

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

THE EDUCATION CAMPUS
INVESTORS, LLC,

Plaintiff,

vs.

STEELCASE INC.,

Defendant.

Case No. 15-10645-CKB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER GRANTING DEFENDANT STEELCASE'S
MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

This dispute concerning the iconic Steelcase pyramid requires the Court to determine whether an enforceable contract exists between Plaintiff The Education Campus Investors, LLC (“ECI”) and Defendant Steelcase Inc. (“Steelcase”). As almost everyone in Kent County knows, the pyramid has been sold to Switch Communications Group LLC (“Switch”), which intends to develop a SuperNAP data center on the site. But ECI contends that the sale was the product of a bait-and-switch scheme that stripped ECI of its contractual rights to own and develop the pyramid. Thus, ECI has requested damages from Steelcase on a breach-of-contract theory.¹ Because the Court concludes, however, that ECI cannot proceed against Steelcase on a claim for breach of contract because the terms on which ECI relies never became part of any binding contract with Steelcase, the Court must award summary disposition to Steelcase on the one remaining claim in this case.

¹ Plaintiff ECI originally asserted several claims against Defendant Steelcase and two other defendants, but the Court’s ruling on the first round of summary-disposition motions resulted in the elimination of all other claims against all other defendants. At this point, based upon ECI’s second amended complaint, only one claim against Steelcase remains at issue.

Defendant Steelcase has moved for summary disposition under MCR 2.116(C)(8) and (10). “When reviewing a motion brought under MCR 2.116(C)(8), the court considers only the pleadings.” Michigan ex rel Gurganus v CVS Caremark Corp, 496 Mich 45, 63 (2014). The Court “must accept all factual allegations in the complaint as true, along with all reasonable inferences or conclusions that can be drawn from them.” Id. Summary disposition is proper under MCR 2.116(C)(8) “where the claims alleged are ‘so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.’” Maiden v Rozwood, 461 Mich 109, 119 (1999). In contrast, summary disposition under MCR 2.116(C)(10) requires consideration of “affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties . . . in the light most favorable to the party opposing the motion.” Id. “Where the proffered evidence fails to establish a genuine issue regarding any material fact, 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). With these standards in mind, the Court shall turn to Steelcase’s request for summary disposition on Plaintiff ECI’s claim for breach of contract.

To support its claim for breach of contract, Plaintiff ECI must “establish ‘(1) that there was a contract, (2) that the other party breached the contract and, (3) that the party asserting breach of contract suffered damages as a result of the breach.’” See Dunn v Bennett, 303 Mich App 767, 774 (2014). “The existence and interpretation of a contract are issues of law[,]” id., so the Court can take up Defendant Steelcase’s contention that there exists no enforceable contract containing the terms on which ECI’s claim rests. Formation of a contract requires “an offer and acceptance.” Kloian v Domino’s Pizza, LLC, 273 Mich App 449, 452 (2006). “Unless an acceptance is unambiguous and

in strict conformance with the offer, no contract is formed.” Id. “Further, a contract requires mutual assent or a meeting of the minds on all the essential terms.” Id. at 453. Thus, the Court must look to the parties’ exchange of communications to see if they formed the contract on which ECI relies in seeking relief.

Without question, Plaintiff ECI and Defendant Steelcase engaged in substantial negotiations concerning the sale of the pyramid facility, which includes more than 140 acres of land and all of the facilities on the property. ECI and Steelcase eventually signed a purchase and sale agreement for the pyramid property on October 31, 2014, see Second Amended Complaint, Exhibit 2, which specified a sale price of \$7.5 million, see id. (Purchase and Sale Agreement, § 1(i)), and established a closing deadline of February 16, 2015. See id. (Purchase and Sale Agreement, § 1(a)). Because the pyramid facilities had to be modified to suit ECI’s needs, ECI undertook development activities, including design and construction planning, negotiation with local authorities for rezoning, and solicitation of potential tenants. See Second Amended Complaint, ¶ 14.

On February 18, 2015, after the closing deadline had come and gone, Defendant Steelcase agreed to modify the purchase and sale agreement to reduce the sale price to \$6 million and afford Plaintiff ECI additional time to complete its inspections. See Second Amended Complaint, Exhibit 4 (First Amendment to Purchase and Sale Agreement). The modified purchase and sale agreement also extended the closing deadline to April 30, 2015. See id. To the consternation of Steelcase, the inspection process dragged on past the time period contemplated in the parties’ revised purchase and sale agreement. See Second Amended Complaint, ¶ 24. Then, on April 2, 2015, ECI sent a letter to Steelcase stating that “Purchaser is not satisfied with the condition of the Property and, as such, Purchaser hereby notifies Seller that the Agreement is terminated and of no further force and/or

effect.” See Steelcase Inc.’s Brief Supporting its Motion to Dismiss, Exhibit B. In other words, ECI unilaterally terminated the purchase and sale agreement as revised, thereby renouncing its contractual relationship with Steelcase.²

The parties engaged in post-termination negotiations during April of 2015, which culminated in an offer from ECI’s principal on April 22, 2015, to buy the pyramid facility for \$3 million within 60 days. See Second Amended Complaint, Exhibit 5. Significantly, that terse e-mail referred to the subject as “Re: Offer” and stated five conditions, including contingencies for “the Gaines Township rezoning” and “LARA approval for the Plasma HVAC system” See id. Steelcase responded to the e-mail offer on April 24, 2015, see id., but its response merely provided counter-proposals on terms of the sale. See id. Ultimately, Steelcase sold the pyramid property to Switch, and ECI filed this suit claiming that Steelcase’s refusal to complete the sale to ECI amounted to a breach of contract.

The Court concludes that Defendant Steelcase entered into contracts with Plaintiff ECI when the parties signed the purchase and sale agreement on October 31, 2014, and again when the parties signed the first amendment to the purchase and sale agreement on February 18, 2015. The problem, though, is that ECI formally and unequivocally terminated those agreements on April 2, 2015. See Steelcase Inc.’s Brief Supporting its Motion to Dismiss, Exhibit B. Whether ECI intended its letter to Steelcase on April 2, 2015, to be a mere negotiation tactic is beside the point. ECI left no room for interpretation when it stated: “Purchaser hereby notifies Seller that the Agreement is terminated and of no further force and/or effect.” See id. Thus, as of April 2, 2015, no contractual agreement between the parties remained in effect.

² In its second amended complaint, Plaintiff ECI characterizes its actions as a mere “attempt to terminate the First Amended Purchase and Sale Agreement according to its terms.” See Second Amended Complaint, ¶ 25.

In its second amended complaint, ECI attempts to cobble together a new contract by quoting its e-mail offer to Defendant Steelcase on April 22, 2015, and Steelcase's e-mail reply on April 24, 2015. See Second Amended Complaint, ¶ 41 & Exhibit 5.³ The ECI e-mail to Steelcase states:

Dan,

Good talking to you today. Here are the basics of our offer:

1. \$3 million purchase price
2. The 141 or so acres. Does not include the east acreage.
3. Closing in 60 days
4. Contingency for the Gaines Township rezoning. Most of this is complete. Final approval is set for May 11.
5. Contingency for getting LARA approval for the Plasma HVAC system. Rockford and GMB have already met with them in Lansing. Initial indicators are positive. We anticipate final approval in around 45 days. GMB has already submitted the paperwork on this.

No other side agreements with the exception of the data center. We are happy with the suggestion you made to resolve this but it would be good to have a sense of how long you think that will take.

Please let me know if you have any issues. Otherwise, let's get Nic rolling on the paperwork and get this wrapped up.

Jerry

See Second Amended Complaint, Exhibit 5. Steelcase's e-mail reply to ECI states:

Thanks Jerry - this is great news. I will get Nic working on this. As we discussed, we will continue to operate in parallel paths...where we work on the deal with you to close in 60 days and continue down the path of planning to demo the building.

Also, in talking with our IT they are planning a 5-6 month timeframe to exit. I know internally we will be putting pressure on this timeline, so I would expect more of a 4-5 month timeframe.

Given that how would you feel about the following structure of the agreement:
-closing on June 30th

³ Paragraph 41 of the second amended complaint erroneously refers to the e-mails as Exhibit 4 to that pleading. To be clear, both e-mails are attached to that pleading as Exhibit 5.

- building handover, September 30th (allowing some work, construction, repairs, etc. to occur, however, with prior approval of Steelcase)
- Steelcase cover operating expenses until building hand over (utility bills...electric, gas, water, etc.) as well as any costs related specifically to our data center.
- ECI to cover all other costs

Thanks again - I will give you a call over the weekend or Monday.

Dan.

See Second Amended Complaint, Exhibit 5. By its terms, the e-mail from ECI presented an “offer” to Steelcase, and the reply from Steelcase cannot be viewed as “an acceptance [that] is unambiguous and in strict conformance with the offer,” see Kloian, 273 Mich App at 453, so “no contract [was] formed” that ECI can cite to support its breach-of-contract claim. Therefore, the Court shall award summary disposition to Steelcase under MCR 2.116(C)(10),⁴ thereby bringing this case to a close.⁵

IT IS SO ORDERED.

This is a final order that resolves the last pending claim and closes the case.

Dated: August 11, 2016



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

⁴ The Court’s award of summary disposition relies almost entirely upon the allegations in the second amended complaint and the attachments to that pleading. Therefore, the Court could nearly repair to MCR 2.116(C)(8) in providing summary disposition. But Plaintiff ECI did not attach its termination letter of April 2, 2015, to the second amended complaint. Thus, the Court had to review one document attached to Defendant Steelcase’s motion for dismissal, so relief is most appropriate under MCR 2.116(C)(10). See Hughes v Region VII Area Agency on Aging, 277 Mich App 268, 273 (2007).

⁵ Although the Court must consider affording Plaintiff ECI leave to amend pursuant to MCR 2.116(I)(5), the Court concludes that further amendment of the complaint “would not be justified,” see MCR 2.116(I)(5), because ECI cannot rely upon any enforceable contract. Therefore, any further amendment “would be futile.” See Ormsby v Capital Welding, Inc., 471 Mich 45, 53 (2004).