

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

MHC LAKE IN THE HILLS, LLC,

Plaintiff,

Case No. 14-138620-CZ

v

Hon. Wendy Potts

SPARTANS PROPERTIES, LLC, et al,

Defendants.

OPINION AND ORDER RE:
PLAINTIFF MHC LAKE IN THE HILLS'S MOTION TO ENFORCE RIGHT OF FIRST
REFUSAL AND TO COMPEL SALE OF MANUFACTURED HOME TO PLAINTIFF
AND
NICHOLAS AND JESSICA KERNS'S MOTION TO DISMISS PURSUANT TO MCR
2.116(C)(8) AND MCR 2.116(C)(10)
AND
JESSICA KERNS'S MOTION FOR DISMISSAL PURSUANT TO MCR 2.116(C)(8) AND
(C)(10)

At a session of Court
Held in Pontiac, Michigan

On
JUN 19 2014

Plaintiff MHC Lake in the Hills, LLC owns a mobile home park in Auburn Hills. In January 2010, Defendants Nicholas and Jessica Kerns leased a lot in the park where they placed a mobile home. The lease agreement states that MHC's Community Rules and Regulations are incorporated in the lease. The Kerns signed a lease agreement and a community rules agreement in which they agreed to comply with MHC's rules. The Kerns' lease expired on February 1, 2011 and they continued to occupy the lot on a month-to-month basis. On November 30, 2013, effective December 30, 2013, MHC amended its Rules to include a provision titled "Right of

First Refusal.” The new rule requires tenants to give MHC written notice of their intent to sell the property to a third party and to allow MHC an opportunity to purchase the property on the same terms. On January 14, 2014, Nicholas Kerns signed an agreement to sell the mobile home to Defendant Spartans Properties, LLC. MHC filed this action against the Kerns and Spartans on January 30, 2014 alleging breach of contract, tortious interference, and trespass. The matter is before the Court on three motions: MHC’s motion seeking enforcement of its claimed right of first refusal and two motions for summary disposition filed by the Kerns.

I. MHC’s Right of First Refusal

Although MHC asserts that this is not a dispositive motion, MHC is seeking a ruling as a matter of law on the validity and enforceability of its right of first refusal, which is the essence of its breach of contract claim against the Kerns. The Court looks to the substance of a motion or ruling to determine its true nature, not its label. *Keywell & Rosenfeld v Bithell*, 254 Mich App 300, 326; 657 NW2d 759 (2002). Because MHC’s motion seeks partial summary disposition, the Court will analyze it under MCR 2.116(C)(10), which tests the factual support for MHC’s claim. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).

MHC asserts that it had authority to establish the right-of-first-refusal rule under the terms of its lease agreement with the Kerns and the statutes and administrative code governing mobile home communities. However, MHC’s argument presumes that a lessor can create a right of first refusal by unilateral imposition of a rule. A right of first refusal is a preferential contractual right to purchase property on the same terms offered by or to a bona fide purchaser. *In re Smith Trust*, 274 Mich App 283, 287; 731 NW2d 810 (2007). MHC cites no authority that allows it to unilaterally impose a contractual obligation on its tenants. MHC had authority under its lease and the Mobile Home Commission Act to establish community rules “necessary to

protect the health, safety, and peaceful enjoyment of persons who reside in the Community or their guests.” The administrative code of the Mobile Home Commission allows MHC to create community rules for various purposes including “other conditions of tenancy.” 2008 AC R 125.2001(1)(a); 2003 AC R 125.2006. However, MHC cites no authority supporting its position that a contractual right of first refusal constitutes a “condition of tenancy” that can be governed by a community rule. Because MHC fails to show, as a matter of law, that it had authority to unilaterally create a rule giving it the right of first refusal over the sale of its tenants’ mobile homes, its right of first refusal is not enforceable as a community rule.

Rather, MHC can enforce its right of first refusal only if it can show that it has a valid contractual right obtained through mutual assent. *Kamalath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 548-549; 487 NW2d 499 (1992). MHC is correct that, to the extent it has a valid right of first refusal, it need not be in writing or signed by the Kerns. A right of first refusal does not grant MHC a property interest in the mobile home or the right to purchase it. *Randolph v Reisig*, 272 Mich App 331, 338-339; 727 NW2d 388 (2006). Thus, a right of first refusal cannot be construed as a sale of goods subject to the UCC statute of frauds. MCL 440.2201(1). Further, the statute of frauds governing modifications to a contract, MCL 566.1, is inapplicable because the right of first refusal was not a modification of the Kerns’s lease. MHC admits that there was no lease to modify in January 2014 because the lease expired in February 2011 and was not extended. In addition, the right of first refusal was not a violation of the Truth in Renting Act because there was no provision in the lease agreement that gave MHC the right to alter the terms of the lease without Nicholas Kerns’s consent. See MCL 554.633(1)(I).

Nonetheless, MHC cannot enforce a contractual right of first refusal if it cannot show mutual assent, which it has failed to do. There is no evidence that Nicholas Kerns assented to

granting MHC a right of first refusal over the sale of his mobile home. In fact, Mr. Kerns contends that he was not even aware of MHC's purported right when he sold his mobile home to Spartans. Because MHC's right of first refusal was not obtained by mutual assent, it is unenforceable. *Kamalnath, supra*.

In addition, MHC's right of first refusal must be supported by consideration, *In re Smith Trust, supra* at 289, and there is no evidence that MHC gave Nicholas Kerns consideration for its right of first refusal. Had the right of first refusal been part of MHC's lease agreement that could have been adequate consideration. *In re Smith Trust, supra*. However, there was no lease between MHC and the Kerns when the rule was enacted. Even if the Kerns's tenancy was still subject to a lease, MHC fails to explain how allowing the Kerns to occupy a lot in MHC's park would constitute adequate consideration. MHC had a pre-existing obligation to allow the Kerns to occupy a lot on a month-to-month basis, and doing what one is legally bound to do is not consideration for a new promise. *Yerkovich v AAA*, 461 Mich 732, 740-741; 610 NW2d 542 (2000).

In sum, MHC fails to demonstrate that it had the authority to impose a right of first refusal on the sale of Nicholas Kerns's mobile home by unilaterally enacting a community rule. MHC's right of first refusal would be enforceable only to the extent that it was obtained through mutual assent and supported by consideration. Because there is no question of fact that Nicholas Kerns did not assent to the right of first refusal and MHC did not give Mr. Kerns consideration for the right, it is unenforceable as a matter of law. Thus, the Court denies MHC's motion to enforce the right of first refusal.

At the hearing on the motion, Spartans asked the Court to grant it summary disposition under MCR 2.116(I)(2), which give the Court authority to grant summary disposition to the

opposing party if that party demonstrates that it, rather than the moving party, is entitled to judgment as a matter of law. *Auto-Owners Ins Co v Allied Adjusters & Appraisers, Inc*, 238 Mich App 394, 397 (1999). However, neither MHC's motion nor Spartans's response addressed the merits of MHC's claims against Spartans. To the extent that Spartans believes that it is entitled to summary disposition based on the unenforceability of MHC's right of first refusal, Spartans may file a motion seeking dismissal of the claims.

II. The Kerns' Motions to Dismiss

MHC asserts only one claim against Nicholas and Jessica Kerns: that they violated MHC's community rules when they sold their mobile home to Defendant Spartans Properties, LLC without allowing MHC a right of first refusal. The Kerns move for summary disposition of that claim under MCR 2.116(C)(8), which tests the legal sufficiency of the complaint, and (C)(10), which tests the factual support for the claim. *Maiden, supra*.

At the outset, MHC's claim against the Kerns fails as a matter of law because its right-of-first-refusal rule is unenforceable for the reasons explained above. Because the rule is unenforceable, the Kerns's cannot be held liable for violating it.

Even if MHC had an enforceable right of first refusal, it cannot show as a matter of law that Jessica Kerns violated the rule. MHC does not dispute that Jessica Kerns was not listed on the mobile home certificate of title and she did not sign the purchase agreement with Spartans. Instead, MHC asserts that Jessica Kerns violated the lease by representing that she was an owner. However, MHC has not alleged any such violation in its complaint, nor has it moved to amend the complaint. Even if it did assert this claim, it fails to explain how its alleged injury – the loss of its purported right of first refusal – was caused by Jessica Kerns's representation in the lease

agreement that she owned the mobile home. MHC cannot support its breach of contract theory against Jessica Kerns based on the allegation that she held herself out as the owner.

MHC also argues that Jessica Kerns is, in fact, an owner of the mobile home because Nicholas Kerns purchased it while married to Jessica Kerns and it is marital property. However, MHC's argument is premised on law governing property division in a divorce. See *Cunningham v Cunningham*, 289 Mich App 195, 201; 795 NW2d 826 (2010). MHC fails to explain how divorce law principles are applicable to this case.

Nicholas Kerns asserts that the right-of-first-refusal rule is also unenforceable because it only applied "during the term of this lease or any extension thereof . . ." He argues that because the lease expired in February 2011 and was not extended, the rule is inapplicable. MHC contends that the Kerns held over after their lease expired and their month-to-month tenancy continued under the same terms as the lease. Generally, when a tenant holds over after a lease expires, the law implies a continuance of the tenancy on the same terms and subject to the same conditions. *Bay County v Northeastern Michigan Fair Ass'n*, 296 Mich 634, 640-641; 296 NW 707 (1941). Although the lease agreement is not necessarily continued in force, the Court can look to its provisions to determine the terms under which the tenant holds and the nature of his tenancy. *Glocksine v Malleck*, 372 Mich 115, 120; 125 NW2d 298 (1963). By holding over after the lease expired, the Kerns entered into an implied month-to-month continuation of the lease on the same terms and conditions.

Although the original lease terms apply to the Kerns's holdover tenancy, the terms of the Kerns's lease did not include a right of first refusal. Although MHC incorporated its community rules into the lease agreement, for the reasons explained above the right-of-first-refusal rule is unenforceable. Thus, regardless whether the Kerns's holdover tenancy is subject to the same

terms as the lease, MHC's claim that the Kerns breached the right-of-first-refusal rule still fails as a matter of law.

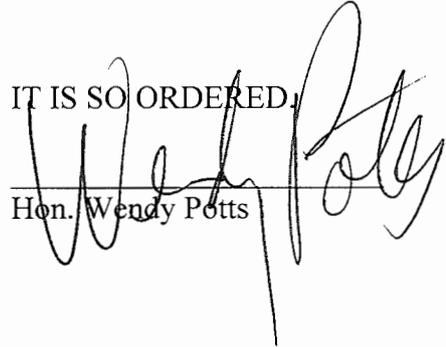
For all of these reasons, the Court grants the Kerns summary disposition and dismisses MHC's claim against them with prejudice.

Dated:

JUN 19 2014

IT IS SO ORDERED.

Hon. Wendy Potts

A handwritten signature in black ink, appearing to read "Wendy Potts", is written over a horizontal line that separates the signature from the printed name below it.