

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

J & N KOETS, INC., a Michigan
corporation,

Plaintiff,

vs.

Case No. 12-09165-CKB

HON. CHRISTOPHER P. YATES

ONEMARKET PROPERTIES LAKE
POINTE, LLC; LAKE POINTE
CONDOMINIUMS & TOWNHOMES
ASSOCIATION, a Michigan corporation;
and SUZANNE RUDNITZKI, d/b/a
Lake Pointe Condos,

Defendants.

_____ /

OPINION AND ORDER ON PLAINTIFF'S
MOTION FOR SUMMARY DISPOSITION

Can an enforceable contract exist when the parties have agreed on all of the essential terms except for price? Under Michigan law, “the absence of certain terms – including at times the price – does not necessarily render a contract invalid.” See Calhoun County v Blue Cross Blue Shield of Michigan, 297 Mich App 1, 14 (2012). Here, in the midst of a flooding emergency, Plaintiff J & N Koets, Inc. (“J&N Koets”) offered an “Emergency Work Authorization and Direct Payment Request Form” to Defendant Suzanne Rudnitzki, who signed the document as the “manager” of “Lake Pointe Condos” on Valentine’s Day, February 14, 2007. See Affidavit of Nathan Koets, ¶¶ 4-6 & Exhibit 1 (work-authorization request). That standard-form agreement authorized J&N Koets “to proceed with its recommended emergency procedures” and explained that J&N Koets “shall bill all charges and/or costs direct to the CLIENT,” but the document made no mention of price.

After Plaintiff J&N Koets completed all of its work at the Lake Pointe Condominiums, it sent an invoice to Defendant OneMarket Properties Lake Pointe, LLC (“OneMarket”) seeking payment of \$121,485.35.¹ See Affidavit of Nathan Koets, ¶ 16 & Exhibit 2. Years passed without payment on the invoice, so on October 2, 2012, J&N Koets filed this suit requesting recovery for breach of contract or, in the alternative, unjust enrichment. Significantly, the claim for breach of contract not only demands the full amount of the invoice, *i.e.*, \$121,485.35, but also payment of a service charge of two percent per month as contemplated by the language of the work-authorization agreement. In response, the defendants admit that they must provide some measure of compensation to J&N Koets for the work done in 2007, but they contend that J&N Koets cannot sue on the contract because it lacks a price term. Alternatively, the defendants argue that, even if an enforceable contract exists, the price term must be “reasonable,” rather than simply whatever J&N Koets demands. Finally, the defendants vigorously contest J&N Koets’s entitlement to the two-percent monthly fee. J&N Koets has filed a motion for summary disposition under MCR 2.116(C)(10) that obligates the Court to rule upon each of the issues identified by the parties.

Michigan law requires “that the parties to a contract must have ‘a meeting of the minds on all essential terms of a contract.’” Calhoun County, 297 Mich App at 13. “‘A meeting of the minds is judged by an objective standard, looking to the express words of the parties and their visible acts, not their subjective states of mind.’” Id. Here, Defendant Rudnitzki clearly enlisted Plaintiff J&N Koets to remediate water damage at the Lake Pointe Condominiums, and J&N Koets performed its obligation under the work-authorization agreement “to proceed with its recommended emergency procedures to preserve, protect, and secure from further damage the above property and its contents.”

¹ The invoice bears the notation: “Date Printed 10/20/2010.” See Complaint, Exhibit 1.

See Affidavit of Nathan Koets, ¶ 12 & Exhibit 1. Although the work-authorization agreement lacked a price term and J&N Koets apparently did not furnish the defendants with a cost estimate, the Court nonetheless concludes that the parties entered into a valid contract that required payment in exchange for the remediation work at the Lake Pointe Condominiums.

In both published and unpublished decisions, our Court of Appeals has ruled that a missing price term in a contract can be filled in with “a reasonable price.” Calhoun County, 297 Mich App at 15, quoting J W Knapp Co v Sinas, 19 Mich App 427, 431 (1969); Vision Information Services, LLC v Tocco, No 258422, slip op at 5 (Mich App Dec 20, 2005) (unpublished decision). Indeed, if “an important contractual term, such as the price or the time of performance, is indefinite, the trial court has the discretion to supply the term under the reasonableness standard.” Vision Information Services, No 258422, slip op at 5. Thus, the responsibility to establish a “reasonable price” for the work performed by J&N Koets falls to the Court. See Calhoun County, 297 Mich App at 15, quoting J W Knapp, 19 Mich App at 430-431 (“Even though important terms of the contract were indefinite the trial judge acted properly in supplying the necessary additions.”). Accordingly, the Court must conduct a hearing to determine the “reasonable price” for the services provided by J&N Koets.²

In light of the Court’s conclusion that an enforceable contract exists with only the price term to be supplied, the Court must award summary disposition to the defendants under MCR 2.116(I)(2) on the claim in Plaintiff J&N Koets’s complaint for unjust enrichment. Under Michigan law, a claim

² The ability of Plaintiff J&N Koets to recover its two-percent monthly fee shall be a part of the Court’s assessment of a “reasonable price” under the work-authorization agreement. If the Court concludes that the invoice amount of \$121,485.35 constitutes a reasonable price, then J&N Koets will have a compelling argument for the assessment of a monthly fee for the defendants’ refusal to timely satisfy the invoice. But if the Court determines that the invoice amount cannot be regarded as a reasonable price, then the defendants almost certainly should not be responsible for the monthly fee merely because they refused to pay an unreasonable demand from J&N Koets.

for breach of contract and a cause of action for unjust enrichment cannot coexist. See Morris Pumps v Centerline Piping, Inc, 273 Mich App 187, 194 (2006). In addition, the Court must grant summary disposition under MCR 2.116(I)(2) to Defendant Rudnitzki in her individual capacity on all claims. Ms. Rudnitzki signed the work-authorization agreement only once, and she did so as “manager” of “Lake Pointe Condos.” See Affidavit of Nathan Koets, Exhibit 1. “As a general rule, ‘an individual stockholder or officer is not liable for his corporation’s engagements unless he signs individually, and where individual responsibility is demanded the nearly universal practice is that the officer signs twice – once as an officer and again as an individual.’” Geresy v Dommert, No 243468, slip op at 5 (Mich App June 3, 2004) (unpublished decision). Here, because Ms. Rudnitzki only signed the work-authorization agreement once, and she did so as the “manager” of a corporate entity, the Court concludes that she cannot be held personally liable for obligations imposed by that agreement.³ As a result, all claims against Ms. Rudnitzki cannot stand, so the Court shall proceed with an evidentiary hearing exclusively on the breach-of-contract claim against the two entities named as defendants.

IT IS SO ORDERED.

Dated: April 24, 2014



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

³ The defendants have furnished an “Affidavit of Suzanne Rudnitzki” that states in paragraph 11: “I never individually authorized the at-issue work to be performed, but was, at all times, acting as an officer of the Condominium Association in requesting said work to be performed.” Although the version of that affidavit appended as Exhibit 2 to the Defendants’ Memorandum in Response to Plaintiff’s Motion for Summary Disposition is unsigned, the defendants recently supplemented the record by filing a notarized copy of that affidavit, which Ms. Rudnitzki signed on March 25, 2014.