

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

FIRE INSURANCE EXCHANGE, as
subrogee of Le Kabob Restaurant,

Plaintiff,

Case No. 13-08013-CZB

vs.

HON. CHRISTOPHER P. YATES

RAPID FIRE PROTECTION,

Defendant.

_____ /

OPINION AND ORDER DENYING DEFENDANT'S MOTION
FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

Early hominids and their human successors have used fire for cooking food for hundreds of thousands of years. That process has yielded greater caloric intake and nearly endless dining options, but occasionally it has led to catastrophic damages. Here, Le Kabob Restaurant suffered \$83,050.90 in fire and smoke damage that Plaintiff Fire Insurance Exchange ("Fire Insurance") covered. Fire Insurance then stepped into the shoes of Le Kabob and filed this action against Defendant Rapid Fire Protection ("Rapid Fire"), claiming that the failure of Le Kabob's fire-suppression system to operate caused Le Kabob's damages. In response, Rapid Fire moved for summary disposition under MCR 2.116(C)(10), contending that Fire Insurance has proffered no admissible evidence establishing that Rapid Fire improperly installed or maintained the fire-suppression system and that, even if the fire-suppression system had operated properly, the very same damages would have ensued. Because the Court concludes that genuine issues of material fact exist with respect to Rapid Fire's maintenance of the fire-suppression system and the extent of the resulting damages attributable to Rapid Fire, the Court must deny Rapid Fire's motion for summary disposition and set the matter for trial.

I. Factual Background

“A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint.” Corley v Detroit Bd of Educ, 470 Mich 274, 278 (2004). “In evaluating such a motion, a court considers the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties.” Id. Accordingly, the Court shall set the factual background of this dispute by presenting the evidence in the light most favorable to Plaintiff Fire Insurance.

On February 16, 2013, a fire occurred at Le Kabob Restaurant when a cook at the restaurant mistakenly left a pot containing Lebanese butter on top of a stove burner. When the butter ignited, the fire-suppression system did not operate properly, so the fire continued until it burned itself out. See Brief in Support of Defendant’s Motion for Summary Disposition, Exhibit A. As a result of the damage caused by the fire and smoke, Le Kabob lost approximately \$83,050 in business income and damaged business personal property. Plaintiff Fire Insurance paid the full amount of the loss to Le Kabob, and then filed this suit to recover that entire amount from Rapid Fire.

According to Plaintiff Fire Insurance, Le Kabob hired Defendant Rapid Fire to maintain and service its Buckeye fire-suppression system. By all accounts, Rapid Fire’s most recent service call prior to the fire took place in March of 2012. Rapid Fire was the only company Le Kabob hired to perform maintenance on the Buckeye fire-suppression system, see Plaintiff’s Brief in Opposition to Defendant’s Motion for Summary Disposition, Exhibit B (Deposition of Ameer Algahim at 42-43), and the company Le Kabob hired to clean the oven hoods, B & B Clean, never disabled the Buckeye fire-suppression system when cleaning the hoods. See id., Exhibit E (Deposition of Robert Bundy at 13) & Exhibit L (Deposition of Curtis Blackwell at 17).

In the wake of the fire, investigators and experts examined the scene at Le Kabob and found that the fire-suppression system had activated in response to the fire, but the “fire-suppressing liquid agent did not exit the system nozzles” because “the system was not properly serviced or maintained.” See Brief in Support of Defendant’s Motion for Summary Disposition, Exhibit C (Deposition of Mark Brennan at 22). A “nitrogen cartridge was not properly threaded into the manifold mounting block[,]” see id. (Deposition of Mark Brennan at 23), which “caused the system to fail to squirt fire-suppressing liquid out the nozzles.” Id. Had the nitrogen cartridge “been properly threaded into the manifold mounting block,” then “it could have extinguished the fire.” Id. Based upon this theory, Plaintiff Fire Insurance seeks to impose the loss from the fire upon Defendant Rapid Fire, which bore the responsibility for servicing the fire-suppression system at Le Kabob.

On August 22, 2013, Plaintiff Fire Insurance filed this action alleging breach-of-contract and negligence claims against Defendant Rapid Fire. After the parties completed discovery, Rapid Fire moved for summary disposition under MCR 2.116(C)(10). In simple terms, Rapid Fire argues that the cook at Le Kabob was principally responsible for the fire, and that any theory about how the fire could have been extinguished by a properly functioning fire-suppression system constitutes nothing more than speculation. Thus, the Court must determine whether Fire Insurance has presented enough evidence to defeat summary disposition by creating a genuine issue of material fact.

II. Legal Analysis

In reviewing Defendant Rapid Fire’s summary-disposition motion under MCR 2.116(C)(10), the Court must bear in mind that “[s]ummary 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. To be sure, the Court “may not employ a standard citing the mere possibility that a claim might be supported by evidence produced at trial.” Maiden v Rozwood, 461 Mich 109, 121 (1999). But the Court should draw “all reasonable inferences [from the proffered evidence] in the nonmovant’s favor.” de Sanchez v Department of Mental Health, 455 Mich 83, 89 (1997).

At the outset, the Court acknowledges that the problem with the fire-suppression system did not cause the fire at Le Kabob Restaurant. The issue raised by Plaintiff Fire Insurance’s claims has to do, instead, with whether a correctly functioning fire-suppression system would have prevented or reduced the damage from the fire. Expert witnesses for Fire Insurance have explained that Rapid Fire’s failure to properly install the nitrogen cartridge caused the fire-suppression system “to fail to squirt fire-suppressing liquid out [of] the nozzles[.]” see Brief in Support of Defendant’s Motion for Summary Disposition, Exhibit C (Deposition of Mark Brennan at 23), that if the “nitrogen cartridge had been properly threaded into the manifold mounting block,” then “it could have extinguished the fire[.]” id., and that “the fire in the Le Kabob Restaurant would have extinguished while still in the pot and would not have spread to the rest of the restaurant” if the fire-suppression system would have worked properly. See Supplemental Response Brief to Defendant’s Motion for Summary Judgment, Exhibit R (Affidavit of Joel DeKraker, ¶9). This evidence plainly creates genuine issues of material fact concerning the role a properly functioning fire-suppression system would have played in either entirely preventing or significantly diminishing the loss suffered by Le Kabob and its insurer, Fire Insurance, as a result of the fire.

Defendant Rapid Fire further insists that the Court must grant summary disposition pursuant to MCR 2.116(C)(10) because Plaintiff Fire Insurance has failed to provide evidence quantifying the loss that a properly functioning fire-suppression system would have prevented. Under Michigan law, Fire Insurance must present a claim for damages that constitutes something more than speculation. Health Call of Detroit v Atrium Home & Health Care Services, Inc, 268 Mich App 83, 96 (2005), citing Sutter v Biggs, 377 Mich 80, 86 (1966). Here, however, Fire Insurance claims that its entire \$83,050 obligation for the loss at Le Kabob represents the appropriate amount of damages for Rapid Fire's malfeasance because a correctly functioning fire-suppression system would have prevented the entire loss at Le Kabob. See Supplemental Response Brief to Defendant's Motion for Summary Judgment, Exhibit R (Affidavit of Joel DeKraker, ¶9). This precise damage figure requested by Fire Insurance constitutes the antithesis of impermissible "remote, contingent, and speculative damages." See Health Call, 268 Mich App at 96. Thus, the Court must deny Rapid Fire's request for summary disposition under MCR 2.116(C)(10).

III. Conclusion

For all of the reasons set forth in this opinion, the Court shall deny Defendant Rapid Fire's motion for summary disposition under MCR 2.116(C)(10) and set the case for trial because genuine issues of material fact preclude this Court from resolving the parties' dispute at this juncture.

IT IS SO ORDERED.

Dated: December 15, 2014



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