

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

HARRISON CHIROPRACTIC CENTER,
P.C., a Michigan professional corporation,

Plaintiff/Counter-Defendant,

vs.

Case No. 12-10432-CKB

HON. CHRISTOPHER P. YATES

CHRISTY DYKGRAAF; and C & R
MANAGEMENT, INC.,

Defendants,

and

CRAIG J. DYKGRAAF, D.C., P.C.,

Counter-Plaintiff.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND VERDICT

According to Plaintiff Harrison Chiropractic Center, P.C. (“HCC”), Dr. Gerard Farage took over HCC’s practice by underhanded means. But in October 2014, HCC reached a settlement with Dr. Farage, leaving only Christy Dykgraaf and C & R Management, Inc. (“C&R”) to defend against HCC’s remaining claim for breach of the lease agreement between C&R and HCC. Based upon the evidence adduced at trial, the Court finds that HCC has established a breach of the lease agreement, but HCC’s damages are limited to \$9,969.12. The Court further finds that Craig J. Dykgraaf, D.C., P.C., (“Dykgraaf P.C.”) is entitled to recover \$4,500.00 from HCC on a counterclaim.¹

¹ Plaintiff HCC named Dykgraaf P.C. as a defendant in the first amended complaint filed on August 27, 2013, and Dykgraaf P.C. responded with a counterclaim against HCC on November 25, 2013. Then, on October 3, 2014, HCC filed a second amended complaint that replaced Dykgraaf P.C. with Defendant C&R. The counterclaim nonetheless remains pending, so the Court must render a verdict on that counterclaim.

I. Findings of Fact

Pursuant to MCR 2.517(A)(1), in an action tried without a jury, “the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.” The Court must render “[b]rief, definite, and pertinent findings and conclusions on the contested matters” that may take the form of a written opinion. See MCR 2.517(A)(2) & (3). Therefore, the Court shall begin with findings of fact, followed by conclusions of law, and ultimately the verdict.

By all accounts, Dr. David Harrison has enjoyed a successful career as a chiropractor and as a manager of chiropractic practices. Dr. Harrison bought his first practice in 1986 and, in time, took over several other practices in West Michigan. See Trial Tr at 13-14. In 2009, Dr. Harrison bought a practice from Dr. Craig Dykgraaf for \$85,000, see id. at 14, 20; Trial Exhibit 2, with the agreement that HCC would “sign a 1-year lease with C&R Management for the price of \$600.00 monthly for Suites A and C” at the practice’s current location.² See Trial Exhibit 2 (Buy/Sell Agreement, § 8). On June 23, 2009, Dr. Harrison signed a lease agreement with C&R that called for a one-year term ending on June 30, 2010.³ See Trial Exhibit 3 (lease agreement, § 2). Dr. Dykgraaf also signed that lease agreement as the “manager” of C&R. See Trial Exhibit 3 (lease agreement at 17).

In August of 2010, Dr. Harrison signed a new lease agreement with Defendant C&R. See Trial Exhibit 7. That lease agreement contemplated a two-year term commencing on September 1, 2010, see Trial Exhibit 7 (lease agreement, ¶¶ 2(a)-(b)), afforded HCC “the right to consolidate its

² As Dr. Harrison explained, maintaining the practice in its current location was important to the success of the practice because “patients are creatures of habit, especially chiropractic patients. They like to go where they’ve always gone.” See Trial Tr at 23. Consequently, the location of the practice had a direct bearing upon the ability of the practice to retain the client base.

³ The lease agreement erroneously states that the parties entered into that agreement on “this 23rd day of June, 2010.” See Trial Exhibit 3.

business into suite 1715C returning suite 1717A to” C&R, see id. (lease agreement, ¶ 2), and gave HCC the right to renew the lease for “[o]ne term of one (1) year.” See id. (lease agreement, ¶ 2(c)).

The new lease agreement also provided directives regarding the renewal process:

Lessee shall have the option to renew this Lease as stated in Paragraph 2(c) above. . . . To exercise said option Lessee shall give notice to Lessor in writing not less than 120 days prior to the expiration of this Lease and any extension thereof. An election to renew that is given too late is void.

See id. (lease agreement, ¶ 20).

Beginning in September 2010, Plaintiff HCC occupied the rented space under the new lease agreement without incident. In January of 2012, HCC began paying a reduced amount of rent based upon the consolidation of its operations from two suites into one. See Trial Tr at 44-45. Dr. Gerard Farage was working in the rented space on behalf of HCC throughout the duration of the new lease, see id. at 46-47, but on September 4, 2012, Dr. Farage informed Dr. Harrison that he wanted to buy the practice, that he had already signed a new lease for the rented space,⁴ and that Dr. Harrison had been locked out of the rented space. See id. at 50-52. Dr. Harrison promptly went over to the rented space, but a sheriff’s deputy at the premises “said that the locks were changed” and that Dr. Harrison “couldn’t get in.” See id. at 53.

Because of his new lease with Defendant C&R, Dr. Farage held onto the rented space at issue on Four Mile Road, see Trial Tr at 92, so Dr. Harrison and Plaintiff HCC had to provide chiropractic services for HCC’s patients exclusively at their existing office on the East Beltline, see id. at 91-92, which was approximately three and a half miles from the rented space that Dr. Farage took over from HCC. See id. at 68-69. Based upon its expulsion from the rented space on September 4, 2012, HCC

⁴ That lease was signed on August 9, 2012, by Dr. Farage and Defendant Christy Dykgraaf, who was identified on the lease as the “president” of Defendant C&R. See Trial Exhibit 10.

has requested \$423,860 in damages for the defendants' alleged breach of the lease agreement. See Trial Tr at 149. In response, Dykgraaf P.C. has advanced a claim for \$4,500 as the unpaid balance on the purchase price of HCC's acquisition of the Dykgraaf P.C. practice.

II. Conclusions of Law

In order to render a verdict, the Court must address competing claims for breach of contract. First, the Court must decide whether Defendants C&R and Christy Dykgraaf breached the HCC lease by renting the space on Four Mile Road to Dr. Farage, and thereby prematurely terminating HCC's lease. Second, the Court must determine whether HCC should be held accountable for failing to pay the outstanding balance of \$4,500 for the purchase of Dykgraaf P.C.'s practice. To establish a claim for breach of contract, a plaintiff must prove: (1) the existence of a valid contract; (2) a breach of the contract; and (3) damages resulting from the breach. See Marketplace of Rochester Hills Parcel B, LLC v Comerica Bank, No 318894, slip op at 4 (Mich App March 17, 2015) (**published** decision). With regard to HCC's claim and Dykgraaf P.C.'s counterclaim, the Court finds that a valid contract existed in each relationship, so the Court shall focus on whether a breach occurred that resulted in compensable damages.

A. HCC's Claim for Breach of the Lease Agreement.

The lease agreement signed by Plaintiff HCC and Defendant C&R in August of 2010 called for a two-year term starting on September 1, 2010, see Trial Exhibit 7 (lease agreement, ¶¶ 2(a)-(b)), but afforded HCC the right to a renewal option of "[o]ne term of one (1) year." Id. (lease agreement, ¶ 2(c)). To exercise that renewal option, HCC had to "give notice to Lessor [*i.e.*, C&R] in writing not less than 120 days prior to the expiration of this Lease and any extension thereof." See id. (lease

Despite the Court's conclusion that Plaintiff HCC suffered a breach of the lease agreement, the Court cannot hold Defendant Christy Dykgraaf personally liable for damages. "It goes without saying that a contract cannot bind a nonparty[.]" AFSCME, Council 25 v Wayne County, 292 Mich App 68, 80 (2011), and personal liability ordinarily does not attach to a corporate officer who signs a contract "only once, rather than twice," on behalf of a corporate entity. Livonia Building Materials Co v Harrison Construction Co, 276 Mich App 514, 523 (2007). The lease at issue here was signed by Craig Dykgraaf as the "president" of Defendant C&R. See Trial Exhibit 7. Because the signature of Christy Dykgraaf appears nowhere on that lease, the Court cannot hold her personally responsible for any breach of that lease agreement. Instead, the Court can impose liability only upon C&R itself, as opposed to any of its officers.

Under Michigan law, the party "asserting a breach of contract has the burden of proving its damages with reasonable certainty, and may recover only those damages that are the direct, natural, and proximate result of the breach." See Alan Custom Homes, Inc, v Krol, 256 Mich App 505, 512 (2003). Accordingly, the appropriate measure of damages for breach of the lease agreement includes "those damages that arise naturally from the breach, or which can *reasonably* be said to have been in the contemplation of the parties at the time the contract was made." Lawrence v Will Darrah & Associates, Inc, 445 Mich 1, 13 (1994). Plaintiff HCC's retrospective approach to damages flies in the face of this established standard. That is, HCC seeks damages for its business costs and expenses leading up to the date of breach on September 4, 2012, rather than its losses following the breach on that date. See Trial Tr at 147. But Michigan law dictates a prospective approach that bases HCC's damages on its losses "flowing from the breach." Burnside v State Farm Fire and Casualty Co, 208 Mich App 422, 428 (1995).

The only losses potentially flowing from the breach in this case take the forms of lost clients, lost value of the leased space, and attorney fees claimed by Plaintiff HCC as damages. With respect to lost clients, Dr. Harrison candidly conceded that he could not identify clients HCC lost as a result of his expulsion from the leased space. See Trial Tr at 81-82. Consequently, the Court cannot award damages to HCC for any of its lost clients because such an award would be entirely speculative. See Chelsea Investment Group, LLC v City of Chelsea, 288 Mich App 239, 255 (2010) (“damages that are speculative or based on conjecture are not recoverable”). In contrast, HCC surely lost access to the leased space, and the value of that lost space can be computed as the monthly rent multiplied by the number of months HCC was entitled to occupy that space. The lease agreement provides for a monthly rent payment of \$830.76 for suite 1715C, see Trial Exhibit 7 (lease agreement, ¶ 3), and one 12-month extension of the lease beyond September 1, 2012, see id. (lease agreement, ¶ 2(c)), so the Court shall award HCC the sum of \$9,969.12 (*i.e.*, \$830.76 times 12 months) in damages for the loss of the leased space. Finally, the Court has no basis to award damages to HCC for its attorney fees. “[A]ttorney fees are not recoverable as an element of costs or damages unless expressly allowed by statute, court rule, common-law exception, or contract.” Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club, 283 Mich App 264, 297 (2009). In this case, no statute, court rule, or common-law exception permits recovery of attorney fees for HCC’s breach-of-contract claim, and the parties’ lease agreement only provides for attorney fees for the landlord – not the tenant – in case of litigation to address the tenant’s default.⁶ See Trial Exhibit 7 (lease agreement, ¶ 16).

⁶ At most, Michigan law “allows recovery of reasonable attorney fees in prior litigation with a third party – not with the defendant.” G & D Co v Durand Milling Co, Inc, 67 Mich App 253, 257 (1976). But even if the Court were to consider attorney fees incurred by Plaintiff HCC in litigating against Dr. Farage, HCC would have to show that Defendant C&R “is guilty of malicious, fraudulent or similar wrongful conduct[.]” Id. at 260. HCC cannot possibly meet that standard here.

Based upon a careful analysis of the record and Michigan law concerning damages available in breach-of-contract actions, the Court concludes that Plaintiff HCC is entitled to recover \$9,969.12 from Defendant C&R for C&R's breach of the parties' lease agreement. The Court recognizes that this sum represents a small fraction of the damages requested by HCC, but that modest figure reflects the reality that C&R's breach deprived HCC of nothing more than occupancy of one of its offices for a 12-month period. HCC had three years in the leased space to accomplish a seamless transition of patients from Dr. Dykgraaf's care to HCC's care. To be sure, the fourth year of that transition was complicated by the abrupt exclusion of HCC from the leased space, but Dr. Farage bears most of the responsibility for that unwarranted complication. Because HCC has reached a settlement with Dr. Farage, the Court has no ability to impose HCC's costs upon Dr. Farage. Instead, the Court has to limit the award to the damages flowing from C&R's breach of the lease agreement. Because those damages do not reflect the harm caused by Dr. Farage, the Court shall not offset the award rendered here against the amount of the settlement paid by Dr. Farage to HCC. The Court shall simply order that C&R pay damages of \$9,969.12 to HCC for C&R's breach of the lease agreement.

B. Dykgraaf P.C.'s Claim for the Outstanding Balance.

Dykgraaf P.C.'s breach-of-contract claim against HCC rests upon a straightforward theory: HCC agreed to pay \$85,000 for the Dykgraaf P.C. practice; HCC has only paid \$80,500; so HCC owes Dykgraaf P.C. the outstanding balance of \$4,500. As counsel for HCC explained during trial: "It's already been stipulated that 4,500 has not been paid out of the \$85,000." See Trial Tr at 108. As far as the Court can tell, Dr. Harrison refused to make the final payment to Dykgraaf P.C. because HCC was locked out of the leased space by C&R. But Dykgraaf P.C. and C&R must be treated as

separate entities under Michigan law, see Spartan Stores, Inc v City of Grand Rapids, 307 Mich App 565, 577-578 n13 (2014), so any contractual breach committed by C&R cannot be cited by HCC as a “first breach” that excused HCC from its obligation to pay Dykgraaf P.C. \$85,000 for the practice. “The rule in Michigan is that one who first breaches a contract cannot maintain an action against the other contracting party for his subsequent breach or failure to perform.” Able Demolition, Inc v City of Pontiac, 275 Mich App 577, 585 (2007). Because HCC has not established that Dykgraaf P.C. breached its contract to sell its practice, HCC has offered no viable defense to Dykgraaf P.C.’s counterclaim for the unpaid balance on the purchase price of the practice. Therefore, the Court shall award Dykgraaf P.C. the sum of \$4,500.00 on its counterclaim against HCC.

III. Verdict

For all of the reasons stated in the Court’s findings of fact and conclusions of law, the Court hereby renders a verdict in favor of Plaintiff HCC and against Defendant C&R on HCC’s claim for breach of the lease agreement. The Court concludes that HCC has sustained damages in the amount of \$9,969.12. But because the Court has no basis to impose personal liability for that damage award upon Defendant Christy Dykgraaf, the Court shall enter a verdict of no cause of action against her. Also, the Court hereby renders a verdict in favor of Counter-Plaintiff Dykgraaf P.C. and against HCC in the amount of \$4,500.00 on Dykgraaf P.C.’s counterclaim for breach of contract.

IT IS SO ORDERED.

Dated: March 26, 2015



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge