

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

RADICORP, INC,
Plaintiff,

v.

Case No. 13-135987-CK
Hon. James M. Alexander

ADAM G TAUB & ASSOC CONSUMER LAW GROUP, LLC,
Defendant.

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant’s motion for summary disposition. In its Complaint, Plaintiff alleges that it leased Defendant commercial office space in its building. During this time, Plaintiff claims that Defendant failed to pay rent between February 2000 and July 2006 – to the tune of \$35,292. To recover this amount, in August 2013, Plaintiff filed the present Complaint on claims of account stated, breach of contract, and unjust enrichment.

In its first responsive pleading, Defendant filed the present motion for summary disposition – seeking the same under MCR 2.116(C)(5), (C)(7), and (C)(8). A motion under MCR 2.116(C)(5) challenges whether a plaintiff lacks the legal capacity to sue. *McHone v Sosnowski*, 239 Mich App 674, 676; 609 NW2d 844 (2000). A motion under (C)(7) determines whether a claim is barred, among other grounds, by a statute of limitations. And a (C)(8) motion tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

1. Plaintiff's standing to sue.

Defendant first argues that it is entitled to summary disposition of Plaintiffs' Complaint because Plaintiff Radicorp was automatically dissolved in 1986. As a result, Plaintiff was unable to enter into a lease or conduct any business during the time that it purportedly leased office space to Defendant. Additionally, under Michigan law, Defendant argues that Plaintiff cannot sue for unpaid rents.

In support, Defendant argues that under the Business Corporation Act, a dissolved business "shall not carry on business except for the purpose of winding up its affairs." MCL 450.1833. Defendant also cites *Flint Cold Storage v Dep't of Treasury*, 285 Mich App 483; 776 NW2d 387 (2009), in which, the Court of Appeals analyzed the Business Corporation Act.

The *Flint Cold Storage* Court considered whether a Corporation that was dissolved 32 years prior could bring suit. The Court concluded, based on the Act, that "it is clear that a dissolved Michigan corporation may continue to exist beyond its date of dissolution only until it has concluded "winding up its affairs" *Id.* at 495-496, quoting MCL 450.1833.

In this case, Plaintiff does not dispute Defendant's claim that it was automatically dissolved in 1986. In fact, Plaintiff fails to even address this claim. Instead, Plaintiff merely claims that it "is an active corporation." In support, Plaintiff attaches a certificate issued by the Michigan Department of Licensing and Regulatory Affairs. This certificate states that, as of January 2, 2014, Radicorp is validly in existence and able to transact business.

Plaintiff makes no mention of the legal significance of its January 2014 license to the alleged lease period from February 2000 to July 2006 or the August 2013 lawsuit. It appears that Plaintiff believes that its January license resolves these issues, but Plaintiff's three sentences don't substantively address Defendant's arguments. Michigan law is clear that, "A party may

not merely announce a position and leave it to [the] Court to discover and rationalize the basis for the claim.” *National Waterworks, Inc v International Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007).

Without **any** analysis by Plaintiff regarding the effect of its January 2014 license, disposition of this matter is difficult. Further, despite Plaintiff’s failure to mention the same, the Court recognizes that the Act provides that a corporation may renew its license after an automatic dissolution by completing some requirements. And upon such compliance, “the rights of the corporation shall be the same as though a dissolution or revocation had not taken place, and all contracts entered into and other rights acquired during the interval shall be valid and enforceable.” MCL 450.1925(2).

Although Plaintiff fails to provide meaningful analysis, the Court cannot ignore the plain language of the statute. In order to dispose of this matter either way, the Court would be required to make several assumptions – which is wholly inappropriate when deciding a motion for summary disposition. For this reason, summary disposition under (C)(5) is DENIED.

2. Statute of Frauds.

Defendant next argues that, under MCL 566.108, “Every contract for the leasing for a longer period than 1 year . . . shall be void, unless the contract, or some note or memorandum thereof be in writing, and signed by the party by whom the lease or sale is to be made.” Because Plaintiff alleges a several-year lease, Defendant argues that the same is void under the statute of frauds.

In response, Plaintiff admits that there is no written lease. Instead, Plaintiff claims that the parties verbally agreed to rent the space from month-to-month. As a result, the statute of

frauds isn't implicated. Further, Plaintiff appears to abandon its breach of contract claim. Instead, Plaintiff argues that it has valid account stated and unjust enrichment claims.

Because Plaintiff has abandoned its breach of contract claim, the Court will dismiss the same.

3. Account Stated.

Defendant next argues that Plaintiff's account stated claim fails because it failed to attach any evidence or affidavit in support of such a claim. The Court of Appeals has reasoned:

an account stated [is] "a balance struck between the parties on a settlement" "Where a plaintiff is able to show that the mutual dealings which have occurred between two parties have been adjusted, settled, and a balance struck, the law implies a promise to pay that balance." *Keywell & Rosenfeld v Bithell*, 254 Mich App 300, 331; 657 NW2d 759 (2002); quoting *Watkins v Ford*, 69 Mich 357, 361; 37 NW 300 (1888).

In order to establish an account stated, a plaintiff must prove that the defendant "either expressly accepted the bills by paying them or failed to object to them within a reasonable time." *Keywell*, supra at 331. Further, "[p]roving an account stated 'must depend upon the facts. That it has taken place, may appear by evidence of an express understanding, or of words and acts, and the necessary and proper inferences from them.'" *Id.* at 331; quoting *Kaunitz v Wheeler*, 344 Mich 181, 185; 73 NW2d 263 (1955).

In support of its request, Defendant claims that Plaintiff failed to attach sufficient evidence of an account stated (such as an Affidavit) to its Complaint. The Court agrees. But Plaintiff did attach an Affidavit to a supplemental response filed on January 21, 2014. Although the Court recognizes that this supplemental response was filed past the January 15, 2014 deadline, the Court will exercise its discretion and consider the same.

In his Affidavit, Plaintiff's President, Ole Lyngklip, claims that he spoke with Defendant's representative, who "acknowledged the [\$35,292] debt and his firm's obligation to pay it." Mr. Lyngklip then claims that "[t]hereafter, Mr. Taub made two payments totaling \$550.00, on July 8, 2008 and August 2008 respectively." In his Affidavit attached to Defendant's motion, Mr. Taub contests the amount and existence of the debt. Because the parties have presented competing affidavits, summary disposition is wholly inappropriate.

Further, to the extent that Defendant argues that summary disposition is appropriate under the statute of limitations, the Court rejects the argument. Although the debt dates back to July 2006 and there is a six-year statute of limitations under MCL 600.5807(8), Defendant's alleged partial payment in August 2008 may have served to renew the promise under Michigan law. *Yeiter v Knights of St Casimir Aid Society*, 461 Mich 493, 497-499, 607 NW2d 68 (2000) "[A] partial payment restarts the running of the limitation period unless it is accompanied by a declaration or circumstance that rebuts the implication that the debtor by partial payment admits the full obligation.").

The Court notes that Defendant does not deny making the July and August 2008 payments. As a result, without knowing the circumstances surrounding said payments, the Court finds that summary disposition is also inappropriate based on the statute of limitations.

4. Unjust Enrichment.

Finally, Defendant claims that it is entitled to summary disposition of Plaintiff's unjust enrichment claim. Regarding such a claim, our Supreme Court has held: "Even though no contract may exist between two parties, under the equitable doctrine of unjust enrichment, '[a] person who has been unjustly enriched at the expense of another is required to make restitution

to the other.” *Michigan Educ Empl's Mut Ins Co v Morris*, 460 Mich 180, 198; 596 NW2d 142 (1999), quoting Restatement Restitution, § 1, p 12.

Michigan courts have established that “The elements of a claim for unjust enrichment are: (1) 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.” *Barber v SMH (US)*, 202 Mich App 366, 375; 509 NW2d 791 (1993); citing *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 546; 473 NW2d 652 (1991).

Both parties’ arguments on this issue are sparse. Defendant argues that it is entitled to summary of this claim because Plaintiff’s other claims fail. Plaintiff, on the other hand, argues that “Defendant acknowledges using Plaintiff’s office space and not paying for it.” As a result, Plaintiff argues that its unjust enrichment claim is valid.

In any event, the Court cannot conclude that accepting all well-pled allegations as true that no possible factual development could possibly deny Plaintiff’s right to recovery. For this reason, summary disposition under (C)(8) is DENIED.

Summary

To summarize, based on its abandonment of the same, Plaintiff’s breach of contract claim is DISMISSED. In all other respects, Defendant’s motion for summary disposition is DENIED.

IT IS SO ORDERED.

February 5, 2014
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge