

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

**JONNA’S FINE WINE & LIQUOR,  
Plaintiff,**

v.

**Case No. 15-149084-CB  
Hon. James M. Alexander**

**THE FOX COMPANY, INC, ET AL,  
Defendants.**

---

**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Defendants Wajdi Bouchakra, Hoda Chakra, and Amigo’s Investments, LLC’s motion for summary disposition.<sup>1</sup> Plaintiff is a business that is located in a building adjacent to the moving Defendants’ business in Farmington Hills.

Plaintiff claims that, in the summer of 2014, Defendants hired Defendant Fox to perform services on their building. In so doing, Fox allegedly dug a hole “within inches of Plaintiff’s building.” Plaintiff claims that, in August, “a significant rainfall filled the hole and forced water from the excavation into Plaintiff’s building causing various damages to the contents and to the operation of Plaintiff’s business.”

Plaintiff alleges that it requested that Defendants perform or pay for the resulting necessary repairs to its property, but Defendants have refused. Plaintiff then sued the moving Defendants on under a trespass theory.<sup>2</sup>

---

1 Principal Defendant, The Fox Company, is apparently unrepresented and yet to be served with the Summons and Complaint.

2 Although untiled, Plaintiff’s claim against Fox appears to be based in negligence.

Defendants now move for summary disposition under MCR 2.116(C)(8), which tests the legal support for a plaintiff's claims. When analyzing such a motion, 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, 162-163; 483 NW2d 26 (1992). A (C)(8) motion may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* And, when deciding such a motion, the court considers only the pleadings. MCR 2.116(G)(5) (emphasis added).

Defendants argue that they are entitled to summary disposition for two reasons. First, Plaintiff has failed to adequately state a claim for trespass. Second, Defendants argue that the named Plaintiff lacks the capacity to sue because this case was filed by the assumed name of a corporate entity (and not the entity itself).

With respect to Defendants' second argument, Plaintiff admits that the appropriate named Plaintiff is Khmoro, Inc, which operates under the assumed name Jonna's Fine Wine & Liquor and "requests the opportunity to correct that error." The Court will exercise its discretion and allow the amendment to indicate that Plaintiff is properly Khmoro, Inc.

Regarding Defendants' primary argument (that Plaintiff has failed to adequately plead trespass), in 1999, the Court of Appeals discussed trespass (and its interplay with the related nuisance doctrine) at length, finding:

Recovery for trespass to land in Michigan is available only upon proof of an unauthorized direct or immediate intrusion of a physical, tangible object onto land over which the plaintiff has a right of exclusive possession. Once such an intrusion is proved, the tort has been established, and the plaintiff is presumptively entitled to at least nominal damages. *Adams v Cleveland-Cliffs Iron Co*, 237 Mich App 51, 67; 602 NW2d 215 (1999).

In *Adams*, the plaintiff homeowners sued a neighboring iron ore mine operator – claiming both trespass and nuisance based on dust, noise, and vibrations originating from the mine. The Court held that “noise or vibrations are clearly not tangible objects,” and therefore, “cannot give rise to an action in trespass in this state.” *Id.* at 69. With respect to dust, the *Adams* Court similarly found that “dust must generally be considered intangible and thus not actionable in trespass.” *Id.*

The *Adams* Court then addressed, if there was a tangible intrusion, “how strong must the connection between cause and effect be in order to satisfy” the “direct” requirement. *Id.* at 71. The Court reasoned:

We agree with the Restatement view that “[i]t is enough that an act is done with knowledge that it will to a substantial certainty result in the entry of the foreign matter.” Thus, a “direct or immediate” invasion for purposes of trespass is one that is accomplished by any means that the offender knew or reasonably should have known would result in the physical invasion of the plaintiff’s land. *Adams*, 237 Mich App at 71; quoting 1 Restatement Torts, 2d, § 158, comment i, p. 279.

In this case, Plaintiff claims that Defendants directed a co-Defendant to do some work on their property that resulted in a hole next to Plaintiff’s building. When “a significant rainfall” filled the hole in August 2014, water was forced into Plaintiff’s building. (Complaint, at paragraph 6).

But in this case, there is a larger disconnect between the Defendants’ actions and the effect of said actions than in *Adams*. In *Adams*, the mine operator foreseeably caused dust, which entered onto the homeowners’ property. The Court of Appeals reversed a jury award in the homeowners’ favor because dust was not sufficiently “tangible,” but the discussion regarding the connection between cause and effect is instructive.

In this case, the moving Defendants hired Fox to do some work on its property. There is no reason to believe that (and no reasonable factfinder could conclude) that, at that time, Defendants

knew or reasonably should have known that a hole dug by Fox would fill with water from “a significant rainfall” and enter Plaintiff’s property. As a result, the Court finds that Defendants did not have the requisite intent or knowledge of the potential of water intrusion to support an action in trespass.

This conclusion is consistent with the holding of *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186; 540 NW2d 297 (1995), which found in order to succeed in trespass:

the actor must intend to intrude on the property of another without authorization to do so. If the intrusion was due to an accident caused by negligence or an abnormally dangerous condition, an action for trespass is not proper. Although plaintiffs allege that [the defendant] caused the gasoline to spill into the ground water, they did not claim that [the defendant] intended this intrusion. *Cloverleaf Car*, 213 Mich App at 195; citing Prosser & Keeton, Torts (5th ed), § 13, pp. 73-74.

In this case, Plaintiff fails to allege that Defendants intended to cause water to intrude on Plaintiff’s property. The rainfall in this case fails to even amount to “an accident caused by negligence or an abnormally dangerous condition.” But even if it did, it would still not amount to trespass. The water intrusion in this case was caused by rainfall, not an action by Defendants. Simply, Plaintiff’s allegations do not amount to a trespass.

The Court will note that, in its Answer to Defendants’ motion, Plaintiff argues that it is willing to plead nuisance in the alternative and seeks leave to so amend its Complaint. Regarding nuisance, the *Adams* Court found:

Where the possessor of land is menaced by noise, vibrations, or ambient dust, smoke, soot, or fumes, the possessory interest implicated is that of use and enjoyment, not exclusion, and the vehicle through which a plaintiff normally should seek a remedy is the doctrine of nuisance. To prevail in nuisance, a possessor of land must prove **significant harm resulting from the defendant’s unreasonable interference** with the use or enjoyment of the property. *Adams*, 237 Mich App at 67 (emphasis added).

To the extent that Plaintiff seeks to amend to include a nuisance claim, the Court finds that allowing the same would be futile because, on these allegations, Plaintiff has failed to plead that Defendants caused “unreasonable interference” with Plaintiff’s use or enjoyment of its property.

Rather, Plaintiff pled that Defendants hired a company to perform services on their property. It is not unreasonable for Plaintiffs to hire a company to perform services that included digging a hole on its property. This act did not interfere with Plaintiff’s use or enjoyment of its property. Defendants’ actions were not unreasonable, and no reasonable factfinder could conclude otherwise.

For all of the foregoing reasons and accepting all well-pled factual as true and construed in a light most favorable to Plaintiff, the Court finds that Plaintiff’s claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. As a result, Defendants’ motion for summary disposition under (C)(8) is GRANTED, and Plaintiff’s Complaint as to Defendants Wajdi Bouchakra, Hoda Chakra, and Amigo’s Investments is DISMISSED.

**IT IS SO ORDERED.**

December 23, 2015  
Date

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