

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

**S. MAIN, LLC,**

**Plaintiff,**

**v.**

**Case No. 14-143867-CK  
Hon. James M. Alexander**

**HAUN ENTERPRISE, LLC, ET AL,**

**Defendants.**

---

**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Defendants' Motion for Summary Disposition. In May 2013, Plaintiff's predecessor entered into a purchase agreement with the seller of certain real property in Clarkston. Plaintiff was then assigned said right. On March 30, 2014, the parties entered into a written Assignment of Purchase Agreement, whereby Plaintiff was to assign all its rights and interests in the property pursuant to the underlying purchase agreement.

Essentially, the parties contracted for Plaintiff to sell its right to purchase the property to Defendants. For their part, Defendants agreed to pay a total of \$130,000 for the assignment of Plaintiff's rights, which comprised of \$125,000 for the purchase of Plaintiff's rights and \$5,000 for the reimbursement of Plaintiff's closing costs.

Additionally, Defendants Dennis and Leanne Haun, who own Defendant Haun Enterprises, LLC, executed personal guarantees on March 30, 2014 as part of this Assignment Purchase Agreement.

Sometime thereafter, Defendants allegedly approached the owner of the property to buy the property outright – without Plaintiff’s involvement. In its complaint, Plaintiff claims Defendants bought the property from seller, took possession of the property, and have begun conducting business. Plaintiff claims that this amounts to a breach of the Assignment of Purchase Agreement and personal guarantees. Plaintiff also claims that Defendants have been unjustly enriched when they retained the benefit of the property without properly compensating Plaintiff.

Defendants now move for summary disposition of Plaintiff’s breach of contract (Count I) and breach of personal guarantees (Count II) under MCR 2.116(C)(8) and (C)(10). A (C)(8) motion tests the legal sufficiency of the complaint when “the opposing party has failed to state a claim on which relief can be granted.” *Radke v Everett*, 442 Mich 368, 373 (1993). All well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dept of Corrections*, 439 Mich 158; 483 NW2d 26 (1992). And a (C)(10) motion tests the factual support for Plaintiff’s claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In response to Defendants’ motion, Plaintiff seeks summary under MCR 2.116(I)(2).

### **I. Breach of Contract and Personal Guarantees**

Defendants’ summary argument is largely founded on the existence of an alleged condition precedent to closing – obtaining financing. Defendants claim this condition was not met, and therefore, there is no valid and enforceable agreement. Defendants argue the assignment contained clear and unambiguous language that financing was to be obtained before the assignment could be considered valid and enforceable. In response, Plaintiff argues that no such condition existed.

Both parties' arguments are based on language found within the written agreement. In order to prove breach of contract, a plaintiff must establish: (1) the existence of a contract; (2) a breach of that contract; and (3) damages resulting from that breach. *Stoken v JET Electronics & Technology, Inc*, 174 Mich App 457, 463; 436 NW2d 389 (1988).

Michigan law is well-established that “[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. If the contract is subject to two reasonable interpretations, factual development is necessary to determine the intent of the parties and summary disposition is therefore inappropriate.” *Holmes, supra* at 594; quoting *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997).

The parties' dispute centers around Sections 5 and 6, which state in relevant part:

#### **5. Consideration for the Assignment**

For the assignment of the purchaser's rights under the Purchase Agreement, Assignee agrees to pay Assignor the sum of \$125,000 plus reimbursement at Closing of Assignee's deposit under the Purchase Agreement, which is currently \$5,000. The purchase price (exclusive of such reimbursement) will be paid as follows: \$20,000 at Closing inclusive of Assignee's earnest money deposit described in Paragraph 9; \$20,000 six from Closing; and \$20,000 one year from Closing. Payment of these deferred installments and balance of the of this sum, \$65,000, will be evidenced by a mortgaged note (the “Second Mortgage Note”) and secured by a mortgage and security agreement (the “Second Mortgage”) upon the Property to be granted by Assignee to For Mortgage Investors, LLC, a Florida limited liability company (“Lender”), the proceeds of which (other than the deferred installments) will be paid to Assignor at the Closing.

#### **6. Financing for the Acquisition Contemplated by the Purchase Agreement.**

In order to pay the consideration to David McNeven required under the [underlying] Purchase Agreement, Lender, acting, pursuant and subject to a separate written commitment to be provided, will lend Assignee at the closing

under the Purchase Agreement \$250,000 under the terms and conditions set forth in this Paragraph 6.

Plaintiff argues that if Defendants intended financing to act as a condition precedent, then they would have included such language. This Court agrees. The Michigan Supreme Court has said:

Whether a provision in a contract is a condition [precedent], the nonfulfillment of which excuses performance, depends upon the intent of the parties to be ascertained from a fair and reasonable construction of the language used the light of all the surrounding circumstances when [the parties] executed the contract. *MacDonald v Perry*, 342 Mich 578, 586 (1955).

If the parties wished that Defendants' obligation to purchase was contingent on their obtaining financing, this could have been easily said. Instead, the language of the contract refers to financing, and **at best**, creates an ambiguity as to the true intention of the parties.

And ambiguities in a contract must be submitted to the trier-of-fact.

## **II. Plaintiff's ability to enter into a Contract with Defendants.**

Defendants also argue that Plaintiff was unable to enter into a contract with Defendants because "its corporate status was dissolved and/or suspended with the State of Florida at the time of executing the Assignment and did not reinstate its corporate status until just before this litigation." Defendants claim Plaintiff was not a viable entity at the time of the agreement and thus did not have the power to enter into the contract. This Court disagrees.

Plaintiff responds that it was temporarily dissolved for 20 days because it failed to file its annual report. But Plaintiff argues that it reinstated its corporate status in Florida on October 16, 2014, before this lawsuit was filed. As a Florida limited liability company, it follows Florida law with respect to its incorporation. Under FS 617.1422, when a corporation is administratively dissolved and thereafter effectively reinstated, "it relates back to and takes effect as of the

effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.” The Court finds that Plaintiff had the authority to enter into this Assignment Purchase Agreement with Defendants.

For all of the foregoing reasons, the Court finds that Defendants’ summary disposition of Plaintiff’s Counts I and II under (C)(8) and (C)(10) is DENIED, and Plaintiff’s request for summary disposition of these claims under MCR 2.116(I)(2) is likewise DENIED.

**IT IS SO ORDERED.**

February 25, 2015  
Date

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