

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

DR. GERARD FARAGE d/b/a FARAGE
CHIROPRACTIC,

Defendant,

and

CRAIG J. DYKGRAAF, D.C., P.C.; and
CHRISTY DYKGRAAF,

Defendants/Counter-Plaintiffs.

ORDER GRANTING DYKGRAAF DEFENDANTS' MOTION FOR
SUMMARY DISPOSITION, BUT AFFORDING LEAVE TO AMEND

On November 7, 2012, Harrison Chiropractic Center, P.C. ("HCC") filed this action against Defendant Dr. Gerard Farage d/b/a Farage Chiropractic ("Dr. Farage") for allegedly taking over Dr. David Harrison's chiropractic practice by underhanded means. Although this case primarily involves claims against Dr. Farage, Plaintiff HCC has pleaded claims against Craig J. Dykgraaf, D.C., P.C., and Christy Dykgraaf (collectively, "Dykgraaf defendants"), essentially contending that the Dykgraaf defendants, who had sold their chiropractic practice to Dr. Harrison as a going venture in 2010, aided Dr. Farage in stealing Dr. Harrison's practice in 2012. Specifically, HCC filed claims against the Dykgraaf defendants for breach of contract, tortious interference, and civil conspiracy. The Dykgraaf defendants have moved for summary disposition under MCR 2.116(C)(10) on each of those claims.

During the oral argument on the Dykgraaf defendants' summary-disposition motion, Plaintiff HCC formally agreed to dismiss its tortious-interference and civil-conspiracy claims against the Dykgraaf defendants, and the Court's analysis leads to the conclusion that dismissal of HCC's claim for breach of contract against the Dykgraaf defendants is necessary. But the Court must afford HCC leave to amend its complaint to reformulate a claim for breach of contract based upon the breach of a separate agreement between an affiliate of HCC and a company controlled by the Dykgraaf defendants.

In reviewing a motion under MCR 2.116(C)(10), "a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties," see Maiden v Rozwood, 461 Mich 109, 120 (1999), albeit "in the light most favorable to the party opposing the motion." Id. Therefore, the Court must limn the facts from the documents presented by the parties. On June 23, 2009, Dr. Dykgraaf sold his chiropractic practice as a going concern to Dr. Harrison. See Brief in Support of Dykgraaf Defendants' Motion for Summary Disposition, Exhibit B (Agreement for the Purchase and Sale of Professional Practice and Personal Property). Under the terms of the purchase agreement, Dr. Harrison agreed to enter into a one-year lease for the office known as the Plainfield Chiropractic Office. See id., ¶ 3(b). On August 15, 2010, after the expiration of the initial one-year lease, Dr. Harrison (on behalf of Plainfield Chiropractic Center, P.C.) entered into a two-year lease with C & R Management ("C&R") – a company owned by the Dykgraaf defendants – for that same space. See id., Exhibit D (Lease Agreement). That two-year lease included an option for a one-year renewal, see id., ¶¶ 2(c) & 20, but C&R contends that Dr. Harrison failed to exercise that renewal. Thus, in August of 2012, C&R leased the space to Dr. Farage, who opened a competing chiropractic practice in the office that Plaintiff HCC had occupied for several years. HCC claims that, by leasing the office space to Dr. Farage, the Dykgraaf defendants breached their duty of good-faith cooperation owed under the terms of the June 23, 2009, purchase agreement.

The Dykgraaf defendants have requested summary disposition under MCR 2.116(C)(10) on Plaintiff HCC's claim for breach of contract based upon their contention that they did not breach the purchase agreement when they replaced HCC with Dr. Farage as their tenant. "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." West v General Motors Corp, 469 Mich 177, 183 (2003). Such "[a] genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." Id. Applying these standards, the Court must determine whether HCC has presented a viable claim for breach of contract.

Under Michigan law, the courts bear the responsibility of interpreting unambiguous contracts as a matter of law. See Klapp v United Ins Group Agency, Inc, 468 Mich 459, 469 (2003). Indeed, one "fundamental tenant of our jurisprudence is that unambiguous contracts are not open to judicial interpretation and must be *enforced as written*." See Rory v Continental Ins Co, 473 Mich 457, 468 (2005). Here, Plaintiff HCC's breach-of-contract claim in its current formulation necessarily fails because the Dykgraaf defendants did not owe any continuing duty to lease the office space to HCC under the terms of the parties' June 23, 2009, purchase agreement.

By all accounts, the June 23, 2009, purchase agreement governed the sale of Dr. Dykgraaf's chiropractic practice to Dr. Harrison. To that end, the purchase agreement contains a clause entitled "Good-Faith Cooperation," which sets forth the parties' agreement that "each in good faith shall take all steps reasonably necessary to facilitate the purchase and sale contemplated herein and to execute such documents reasonably necessary to carry out and otherwise put into effect the terms and provisions of this Agreement." See Brief in Support of Dykgraaf Defendants' Motion for Summary Disposition, Exhibit B (Agreement for the Purchase and Sale of Professional Practice and Personal

Property, ¶ 14.7). But nowhere in the purchase agreement did the Dykgraaf defendants agree to lease the office space to Dr. Harrison into perpetuity. To the contrary, the purchase agreement states that the initial lease was included “[a]s additional consideration and in order to induce **Seller [i.e., Dr. Dykgraaf]** to enter into this agreement[,]” see id., ¶ 3(b) (emphasis added), rather than as a benefit for Dr. Harrison. Further, the purchase agreement provides that the initial lease would simply run for a one-year term. Accordingly, the Dykgraaf defendants had no duty to continue leasing the office space to Dr. Harrison beyond the initial one-year term contemplated by the purchase agreement, so Plaintiff HCC cannot succeed on a claim for breach of contract based upon the purchase agreement executed on June 23, 2009. As a result, the Court must grant summary disposition to the Dykgraaf defendants on the breach-of-contract claim in Count Five of HCC’s First Amended Complaint.

But the Court must afford Plaintiff HCC leave to amend so that HCC can assert its claim for breach of contract based upon a different agreement. See MCR 2.116(I)(5). After the expiration of the initial one-year lease, Dr. Harrison – on behalf of Plainfield Chiropractic Center, P.C. (“PCC”) – entered into a two-year lease with C&R, an entity operated by the Dykgraaf defendants. That lease included a renewal option for one more year. See Brief in Support of Dykgraaf Defendants’ Motion for Summary Disposition, Exhibit D (Lease Agreement). To exercise that renewal option, PCC just needed to provide C&R with a written notice “not less than 120 days prior to the expiration” of the lease. Id., ¶ 20. Dr. Harrison contends that PCC gave notice of its intention to exercise its renewal option to C&R on April 1, 2011. See Plaintiffs’ Summary Disposition Opposition Brief, Exhibit A; see also Affidavit of Marie Harrison, ¶ 6. Although C&R asserts that it never received that notice, PCC has presented evidence to support a valid claim for breach of the lease agreement against C&R. Moreover, counsel for the Dykgraaf defendants has agreed that, in order to resolve the dispute in an economically efficient manner, the Dykgraaf defendants will waive any objection to PCC intervening

as a new plaintiff and filing a claim for breach of contract against C&R based upon the alleged denial of the option to renew contained in the lease agreement of August 15, 2010. Consequently, although the Court must award summary disposition under MCR 2.116(C)(10) with respect to HCC's claim for breach of contract against the Dykgraaf defendants, the Court must grant PCC leave to intervene in this case as a new plaintiff for the purpose of pursuing a claim for breach of contract against C&R based upon the August 15, 2010, lease agreement between C&R and PCC. Thus, IT IS ORDERED that PCC and Plaintiff HCC are granted leave until Friday October 3, 2014, to file a second amended complaint setting forth a breach-of-contract claim on behalf of PCC against C&R predicated upon the terms of the August 15, 2010, lease agreement. IT IS FURTHER ORDERED that the trial of this case shall commence as scheduled at 9:00 A.M. on Monday, October 20, 2014.

IT IS SO ORDERED.

Dated: September 26, 2014



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