

EV

## STATE OF MICHIGAN

## SIXTEENTH JUDICIAL CIRCUIT COURT

NEW BALTIMORE BAKER BUILDING, LLC,

Plaintiff/Counter-defendant,

vs.

Case No. 17-2268-CB

JOSEPH D. STABILE, JDS BAKERY, LLC,  
DOROTHY J. STABILE, WILLIAM BAKER  
BUILDING, LLC, FOOD CONSULTING  
SOLUTIONS, LLC, and JOHN M. PALFFY, d/b/a  
JMP FINANCIAL, INC.Defendants/Counter-plaintiffs.  

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OPINION AND ORDER

Plaintiff/Counter-Defendant New Baltimore Baker Building, LLC ("Plaintiff") filed a motion for summary disposition under MCR 2.116(C)(9) and (10) of its Third Amended Complaint.

**I. Factual and Procedural Background**

This case arises from a commercial lease. The tenant, Defendant William Baker Building, LLC, ("William Baker Building") previously owned property commonly known as 51021 Washington Street, New Baltimore, Michigan ("Property")<sup>1</sup> Select Commercial Assets, LLC ("Select Commercial"), not a party in this litigation, acquired the Property in March 2015 when Joseph Stabile, as manager of William Baker Building, executed a Warranty Deed in Lieu of Foreclosure. Select Commercial purchased the paper from the lender.

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<sup>1</sup> The Third Amended Complaint states the address as 51005 Washington Street, New Baltimore, Michigan.

Select Commercial then entered into a written Lease Agreement on March 20, 2015 with William Baker Building permitting it to remain in possession of the Property as a tenant. Select Commercial subsequently sold the Property to Plaintiff in December 2016 and Plaintiff became assignee of the Lease. Rent under the Lease was \$2041 per month. The Lease terminated on March 31, 2018. In June 2017, Plaintiff obtained a judgment of possession of the Property.

Defendants Mr. and Ms. Stabile are members of JDS Bakery and William Baker Building, which have no formal operating agreement, no corporate records and have never maintained such records other than an occasional annual report. Further, William Baker Building and JDS Bakery are not in good standing. At some time during 2016, Mr. Stabile subleased a portion of the Property to defendant Greg R. Dilone, Jr.

The Lease required William Baker Building to maintain the Property in good repair to the reasonable satisfaction of the landlord. Plaintiff alleges that William Baker Building failed to comply with terms of the Lease, did not pay all rent due, damaged the Property, and had an unauthorized sublet tenant. Plaintiff further alleges that the Warranty Deed transferred to Select Commercial all real and personal property in the building, including equipment and fixtures, some of which has been converted.

Plaintiff filed its first Complaint on June 23, 2017, followed by an Amended Complaint on July 14, 2017, a Second Amended Complaint on September 25, 2017, and a Third Amended Complaint on July 31, 2018. In the Third Amended Complaint, Plaintiff alleges: count I, breach of lease agreement against "Stabile, JDS and Baker Building"; count II, tortious interference with a business expectancy against "all defendants other than Stabile"; count III, damages to property "against Stabile, JDS,

Palffy and Baker Building”; count IV, damages to property against “J. Stabile and Greg R. Dilone, Jr.”; count V, conversion of fixtures and equipment “against J. Stabile, JDS and Baker Building”; count VI, contractual indemnity “against J. Stabile and Baker Building”; count VII, fraud against “JDS, Baker Building and J. Stabile”; count VIII, conspiracy “against Palffy and Stabile”; and count IX, piercing the corporate veil “against JDS and Baker Building.”

William Baker Building filed a Counter-complaint against Plaintiff on July 13, 2017 alleging: count I, forcible entry and detainer; count II, statutory conversion; and count III, claim and delivery.

On May 28, 2019, the Court heard oral argument and made a ruling on Plaintiff’s motion. This *Opinion and Order* articulates the reasoning supporting the Court’s ruling.

## **II. Standards of Review**

Summary disposition is warranted pursuant to MCR 2.116(C)(9) when “[t]he opposing party has failed to state a valid defense to a claim asserted against him or her.” A summary disposition motion under MCR 2.116(C)(9) tests the sufficiency of a defendant’s pleadings by accepting all well-pleaded allegations as true. *Id.* “If the defenses are so clearly untenable as a matter of law that no factual development could possibly deny plaintiff’s right to recovery, then summary disposition is proper.” *Village of Dimondale v Grable*, 240 Mich App 553, 564; 618 NW2d 23 (2000).

The Court will grant a motion for summary disposition under MCR 2.116(C)(10) if the documentary evidence shows no genuine issue of material fact. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-55; 597 NW2d 28 (1999). The party opposing the motion for summary disposition has the burden of showing that a genuine issue of disputed fact

exists. *Fulton v Pontiac Gen Hosp*, 160 Mich App 728, 735; 408 NW2d 536 (1987). The opposing party may not then rest on mere allegations or denials in the pleadings but must, by affidavit or other documentary evidence, set forth specific facts showing a genuine issue for trial. MCR 2.116(G)(4). The Court does not assess credibility, weigh the evidence, or resolve factual disputes; if material evidence conflicts, the Court will deny the motion for summary disposition under MCR 2.116(C)(10). *Pioneer State Mut Ins Co v Dells*, 301 Mich App 368, 377; 836 NW2d 257 (2013).

### **III. Arguments, Law and Analysis**

#### **A. Count I, Breach of the Lease:**

Plaintiff first argues that no question remains that William Baker Building breached the lease for failing to pay rent, insure the building, and failing to maintain the building.

To establish a breach of contract, a plaintiff must show “(1) that there was a contract, (2) that the other party breached the contract and, (3) that the party asserting breach of contract suffered damages as a result of the breach.” *Miller-Davis Co v Ahrens Construction., Inc*, 296 Mich App 56, 71; 817 NW2d 609 (2012).

Here, the parties do not dispute the existence of a contract in the form of a Lease. To show breach of the Lease, Plaintiff attaches pictures showing the condition of the Property with holes in drywall, broken windows, damaged door frames, etc. Plaintiff's Exhibit G. According to Plaintiff, Mr. Stabile admitted in his deposition to breaches for failure to maintain insurance and pay rent. Exhibit A, 34, 37, 42-45. In the Response brief, Defendants admit that Plaintiff can show failure to pay rent through the

full term of the Lease. Further, Mr. Stabile admits not maintaining insurance on the building at least at some point in time during the Lease. Answer, ¶42.

In response to Plaintiff's evidence of the condition of the Property and other failures under the Lease, Defendants produced no evidence to create any material question of fact. As a result, the undisputed evidence shows damage to the Property and failure to pay rent contrary to Lease terms. See Lease ¶¶4, 8, 11, Plaintiff's Exhibit B. Therefore, Plaintiff is entitled to summary disposition on count I for breach of the Lease.

B. Count V, Conversion:

Plaintiff next argues that Mr. Stabile, William Baker Building, and JDS Bakery converted fixtures, equipment and other personal property. Plaintiff relies on the conveyance language of the Warranty Deed to show that it owned all the property in the building. Plaintiff claims Mr. Stabile admitted removing personal property from the building and such removal, without Plaintiff's consent, was inconsistent with Plaintiff's ownership in the property. Plaintiff also seeks to treble any damages under statutory conversion.

Conversion is any "distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein." *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992).

The language of the Warranty Deed conveyed fixtures and improvements along with all personal property located at the Property. See, Plaintiff's Exhibit C. Further, in his deposition testimony, Mr. Stabile admitted moving some equipment, fixtures, and personal property to another building. Plaintiff's Exhibit A at 68, 71. However, Mr.

Stabile claims that the property “was all mine.” *Id.* at 72. Mr. Stabile also testified that some of the items on the Stahl Bakery appraisal form no longer exists and some of it remains in the building. *Id.*

Plaintiff additionally cites to an email from Mr. Stabile to John Palffy instructing him to remove items from the bakery. *Id.* at 51 and Exhibit E. Plaintiff includes a document as its Exhibit F entitled “Stahl’s Bakery Appraisal”, which contains a list of items like ovens, slicers, refrigerators and bowls, etc. along with a “forced sale value.” However, Plaintiff provides no information regarding the origination of the appraisal document or whether it reflects the items Plaintiff claims were converted. Plaintiff also does not specify which defendants are responsible for the alleged conversion—Plaintiff relies on the deposition of Mr. Stabile, yet names JDS Bakery and William Baker Building as additional defendants in the conversion count.

While the Warranty Deed states that it conveys fixtures and improvements, and Mr. Stabile admits to removing property, the Court has insufficient evidence to conclude, as a matter of law, that the property removed was the same property conveyed in the Deed. Plaintiff also did not produce specific information regarding what Property remains, what property was removed, and who removed it. Therefore, Plaintiff is not entitled to summary disposition for its claim of conversion.

C. Count III, Tortious Damage to the Building and Count IV, Indemnification:

Plaintiff next argues that the undisputed evidence shows that Defendants damaged real and personal property and William Baker Building agreed to indemnify Plaintiff for that damage. Specifically, Plaintiff claims Defendants neglected the Property and intentionally or maliciously caused destruction.

Plaintiff cites only to a single case for the proposition that a person has a duty to act so “as not to injure another.” Plaintiff cites no authority for a claim of tortious damage to a building and does not clearly identify what legal theory upon which it relies in count III.

Regarding count IV for indemnification, Plaintiff does not cite the specific Lease provision upon which it relies. The Lease provides, in section 9, in pertinent part, “Tenant will indemnify and defend Landlord against all claims for bodily injury or property damage relating to the Premises.” Plaintiff’s Exhibit B. Plaintiff has not shown that it defended or suffered loss from a claim for bodily injury or property damage. Rather, Plaintiff itself asserts a claim for property damage and seeks to use the indemnification clause as insurance against conditions relating to the Property. Plaintiff cites no support for such a reading of an indemnification clause. For these reasons, Plaintiff’s motion for summary disposition on counts III and IV is denied.

D. Count II, Tortious Interference:

Plaintiff next argues that Defendants Palffy and Food Consulting Solutions, LLC wrongfully interfered with Plaintiff’s Lease with William Baker Building by advising and encouraging Mr. Stabile to breach the Lease Agreement.

To succeed on a claim of tortious interference with a business expectancy, a plaintiff must establish the existence of a valid business relationship or expectancy, that defendant knew of the expectancy, that defendant intentionally interfered with the expectancy, causing a breach or termination of the expectancy, resulting in damage to the plaintiff. *Puetz v Spectrum Health Hosps*, 324 Mich App 51, 78; 919 NW2d 439 (2018) citation omitted.

Plaintiff relies on its Lease relationship with William Baker Building to show a business relationship. Plaintiff relies exclusively on emails between Mr. Stabile and Mr. Palffy to show Mr. Palffy knew of the relationship and advised Mr. Stabile to breach the Lease. Plaintiff's Exhibit H.

Specifically, Plaintiff's Exhibit H is an email from John Palffy to Joe Stabile, dated March 25, 2017, describing the need for a meeting regarding issues the parties must discuss—specifically “phone/fax”, insurance, payments owed, and capitalization of a business. The email references an agreement of some sort and money owed. A follow-up email from Joe Stabile on March 26, 2017, requests that the agenda also include a city inspection, a signed agreement and a lease with Yakem. *Id.* Then John Palffy responds discussing concerns regarding inspections and the need for a conference call regarding the agreement.

Under a subsection (c) in the email response, entitled lease, John Palffy writes, “There will be a court date about 45 days after the demand notice . . . since this is his third try we should assume even the numb nut lawyer gets it right this time.” The email continues to discuss potential outcomes and the possibility of losing “on either the taxes or rent” and the parties anticipated response, including doing nothing, paying, negotiating or appealing or countersuing.

The subject and nature of the discussion in the emails is unclear. Without further testimony authenticating the emails and placing them in context, they do not establish, as a matter of law, that Defendants Palffy and Food Consulting Solutions, LLC intentionally interfered with Plaintiff's business expectancy causing a breach or termination of the expectancy.



More fully stated, the emails, standing alone, do not provide evidence of *causation* of termination of Plaintiff's Lease. Instead, the parties appear to be contemplating a course of action in response to eviction proceedings already in process. Mr. Palffy offers his understanding of the process then advises Mr. Stabile to not rely on that interpretation but to seek counsel. Even if the email exchanges show evidence that Mr. Stabile pursued another business venture or lease agreement, it does not follow that one business or consulting arrangement necessarily comes at the expense or to the exclusion of Plaintiff's Lease. The Court simply has insufficient information to reach the conclusion that Mr. Palffy intentionally interfered with Plaintiff's business expectancy. For these reasons, Plaintiff's motion for summary disposition on count II is denied.

E. Count VII, Fraud:

Plaintiff next seeks summary disposition on its fraud claim in count VII on the basis that Mr. Stabile and William Baker Building intentionally misrepresented their ownership of fixtures and equipment. Plaintiff claims that it and its predecessor in interest relied on false statements that Defendants had the authority to convey fixtures and equipment in the building.

To recover on a claim of fraud, plaintiff must show (1) a material representation made by defendant to plaintiff, (2) the representation was false, (3) defendant knew or should have known of the falsity at the time of making the representation, (4) defendant intended for plaintiff to act upon the representation, (5) plaintiff did act on the representation, and (6) plaintiff suffered injury as a result. *City of Novi v Robert Adell Children's Funded Trust*, 473 Mich 242, 253 n 8; 701 NW2d 144 (2005).

Reliance on a misrepresentation must be reasonable. *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 690-691; 599 NW2d 546 (1999). "An allegation of fraud based on misrepresentations made to a third party does not constitute a valid fraud claim." *International Brotherhood of Electrical Workers, Local Union No 58 v McNulty*, 214 Mich App 437, 447; 543 NW2d 25 (1995).

To the extent that Plaintiff's theory under count VII depends on representations made to its predecessor, it fails to even state a claim because a fraud claim cannot rest on misrepresentations made to a third party. That is, a Plaintiff cannot show reasonable reliance on statements made to someone else.

While Plaintiff states in its brief that Defendants also made misrepresentations of ownership to Plaintiff, Plaintiff has not identified with particularity any such statements. The representations made in the context of the conveyance of the Warranty Deed occurred before Plaintiff acquired an interest in the Property. Therefore, Plaintiff has not shown factual support entitling it to summary disposition on its fraud claim.

F. Count IX, Piercing the Corporate Veil:

Plaintiff urges the Court to pierce the corporate veil of William Baker Building and JDS Bakery because Mr. Stabile admits that he and his wife Dorothy Stabile comingled assets, failed to maintain separate books, bank accounts, keep records, observe corporate formalities or keep the corporations in good standing. Therefore, Plaintiff argues that the Stabiles used the corporate form as a mere alter ego and should be held personally liable.

No single rule determines when a corporate entity may be disregarded. *Papo v Aglo Restaurants of San Jose, Inc*, 149 Mich App 285, 301; 386 NW2d 177 (1986).

Instead, courts consider the relevant facts in light of the corporation's economic justification to determine abuse of the corporate form. *Klager v Robert Meyer Co*, 415 Mich 402, 411-412; 329 NW2d 721 (1982). Generally, "piercing the corporate veil" is justified where (1) the corporate entity is a mere instrumentality of another entity or individual, (2) the corporate entity is used to commit a fraud or wrong, and (3) the plaintiff suffers an unjust loss or injury as a result. *SCD Chemical Distributors, Inc v Medley*, 203 Mich App 374, 381; 512 NW2d 86 (1994).

Here, the evidence shows that the Stables disregarded some corporate formalities and obligations. See Answer, ¶¶ 25, 26; Plaintiff's Exhibit A at 18, 29-31, 77-78 (Mr. Stabile admitted in his deposition testimony that he did not produce records for William Baker Building and had no bank account for it).

Further, given the possible intentional nature of some of the damage shown to the building in count I—broken windows and holes in the wall—an injustice would result to Plaintiff if the Stables could use the corporate form to commit destruction of property. While Defendants, in their Response Exhibit 5 attach some bank statements for JDS Bakery from January and February 2016, the statements contain several overdraft fees and do not show adequate capitalization. Defendants have not responded to Plaintiff's motion with evidence showing that at the time of the alleged breach of the Lease, Defendants maintained the corporations as distinct entities. Consequently, Plaintiff's motion for summary disposition for piercing the corporate veil is granted.

G. Count VIII, Civil Conspiracy:

Plaintiff argues that Mr. Palffy conspired with Mr. Stabile to breach the William Baker Building Lease, convert and damage property, and interfere with Plaintiff's contractual rights.

"A civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means." *Admiral Ins. Co. v Columbia Cas Ins Co*, 194 Mich App 300, 313; 486 NW2d 351 (1992). Further, "a claim for civil conspiracy may not exist in the air; rather, it is necessary to prove a separate, actionable tort." *Early Detection Center, PC v New York Life Ins Co*, 157 Mich App 618, 632; 403 NW2d 830 (1986).

Plaintiff has not established a right to summary disposition on a separate or actionable tort and therefore has not shown the right to recover for civil conspiracy. Moreover, Plaintiff has not shown evidence that establishes, as a matter of law that Mr. Stabile and Mr. Palffy conspired. Therefore, Plaintiff's motion on count VIII is denied.

#### H. Attorney's Fees and Costs:

Finally, Plaintiff states that it incurred fees of \$61,559.65. Plaintiff argues that the Lease requires William Baker Building to pay all reasonable legal fees, costs and expenses incurred in eviction and collections. Plaintiff shows no evidence of the fees and expenses and has not shown their reasonableness. Therefore, Plaintiff's motion for summary disposition is also denied without prejudice with respect to fees.

### **IV. Conclusion**

For the reasons set forth above, Plaintiff's motion is GRANTED in part and DENIED in part. Specifically, Plaintiff's motion is granted on counts I and IX for breach of the lease and piercing the corporate veil. Plaintiff's motion is denied in all other

respects. Pursuant to MCR 2.602(A)(3), this *Opinion and Order* neither resolves the last pending claim nor closes this case.

IT IS SO ORDERED.



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HONORABLE RICHARD L. CARETTI

DATE: May 31, 2019

cc: Mark W. Sadecki  
Justin D. Vade Vrede  
Michael J. Rock  
John M. Palffy

