

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

P.A.G., INC.; WALSH CONSTRUCTION CO.,
INC.; WEST MICHIGAN LANDSCAPING &
CONSTRUCTION; LAKE EFFECT INTERIOR
INSTALLATIONS; and TALSMA DRYWALL,
INC.,

Case No. 12-11927-CKB

Plaintiffs,

HON. CHRISTOPHER P. YATES

vs.

JOHN C. BUCHANAN, JR.; and JOHN C.
BUCHANAN, JR., as trustee of the John C.
Buchanan, Jr. Trust,

Defendants.

OPINION AND ORDER GRANTING IN PART, AND DENYING IN PART,
MOTIONS FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

The Court finds a certain rich irony in the defendants' submission of eight inches of briefs and supporting exhibits to argue that no genuine issues of material fact exist in this case, which may well constitute the final fallout from the star-crossed development known as Hangar 42. Here, three contractors that contributed labor and materials to the Hangar 42 project have presented four claims against Defendant John C. Buchanan, Jr. ("Jack Jr.") individually and as the trustee of his own trust.¹ Although two of the plaintiffs may proceed on claims of fraudulent and innocent misrepresentation, none of the other claims can survive summary disposition under MCR 2.116(C)(10). Therefore, the Court shall schedule only those two tort claims for trial.

¹ The complaint lists five plaintiffs, including Lake Effect Interior Installations and Talsma Drywall, Inc., but those two plaintiffs have acceded to the defendants' summary-disposition motion, so only three plaintiffs are pressing forward with their claims. For now, the Court need not address the defendants' request for sanctions against the two plaintiffs that have fallen on their swords.

I. Factual Background

Defendant Jack Jr.’s motion for summary disposition pursuant to MCR 2.116(C)(10) “tests the factual sufficiency of the complaint.” Maiden v Rozwood, 461 Mich 109, 120 (1999). Thus, the Court should consider “affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion.” Id. (citation omitted). Fortunately, our Court of Appeals has already sketched the factual background of this dispute in a closely related case.² PAG, Inc v Alpinist Endeavors, LLC, No 309253 (Mich App June 26, 2014) (unpublished decision). As a result, the Court shall recount the facts here by relying heavily upon the decision from our Court of Appeals.

Defendant Jack Jr. and his father, John C. Buchanan, Sr. (“Jack Sr.”), formed an entity called Alpinist Endeavors, LLC (“Alpinist”) to engage in real-estate development. In 2006, Alpinist bought the former Lear Corporation plant in Walker and transformed the plant into industrial condominium units. In 2009, Jack Jr. began negotiating with his father to buy out the interest of Jack Sr.’s trust in Alpinist. The buy-out plan included the construction of a “motion picture/movie studio” in two of the industrial condominium units. Jack Jr. claimed that he had obtained approval for \$10 million in film tax credits from the State of Michigan to fund the project. But before Jack Jr. could sell the two industrial condominium units to a studio group, Jack Jr. had to make some improvements to the two units.

² Indeed, the plaintiffs in that case – including all of the plaintiffs in the instant case – chose to name Jack Jr. and his trust as defendants in that case, but the trial court dismissed all of the claims against Jack Jr. and his trust for want of timely service. See PAG, Inc v Alpinist Endeavors, LLC, No 309253, slip op at 10 (Mich App June 26, 2014) (unpublished decision). The plaintiffs thereafter filed the instant case as a new action against Jack Jr. and his trust while their claims against the other defendants ran their course through the trial court and the appellate process.

To carry out his plan to improve and sell the two industrial condominium units, Defendant Jack Jr. enlisted the plaintiffs to perform various tasks. By all accounts, each plaintiff supplied labor and materials for the project, but the State of Michigan never issued the film tax credits and none of the plaintiffs received payment for their work. The plaintiffs filed construction liens on the two industrial condominium units and ultimately filed suit to foreclose on the construction liens and to recover damages on several legal theories. But the plaintiffs recovered nothing in their initial suit because the trial court ruled that a bank had a mortgage with priority over the construction liens and none of the defendants in the case had any legal obligation to compensate the plaintiffs on any claim. Left with no other options, the plaintiffs chose to press on against Jack Jr. and his trust.

On December 27, 2012, the plaintiffs filed a complaint asserting claims against Jack Jr. and his trust for breach of contract, fraud, innocent misrepresentation, and unjust enrichment. The Court waited patiently while the plaintiffs went forward with their appeal in the closely related case. But as soon as our Court of Appeals released an unpublished decision affirming *in toto* the dismissal of the plaintiffs' claims in the related case, see PAG, Inc, No 309253 (Mich App June 26, 2014), the dispute shifted in earnest to the instant case. Specifically, Jack Jr. and his trust moved for summary disposition under MCR 2.116(C)(10), insisting that none of the plaintiffs' claims justifies recovery. Therefore, the Court must consider the viability of each claim advanced by the plaintiffs.

II. Legal Analysis

Defendant Jack Jr. and his trust seek summary disposition under MCR 2.116(C)(10). When reviewing a motion under MCR 2.116(C)(10), the Court must “consider ‘the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party.’”

Rambin v Allstate Ins Co, 495 Mich 316, 325 (2014). The Court must grant summary disposition “if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” Id. “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.” West v General Motors Corp, 469 Mich 177, 183 (2003). Applying these well-understood standards, the Court shall address each of the plaintiffs’ four claims *seriatim*.

A. Breach of Contract.

In Count One, the plaintiffs allege that Defendant Jack Jr. “entered into an express or implied contract” with each of them to perform work at his request on the two industrial condominium units. See Plaintiffs’ Complaint, ¶ 21. Although Jack Jr. does not deny that the plaintiffs performed work on the units, he contends that he never entered into a contract with any of the plaintiffs, so he cannot be responsible to the plaintiffs for breach of contract. “It goes without saying that a contract cannot bind a nonparty.” AFSCME, Council 25 v Wayne County, 292 Mich App 68, 80 (2011). Beyond that, personal liability usually does not attach to a corporate officer who signs a contract “only once, rather than twice,” on behalf of a corporate entity. See Livonia Building Materials Co v Harrison Construction Co, 276 Mich App 514, 523 (2007). Accordingly, the Court must honor the corporate form unless the record establishes that Jack Jr. or his trust entered into a contract with the plaintiffs.

Each of the plaintiffs entered into a contract with an entity, rather than Defendant Jack Jr. and his trust. Plaintiff P.A.G., Inc. (“PAG”) had an oral contract with Alpinist, see Defendants’ Motion for Summary Disposition Against Plaintiff PAG, Inc., Exhibit 5 (Deposition of John Beck at 77-79), and PAG delivered invoices to Alpinist. Id. (Deposition of John Beck at 73). Walsh Construction

Co., Inc. (“Walsh Construction”) made an oral agreement with Blue Bridge Ventures, LLC (“Blue Bridge”), see Defendants’ Motion for Summary Disposition Against Plaintiff Walsh Construction Co., Inc., Exhibit 5 (Deposition of Kenneth Walsh at 28-29), and subsequently invoiced its work to Blue Bridge. Id. (Deposition of Kenneth Walsh at 56-57). Similarly, West Michigan Landscaping & Construction (“West Michigan Landscaping”) entered into an oral agreement with Blue Bridge, see Defendants’ Motion for Summary Disposition Against Plaintiff West Michigan Landscaping & Construction, Exhibit 5 (Deposition of Rene Rios at 48-49), and sent invoices to Blue Bridge. See id. (Deposition of Rene Rios at 74). In sum, none of the three plaintiffs entered into a contract with Jack Jr. or his trust, so none of the plaintiffs has any basis for proceeding against Jack Jr. or his trust on a breach-of-contract claim. Therefore, the Court shall grant summary disposition to Jack Jr. and his trust under MCR 2.116(C)(10) on the plaintiffs’ claim for breach of contract.

B. Fraud.

In Count Two, the plaintiffs contend that Defendant Jack Jr. committed fraud in convincing them that they would be paid for their work, that money for film tax credits existed, and that he had the ability to pay for the work on the industrial condominium units. To be sure, the plaintiffs did not devote labor and materials to the two units merely out of the goodness of their hearts. But their fraud claim requires proof of fraudulent misrepresentation or silent fraud. Fraudulent misrepresentation “entails a defendant making a false representation of material fact with the intention that the plaintiff would rely on it, the defendant either knowing at the time that the representation was false or making it with reckless disregard for its accuracy, and the plaintiff actually relying on the representation and suffering damage as a result.” See Barclae v Zarb, 300 Mich App 455, 476 (2013). Silent fraud is

“essentially the same except that it is based on a defendant suppressing a material fact that he or she was legally obligated to disclose, rather than making an affirmative misrepresentation.” Id. “Such a duty may arise by law or by equity[,]” id., and a “misleadingly incomplete response to an inquiry can constitute silent fraud.” Id.

Here, two of the plaintiffs have presented sufficient evidence to sustain a claim for fraudulent misrepresentation. Specifically, John Beck – the principal of Plaintiff PAG – testified that Jack Jr. repeatedly promised him: “you guys are gonna get paid, you are gonna get paid, you are gonna get paid.” See Defendants’ Motion for Summary Disposition Against Plaintiff PAG, Inc., Exhibit 5 (Deposition of John Beck at 76). Also, Rene Rios – the principal of West Michigan Landscaping – testified that Jack Jr. persuaded him to keep his crew on the job site by saying: “stick around with me, get this project done and . . . you’ll get a bonus when we get our tax credits.” See Defendants’ Motion for Summary Disposition Against Plaintiff West Michigan Landscaping & Construction, Exhibit 5 (Deposition of Rene Rios at 68-69). In contrast, Kenneth Walsh – the principal of Walsh Construction – testified that he only spoke with Jack Jr. once, see Defendants’ Motion for Summary Disposition Against Plaintiff Walsh Construction Co., Inc., Exhibit 5 (Deposition of Kenneth Walsh at 31), and he could not recall the substance of that conversation. Id. (Deposition of Kenneth Walsh at 31-32). Consequently, the Court concludes that PAG and West Michigan Landscaping may go forward against Jack Jr. – but not his trust – on a claim for fraudulent misrepresentation, but Walsh Construction has no basis for proceeding on such a claim.³

³ Nor can Plaintiff Walsh Construction proceed on a silent-fraud claim. Walsh Construction had no contractual relationship with Jack Jr. or his trust, so the Court cannot fathom how Jack Jr. or his trust had a legal obligation to disclose any information to Walsh Construction. See Barclae, 300 Mich App at 476. Moreover, the record contains no evidence of anyone at Walsh Construction “making a direct inquiry or expressing a particularized concern” to Jack Jr. or his trust. See id.

C. Innocent Misrepresentation.

Count Three of the complaint presents a claim for innocent misrepresentation. Specifically, the plaintiffs assert that Defendant Jack Jr. induced them to work on the two industrial condominium units by assuring them that they would be paid, that money for film tax credits was available to pay them, and that he could cover the costs of their work. To establish innocent misrepresentation, the plaintiffs must prove they “‘justifiably relied to [their] detriment on information prepared without reasonable care by one who owed the relying party a duty of care.’” Barclae, 300 Mich App at 476. As the Court has already explained, two of the plaintiffs have presented evidence on this point. John Beck – the principal of Plaintiff PAG – testified that Jack Jr. repeatedly promised him: “‘you guys are gonna get paid, you are gonna get paid, you are gonna get paid.’” See Defendants’ Motion for Summary Disposition Against Plaintiff PAG, Inc., Exhibit 5 (Deposition of John Beck at 76). Also, Rene Rios – the principal of West Michigan Landscaping – testified that Jack Jr. persuaded him to keep his crew on the job site by saying: “‘stick around with me, get this project done and . . . you’ll get a bonus when we get our tax credits.’” See Defendants’ Motion for Summary Disposition Against Plaintiff West Michigan Landscaping & Construction, Exhibit 5 (Deposition of Rene Rios at 68-69). PAG and West Michigan Landscaping both kept working on the project, thereby justifiably relying to their detriment on information from Jack Jr. divulged “‘without reasonable care by one who owed the relying party a duty of care.’” Barclae, 300 Mich App at 476.

But neither Plaintiff PAG nor Plaintiff West Michigan Landscaping has established a legal basis for proceeding against Jack Jr.’s trust on a theory of innocent misrepresentation. Nothing in the record even hints that Jack Jr. spoke to the principals of PAG or West Michigan Landscaping on behalf of his trust. Also, the record is bereft of evidence to support an innocent-misrepresentation

claim from Plaintiff Walsh Construction. Kenneth Walsh – the principal of Walsh Construction – testified that he merely spoke with Jack Jr. once, see Defendants’ Motion for Summary Disposition Against Plaintiff Walsh Construction Co., Inc., Exhibit 5 (Deposition of Kenneth Walsh at 31), and he could not recall the substance of that conversation. Id. (Deposition of Kenneth Walsh at 31-32). Absent a misrepresentation by Jack Jr. to somebody at Walsh Construction, the claim for innocent misrepresentation cannot survive summary disposition under MCR 2.116(C)(10).

D. Unjust Enrichment.

In Count Four, the plaintiffs contend that Defendant Jack Jr. and his trust received an unjust enrichment in the form of improvements that the plaintiffs made to the two industrial condominium units. Michigan “law will imply a contract in order to prevent unjust enrichment.” Belle Isle Grill Corp v City of Detroit, 256 Mich App 463, 478 (2003). 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.” Id. The plaintiffs insist that Jack Jr. and his trust received a benefit from the work that the plaintiffs did at the job site, but the record reveals that the corporate entities that owned the site obtained the benefit of the plaintiffs’ improvements to the property. The plaintiffs have failed to establish that any benefit flowed to either Jack Jr. or his trust as a result of the plaintiffs’ efforts. That lack of proof dooms the plaintiffs’ claim for unjust enrichment because, without a showing of a benefit to a defendant, an unjust-enrichment claim cannot survive. Karaus v Bank of New York Mellon, 300 Mich App 9, 23-24 (2013). Thus, the Court must grant the defendants’ motion for summary disposition on the unjust-enrichment claim pursuant to MCR 2.116(C)(10).

III. Conclusion

For all of the reasons set forth in this opinion, the Court must grant summary disposition to the defendants with respect to the plaintiffs' claims for breach of contract and unjust enrichment *in toto*. In addition, the Court must grant summary disposition to the defendants as to Plaintiff Walsh Construction's claims for fraud and innocent misrepresentation, thereby leaving Walsh Construction with no viable claims to pursue. Finally, the Court must award summary disposition to Jack Jr.'s trust on the remaining plaintiffs' claims for fraud and innocent misrepresentation. Consequently, all that remains for trial are claims of fraudulent and innocent misrepresentation by Plaintiffs PAG and West Michigan Landscaping against Jack Jr. in his individual capacity. Those two claims shall be set for trial by jury.

IT IS SO ORDERED.

Dated: January 2, 2015



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