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

TIMOTHY BRACEY,

Plaintiff,

vs.

MACKER BASKETBALL, LLC; and SCOTT McNEAL, jointly and severally,

Defendants.
_____/

Case No. 14-02092-CKB

HON. CHRISTOPHER P. YATES

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

Earlier this season, college basketball fans were astonished when Plaintiff Timothy Bracey's alma mater – Eastern Michigan University – bested the mighty Michigan Wolverines in Ann Arbor. Bracey hopes to achieve similar success in a different kind of court on his claims for unpaid sales commissions purportedly owed by his former employers, Macker Basketball, LLC ("Macker") and Scott McNeal. But Macker and McNeal have mounted a suffocating defense, moving for summary disposition under MCR 2.116(C)(10) on each and every claim. In the Court's view, Bracey can do no better than 25 percent from the field because the Court must grant summary disposition on three of his four claims. But the Court concludes that Bracey is entitled to drive the lane on his claim for breach of contract, which easily survives the defendants' motion for summary disposition. Thus, the Court shall set the case for a settlement conference and then trial, where the parties can jump it up to see who prevails on Bracey's core contention that Macker and McNeal failed to compensate him for sales commissions he earned.

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. In this case, both sides have requested summary disposition under MCR 2.116(C)(10), so the Court shall present the factual background by considering the entire record in an objective manner.

After Plaintiff Bracey finished his stellar basketball career at Eastern Michigan University and obtained his degree, he completed law school but eventually returned to basketball, working for Defendant Macker in two capacities. Initially, Bracey was employed by the Continental Basketball Association ("CBA") team that Defendant McNeal operated.[1] Later, when Bracey launched a career in sales, McNeal hired him to work for Macker cultivating sponsors for events. On April 4, 2012, Bracey signed a Macker "Independent Contractor Agreement." See Defendants' Supplemented Brief in Support of its Motion for Summary Disposition Pursuant to MCR 2.116(C)(10), Exhibit 1; see also Deposition of Timothy Bracey at 53-54. In addition, Bracey and McNeal subsequently signed a "Sponsorship Manager" agreement. See Defendants' Supplemented Brief in Support of its Motion for Summary Disposition Pursuant to MCR 2.116(C)(10), Exhibit 2; see also Deposition of Timothy Bracey at 54. Both sides agree that those two documents defined the business relationship between Bracey and Macker.

---

[1] That CBA team, originally known as the Grand Rapids Hoops, became the Grand Rapids Mackers under Defendant McNeal's leadership. Unfortunately, the franchise could not survive as either the Hoops or the Mackers. But the basketball cognoscenti in West Michigan still remember the epic contests that took place at Welsh Auditorium, Van Andel Arena, and the DeltaPlex in the glory days of the CBA.

Plaintiff Bracey ultimately became convinced that Defendant McNeal did not intend to pay commissions for several significant sponsorships that Bracey obtained for Defendant Macker. See Deposition of Timothy Bracey at 54-55. In Bracey's view, Macker had to compensate him with two payments. First, Bracey was entitled to a weekly stipend of $500 for some of his responsibilities on the job. See id. at 56. The dispute here does not appear to involve payment of that weekly stipend. Second, Macker had to pay Bracey a 20-percent commission for each sponsorship he obtained for Macker.[2] Id. at 55; see also Defendants' Supplemented Brief in Support of its Motion for Summary Disposition Pursuant to MCR 2.116(C)(10), Exhibit 2. Bracey initiated this action to recover those commissions, but Macker contends that Bracey quit his job shortly after he signed the "Sponsorship Manager" agreement, so Macker owes Bracey nothing under the commission-payment provision of that agreement. Both sides have moved for summary disposition under MCR 2.116(C)(10), so the Court must carefully consider each of the four claims asserted by Bracey.

II. Legal Analysis

"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). "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 consider each of Plaintiff Bracey's four claims against the defendants.

---

[2] The "Sponsorship Manager" agreement refers to two commission levels: (1) "Commission pay of 20% on each sponsorship sale when manager handles initial sale and overall relationship after sale"; and (2) "Commission pay of 10% on sponsorship sale only." See Defendants' Supplemented Brief in Support of its Motion for Summary Disposition Pursuant to MCR 2.116(C)(10), Exhibit 2.

A. The Michigan Sales Representatives' Commissions Act.

Plaintiff Bracey's first claim, based upon the Michigan Sales Representatives' Commissions Act ("SRCA"), MCL 600.2961, requires proof that Bracey engaged in "the solicitation of orders or sale of goods and [was] paid, in whole or in part, by commission." See MCL 600.2961(1)(e). As our Court of Appeals has noted, "the central factual question to be resolved in determining whether plaintiff was a 'sales representative' under the SRCA is whether plaintiff was employed by defendant 'for the solicitation of orders or sale of goods.'" Radina v Wieland Sales, Inc, 297 Mich App 369, 374 (2012). "The word 'goods' is defined as 'articles of trade; merchandise.'" Id. Thus, Bracey's right to seek redress under the SRCA depends upon whether the sponsorships he sold fall within that definition of "goods." Simply put, the purely intangible sponsorships that Bracey sold for Defendant Macker cannot possibly be characterized as "articles or trade" or "merchandise," so Bracey cannot pursue damages under the SRCA. See id. at 374-375.

B. Breach of Contract.

In Count Two, Plaintiff Bracey contends that the defendants committed a breach of contract by failing to pay him commissions as required by the "Sponsorship Manager" agreement. "When analyzing a claim for posttermination commissions, the first step is to look at the parties' contract." KBD & Associates, Inc v Great Lakes Foam Technologies, Inc, 295 Mich App 666, 675 (2012). In this case, the "Sponsorship Manager" agreement plainly contemplates the payment of commissions to Bracey on sponsorship sales, see Defendants' Supplemented Brief in Support of its Motion for Summary Disposition Pursuant to MCR 2.116(C)(10), Exhibit 2, and genuine issues of material fact exist with respect to Bracey's right to commissions for the sponsorships he obtained for Defendant

Macker. Accordingly, the Court must deny summary disposition to both sides on Count Two and leave the resolution of the breach-of-contract claim for trial.

C. Promissory Estoppel.

Count Three presents a claim for promissory estoppel, which "is a judicially created doctrine that was developed as an equitable remedy applicable in common-law contract actions." See Crown Technology Park v D&N Bank, FSB, 242 Mich App 538, 548 (2000). As our Court of Appeals has explained (albeit in an unpublished decision), claims for promissory estoppel and breach of contract cannot coexist "when a court concludes that an enforceable contract exists and the performance that creates the consideration for the contract is the same performance that evidences detrimental reliance in a promissory estoppel claim." Raby v Board of Trustees of the Police and Fire Retirement System of the City of Detroit, No 293570, slip op at 5 (Mich App March 17, 2011) (unpublished decision). That is precisely the situation here. The "Sponsorship Manager" agreement constitutes a contract governing commissions that the Court shall enforce, Bracey's consideration for that contract was his sale of sponsorships for Defendant Macker, and that very activity forms the basis for Bracey's theory of detrimental reliance. Indeed, Count Three of Bracey's complaint not only frames the promissory-estoppel claim in those terms, but also invokes the language about commissions in the "Sponsorship Management" agreement as the predicate for the promissory-estoppel claim. Therefore, the Court must grant summary disposition to the defendants on the promissory-estoppel claim.

D. Piercing the Corporate Veil.

Although Count Four presents a claim entitled "piercing the corporate veil," Michigan law does not recognize such an independent cause of action. See Kostopoulos v Crimmins, No 299478,

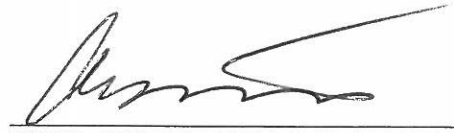
slip op at 3-4 (Mich App Dec 29, 2011) (unpublished decision). As our Court of Appeals has held, "piercing the corporate veil is not itself an independent cause of action, but rather, it is a means of imposing liability on an underlying cause of action." Id. at 4. Here, the underlying cause of action is the claim for breach of contract in Count Two. Thus, the Court must award summary disposition to the defendants on Count Four, leaving only the breach-of-contract claim in Count Two. Bracey therefore shall be afforded the opportunity to convince the Court to pierce the corporate veil in order to impose personal liability upon Defendant McNeal with respect to the claim for breach of contract, but that involves a daunting uphill climb. See Florence Cement Co v Vettraino, 292 Mich App 461, 469 (2011) (setting forth requirements for piercing the corporate veil).

III. Conclusion

For all of the reasons set forth in this opinion, the Court must grant summary disposition to Defendants Macker and McNeal on Counts One, Three, and Four of Plaintiff Bracey's complaint pursuant to MCR 2.116(C)(10). But the Court cannot award summary disposition to either side on the breach-of-contract claim in Count Two, which must be resolved at trial. In addition, the Court shall allow Bracey to try to pierce the corporate veil in order to recover from McNeal in his personal capacity on the claim for breach of contract.

IT IS SO ORDERED.

Dated: January 16, 2015



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