

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

ENGLISH MEADOWS, LP, a Michigan limited partnership, and HOMEFIRST SALES, LLC, a Michigan limited liability company,

Plaintiffs,

File No. 16-000696-CZ

v.

Hon. Richard N. LaFlamme

ROGER HAMILL, an individual, and d/b/a Huron Homes, d/b/a Huron MFG Homes, d/b/a Huron Modular Homes, LLC, and HURON MANUFACTURED HOMES, LLC, a Michigan limited liability company, and AMEE DURST, an individual,

Defendants.

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**OPINION AND ORDER REGARDING MOTIONS**  
**FOR SUMMARY DISPOSITION**

**Background**

Plaintiffs English Meadows, LP (“English Meadows”), and related entity, Homefirst Sales, LLC (“Homefirst”), initiated this action as a result of a series of acts relating to Defendant Amee Durst (“Durst”)’s March 1, 2016, sale of a manufactured home (“Home”), located at 3983 Sherwood Lake Blvd, Site #1, Jackson, MI, to Defendants Roger Hamill (“Hamill”) and/or Huron Manufactured Homes, LLC (“Huron”). English Meadows owns and operates a manufactured housing community in Jackson County, Michigan, where Durst rented a lot for the Home. English Meadows alleges that Durst violated a right of first refusal in its residential lease agreement, dated March 6, 2015 (“2015 Lease Agreement”), and violated her duty to pay rent under the agreement in March and April of 2016. Homefirst alleges that Durst violated a listing agreement, dated November 2, 2015, providing

Homefirst the exclusive right to market and sale the Home for a specified period, which included March 1, 2016.

On April 1, 2016, this Court granted in part Plaintiffs' Motion for a Preliminary Injunction and entered a Preliminary Injunction enjoining the removal of the Home from the manufactured home community, and granting English Meadows the opportunity to exercise its right of first refusal under the 2015 Lease Agreement. Thereafter, English Meadows exercised its right of first refusal and purchased the Home from Hamill for \$16,139.83, the same price Hamill purchased the Home for from Durst.

On August 26, 2016, after an unsuccessful mediation, Plaintiffs English Meadows and Homefirst filed Motions for Summary Disposition of their respective breach of contract claims against Durst based on no genuine issue of material fact existing regarding the remaining issues of Durst's liability for such breaches and her respective damages as a result. On September 16, 2016, Defendant Durst filed an Answer alleging that an English Meadows representative fraudulently induced Durst into signing a new lease agreement in December 2014, (the "2015 Lease Agreement"), and raising her lot rental rate \$150, despite having an existing lease ("2012 Lease Agreement"), and alleging that Durst's lot rental rate would increase to \$650 per month if she did not sign the new lease agreement. Durst's Answer also alleged that the listing agreement entered into with Homefirst did not prohibit Durst from selling the Home and that Homefirst breached the listing agreement by failing to make any material efforts to sell the Home. On September 21, 2016, a Motion Hearing was held regarding this matter and judgment was reserved.

## Analysis

### I. Summary Disposition Standard

A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Dressel v. Ameribank*, 468 Mich. 557, 561, 664 NW2d 151 (2003). Where the proffered evidence establishes that no genuine issue of material fact exists between parties, excluding damages, the moving party is entitled to judgement as a matter of law. *Miller v. Purcell*, 246 Mich. App. 244, 246, 631 NW2d 760 (2001). The moving party has the burden of supporting its position through affidavits, depositions, admissions, or other documentary evidence. *Neubacher v. Globe Furniture Rentals*, 205 Mich. App. 418, 420, 522 NW2d 335 (1994). The burden then shifts to the nonmoving party to establish through documentary evidence that a genuine issue of material fact exists. *Id.*

In evaluating a motion brought under MCR 2.116(C)(10), the court considers the record in the light most favorable to the nonmoving party. *Ritchie-Gamester v. City of Berkley*, 461 Mich. 73, 76, 597 NW2d 517 (1999). A genuine issue of material fact exists where the record, viewed in the light most favorable to the nonmoving party, leaves open an issue upon which reasonable minds may differ. *West v. GMC*, 469 Mich.177, 183, 665 NW2d 468 (2003).

### II. English Meadows' Motion for Summary Disposition

English Meadows' Motion for Summary Disposition against Defendant Durst for breach of contract specifically alleges that Durst violated the 2015 Lease Agreement through her failure to afford English Meadows a right of first refusal and breach of her obligation to make lease rental payment agreements until September 30, 2017, as provided in the agreement. Durst contends that she complied with the right of first refusal obligation in the 2015 Lease Agreement and gave repeated notice to

English Meadows of her desire to sell. Section 16 of the 2015 Lease Agreement covers the Right of First Refusal. Subsection a provides in relevant part:

If, at any time, Tenant receives a bona fide written offer from any party to purchase the Home, Tenant shall deliver a copy of the offer to Landlord, thereby notifying Landlord of Tenant's intent to accept it. For ten (10) business days thereafter, Landlord shall have the right to match the terms of the offer, by providing written notice to Tenant.

Durst attests that she offered the Home for sale to English Meadows various times between October 2015 and February 2016 and English Meadows declined to purchase the Home. However, the contract is clear that where "Tenant receives a bona fide written offer" from a party to purchase the Home, the tenant must "deliver a copy of the offer" to English Meadows. Upon receiving a bona fide offer to purchase the Home from Hamill and Huron, Durst did not deliver a copy to English Meadows. Therefore, Durst did not provide English Meadows its right of first refusal.<sup>1</sup>

However, Durst alleges that an English Meadows representative fraudulently induced her into signing the 2015 Lease Agreement, which raised her lot rent rate by \$150 and included a right of first refusal, and threatened to substantially raise her lot rent if she did not sign the agreement. "Fraud in the inducement occurs where a party materially misrepresents future conduct under circumstances in which the assertions may reasonably be expected to be relied upon." *Samuel D. Begola Services, Inc, v. Wild Brothers*, 210 Mich. App. 636, 639 (1995). "Fraud in the inducement to enter a contract renders the contract voidable at the option of the defrauded party." *Id.* Given that Durst had an existing 2012 Lease Agreement, covering a period of five years and in effect until September 30, 2017, if an English Meadows representative made the alleged statements to Durst, these facts may constitute fraud in the inducement of a contract, which, in turn, may render the contract voidable.

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<sup>1</sup> Earlier in this action, in response to English Meadows' request for injunctive relief, Defendants took the position that there was never a "written" agreement for the sale by Durst to Defendants. However, the Court ruled that the absence of a written agreement was not a bar to enforcement of the right of first refusal, since the intent of the right of first refusal was to give English Meadows the first right to purchase the HOME before it is sold to someone else.

While English Meadows contends that this Court has already deemed the 2015 Lease Agreement, and its provisions therein, valid and enforceable based upon this Court's granting Plaintiffs' Temporary Order for a Preliminary Injunction, this assertion mischaracterizes the law. A movant must show a "substantial likelihood of success on the merits," among other criteria, before a preliminary injunction may be issued, *State Employees Ass'n v. Dep't of Mental Health*, 421 Mich. 152, 158 n.4; 365 NW2d 93 (1984), and a "substantial likelihood of success on the merits" is not the same as definitive success on the merits.

When the evidence is viewed in the light most favorable to the nonmoving party, here, Durst, the Court finds that a genuine issue of material fact exists as to whether the 2015 Lease Agreement, and the right of first refusal and rental payment schedule therein, may be found voidable and unenforceable based upon Durst's assertion that an English Meadows representative fraudulently induced her into signing the 2015 Lease Agreement. Accordingly, English Meadows' Motion for Summary Disposition is denied.

### **III. HomeFirst Sales, LLC's Motion for Summary Disposition**

Homefirst's Motion for Summary Disposition alleges that Durst failed to pay commission to Homefirst resulting from Durst's sale of the Home to Hamill. "A party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) that the other party breached (3) thereby resulting in damages to the party claiming breach." *Stevenson v. Brotherhoods Mut. Benefit*, 312 Mich. 81, 90-91, 19 NW2d 494 (1945). "Remedy for breach of contract generally should make the nonbreaching party whole or 'place the nonbreaching party in as good a position as if the contract had been fully performed.'" *Roberts v. Farm Ins. Exchange*, 275 Mich. App. 58, 69, 737 NW2d 332 (2007), quoting *Corl v. Huron Castings, Inc.*, 450 Mich. 620, 625-26, 544 N.W.2d 278 (1996).

A contract existed between the parties. The parties signed the Listing Agreement on November 2, 2015, which provided that Homefirst would “list and use [its] effort to find a purchaser” for Home for the period of November 2, 2015 to May 2, 2016.

Section 2 of the Listing Agreement clearly and unambiguously provides:

During the listing period, should the “Home” be sold by the Broker, *the undersigned*, or someone else...the undersigned agrees to pay the Broker a commission of 10% of the sale price but not less than \$2,500.00 in the event of a sale...

(Emphasis added). Durst sold the Home to Hamill for \$16,139.83 before the listing period in the Listing Agreement expired on May 2, 2016. Although Homefirst did not sell the Home, the Listing Agreement clearly states that regardless of the seller of the Home, if the Home is sold during the listing period, Durst shall pay commission to Homefirst for “10% of the sale price but not less than \$2,500.00.” As 10% of the Home’s sale price is less than \$2,500.00, Durst was obligated to pay Homefirst a \$2,500.00 commission, as contracted for in the Listing Agreement. Since she has not paid Homefirst this commission, she is in breach of the Listing Agreement.<sup>2</sup>

While Durst contends that Homefirst breached the Listing Agreement first by making no genuine efforts to sell the Home, the record demonstrates that Homefirst, at a minimum, placed signage in the Home and listed the Home for sale on its website. Although these efforts do not appear to be best efforts, these efforts satisfy Homefirst’s obligation “to list and use [its] efforts to find a purchaser” for the Home as provided in the Listing Agreement.

Finally, Homefirst has suffered damages in the loss of payment due from the Listing Agreement. Homefirst has not received the \$2,500.00 commission that was contracted for should the Home be sold during the listing period.

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<sup>2</sup> Irrespective of whether the Home was sold to Hamill, or sold directly to English Meadows pursuant to its right of first refusal, a commission would be due. Thus, regardless of how the Court ultimately rules on the enforceability of the 2015 Lease Agreement, Homefirst would still be entitled to a commission.

Thus, Plaintiff Homefirst has met its burden of establishing that a breach of contract occurred and that no genuine issue of material fact remains as to the Listing Agreement and the obligations thereunder.

**V. Attorney's Fees**

Given that a genuine issue of material fact exists which may affect the enforceability of the 2015 Lease Agreement, and the attorney's fees provision found therein, the Court denies the request for attorney's fees at this time.

**WHEREFORE**, based on the above analysis, **IT IS HEREBY ORDERED** that Plaintiff English Meadow's Motion for Summary Disposition is **DENIED** and Plaintiff Homefirst's Motion for Summary Disposition is **GRANTED**.

Judgment is hereby entered against Defendant Durst in favor of Plaintiff Homefirst in the amount of \$2,500.

**IT IS SO ORDERED.**

This is not a final order, since it does not dispose of all claims.

Dated: September 27, 2016

/s/ Richard N. LaFlamme  
Richard N. LaFlamme, Circuit Court Judge

The undersigned certifies that a copy of the above document was served upon attorneys of record by first class mail.

Dated:

/s/ Jenna Furman  
Jenna Furman, Judicial Attorney