

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

**UKPAI UKPAI,
Plaintiff,**

v.

**Case No. 15-148120-CB
Hon. James M. Alexander**

**LAURENCE J. WOLF and
LAURENCE WOLF PROPERTIES,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendants’ motion for summary disposition as to Count I. Defendants previously filed a summary disposition motion in this case, and the Court summarized the case as follows.

This case involves a commercial landlord-tenant dispute. Under the terms of a November 1, 2013 Lease Agreement, Defendant Laurence Wolf Properties leased space in its building to Plaintiff, which was intended to be used as a coffee shop.

The lease term was one year, with rent set at \$2,500 per month from February through July 2014. After August 1, 2014, rent would increase to \$3,000 per month. The Lease also contained the following provision, at paragraph 4:

Lessee shall not make or add any alterations, decorations, installations, additions, improvements, fixtures or equipment (hereinafter collectively referred to as “alterations”) in or to the Premises without Lessor’s prior written consent. Such consent, if given, shall be subject to the following conditions and such additional conditions as Lessor may require:

...

(b) the alterations shall be made only by Lessor’s staff or by contractors or mechanics approved by Lessor, but at no profit to Lessor.

Disputes over this provision caused problems. Specifically, the parties had a difficult time agreeing on contractors, with Plaintiff claiming that Defendant

was unreasonably withholding consent and delaying access to the premises in the planning stages.

Defendants also claim that Plaintiff was “habitually late in paying the rent.” As a result, on March 30, 2015, Defendants filed a summary proceeding for possession in the 43rd District Court. In response, Plaintiff filed a Counter-Complaint seeking \$24,800 in damages for Defendant’s refusal “to promptly approve contractors needed” to build out the premises. Plaintiff also alleged “[v]arious other forms of harassment” and, generally, that Defendants breached the contract.

On April 30, 2015, 43rd District Court Judge Joseph Longo conducted a hearing that resulted in a Judgment for Possession in Plaintiff’s favor. The Judgment did not award damages to either party.

On July 20, 2015, Plaintiff then filed the present action on claims titled: (1) breach of contract, (2) tortious interference, and (3) unauthorized access of Plaintiff’s credit. The breach of contract and tortious interference claims are based on the allegation that Defendants unreasonably withheld contractor consent or wrongfully interfered with Plaintiff’s relationships with said contractors.

In its April 27, 2016 Opinion on Defendants’ prior motion, the Court dismissed Plaintiff’s Counts II and III – but left Count I because Defendants failed to plead the affirmative defense of res judicata. Thereafter, on May 11, 2016, the Court entered an order permitting Defendants to amend their affirmative defenses to so plead. On May 13, 2016, Defendants did so.

Defendants now again move for summary disposition of Plaintiff’s Count I under MCR 2.116(C)(7) and (C)(10) – arguing that Plaintiff’s claims are barred by res judicata and fail as a matter of law.

A (C)(7) motion determines whether a claim is barred, among other grounds, by a “prior judgment.” The Court accepts the plaintiff’s well-pleaded allegations as true and construes them in the plaintiff’s favor unless the allegations are contradicted by documentary evidence. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999); *Huron Tool & Eng'g Co v Precision Consulting Services, Inc*, 209 Mich App 365, 376-77; 532 NW2d 541 (1995).

A (C)(10) motion tests the factual support for a plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). In such a motion, the moving party must specifically identify the issues that he believes present no genuine issue of material fact. *Id.* at 120. The opposing party may not rest on mere allegations or denials in his pleadings, but must, by affidavits or as otherwise provided in the rule, set forth specific facts showing a genuine issue for trial. *Id.* at 120-121. Where the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* at 120.

1. Res Judicata (C)(7)

Defendants first claim that Plaintiff's claims are barred by the doctrine of res judicata. The doctrine of res judicata bars a subsequent action when: (1) the prior action was decided on the merits; (2) both actions involve the same parties or their privies; and (3) the claims in the second case were, or could have been, resolved in the first case. *Adair v Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004); *Sewell v Clean Cut Mgmt*, 463 Mich 569, 575; 621 NW2d 222 (2001).

In support of their motion, Defendants cite to the April 30, 2015, District Court Judgment that awarded possession of the premises to Defendant Lawrence Wolf. But, as stated, although Plaintiff filed a Counterclaim in the District Court alleging the same wrongs and damages as in this case, the Judgment is silent as to said claims. As a result, this Court cannot conclude that the claims in this case were actually resolved.

For this reason, the Court DENIES Defendants' motion based on res judicata.

2. Merits (C)(10)

Defendants next move for summary disposition of Plaintiff's Count I under (C)(10) – claiming that said claim fails as a matter of law because the Lease provides that Defendants had the express contractual right to approve or deny Plaintiff's suggested contractors.

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). “Under ordinary contract principles, if contractual language is clear, construction of the contract is a question of law for the court.” *Holmes v Holmes*, 291 Mich App at 594.

In response, Plaintiff claims that Defendants unreasonably interfered with his right to quiet enjoyment of the premises by unreasonably withholding his consent to using competent and appropriate contractors to build out the premises. Indeed, paragraph 10 of the Lease provides (emphasis added):

Lessor covenants that Lessee may peaceably and quietly enjoy the Premises, **subject to the terms and conditions of this Lease**, upon Lessee's paying the rent and additional rent and observing and performing all the terms, covenants and conditions, on Lessee's part to be observed and performed.

But this provision specifically incorporates the other terms of the Lease. And one of those other terms is the express provision contained in paragraph 4. Plaintiff cannot now claim that Defendants breached the Lease's terms by withholding consent when Plaintiff expressly contracted to give said right to Defendants. Simply, Plaintiff fails to allege any breach of the Lease.

For all of the foregoing reasons and viewing all evidence in the light most favorable to Plaintiff, the Court concludes that there are no material questions of fact in dispute and

Defendants are entitled to summary disposition of Plaintiff's Counts I as a matter of law. The Court, therefore, GRANTS Defendants' motion and DISMISSES Plaintiff's Complaint.

IT IS SO ORDERED.

July 20, 2016
Date

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