

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

**PAPA JOE’S HOLDING COMPANY, LLC,
Plaintiff,**

v.

**Case No. 15-146598-CZ
Hon. James M. Alexander**

**WEST DEARBORN MASSAGE, INC, ET AL,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant West Dearborn Massage, Inc’s motion for partial summary disposition. The Court dispenses with oral argument pursuant to MCR 2.119(E)(3).

In its First Amended Complaint, Plaintiff claims that Defendant West Dearborn was a tenant in Plaintiff’s shopping center whose lease expired on May 31, 2015. This so, Plaintiff alleges, because West Dearborn failed to exercise its option to extend prior to the November 30, 2014 deadline.

Plaintiff claims that it then leased space to a different massage business, Defendant Massage Envy Birmingham. Plaintiff alleges that when West Dearborn learned of the Massage Envy’s lease, it newly claimed that it had sent a certified letter exercising its option to extend the lease on July 8, 2014. But, Plaintiff claims, West Dearborn has not been able to provide any proof of actually doing so.

In any event, Plaintiff alleges that exclusivity provisions in both leases prohibit both massage businesses from being tenants contemporaneously. As a result, Plaintiff filed the present

action, in relevant part, on three claims. Count I seeks a declaration of which lease is effective. Count II is for breach of contract based on West Dearborn's holdover past the May 31, 2015 expiration date. And Count III is a claim for possession of the property – once the Court determined which lease was effective.¹

West Dearborn argues that it is entitled to summary disposition of these three claims because the present case involves claims that are within the exclusive jurisdiction of the district court. To that end, West Dearborn now moves for summary disposition under MCR 2.116(C)(4), which tests whether the Court has subject matter jurisdiction over Plaintiffs' claims.

In support, West Dearborn cites to the summary proceedings chapter of the Revised Judicature Act, at MCL 600.5704, which provides "The district court . . . [has] jurisdiction over summary proceedings to recover possession of premises under this chapter." Under MCL 600.5701(a), "Summary proceedings" are defined as "a civil action to recover possession of premises and to obtain certain ancillary relief as provided by this chapter and by court rules adopted in connection therewith."

Further, MCL 600.5714(1) provides, in relevant part:

A person entitled to possession of premises may recover possession by summary proceedings in the following circumstances:

...

(c) When a person holds over premises in 1 or more of the following circumstances:

...

(ii) After the term for which the premises are demised to the person or to the person under whom he or she holds.

(iii) After the termination of the person's estate by a notice to quit as provided by section 34 of 1846 RS 66, MCL 554.134.

¹ Plaintiff's First Amended Complaint also alleges claims of: (Count IV) Guaranty – against Massage Green and (Count V) Tortious Interference – against West Dearborn and Massage Green. But these claims are not subject to the present motion for partial summary disposition.

West Dearborn also cites to an unpublished, Western District of Michigan federal case that commented in dicta that “Michigan law provides that a summary proceeding for possession of premises falls within the exclusive jurisdiction of the State’s district courts.” *Kropek v Sullivan*, No. 13-cv-13573, 2013 U.S. Dist. LEXIS 168823 (ED Mich, Nov 26, 2013); citing MCL 600.5704 *et seq.*

West Dearborn argues that “Plaintiff cannot provide any authority for its position that this Court has subject matter jurisdiction over summary proceedings,” and as a result, Plaintiff’s Counts I-III must be dismissed.

In response to West Dearborn’s motion,² Plaintiff argues that “[t]he circuit court has concurrent jurisdiction to determine and enforce rights concerning possession and title of property,” citing (in part) MCL 600.2932, which provides (emphasis added):

(1) **Any person**, whether he is in possession of the land in question or not, who claims any right in, title to, equitable title to, interest in, or **right to possession of land, may bring an action in the circuit courts** against any other person who claims or might claim any interest inconsistent with the interest claimed by the plaintiff, whether the defendant is in possession of the land or not.

...

(4) Any tenant or tenants in common who recovers any undivided interest in lands in an action under subsection (1) against a person or persons who may be in possession thereof, but who does not show in the trial of such action that he or they have any interest therein or title thereto, may take possession of the entire premises subject to all of the rights and interest of the other tenant or tenants in common therein.

Plaintiff further argues that the Summary Proceedings chapter of the Revised Judicature Act specifically provides that: “The remedy provided by summary **proceedings is in addition to, and not exclusive of**, other remedies, either legal, equitable or statutory.” MCL 600.5750 (emphasis added).

² Defendant Massage Envy joins in Plaintiff’s response to West Dearborn’s motion.

In fact, relying on this section (in addition to the use of the word “may” in MCL 600.5714), the Court of Appeals has concluded that the circuit court has concurrent jurisdiction over possession claims such as those at issue here. *De Bruyn Produce Co v Romero*, 202 Mich App 92,106-107; 508 NW2d 150 (1993).

Plaintiff had the option to bring this case here, and appropriately so. This case does not present a simple summary eviction proceeding like those typically brought before the district court. Rather, this case involves multiple parties and counter- and cross-claims. Plaintiff’s Counts I-III really seek declaratory relief and are intricately intertwined to the remaining claims, counter-, and cross-claims that are properly under this Court’s jurisdiction. MCR 2.605.

For all of the foregoing reasons, West Dearborn’s motion for summary disposition under (C)(4) is DENIED.

IT IS SO ORDERED.

September 11, 2015
Date

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