

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

**THE ANTONIO BARONE REVOCABLE
LIVING TRUST U/A/D 2/4/04,
Plaintiff,**

v.

**Case No. 16-152450-CB
Hon. James M. Alexander**

**MG FARMINGTON HILLS, LLC,
Defendant.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on cross motions for summary disposition. Plaintiff, the Antonio Barone Revocable Living Trust, owns property located at 29657 Orchard Lake Road in Farmington Hills. Defendant MG Farmington Hills is a former tenant on said premises. The parties were previously involved in a lawsuit, in which, MG claimed that water leaked into the premises and caused damage to its property.¹

On July 1, 2014, the parties executed a “Memorandum of Settlement Agreement” to settle the prior case. This Agreement provided:

The above referenced matter [14-138522-CH] has been resolved. The parties recognize that one or more formal documents, including but not limited to mutual releases will be needed to state the full terms of the Agreement. The lease is extinguished and [The Barone Trust] may put up for rent sign.

1. [The Barone Trust] shall pay [MG Farmington] \$30,000.00 to [its] Counsel.
2. This sum shall be paid in 6 equal installments of \$5,000.00. The first payment shall be due 30 [sic – days] after the subject property is re-leased. All other payments shall be due in 5 30 day increments.

¹ Oakland County Circuit Court case no. 14-138522-CH.

3. [The Barone Trust] shall act in good faith to get the subject property re-leased.
4. This agreement shall be secured by a judgment in the amount of 30,000.00 plus reasonable attorney fees to be held by Plaintiff's counsel. In the event a payment is 7 days late, [MG Farmington's] counsel shall notify [The Barone Trust's] counsel in writing and [The Barone Trust] shall have 7 days to cure the default. Notification by email shall be a sufficient writing under this agreement.
5. This matter and the pending matter in the 47th District Court shall be dismissed with prejudice and without costs. Upon dismissal, the subject property shall be returned to [The Barone Trust] forthwith. [MG Farmington] shall remove all its property, interior and exterior prior to return of subject property within 21 days. If the subject property is sold prior to payment of the balance, the balance owed shall be paid at closing.

Despite the Agreement's acknowledgement for the need for the same, the parties never executed any additional formal documents. On September 10, 2014, the parties did appear for a [MG] motion to enforce the terms of the Settlement Agreement. In said motion, MG sought entry of a consent judgment and stipulated order for dismissal of the 47th District Court case.

Then, on October 17, 2014, MG's counsel, Sam Fikah, filed a Notice of Lis Pendens on the property – claiming the same is appropriate because the \$30,000 owed under the Settlement Agreement “deals directly with [the] property.”

In response, The Barone Trust's counsel asked MG to discharge the Lis Pendens as being unlawful. But MG apparently only agreed to do so upon payment of the \$30,000. The Barone Trust then filed the present suit. The Second Amended Complaint alleges claims for (Count I) slander of title, (Count II) tortious interference, (Count III) action to quiet title, and (Count IV) breach of contract.

MG then filed a Counterclaim on claims for (Count I) breach of contract, (Count II)

anticipatory repudiation, and (Count III) declaratory relief.² Both sides now move for summary disposition of the other's claims under MCR 2.116(C)(10), which tests the factual support for a said claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). The Barone Trust also moves for summary disposition of its slander of title and quiet title claims under (C)(9), which tests whether the defendant's defenses are so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery. *Lepp v Cheboygan Area Schools*, 190 Mich App 726 (1991).

I. The Barone Trust's Second Amended Complaint

As stated, The Barone Trust asserts claims for (Count I) slander of title, (Count II) tortious interference, (Count III) action to quiet title, and (Count IV) breach of contract.

A. Slander of Title (Count I)

First, both parties seek summary in their favor on The Barone Trust's slander of title claim. To establish both common-law and statutory slander of title, "a plaintiff must show falsity, malice, and [for common-law claims] special damages, i.e., that the defendant maliciously published false statements that disparaged a plaintiff's right in property, causing special damages." *B & B Inv Group v Gitler*, 229 Mich App 1, 8; 581 NW2d 17 (1998).

Further, Michigan Courts have held that "[i]n order to maintain an action for slander of title, a plaintiff must show that the defendant knowingly filed an invalid lien with the intent to cause the plaintiff injury." *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 412; 487 NW2d

² MG Farmington's Counterclaim also alleges claims for (Count IV) injunctive relief and (Count V) reformation, but MG Farmington agreed to dismissal of the same in its Response to The Barone Trusts's motion for summary

784 (1992), citing *Stanton v Dachtile*, 186 Mich App 247, 262; 463 NW2d 479 (1990). Further, “Malice may not be inferred merely from the filing of an invalid lien; the plaintiff must show that the defendant knowingly filed an invalid lien with the intent to cause the plaintiff injury.” *Stanton v Dachtile*, 186 Mich App 247, 262; 463 NW2d 479 (1990).

The penalty for recording of a such a document without lawful cause includes all costs in bringing the action, including actual attorney fees, and any damages sustained as a result of the filing. MCL 565.108; MCL 600.2907a (also permits recovery of exemplary damages).

The Court will note that both lis pendens have been discharged by MG – the second having been discharged on June 8, 2016 (while the present motions were pending).

MG argues that the lis pendens were appropriate because it believed that it had a right in the real property by virtue of the prior case. In support of its argument, MG cites *Fed Nat Mortg Ass'n v Lagoons Forest Condo Ass'n*, 305 Mich App 258; 852 NW2d 217 (2014) for the proposition that “[a] plaintiff may not prevail on a slander-of-title claim if the defendant’s ‘claim under the mortgage [or lien] was asserted in good faith upon probable cause or was **prompted by a reasonable belief that [the defendant] had rights in the real estate in question.**’” *Fed Nat Mort Ass'n*, 305 Mich App at 270 (emphasis added); quoting *Glieberman v Fine*, 248 Mich 8, 12; 226 NW 669 (1929).

MG also argues that it had a good-faith belief that filing the lis pendens was appropriate because the subject property was “affected” by the underlying litigation, citing MCL 600.2701(1). The Court disagrees.

There is nothing in the Settlement Agreement that provided MG with any right or interest in the real property. The Settlement Agreement only provided MG with the right to a money judgment

for \$30,000. It did not attach the property as security.

The Settlement Agreement only mentions the property in the context of when payment is to be made. But it does not, by any reasonable interpretation, affect The Barone Trust's sole and exclusive right to title, possession, and interest in the property. And MG could not have reasonably believed otherwise.

For all of the foregoing reasons and viewing all evidence in the light most favorable to MG, the Court finds that there are no material questions of fact in dispute such that The Barone Trust is entitled to judgment as a matter of law as to liability. Damages are appropriately determined at a trial or hearing.

For the same reasons, MG's motion for summary as to this claim is DENIED.

B. Tortious Interference (Count II)

MG next moves for summary disposition of The Barone Trust's tortious interference claim, arguing that the Trust failed to adequately plead the same. Michigan recognizes both claims for tortious interference with a contract and tortious interference with a business expectancy.

The elements of tortious interference with a contract are (1) the existence of a contract, (2) a breach of the contract, . . . (3) an unjustified instigation of the breach by the defendant [and (4) damages].

The elements of tortious interference with a business relationship or expectancy are (1) the existence of a valid business relationship or expectancy that is not necessarily predicated on an enforceable contract, (2) knowledge of the relationship or expectancy on the part of the defendant interferer, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resulting damage to the party whose relationship or expectancy was disrupted. *Health Call of Detroit v Atrium Home & Health Care Services, Inc.*, 268 Mich App 83, 89-90; 706 NW2d 843 (2005) (internal citations omitted) (paragraph breaks added for clarity).

MG argues that the Barone Trust's Complaint fails to identify any relationship or contract that was interfered with. The Court agrees.

Additionally, in its Response to MG's motion, the Barone Trust fails to respond on this claim – thereby conceding MG's entitlement to dismissal of the same.

Finally, a review of the Second-Amended Complaint reveals that the Barone Trust's tortious interference claim appears to simply be re-hashed slander of title claim – as contained in Count I. Because the Trust's Count II simply re-hashes its Count I, Count II is appropriately DISMISSED.

C. Quiet Title (Count III)

Both parties also seek summary of the Barone Trust's quiet title claim. MG does so on the argument that the same is moot because it has discharged both filed lis pendens. And the Trust does so on the argument that it solely holds title to the property.

It appears that, inherent in both parties' arguments, is the proposition that The Barone Trust alone holds title to the subject property. As a result, the Court will GRANT the Barone Trust's motion with respect to its Count III.

D. Breach of Contract (Count IV)

Next, MG moves for summary disposition of the Barone Trust's breach of contract claim. The Trust brought said claim based on a past-due water bill dating back to 2011. The Court has previously addressed this issue.

In the underlying case, on September 10, 2014, Mr. Barone brought this issue up to the Court, which opined that the Settlement Agreement contained language indicating that the lease was

“extinguished” and “mutual releases” would be executed. This language indicates the plain intent of the parties to mutually release all remaining claims under the Lease.

As a result, MG cannot be liable on a water bill that predates the Settlement Agreement, which included release language.

For the foregoing reasons and viewing all evidence in the light most favorable to The Barone Trust, the Court GRANTS MG’s motion under (C)(10) and DISMISSES the Trust’s Count IV for breach of contract.

II. MG Farmington’s Counterclaim

Next, the Barone Trust moves for summary of MG’s Counterclaim, which alleges claims for (Count I) breach of contract, (Count II) anticipatory repudiation, and (Count III) declaratory relief.

A. Breach of Contract (Counterclaim Count I)

The Trust first moves for summary of the MG’s breach of contract counterclaim. Generally, 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).

MG alleges that the Trust breached the Settlement Agreement by failing to “act in good faith to get the subject property re-leased” under paragraph 3.

The Trust argues, with evidentiary support, that it has complied with the Agreement’s good-faith re-lease requirement. But MG presents evidence that the Barone Trust has let the property go unlisted for extensive periods of time. This competing evidence precludes summary disposition

under the (C)(10) standard.

Because the parties present competing evidence regarding the Trust's re-lease efforts, summary disposition of said claim is inappropriate and DENIED.

B. Anticipatory Repudiation (Counterclaim Count II)

The Barone Trust next seeks summary of MG's anticipatory repudiation counterclaim.

Under the doctrine of repudiation or anticipatory breach, if, before the time of performance, a party to a contract unequivocally declares the intent not to perform, the innocent party has the option to either sue immediately for the breach of contract or wait until the time of performance. In determining whether a repudiation occurred, it is the party's intention manifested by acts and words that is controlling, not any secret intention that may be held. *Stoddard v Manufacturers Nat'l Bank*, 234 Mich App 140, 163; 593 NW2d 630 (1999), citing *Paul v Bogle*, 193 Mich App 479, 493-494; 484 NW2d 728 (1992).

MG bases this claim on a telephone call with Barone's counsel in December 2015. MG alleges that, in the conversation, said counsel was unaware of the \$30,000 settlement, which leads MG to "assume[] that [the Trust] would not honor that obligation."

But, as argued by the Barone Trust, MG's **assumption** falls far short of an **unequivocal declaration of the intent not to perform**. As a result, summary disposition of this claim is appropriate under (C)(10), and the same is DISMISSED.

C. Declaratory Relief (Counterclaim Count III)

Finally, the Trust seeks dismissal of MG's Counterclaim Count III for declaratory relief. In said claim, MG seeks a declaration that it is entitled to be paid from the closing proceeds should the

property sell before it is repaid the \$30,000 settlement.

MG also appears to seek a declaration that it holds an interest in the property by virtue of the Settlement Agreement. But the Court has already held that the Settlement Agreement gives MG no such interest.

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).

With respect to payment from the closing proceeds, MG cites to the following language from Paragraph 5 of the Settlement Agreement: “If the subject property is sold prior to payment of the balance, the balance owed shall be paid at closing.”

On this precise issue, the Trust offers no real response. And the above-quoted language of the Agreement plainly states that, should the property sell prior to payment of the full \$30,000, the unsatisfied amount must be paid at closing on said sale. And the Court will so declare.

III. Summary / Conclusion

To summarize, both the Barone Trust's and MG's motions for summary disposition are GRANTED IN PART.

The Trust is entitled to judgment as a matter of law as to liability on its slander of title claim (Count I). Damages are appropriately determined at a trial or hearing.

MG's motion for summary as to the Trust's tortious interference (Count II) and breach of contract (Count IV) claims is GRANTED, and the same are dismissed.

The Barone Trust's motion with respect to its Count III – seeking to quiet title to the property in its name alone – is GRANTED.

The Trust's motion for summary disposition of MG Farmington's Counterclaim Count I for breach of contract is DENIED.

The Trust's motion for summary of MG's anticipatory repudiation Counterclaim Count II is GRANTED, and the same is DISMISSED.

And the Trust's motion for summary of MG's declaratory relief Counterclaim Count III is GRANTED IN PART. MG has no interest in the property on which to base any lis pendens. But MG is entitled to payment at closing of any outstanding balance on the \$30,000 should the property sell before the full amount is paid.

The only surviving claims are: (1) the Trust's damages on its slander of title claim, and (2) MG' breach of contract counterclaim.

IT IS SO ORDERED

July 27, 2016 _____
Date

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