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STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

CLEANING ABOVE AND
BEYOND, LLC,

Plaintiff,

vs.

Case No. 2015-1289-CB

JEFFERSON YACHT CLUB,
WILLIAM MILLER, JEFFREY
WEISHAAR, SUSAN
VANSTEELANDT, JOSEPH
LEFEVER and KENNETH
BLONDELL,

Defendants.

_____ /

OPINION AND ORDER

Defendants have filed a motion for partial summary disposition pursuant to MCR 2.116(C)(8) and (10). Plaintiff has filed a response and requests that the motion be denied.

I. Factual and Procedural History

This matter arises out an October 7, 2014 "Work for Hire Agreement" ("Agreement") between Plaintiff and Defendant Jefferson Yacht Club ("JYC"). Pursuant to the Agreement, Plaintiff agreed to provide cleaning services from October 13, 2014 to December 31, 2015 ("Contract Term").

On April 17, 2015, Plaintiff filed its complaint in this matter. Plaintiff's complaint contains the following claims, all of which relate to its allegation that JYC has breached the terms of the Agreement by terminating the Agreement before the Contract Term

was completed: Count I- Breach of Contract, Count II- Tortious Interference, Count III- Civil Conspiracy, and Count IV- Specific Performance.

On June 5, 2015, Defendants filed their instant motion for partial summary disposition pursuant to MCR 2.116(C)(8) and (10). Plaintiff has filed a response and requests that the motion be denied. On July 20, 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. *Radtke v Everett*, 442 Mich 368, 373-374; 501 NW2d 155 (1993). 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

In their motion, Defendants contend that this matter was improperly filed with this Court as Plaintiff's specific performance claim fails to state a viable claim, that a portion of the damages sought in Plaintiff's conspiracy and tortious interference claims is

speculative, and the damages sought in connection with Plaintiff's other claims is below the \$25,000.00 jurisdictional amount requirement set forth by MCL 600.8301.

A. Specific Performance (Count IV)

In its count for specific performance, Plaintiff requests that the Court "reinstate the Agreement and order JYC to specifically perform until at least December 31, 2015, together with full restitution and any other relief found under the circumstances....." (See Complaint, at pg.10.) In their motion, Defendants contend that Plaintiff may not seek specific performance where an adequate remedy at law exists.

"Specific performance will not be decreed where enforcement of the decree would require continuous judicial supervision, or where there is an adequate remedy at law." *Edidin v Detroit Economic Growth Corp*, 134 Mich App 655, 660; 352 NW2d 288 (1984). In this case, Plaintiff contends that there is no adequate remedy at law because it may not be able to collect a money judgment entered against JYC. However, even if the Court were to find that inability to collect would deprive Plaintiff of an adequate remedy at law, Plaintiff has failed to establish how ordering specific performance would cure such an injustice. Indeed, if the Court were to order specific performance, Plaintiff would be granted restitution, i.e. a money judgment, and the "benefit" of being able to performance cleaning services for JYC through the end of the year. However, if Plaintiff is correct in that JYC is insolvent, ordering JYC to allow Plaintiff to continue to provide services would not provide Plaintiff with a remedy at all as JYC would not be able to pay for the service. Accordingly, if Plaintiff is correct that JYC has no money then specific performance would actually further damage Plaintiff by requiring them to perform services for which it has no hope of being compensated. Consequently, the Court is

convinced that utilizing the equity remedy of specific performance in this case is illogical.

In addition, the Court is convinced that Plaintiff has an adequate remedy at law in this matter. Paragraph 3 of the Agreement specifically provides that JYC is required to pay Plaintiff "all future payments" immediately upon the date of termination. (See Defendants' Exhibit A.) Accordingly, the Agreement clearly provides for monetary damages in the event JYC terminates the Agreement early. The Court is convinced that paragraph 3 of the Agreement provides for an adequate remedy at law. As a result, specific performance is unavailable to Plaintiff in this matter. See *Edidin*, 134 Mich App at 660.

B. Speculative Future Damages

In this matter, Plaintiff sole basis for damages over \$25,000.00 arises out of its tortious interference with a business expectancy claim. Specifically, Plaintiff alleges that it expected the Agreement to be renewed for an additional year. However, in order to prevail on a business expectancy claim, the business expectancy must be a reasonable likelihood, more than mere wishful thinking. *Trepel v Pontiac Osteopathic Hospital*, 135 Mich App 361, 377; 354 NW2d 341 (1984). In this matter, it appears undisputed that JYC terminated the Agreement well before the end of Contract Term. Accordingly, Plaintiff's expectancy to have the Agreement renewed for an additional year is hardly wishful thinking, much less a reasonable likelihood. Consequently, Plaintiff's tortious interference with a business expectancy claim must be dismissed. As a result, Plaintiff's sole basis for damages over \$25,000.00 is without merit.

C. Jurisdiction

In their motion, Defendants contend that this matter should be removed to the 40th judicial district court because the amount in controversy is less than \$25,000.00. "Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." MCL 600.605. "Thus, circuit courts are presumed to have subject-matter jurisdiction unless jurisdiction is expressly prohibited or given to another court by constitution or statute." *In re Wayne Co. Treasurer Petition*, 265 Mich App 285, 291; 698 NW2d 879 (2005). Under MCL 600.8301(1), subject-matter jurisdiction is conferred with the district court when the amount in controversy is less than \$25,000. "[T]he plain, ordinary, and legal meaning of 'amount in controversy' under MCL 600.8301(1) is the amount the parties to a lawsuit dispute, argue about, or debate during the litigation." *Moody v. Home Owners Ins. Co.*, 304 Mich App 415, 430; 849 NW2d 31 (2014).

For the reasons discussed above, the Court is satisfied that the bases for Plaintiff filing this matter with this Court are meritless. Further, the Court is convinced that this matter must be removed to the 40th judicial district court. A plaintiff cannot merely allege any amount of damages in a complaint in order to satisfy the actual amount in controversy under MCL 600.8301, as under Michigan law allegations of remote, contingent, or speculative damages cannot be recovered in a tort or contract action. *Ensink v Mecosta Co Gen Hosp*, 262 Mich App 518, 524; 687 NW2d 143 (2004). Moreover, where a Michigan circuit court lacks jurisdiction because claims do not

exceed the monetary jurisdictional threshold, the proper course of action is for the circuit court to immediately remove the action to the appropriate district court. *Boyd v Nelson Credit Centers, Inc.*, 132 Mich App 774; 348 NW2d 25 (1984). In this case, the actual amount in controversy in connection with Plaintiff's remaining claims falls under the jurisdictional threshold set forth by MCL 600.8301. Consequently, the Court is convinced that this matter must be removed to the 40th district court.

IV. Conclusion

For the reasons set forth above, Defendants' motion for partial summary disposition is GRANTED. Specifically, Plaintiff's specific performance claim and portion of its tortious interference claim based on its alleged expectancy that the Agreement would be renewed are DISMISSED. Further, Plaintiff's remaining claims are hereby removed to the 40th judicial district court based on this Court's lack of jurisdiction over said claims under MCL 600.8301. Pursuant to MCR 2.602(A)(3), this Opinion and Order resolves the last pending claim and closes this case.

IT IS SO ORDERED.

Date: AUG 03 2015

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