

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

RALPH ROBERTS REALTY, LLC,
Plaintiff,

vs.

Case No. 17-3025-CB

ED STANEK,
26391 COMPSON STREET, LLC,
EDKEN REAL ESTATE, LLC,
and STANEK INVESTMENT PROPERTIES, LLC,
Defendants.

OPINION AND ORDER

Defendants Ed Stanek, 26391 Compson Street, LLC, Edken Real Estate, LLC and Stanek Investment Properties, LLC (collectively "Defendants") filed a motion for summary disposition under MCR 2.116(C)(7), (8), and (10). Defendants also seek injunctive relief in the form of an order of permanent removal of Ralph Robert Realty's claims of interest filed against the properties.

I. Factual and Procedural Background

Plaintiff Ralph Roberts Realty, LLC ("Ralph Roberts Realty"), a Michigan real estate brokerage firm, seeks to enforce alleged oral agreements¹ for fifty-percent of the net equity/appreciation in properties that Defendants own. Ralph Roberts Realty alleges that Mr. Stanek acquired four parcels of residential real estate from 2010-2014 through its Investor Program.

Defendants 26391 Compson Street LLC, Edken Real Estate, LLC and Stanek Investment Properties LLC are Michigan limited liability companies that Mr. Stanek organized and owns to

¹ Ralph Roberts Realty attaches to its complaint an unsigned copy of an investor agreement.

hold his investment properties. Answer ¶4-6. Ralph Roberts Realty alleges that under its investor program, on behalf of Defendants, it successfully bid at foreclosure auctions to purchase real property located at: 316 Wixom Road #33, Wixom, Michigan (January 2010); 26391 Compson Street, Roseville, Michigan (February 2011); 32935 Gallo Lane #1, Warren, Michigan (June 2012); and 26670 Parkington Street, Roseville Michigan (November 2015).

In exchange for its services, Ralph Roberts received a fee of \$5000 per property. Ralph Roberts Realty filed a claim of interest on the properties because it claims that the parties also had an oral agreement that Ralph Roberts Realty would receive 50 percent of the equity in the properties after five years or upon their sale.

In 2012, Ralph Roberts Realty filed for bankruptcy protection and reorganization under Chapter 11 of the Bankruptcy Code. Ralph Roberts Realty filed its complaint on August 16, 2017 alleging: count I, breach of contract and count II, unjust enrichment. The Court heard oral argument on Defendants' motion for summary disposition and took the matter under advisement.

II. Standard of Review

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).

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 rest upon mere allegations or denials in the pleadings but must, by affidavit or other documentary evidence, set forth specific facts showing that there is 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 and Analysis

Statute of Frauds

Defendants argue that the statute of frauds bars Ralph Robert Realty's claims. Ralph Roberts Realty responds that the statute of frauds does not apply to pre-existing oral joint-venture agreements.

The statute of frauds requires contracts for the sale or for an interest in land to be written and signed. MCL 566.108. Ralph Roberts Realty recognizes that it does not have signed agreements but instead seeks to enforce the alleged oral arrangements with Defendants based on a line of cases holding that the statute of frauds does not apply to pre-existing, oral joint-venture agreements to share profits and losses from the purchase of real estate. See, e.g. *Price v Nellist*, 316 Mich 418, 422; 25 NW2d 512 (1947)(The "agreements to share *profits and losses* arising from the purchase and sale of real estate are not contracts for the sale or transfer of interests in

land and need not be in writing.”); *Koffman v Mathews*, 352 Mich 390, 399–400; 89 NW2d 756 (1958) (“The general rule is that agreements to share *profits and losses* arising from the purchase and sale of real estate . . . need not be in writing.”)

Importantly though, this Court has previously distinguished *Price* because there the parties agreed to share profits *and losses*. Here, Plaintiff alleges only that it is entitled to profits—or “net equity.” Complaint ¶19. To the extent that Plaintiff seeks to apply the joint-venture exception to the statute of frauds, the elements of a joint venture are: (a) an agreement indicating an intention to undertake a joint venture; (b) a joint undertaking of (c) a single project for profit; (d) *a sharing of profits as well as losses*; (e) contribution of skills or property by the parties; (f) *community interest and control over* the subject matter of the enterprise. *Meyers v Robb*, 82 Mich App 549, 557; 267 NW2d 450 (1978) citing *Hathaway v Porter Royalty Pool, Inc*, 296 Mich 90, 295 NW 571 (1941) emphasis added.

In the present case, the alleged arrangements only permit Ralph Roberts Realty to partake in equity from appreciation but do not hold Plaintiff responsible for potential losses in value. Further, Ralph Roberts Realty did not exercise any community interest or control over the property. Exhibit 1, ¶7; 10(b)(ii). In order for Ralph Roberts Realty to have a true pre-existing joint-venture agreement with Defendants, Ralph Roberts Realty must have agreed to share some form of risk of loss.²

Otherwise, if the Court were to adopt Ralph Roberts Realty’s reasoning, the exception to the statute of frauds would overtake the rule. That is, a party without a signed writing relating to real property could always argue that it relies on a preceding oral arrangement—precisely the

² While Ralph Roberts Realty argues that it risked losing its time if the foreclosed properties were redeemed, that argument ignores the fact that it also was engaged in the business of real estate sales and stood to collect a significant commission in compensation for time locating the various properties.

sort of cases that the statute of frauds aims to prevent.³ The line of cases to which Ralph Roberts Realty cites merely articulate a narrow exception to the well-established statute of frauds principles which only applies where parties have agreed to a joint endeavor, which necessarily must include shared risk of loss.

Additionally, as other courts considering these arrangements have also concluded, Ralph Robert Realty's alleged interest lies more clearly in the real property than in the business of a joint-endeavor. First, Ralph Roberts Realty alleges a distinct agreement for each property as opposed to a single, pre-existing partnership. Significantly, it appears that the alleged joint-venture between the parties only took effect when Defendants actually acquired a specific property. *Id.* ¶B 1. Further, in addition to only agreeing to reap benefits from appreciation without committing to any of the expenses of the renovations, taxes etc., Ralph Roberts Realty also filed a claim of interest against each property. Ralph Roberts Realty alleges that the unsigned contract attached to its Complaint reflects the terms of its alleged agreements with Defendants. That contract states that the parties agreed to permit Plaintiff to record a claim of interest to "provide notice to third parties of Realty's *interest in the Home.*" Plaintiff's Complaint Exhibit 1, ¶8, emphasis added.

To the extent that the promise of fifty-percent of appreciation formed part of Ralph Robert Realty's compensation for its broker services, the statute of frauds would also apply to the alleged oral commission. MCL 566.132(1)(e) plainly provides that an agreement to pay a commission for or upon the sale of an interest in real estate is void unless that agreement is in writing and signed by the party to be charged. See generally, *Judy v Lentz*, 6 Mich App 511,

³ Moreover, Plaintiff has alleged no facts relating to the purported oral agreement—where or when it occurred.

512; 149 NW2d 478 (1967) (Denying commission to broker based on oral agreement to secure gas leases).

Consequently, the joint venture exception does not apply to the agreements alleged here. Therefore the statute of frauds bars the alleged agreements because they concern an interest in property. Since the parties agree that the alleged contracts are unsigned, no question of material fact exists as to whether Plaintiff has any enforceable interest in the properties.

Unjust Enrichment:

To sustain a claim of unjust enrichment, a plaintiff must establish (1) the receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant. *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 195; 729 NW2d 898 (2006). “In other words, the law will imply a contract to prevent unjust enrichment only if the defendant has been unjustly or inequitably enriched at the plaintiff’s expense.” *Id.*

Given that the statute of frauds requires any agreement for an interest in land to be written and signed, it also follows that Ralph Roberts Realty may not assert a claim for unjust enrichment as an interest in the real property. The parties agree that Ralph Roberts Realty received five-thousand dollars for its services. Therefore, Ralph Roberts Realty has not established that Defendants have been unjustly enriched at its expense. Therefore, Count II of Ralph Roberts Realty’s complaint must also be dismissed.

Judicial Estoppel:

Defendants next argue that judicial estoppel bars Ralph Roberts Realty’s claims regarding three of the properties because Ralph Roberts Realty neglected to include the subject assets in its disclosure in its 2012 Chapter 11 bankruptcy proceedings. Specifically, Defendants

aver that Ralph Robert Realty's balances in the bankruptcy schedules do not include the alleged investment agreements.⁴

Ralph Roberts Realty responds that it disclosed Defendants investor contract in the Fifth Amended Disclosure. See, Plaintiff's Exhibit B, C, Defendants' Exhibit F. Ralph Roberts Realty attaches a Fifth Amended Disclosure from its bankruptcy filing that states, "Debtors also have claims and causes of action against former investors for failure to pay [Plaintiff] its share of the profits from sold houses." Plaintiff's Exhibit B. The Disclosure further states that, "Realty also owns the right to the splits generated as a result of investors' sales of real estate. Realty estimates that there are approximately 300 properties with respect to which it is entitled to splits . . . Realty believes that the net present value of these contracts is zero. . ." Plaintiff's Exhibit B. Ralph Roberts Realty also includes as its Exhibit F a document that lists the investor's name, an address and purchase price.

Michigan Courts hold that debtor's disclosure obligations are essential to the bankruptcy process. *Spohn v Van Dyke Pub Sch*, 296 Mich App 470, 489-90; 822 NW2d 239 (2012). Courts will not permit a debtor to obtain relief from bankruptcy by representing that no claims exist and then subsequently benefit from asserting those claims. *Id.* In *Spohn*, the Court of Appeals held that a finding of judicial estoppel in the bankruptcy context requires: (1) plaintiff assumed a position contrary to the one asserted under oath in the bankruptcy proceedings; (2) the bankruptcy court adopted the contrary position; and (3) the omission did not result from mistake or inadvertence. *Id.* at 480-81.

Applying *Spohn*, the Court of Appeals held that a bankruptcy petition filed under oath without including a potential lawsuit sufficiently met the "contrary position" prong; the second

⁴ The purchase of 26670 Parkington Street, Roseville occurred after the bankruptcy disclosure filing

prong was met when the bankruptcy court confirmed the debtor's plan; the third prong was satisfied when a party knew of the factual basis of the undisclosed claims and had a motive for concealment. *Jarrett-Cooper v Rosett*, unpublished opinion of the Court of Appeals, issued March 20, 2014 (Docket No. 312958) p 2.

Here, given that Ralph Roberts Realty took the position that approximately 300 contracts had no value, it would be a contrary position to now assert that three of them have significant value. That is, in the bankruptcy proceeding, Plaintiff essentially represented to the court and its creditors that the alleged contracts at issue in this matter were worthless.

Consequently, Defendants meet the *Spohn* test—specifically that Ralph Roberts Realty presented a contrary position to the bankruptcy court. Further, Ralph Robert Realty's position, which the court relied upon, also satisfies the third prong of *Spohn* because Ralph Roberts Realty must have known of the contract and had a motive to not fully disclose it. Therefore, the doctrine of judicial estoppel bars Ralph Robert Realty's present claims with regard to the properties disclosed.

In conclusion, the statute of frauds bars Ralph Roberts Realty's claims based on oral agreements regarding interests in land. Additionally, the doctrine of judicial estoppel also bars Ralph Roberts Realty's claims regarding the three properties included in its Fifth Amended Disclosure. Given that Ralph Roberts Realty has released its claims of interest filed against the various properties, Defendants' motion for injunctive relief is now moot.

IV. Conclusion

For the reasons set forth above, Defendant's motion is GRANTED. Pursuant to 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

DEC 19 2018