

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

**CAROLE LABUTE and
DORINNE M. ROBERTS,
Plaintiffs,**

v.

**Case No. 16-153160-CB
Hon. James M. Alexander**

**LIZA VULAJ WEBSTER,
Defendant.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant's renewed motion for summary disposition. Under the terms of a July 14, 2014 Purchase Agreement, Defendant agreed to purchase, and Plaintiffs agreed to sell, a hair salon located in Farmington Hills. The Agreement provided that the sale would occur in three phases.

In the first phase (from July to December 2014), Defendant was to pay Plaintiffs \$20,000, assume liability for deferred employee bonus payments, and obtain certain office supplies. Plaintiffs would retain ownership and continue to have day-to-day management responsibility. And Plaintiffs were required to train Defendant in management.

In the second phase (from January to December 2015), Defendant was required to pay Plaintiffs an additional \$45,000 for shares of stock. Plaintiffs were also entitled to receive bi-weekly guaranteed compensation of \$2,980. Defendant was to assume responsibility for banking and paying employees. But Plaintiffs would retain ownership and continue to manage day-to-day operations.

In the final phase (from January to December 2016), Defendant was to assume control over all business operations effective January 1, 2016. Plaintiffs were to transfer the stock, and Defendant was required to make the final purchase payments. The Agreement also provided:

[Defendant] agrees that [Plaintiff] Carole LaBute shall have the option to continue her employment with the Business on a full time or part time basis for a period of 5 years from January 1, 2016, for which she shall receive 100% commission for all services she provides (with no product charge deductions) and an assistant paid for by the Business.

It is apparent that, almost immediately after the Purchase Agreement was signed, each side believes that the other spoke badly about them, whispered unkind things, or otherwise hurt their feelings. And this current, resulting dispute snowballed from there.

Plaintiffs initially filed their Complaint on a single breach of contract claim based on allegations that Defendant (1) did not pay as agreed under the Purchase Agreement, (2) changed LaBute's schedule, (3) held staff meetings without inviting LaBute, (4) insisted on communicating via text, and (5) replaced LaBute's assistant.

Shortly after the lawsuit was filed, Plaintiffs claim that Defendant stopped paying the \$1,000 per month required under the Purchase Agreement in 2016. As a result, Plaintiff filed a First Amended Complaint adding this breach in support of her claim.

In response to the Complaint, Defendant filed a Counterclaim for (Count I) breach of contract, and (Count II) tortious interference. Defendant bases her contract claim on the allegation that Plaintiffs (1) failed to train her in management of the business, (2) refused to allow her to inspect the salon's business records, (3) failed to transfer ownership when required, (4) engaged in a disparaging "whisper campaign" against her, and (5) solicited the salon's clientele and staff.

Defendant's tortious interference Counterclaim is also based on the allegation that LaBute encouraged clientele to take their business elsewhere and sabotaged the salon's grand-reopening.

Defendant now moves for summary disposition under MCR 2.116(C)(8) and (C)(10). A (C)(8) motion tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).¹ And a (C)(10) motion tests the factual support for a plaintiff's claims. *Id.*²

In her motion, Defendant argues that Plaintiffs' breach of contract claim fails for two reasons. First, Plaintiffs fail to identify any contractual terms that have been violated. Second, LaBute was not constructively discharged.

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).

I. Failure to Identify Contract Terms that have been Violated.

Defendant first argues that Plaintiffs fail to identify any contractual terms that have been violated. In support, Defendant points to the following Plaintiff allegations: (1) Defendant did

¹ Such a 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." *Wade v Dept of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992). When considering such a motion, all well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade*, 439 Mich at 162-163. Additionally, when considering such motions, the court considers only the pleadings. MCR 2.116(G)(5).

Further, "[w]hen an action is based on a written contract, it is generally necessary to attach a copy of the contract to the complaint. Accordingly, the written contract becomes part of the pleadings themselves, even for purposes of review under MCR 2.116(C)(8)." *Laurel Woods Apts v Roumayah*, 274 Mich App 631, 635; 734 NW2d 217 (2007); citing MCR 2.113(F) and *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2d 633 (2003).

² In such a motion, the moving party must specifically identify the issues that he believes present no genuine issue of material fact. *Maiden*, 461 Mich 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.

not pay Labute as agreed under the Purchase Agreement, (2) Defendant changed LaBute's schedule, (3) Defendant held staff meetings without inviting LaBute, (4) Defendant insisted on communicating via text, and (5) Defendant replaced LaBute's assistant.

Defendant argues that none of these alleged acts constitute breaches because: (1) Plaintiff was paid all she was due, and (2) the other alleged acts are not breaches of specific contractual terms.

Initially, the Court notes that Defendant appears to concede that LaBute's compensation under the Agreement is a specific contractual term. On this issue, Plaintiffs present evidence in the form of LaBute's affidavit and other documentary evidence that she was not paid as required under the Agreement. Defendant, on the other hand, presents her own affidavit that claims that Plaintiff was fully paid. In other words, there is a factual dispute over whether Plaintiff was paid as required under the Agreement. Because it was an express contract term, Plaintiff may base a breach of contract claim on the same.

Plaintiffs also claim that Defendant breached the Agreement by failing to pay a Salon Centric invoice that was due in January 2016 that was delivered in December 2015. Indeed, payment of invoices at that time was also a specific contractual term. And Plaintiffs present sufficient evidence of the alleged breach to survive summary disposition.

With respect to the Plaintiff's remaining allegations relating to LaBute's work environment, it is apparent that Plaintiffs do not claim that said allegations are direct breaches of the Agreement. Rather, Plaintiffs appear to allege that the work-environment allegations are relevant to LaBute's constructive termination claim in support of an alleged breach of her contractual five-year employment option.

In other words, Plaintiffs allege that Defendant “breached the Agreement by engaging in an intentional course of conduct which prevented LaBute from exercising her option to work at the [salon].” This argument directly relates to Defendant’s next summary argument – that LaBute was not constructively discharged.

II. Was Plaintiff Constructively Discharged?

“A constructive discharge occurs when an employer deliberately makes an employee’s working conditions so intolerable that the employee is forced into an involuntary resignation.” *Hammond v United of Oakland, Inc*, 193 Mich App 146, 151; 483 NW2d 652 (1992), citing *Mourad v Auto Club Ins Ass’n*, 186 Mich App 715, 721; 465 NW2d 395 (1991).

LaBute claims that the following actions establish that Defendant deliberately make LaBute’s working conditions so intolerable that she was forced to resign:

[Defendant] (1) changed LaBute’s hours leaving her with a less favorable schedule; (2) reduced LaBute’s hours; (3) isolated LaBute from her co-workers and intentionally excluded her from staff meetings and events; (4) made unauthorized and drastic deductions from LaBute’s contractually agreed upon pay; (5) changed LaBute’s work station after 30 years, and despite her hip condition that required her to have a corner workstation; (6) created an uncomfortable work environment by openly disparaging LaBute to co-workers; (7) planned to (unlawfully) change LaBute’s status from an employee to an independent contractor so LaBute [would be] responsible for taxes and insurance; (8) rejected a completely voluntary effort by LaBute to reduce her compensation so she could work without further harassment; (9) kept LaBute’s tips; and (1) unilaterally slashed LaBute’s compensation by almost 50%.

In support of these allegations, Plaintiffs cite to LaBute’s affidavit and other documentary evidence.

Defendant, on the other hand, argues that “[i]t appears that LaBute was dissatisfied working as an employee for a business that she formerly owned.” In support, Defendant cites to

her own affidavit, portions of LaBute's deposition testimony, and other documentary evidence to establish that LaBute was not compelled to resign by intolerable working conditions.

Viewing all evidence in the light most favorable to Plaintiff, although admittedly a close call, the Court finds that she has presented sufficient evidence to allow a reasonable juror to find that she was constructively discharged.

The Court will note that, in her Reply Brief, Defendant raises two additional grounds for summary for the first time: (1) that Plaintiff's claim must be dismissed for failing to provide contractual notice, and (2) the implied covenant of good faith and fair dealing cannot be used to create contract terms that were not negotiated for. Because Defendant failed to raise these issues in her principal brief so that Plaintiffs had an opportunity to respond,³ the Court will not address Defendant's new arguments.

The Court will also note that, in addition to factual disputes, both parties' submissions appear to challenge the other side's credibility. It is well settled, however, that credibility is an issue that must be submitted to the trier of fact. *White v Taylor Distributing Company, Inc*, 275 Mich App 615; 739 NW2d 132 (2007). The *White* Court reasoned that, "courts may not resolve factual disputes or determine credibility in ruling on a summary disposition motion" *White, supra* at 625.

Additionally, in *Vanguard Ins Co v Bolt*, 204 Mich App 271; 514 NW2d 525 (1994), the Court of Appeals held:

The granting of a motion for summary disposition is especially suspect where motive and intent are at issue or where a witness or deponent's credibility is crucial. Accordingly, where the truth of a material factual assertion of a moving party depends upon a deponent's credibility, there exists a genuine issue for the trier of fact and a motion for summary disposition should not be granted. *Vanguard Ins*, 204 Mich App at 276 (internal citations omitted).

³ As stated, Defendant only raised two issues: (1) "Plaintiff's fail to identify any contractual terms that have been violated," and (2) "LaBute was not constructively discharged."

Additionally, at times both parties' arguments are based on artful editing and out-of-context quotations that cannot possibly tell the entire story. As a result, factual development is necessary for resolution of Plaintiff's claim. As a result, Defendant's motion for summary under (C)(10) is DENIED.

Further, considering only the pleadings and accepting all well-pled factual allegations as true, the Court finds that Plaintiff has sufficiently pled her breach of contract claim such that the Court cannot conclude that the same is so clearly unenforceable as a matter of law that no factual development could justify a right of recovery. As a result, the Defendant's motion for summary disposition under (C)(8) is also DENIED.

IT IS SO ORDERED.

October 5, 2016
Date

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