C. Foster  
JOHN C. FOSTER, Circuit Judge

Dated: July 17, 2014

JCF/sr

Cc: *via e-mail only*

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