

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

**MRG LAKE VILLA, LLC,  
Plaintiff,**

v.

**Case No. 14-142084-CK  
Hon. James M. Alexander**

**ARROWOOD HOME RENTALS, LLC, ET AL,  
Defendants.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Plaintiff's motion for summary disposition. Plaintiff brought this suit to determine rightful ownership of four mobile homes located on its property.

In response to Plaintiff's Complaint, the Arrowood Defendants and Kenneth Burnham, individually, filed Answers and Counterclaims. The Arrowood Defendants' Counterclaim alleges three counts – conversion, intentional interference, common law theft. And Mr. Burnham's Counterclaim asserts a negligence claim.

Plaintiff's present motion seeks dismissal of both of these Counterclaims. As to the Arrowood Defendants, Plaintiff argues that it is entitled to summary disposition because, at an October 2014 preliminary-injunction hearing, the Court held that Plaintiff is the proper owner of four mobile homes in dispute. As a result, Plaintiff argues that the Arrowood Defendants cannot possibly succeed on claims that Plaintiff converted, intentionally interfered with, or stole property that Defendant does not own.

Mr. Burnham's Counterclaim is based on grounds that Plaintiff negligently read the Settlement Agreement as a basis to file suit – causing him damages in defending this litigation.

Plaintiff, not surprisingly, argues that it is entitled to summary disposition of said Counterclaim because it does not owe any duty to Mr. Burnham, on which, he may base a negligence claim.

To its end, Plaintiff moves for summary disposition under MCR 2.116(C)(8) or (C)(10). A (C)(8) motion tests the legal sufficiency of the complaint, and a motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

### **1. The Arrowood Defendants.**

The Court will first address Plaintiff's motion with respect to the Arrowood Defendants. As stated, Plaintiff argues that it is entitled to summary disposition of the Arrowood Defendants' Counterclaim because Defendants could not possibly succeed on any of their three claims when the Court has definitively ruled that Plaintiff is the proper owner of the disputed mobile homes at the conclusion of the October preliminary injunction hearing.

In response, the Arrowood Defendants argue that, although the Court had the discretion to accelerate a preliminary injunction hearing into a trial on the merits, the Court did not do so in this case. The Court agrees. The order entered following said hearing did not indicate that Court's ruling was a final ruling on the ownership issue.

Further, our Appellate Courts have reasoned that findings of fact and conclusions of law rendered at the preliminary injunction stage are not binding at trial on the merits. See *Int'l Union v State*, 211 Mich App 20, 25-27; 535 NW2d 210 (1995) (reasoning "A party thus is not required to prove his case in full at a preliminary-injunction hearing, and the findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on

the merits.” quoting *Univ of Texas v Camenisch*, 451 US 390, 395; 101 S Ct 1830; 68 L Ed 2d 175 (1981)).

While the Court recognizes that it ruled that Plaintiff was the proper owner of the disputed mobile homes at the preliminary injunction stage, this was not intended to be dispositive of this issue for purposes other than said preliminary injunction. This Court did not intend to accelerate a hearing on the merits in conjunction with said hearing (as authorized by MCR 3.310(A)(2)).

As a result, Plaintiff’s motion with respect to the Arrowood Defendants’ Counterclaim is DENIED. Plaintiff’s request for sanctions based on filing the same is, likewise, DENIED.

## **2. Mr. Burnham.**

As stated, Plaintiff argues that it is entitled to summary disposition of Mr. Burnham’s Counterclaim for negligence because he can identify no legal duty owed by Plaintiff, on which to base said claim.

Indeed, it is well settled that “[t]o establish a prima facie case of negligence, a plaintiff must prove: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages.” *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000), citing *Schultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993).

“Whether a duty exists is a question of law that is solely for the court to decide.” *Harts v Farmers Ins Exch*, 461 Mich 1, 6; 597 NW2d 47 (1999), citing *Murdock v Higgins*, 454 Mich 46, 53; 559 N.W.2d 639 (1997). “If there is no duty, summary disposition is proper. However, if factual questions exist regarding what characteristics giving rise to a duty are present, the issue

must be submitted to the fact-finder.” *Laier v Kitchen*, 266 Mich App 482, 496; 702 NW2d 199 (2005).

In response to Plaintiff’s motion, Mr. Burnham offers very little legal reasoning and completely fails to identify the source of any duty that Plaintiff’s counsel owes to him. This Court, likewise, cannot identify a duty owed by a plaintiff’s counsel to an individual defendant.<sup>1</sup>

Considering only the pleadings and accepting all well-pled factual allegations as true, the Court finds that Mr. Burnham’s Counterclaim for negligence is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. As a result, Plaintiff’s motion for summary disposition of said claim is GRANTED under (C)(8), and Mr. Burnham’s Counterclaim is DISMISSED in its entirety.

**IT IS SO ORDERED.**

May 20, 2015  
Date

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

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<sup>1</sup> Defendant may be alleging some form of an abuse of process claim, but such a claim cannot succeed when it is based solely on the filing of litigation – such as the case here. See *Dalley v Dykema Gossett, PLLC*, 287 Mich App 296, 322; 788 NW2d 679 (2010); quoting *Friedman v Dozorc*, 412 Mich 1, 31; 312 NW2d 585 (1981) for the proposition that “[a] complaint must allege more than the mere issuance of the process, because an ‘action for abuse of process lies for the improper use of process after it has been issued, not for maliciously causing it to issue.’”