

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

**SDR GROUP, INC., et al.,**

**Plaintiff/Counter-Defendant,**

**v**

**Case No. 14-144054-CH**

**Hon. Wendy Potts**

**HUTCH PAVING, INC.,**

**Defendant/Counter- and Cross-Plaintiff.**

**OPINION AND ORDER RE: DEFENDANTS' HK GRAND VENTURE CAPITAL, LLC  
AND PREMIER PROPERTY ADVISORS, LLC'S MOTION FOR SUMMARY  
DISPOSITION AND THIRD PARTY PLAINTIFF HUTCH PAVING INC.'S MOTION  
FOR SUMMARY DISPOSITION, MOTION TO AMEND, AND MOTION FOR  
SANCTIONS**

At a session of Court  
Held in Pontiac, Michigan  
On

~~NOV 02 2016~~

This matter is before the Court on Hutch Paving Inc.'s Motion for Summary Disposition, Motion to Amend, and Motion for Sanctions and Defendants HK Grand Venture Capital, LLC and Premier Property Advisors, LLC's Motion for Summary Disposition. The parties appeared for oral argument on the motions on October 26, 2016, at which time the Court took the matter under advisement. Hutch moves for summary disposition pursuant to MCR 2.116(C)(1) and argues that Defendants cannot escape the facts that Hutch complied fully with the contract, performed the work as requested, and billed the defendant the amount specified in the contract. Hutch also asserts that there is no genuine issue as to the validity of its construction lien and that it is entitled to amend its complaint to assert its quantum meruit claim against Premier Property

Advisors, LLC (PPA). Despite moving for summary disposition under (C)(1), Hutch does not argue that the Court lacks jurisdiction over the person or property.

Defendants HK Grand and PPA move for summary disposition pursuant to MCR 2.116(C)(10) and assert that they were not parties to the contract with Hutch and have no obligation or liability to Hutch. Defendants attached a copy of the disputed contract and the deposition transcript of the testimony of Remo Polselli to their motion. The contract in dispute is between Woodcreek Management and Hutch Paving. In response to the respective motions, each party essentially restates the arguments made in their own motion and asserts that summary disposition is appropriate in its own favor.

Hutch argues that Defendants have admitted that Woodcreek contracted with Hutch as the agent for HK Grand. Defendant HK Grand answered the allegation in paragraph 8 of the cross-complaint by stating “HPI furnished this labor and material at the request of and pursuant to an agreement with Woodcreek Management, the agent of HK Grand Venture Capital LLC (HK Grand) the owner of the property. Admitted.” Despite an alleged waiver and the admission that HPI furnished labor and material at the request of and pursuant to an agreement with Woodcreek, Hutch does not automatically satisfy its burden of proof with respect to the breach of contract claim. It goes without saying that a contract cannot bind a non-party, and HK Grand and PPA were not parties to the contract. *Equal Employment Opportunity Comm v Waffle House, Inc.*, 534 US 279, 294; 122 S Ct 754; 151 L Ed 2d 755 (2002). Hutch fails to present any argument regarding agency that could bind HK Grand. An apparent agency “must be traceable to the principal and cannot be established by the acts and conduct of the agent.” *Meretta v Peach*, 195 Mich App 695, 699; 491 NW2d 278 (1992). Further, an agency relationship exists “when there is a manifestation by the principal that the agent may act on his account.” *Id* at 697,

citing 1 Restatement Agency, 2d, § 15, p 82. “Where there is a disputed question of agency, any testimony, either direct or inferential, tending to establish agency creates a question of fact for the jury to determine.” *Id.* Thus, despite the assertions on the record during oral argument that the only issues remaining are legal issues, the disputed issue regarding agency creates a question of fact. *Id.*

Hutch fails to cite any factual or legal basis in support of its conclusion that there is no genuine issue of material fact as to the validity of the construction lien. 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). The Court notes that neither party moves for summary disposition of Hutch’s claim for unjust enrichment. Accordingly, both parties’ motions for summary disposition are denied.

In addition to moving for summary disposition, Hutch moves to amend its complaint. Hutch seeks to amend its complaint to assert its unjust enrichment claims against PPA instead of against HK Grand. In response, Defendants assert that allowing Hutch to amend the complaint at this point would be in direct contravention of the contract at issue in the instant matter. Leave to amend pleadings shall be freely given when justice so requires. MCR 2.118(A)(2). Further, amendment should only be denied for compelling reasons, such as undue delay, actual prejudice, or futility. *Weymers v Khera*, 454 Mich 639, 658-659; 563 NW2d 647 (1997). The Court notes that trial in the instant matter is scheduled for November 3, just over a week after the oral argument on this motion. Hutch filed its Answer to SDR’s complaint, counter-complaint, and cross-complaint on February 2, 2015. Despite the fact that Defendants did not file an Answer to the cross-complaint until February 22, 2016, Hutch had ample opportunity to file the motion to

amend and have it heard prior to a mere 8 days before trial. The Court finds that Hutch's motion to amend constitutes undue delay and that motion is denied.

Hutch next asserts that it is entitled to sanctions on the basis that Defendants denied that venue and jurisdiction are proper in this Court, on the basis that Defendants denied that Hutch performed all of its obligations under the contract, and on the basis that Defendants denied that Hutch was owed \$20,000 on the subject contract. In response, Defendants assert that the responses provided in the Answer and in the response to interrogatories were accurate at the time that they were made and that amendment of the same is needed based on the deposition of Mr. Polselli, which took place not long ago.

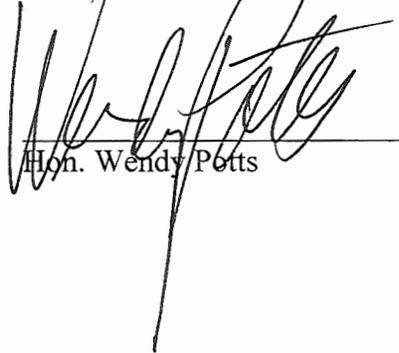
MCR 2.114 requires that all documents filed with the court be signed by a party or counsel and provides that the signature "constitutes a certification by the signer that . . . to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law . . ." MCR 2.114(D)(2). The signature is also a certification that the document "is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." MCR 2.114(D)(3). The rule further provides that if a document is signed in violation of the rule, "the court . . . shall impose upon the person who signed it, a represented party, or both, an appropriate sanction . . ." MCR 2.114(E).

The Court looks to the reasonableness of the inquiry into the factual and legal basis for the claims in determining whether a document is signed in violation of MCR 2.114. *Attorney General v Harkins*, 257 Mich App 564, 576; 669 NW2d 296 (2003). Certainly, Defendants present a novel legal theory to which the Court gave due consideration. The fact that Defendants

may not prevail on their claims does not render them frivolous. *Kitchen v Kitchen*, 465 Mich 654, 662; 641 NW2d 245 (2002). Accordingly, Hutch's motion for sanctions is denied.

This Opinion and Order does not resolve the last pending claim or close the case.

**IT IS SO ORDERED.**



Hon. Wendy Potts

Dated:

NOV 02 2016