

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

**JONG JEUN KOOK and
ALPHA JX, LLC,
Plaintiffs,**

v.

**Case No. 14-139107-CZ
Hon. James M. Alexander**

**SIMCOR CONSTRUCTION, INC, ET AL,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Plaintiffs’ motion for summary disposition of their Count I for declaratory relief.¹ Plaintiffs owned mixed-use commercial and residential property at 2579 Union Lake Road in Commerce Township. In July 2013, a fire damaged the building and grounds – causing extensive damage. The building housed a first-floor cleaners and an apartment above the cleaners.

After the fire, on July 23, 2013, the parties entered into a “Contract for Building and/or Home Repair,” whereby Defendant Simcor Construction would complete the necessary clean-up and repairs. Defendants apparently did complete some work, but on January 31, 2014, Plaintiffs’ counsel sent a letter demanding that Simcor stop any work and purporting to cancel the contract.

¹ The full, complicated title of Plaintiffs’ Count I is:

Action for Injunction, Declaratory Judgment, and Other Equitable Relief Including Relief Necessary to Prevent Continuing Unjust Enrichment/Quasi Contract/Contract Implied in Law, Trespass, Waste, Misappropriation, Theft and Conversion, Defamation, Interference, Officious Intermeddling, Acting as *Negotiorum Gestores*, and for the Imposition of a Constructive Trust, for an Accounting, for the Appointment of a Receiver, and for the Rescission of any Contracts for Fraud, Mistake, or Unconscionability.

As discussed in this Opinion, however, in the present motion, Plaintiffs **only** seek a ruling “declaring that the Contract is cancelled and/or terminated” – claiming the same would resolve their Count I.

Plaintiffs claim that “[t]his letter constituted a valid termination of the Contract, pursuant to Section 5.” This section provides, in relevant part:

If [Simcor] breaches this agreement [Plaintiffs] upon 30 days written notice may terminate the serviced of [Simcor], take possession of the project and all materials thereon, and finish the Work by whatever method [Plaintiffs] may deem expedient. In such event [Plaintiffs] shall immediately pay [Simcor] for all Work performed and all materials purchased up to the date of termination.

Plaintiffs claim that Defendants breached the Contract by: (1) failing to pull necessary permits – resulting in Commerce Township shutting down construction; (2) violating a stop-work order from Commerce Township after a prior failure to pull the necessary permits; (3) neglecting to have a person with a residential-builders’ license on staff; (4) failing to restore the property to the condition that it was in before the fire; (5) performing unnecessary and wasteful services; and (6) charging and collecting for services not performed or overcharging for services performed.

As a result of these breaches, Plaintiffs claim that they were forced to terminate the contract and hire another builder. Plaintiffs now file the present motion under MCR 2.116(C)(10) – specifically seeking a ruling “declaring that the Contract is cancelled and/or terminated” and “Plaintiffs properly terminated the Contract, pursuant to Section 5.”

A motion under MCR 2.116(C)(10) tests the factual support for Plaintiff’s claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

Michigan law is well-established that “a court must construe and apply unambiguous contract provisions as written.” *Rory v Cont’l Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). Further, “[a] contract must be interpreted according to its plain and ordinary meaning.” *Holmes v Holmes*, 281 Mich App 575, 593; 760 NW2d 300 (2008), citing *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 107; 577 NW2d 188 (1998). “Under ordinary contract principles, if

contractual language is clear, construction of the contract is a question of law for the court.” *Holmes v Holmes*, supra at 594; quoting *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997).

Initially, the Court rejects Plaintiffs’ argument that Defendants breached the contract by failing to restore the property to the condition that it was in before the fire. This argument doesn’t make any sense because it is undisputed that Plaintiffs told Defendants to stop working before the job was complete.

Next, the Court rejects Plaintiffs’ claims that Defendants performed unnecessary and wasteful services or charged for services not performed. Plaintiffs attach insufficient evidence establishing these claims, and Plaintiffs’ motion only touches on these issues in conclusory form.

Next, the Court rejects Plaintiffs’ claim that properly terminated the contract because Defendants did not have a person on staff that held a residential builders’ license. First, this allegation was not made in the January 31, 2014 termination letter – apparently because Plaintiffs did not learn that Simcor’s license may be an issue until after said letter was sent.

Additionally, LARA’s January 23, 2014 Order of Section 2405 Suspension provided that Simcor’s license would be suspended 60 days after the date of mailing – unless Simcor acted to obtain approval of another qualifying officer. And Defendants attached proof that Simcor did just that.

And just for the sake of argument, Defendants also claim that all work on Plaintiffs’ property stopped before the prior qualifying officer left on January 21, 2014. For all of these reasons, the Court finds that Defendants did not breach the agreement based on Plaintiffs’ residential-builder argument.

Plaintiffs' final argument has to do with Defendants' alleged failure to obtain the necessary work permits. At his deposition, Sam Simko (Simcor's owner and principal) testified that he did not pull any permit to do the "demolition" or "remedial" work completed on the property.

Under Section 1 of the Contract:

[Simcor] warrants that all Work will comply with local safety standards and local building codes. . . . [Simcor] will obtain all building permits, licenses and inspections necessary for completion of the Work at [Plaintiffs'] expense and will do all work timely subject to any delays that are beyond [Simcor's] control.

On December 30, 2013, a Commerce Township building inspector, Jay James, sent a letter to Plaintiff indicating that he visited the property and determined that the building could not be rebuilt at its current location or in its prior form because it was more than 50% damaged by the fire. As a result, the building had to be moved to conform to current ordinances and Plaintiffs would need to obtain a special land use approval to rebuild the apartment.

Almost two months later, on February 25, 2014, the Commerce building inspector sent Plaintiffs another letter. In it, he claims that, at the time of the 50% damaged determination (in December), he informed [Simcor] that the building could possibly not be rebuilt in the same footprint. He continued "[s]ince no permits had been obtained from Commerce Township, your contractor was informed that all work should cease."

The inspector then detailed additional work that was done after the first visit, and "this letter is to inform you that no work should be performed on this site until proper approvals have been obtained."

These letters appear to establish that Commerce Township informed Simcor that work must be stopped (at the very latest by the visit preceding the December 2013 letter) until the proper approvals were obtained. Despite this, more work was done. And this appears to support

Plaintiffs' argument that Simcor did not comply with all local building codes or obtain all building permits or licenses necessary for completion of the work.²

In response, Defendants claim "that none of the work performed by Simcor required permits." In support, they attach Mr. Simko's deposition testimony. Defendants take great care to argue that only minimal remediation work was performed, and Simko characterizes the Commerce Township letter as stating that permits are only required for a **rebuild** in the building's current location and form. As a result, Defendants argue that the letter does not establish that the demolition and remedial work performed required permits.

In the end, based solely on these letters, it simply isn't clear what work the township inspector believed needed permits or approvals. If any of the work that Simcor completed required permits or approvals, then Simcor breached the contract, and Plaintiffs were within their right to terminate. If the work Simcor completed did not require any permits or authorizations, however, then Plaintiffs may not have properly terminated the contract. But because it isn't clear, summary disposition is inappropriate.

For all of the above reasons and viewing the evidence presented in the light most favorable to Defendants, the Court finds that there remain material facts in dispute, whereby Plaintiffs are not entitled to judgment as a matter of law. As a result, Plaintiffs' Motion for Summary Disposition under MCR 2.116(C)(10) is DENIED.

IT IS SO ORDERED.

October 22, 2014 _____
Date

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

² Although not dispositive, Plaintiffs' insurance adjuster, Riggs Bedford, also testified at deposition that permits were necessary to complete the work done at the site and Simcor obtained none.