

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

LITTLE MACK ONE STOP, LLC  
and HISAM OUZA,

Plaintiffs/Counter-Defendants,

Case No. 2014-1685-CB

vs.

MICHAEL DORRA

Defendant/Counter-Plaintiff,

and

IHSAN DORRA,

Defendant.

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OPINION AND ORDER

Defendant Ihsan Dorra ("Movant") has filed a motion for summary disposition of Plaintiffs' claims against her pursuant to MCR 2.116(C)(8) and (10). Plaintiffs have filed a response and request that the motion be denied.

I. Factual and Procedural History

This matter arises out of the sale of a gasoline station located at 31611 Little Mack, Roseville, MI ("Subject Property"). On May 13, 2013, Plaintiff Little Mack One Stop, LLC ("Plaintiff Little Mack"), through its managing member and sole owner Plaintiff Hizam Ouza, and 94 & Little Mack One Stop Shoppe, LLC ("94 & Little"), through its managing member and sole owner Defendant Michael Dorra ("Defendant Michael"), entered into a "Real Estate Purchase Agreement" ("First Agreement"). However, it appears undisputed that the First Agreement was canceled.

On February 27, 2014, the same parties executed a contract titled "Agreement of Sale Personal Property and Real Estate" ("Second Agreement"). On March 24, 2014, the same parties executed an "Amendment to Agreement of Sale Personal Property and Real Estate" ("Amended Second Agreement"). The Amended Second Agreement provided that Defendant Michael would sell his interest in 94 & Little to Plaintiff Little Mack in lieu of 94 & Little selling certain property to Plaintiff Little Mack as provided in the Second Agreement. (See Complaint, at Exhibit 2.) The Amended Second Agreement also provides that it does not alter the other terms of the Second Agreement.

Shortly after the Amended Second Agreement was executed, Plaintiffs allegedly requested to rescind the Second Agreement/Amended Second Agreement. After their request was denied, Plaintiffs, on April 28, 2014, filed their complaint in this matter. In their complaint, Plaintiffs assert the following claims: Count I- Breach of Contract, Count II- Rescission of Contract, Count III- Fraud and Misrepresentation, Count IV- Innocent Misrepresentation, Count V- Silent Fraud, and Count VI- Unjust Enrichment.

On March 25, 2015, Movant filed her instant motion for summary disposition. On June 15, 2015, Plaintiffs filed their response. On June 22, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

## II. Standard of Review

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party has failed to state a claim upon which relief may be granted. *Radtko v Everett*, 442 Mich 368, 373-374; 501 NW2d 155 (1993). A motion under MCR 2.116(C)(9) tests the sufficiency of a defendant's pleadings by accepting all

well-pleaded allegations as true. *Id.* If the defenses are so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery, then summary disposition under this rule is proper. *Id.* Further, a court may look only to the parties' pleadings in deciding a motion under MCR 2.116(C)(9). *Id.*

A motion under MCR 2.116(C)(10), on the other hand, tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

### III. Arguments and Analysis

#### A. Breach of Contract (Count I) and Rescission of Contract (Count II)

"A party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach." *Miller-Davis Co. v Ahrens Constr., Inc.*, 495 Mich 161, 178; 848 NW2d 95 (2014). In this case, Movant was not a party to the Second Agreement or Amended Second Agreement. (See Movant's Exhibit 1, and Complaint, at Exhibit 2.) "It goes without saying that a contract cannot bind a nonparty." *AFSCME Council 25 v Wayne Co.*, 292 Mich App 68, 80; 811 NW2d 4 (2011). As Movant was not a party to the Second Agreement or Amended Second

Agreement, Plaintiffs cannot establish that she breached either contract's terms, thereby making her liable under a breach of contract theory. Consequently, Movant's motion for summary disposition of Plaintiffs' breach of contract claim against her must be granted.

Likewise, Plaintiff may not obtain rescission of the Second Agreement or Amended Second Agreement from someone that was not a party to either contract. Consequently, Movant's motion for summary disposition of Plaintiffs' rescission claim must be granted.

#### B. Fraud and Misrepresentation (Count III).

To assert an actionable fraud claim, the plaintiff must demonstrate that: (1) the defendant made a material representation; (2) it was false; (3) when the defendant made it, the defendant knew that it was false, or made it recklessly, without any knowledge of its truth and as a positive assertion; (4) the defendant made it with the intention that it should be acted upon by the plaintiff; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff thereby suffered injury. *Cooper v Auto Club Ins Association, supra; Hi-Way Motor Co v Int'l Harvester Co*, 398 Mich 330, 336; 247 NW2d 813 (1976).

In their complaint, Plaintiffs allege that Defendants made representations to them that 94 & Little would have no outstanding debts or obligations once they were sold to Plaintiff, that 94 & Little did not owe U.S. Fuel any money, that the \$200,000.00 up front portion of the purchase price under the Second Agreement would be used to pay off an encumbrance on the Subject Property, and that 94 & Little was current on its taxes and obligations. (See Complaint, at ¶¶ 51-55.) Further, Plaintiffs allege that the above-referenced representations were false when Defendants made them, that Defendants

knew they were false, that they were made with the intention that Plaintiffs rely on them, and that they have relied on them to their detriment. (See Complaint, at ¶¶ 56-61.) Accordingly, Plaintiffs have stated a claim for fraudulent misrepresentation that, if proven, would constitute a valid claim against Movant. Consequently, Movant's motion for summary disposition of Plaintiffs' fraudulent misrepresentation against her pursuant to MCR 2.116(C)(8) must be denied.

With regards to Movant's motion for summary disposition of Plaintiffs' fraudulent misrepresentation claim under MCR 2.116(C)(10), Movant relies on an affidavit executed by Defendant Michael in which he testified that Movant was not involved in the negotiation or closing of the Second Agreement. (See Movant's Exhibit 4, at ¶¶ 3.) In addition, Movant, in her own affidavit, testified that she was not involved in the negotiations or closing. (See Movant's Exhibit 5, at ¶¶ 3.)

In response, Plaintiffs do not refer to any statements Movant made that were fraudulent. Moreover, the only fraudulent statements Plaintiffs identified in their complaint were contained in either the Second Agreement or Amended Second Agreement, neither of which Movant executed. For these reasons, the Court is convinced that Plaintiffs have failed to present sufficient evidence to establish that a genuine issue of material fact exists as to their fraudulent misrepresentation claim against Movant. Consequently, Movant's motion of Count III must be granted.

In addition, the Court notes that Plaintiffs, in their response, contend that they are entitled to recover the \$200,000.00 they paid under the Second Agreement/Amended Second Agreement from Movant under the Michigan Fraudulent Transfer Act ("MFTA"), MCL 566.31. However, even if true, Plaintiffs have not made any reference to the

MFTA in their complaint. Consequently, Plaintiffs have failed to state a valid claim under the MFTA, and any consideration of the merit of a potential claim under the Act would be improper at this time.

#### C. Innocent Misrepresentation (Count IV)

To recover on a claim of innocent misrepresentation, the plaintiff must prove that they “justifiably relied to their detriment on information prepared without reasonable care by one who owed the plaintiff a duty of care.” See *Unibar Maint. Serv., Inc. v. Saigh*, 283 Mich App 609; 769 NW2d 911, 919 (2009).

In this case, Plaintiff has failed to identify any misrepresentation Movant has made. Consequently, Movant’s motion for summary disposition of Plaintiffs’ innocent misrepresentation claim must be granted.

#### D. Silent Fraud (Count V)

To prove silent fraud, also known as fraudulent concealment, a plaintiff must establish (1) that the defendant suppressed the truth with the intent to defraud the plaintiff and (2) that the defendant had a legal or equitable duty of disclosure. *Lucas v Awaad*, 299 Mich App 345, 363–364; 830 NW2d 141 (2013). Further, “[a] plaintiff cannot merely prove that the defendant failed to disclose something; instead, ‘a plaintiff must show some type of representation by words or actions that was false or misleading and was intended to deceive.’” *Id.* at 364, quoting *Roberts v Saffell*, 280 Mich App 397, 404; 760 NW2d 715 (2008), *aff’d* 483 Mich 1089 (2009) (internal citation omitted).

In their complaint, Plaintiffs alleges that Movant had a duty to disclose certain facts regarding the operation of 94 & Little and the sale of the Subject Property by virtue of the transaction she entered into with Plaintiffs. (See Complaint, at ¶ 68.) However,

as discussed above, Movant was not a party to either the Second Agreement or the Amended Second Agreement. Further, Plaintiffs have failed to address their silent fraud claim in their response. For these reasons, the Court is satisfied that Movant's motion for summary disposition of Plaintiffs' silent fraud claim must be granted.

#### E. Unjust Enrichment (Count IV)

In order to sustain the claim of unjust enrichment, plaintiff must establish (1) the receipt of a benefit by defendant from plaintiff, and (2) an inequity resulting to plaintiff because of the retention of the benefit by defendant. *Belle Isle Grill Corp. v. City of Detroit*, 256 Mich App 463, 478, 666 NW2d 271 (2003). If this is established, the law will imply a contract in order to prevent unjust enrichment. *Id.* However, a contract will be implied only if there is no express contract covering the same subject matter. *Id.*

In this case, the \$200,000.00 Plaintiffs paid in connection with the Second Agreement and/or Amended Second Agreement was tendered in the form of a check payable to both Defendant Michael and Movant. (See Exhibit 3 to Plaintiffs' Response.) Consequently, the first element of Plaintiffs' unjust enrichment claim has been satisfied. With respect to the second element, Movants has testified that she never received any proceeds from the Second Agreement or Amended Second Agreement. (See Movant's Exhibit 5, at ¶4.) Plaintiffs have not provided any evidence contradicting Movant's testimony. Consequently, the Court is convinced that Plaintiff has failed to identify a genuine issue of material fact that would preclude summary disposition. As a result, Movant's motion for summary disposition of Plaintiffs' unjust enrichment claim must be granted.

F. Request for Sanctions pursuant to MCR 2.114(F)

In addition, Movant also requests that the Court impose sanctions against Plaintiffs pursuant to MCR 2.114(F). However, the Court is not persuaded that sanctions are appropriate in this matter. Consequently, Movant's request for sanctions is denied.

IV. Conclusion

For the reasons set forth above, Defendant Ihsan Dorra's motion for summary disposition of Plaintiffs' claims against her is GRANTED.

Further, Defendant Ihsan Dorra's request for sanctions is DENIED.

Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last pending claim nor closes the case.

IT IS SO ORDERED.

Date: JUL 24 2015

Kathryn A. Viviano  
Hon. Kathryn A. Viviano, Circuit Court Judge