

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

JASH'D BELCHER, d/b/a Love
Grand Rapids,

Plaintiff,

vs.

SONIKA, LLC, a Michigan limited
liability company; and SONIKA
CHHABRA

Defendants.

Case No. 12-11822-CKB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER DENYING DEFENDANTS' MOTION FOR
SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(8) & (10)

A transaction involving an enterprise originally known as the “Rendezvous Lounge & Grill” that subsequently became “The Love Lounge” should have struck everyone involved as a very risky proposition. But Defendant Sonika, LLC (“Sonika”) and its principal, Defendant Sonika Chhabra, chose to go forward with a deal to sell the business to Plaintiff Jash’d Belcher. When the dust settled on that arrangement and Sonika locked Belcher out of the establishment in September of 2011, both the plaintiff and the defendants felt aggrieved by one another’s conduct. Belcher filed this lawsuit on December 21, 2012, claiming that the defendants breached two separate contractual agreements between the two sides. The defendants, in turn, filed a motion for summary disposition under MCR 2.116(C)(8) and (10), essentially characterizing themselves as the true victims. The Court’s review of the evidence submitted by the parties establishes the existence of separate contracts in the forms of a purchase agreement and a subsequent management agreement, but genuine issues of material fact prevent the Court from entering summary disposition for either side.

I. Factual Background

“A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint[,]” Maiden v Rozwood, 461 Mich 109, 119 (1999), so the Court must limit itself to the allegations set forth in the complaint when addressing such a request for relief. “A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint” and permits the Court to consider “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.” Corley v Detroit Board of Education, 470 Mich 274, 278 (2004). Because the defendants have asked for relief on both of these grounds, the Court shall look to the complaint in the first instance and then modify the allegations in that pleading as the evidence presented by the parties requires.

In 2010, Defendant Sonika purchased a business at 1520 Wealthy Street, SE, in Grand Rapids and opened the Rendezvous Lounge & Grill at that location. The business struggled in its first year of operations, so Sonika decided to list it for sale with Ken George of Sunbelt Realty in late 2010. See Plaintiff’s Response to Defendants’ Motion for Summary Disposition, Exhibit B (Deposition of Sanjay Chhabra at 8-9). George suggested Plaintiff Belcher as a potential buyer, see id., Exhibit B (Deposition of Sanjay Chhabra at 9-10), and on January 18, 2011, Sonika and Belcher entered into a purchase agreement for the sale of the business. See Brief in Support of Defendants’ Motion for Summary Disposition, Exhibit 15. The purchase agreement prescribed a sale price of \$197,500 to be paid in increments, including an initial deposit of \$2,500 followed by down payments of \$10,000 on February 1, 2011, and \$12,500 on March 1, 2011, and eventually augmented by 120 monthly payments of \$1,893.52. Id. By all accounts, Belcher paid the initial \$2,500 deposit, but missed the February 1, 2011, deadline for the \$10,000 down payment.

Notwithstanding Plaintiff Belcher's failure to make the \$10,000 down payment in February of 2011, the parties entered into a separate management agreement on February 14, 2011, that gave Belcher the authority to manage the Rendezvous Lounge & Grill on behalf of Sonika.¹ See Brief in Support of Defendants' Motion for Summary Disposition, Exhibit 3. The management agreement set forth a one-year term, but permitted Defendant Sonika to terminate the agreement within the one-year term if Belcher failed to comply with any material requirement of the agreement. Id., Exhibit 3 (Management Agreement, § 2). Significantly, however, Sonika could not exercise its contractual right to terminate the agreement without first giving Belcher written notice "describing such failure in reasonable detail" and then affording Belcher "10 days to cure such failure after receiving written notice from the Owner" Id.

The termination provision came into play after Plaintiff Belcher received a warning from the City of Grand Rapids on August 14, 2011, for excessive noise and overcrowding. See id., Exhibit 13 (Grand Rapids Police Department incident report). Defendant Sonika asserts that it sent Belcher a hand-written notice of its intent to terminate the management agreement on August 23, 2011, see id., Exhibit 19, but Belcher denies receiving such a notice. See Deposition of Jash'd Belcher at 50. In any event, on September 4, 2011, the Grand Rapids Police Department issued citations to Sanjay Chhabra and Defendant Sonika Chhabra for zoning violations at the establishment involving loud music. See Brief in Support of Defendants' Motion for Summary Disposition, Exhibits 11 and 12.

¹ The opening paragraph of the management agreement can best be described as a comedy of errors. For example, it indicates that the agreement was "entered into this 1st day of February 14, 2011[.]" it stipulates that Sonika was the "Manager," and it identifies "Love Grand Rapids, Inc." as the "Owner." See Brief in Support of Defendants' Motion for Summary Disposition, Exhibit 3. As the record demonstrates, however, the management agreement was signed on February 14, 2011, the management responsibilities were assigned to Belcher, and ownership remained with Sonika.

The defendants responded by locking Belcher out of the establishment on September 10, 2011, and this litigation ensued shortly thereafter. In simple terms, Belcher claims that the defendants breached the purchase agreement by failing to go forward with the sale of the business and the management agreement by locking him out of the premises without giving him proper written notice as well as an opportunity to cure any non-compliance with the management agreement's requirements. After the close of discovery, the defendants moved for summary disposition, so the Court must now decide whether the dispute can be resolved prior to trial.

II. Legal Analysis

Although the defendants have cited MCR 2.116(C)(8) and (10) in their motion for summary disposition, the Court plainly must consider materials outside the complaint in order to resolve the motion. Thus, the Court shall assess the request for summary disposition under MCR 2.116(C)(10). "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), and 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. Applying these principles, the Court must separately consider Plaintiff Belcher's claims for breach of the purchase agreement and the management agreement.

A. The Purchase Agreement.

Under the terms of the purchase agreement dated January 18, 2011, Plaintiff Belcher had to fulfill a series of payment obligations in order to purchase the business from the defendants. By all accounts, Belcher paid the initial deposit of \$2,500, but he missed the deadline on February 1, 2011,

for the first down payment of \$10,000. Nevertheless, on February 14, 2011, the parties entered into a separate management agreement, which acknowledged that Defendant Sonika “has agreed to sell substantially all of the Business’s assets, including the Licenses, to” Belcher. See Brief in Support of Defendants’ Motion for Summary Disposition, Exhibit 3. Moreover, Sonika apparently accepted payments from Belcher in March, April, May, June, and July of 2011. See Plaintiff’s Response to Defendants’ Motion for Summary Disposition, Exhibit B (Deposition of Sanjay Chhabra at 25-28) & Exhibit C (Lake Michigan Credit Union account statements). Therefore, Belcher asserts that the defendants excused the strict payment obligations imposed by the purchase agreement and, instead, proceeded under an oral modification of that agreement.

Under Michigan law, the parties to a contract may “enter into new contracts or modify their existing agreements.” See Quality Products and Concepts Co v Nagel Precision, Inc, 469 Mich 362, 371 (2003). Beyond that, the parties to a contract may waive particular contractual terms. See id. at 374. When a party to a contract claims that a modification or waiver of written terms occurred, such “a modification or waiver can be established by clear and convincing evidence that the parties mutually agreed to a modification or waiver of the contract.” Id. at 372. To be sure, Michigan law sets a high bar for establishing modification or waiver, see id. at 373, but in this case the record is replete with evidence supporting the existence of an oral modification of the purchase agreement or a waiver of its strict deadlines for periodic payments.² The parties not only signed the management agreement two weeks after Plaintiff Belcher missed the deadline for a \$10,000 down payment, but also continued to make and accept monthly payments while Belcher ran the establishment in 2011.

² Nothing in the record, however, supports an argument that the parties agreed to reduce the aggregate price of the business. Thus, an oral modification or waiver would only affect the timing, and not the sum, of the payments Belcher must provide to the defendants.

Although Defendant Sonika characterizes those payments as mere satisfaction of lease obligations, the management agreement clearly required Belcher to make only one “lease payment of \$4600 by March 5, 2011.”³ See Brief in Support of Defendants’ Motion for Summary Disposition, Exhibit 3 (Management Agreement, § 21). Consequently, the Court must conclude that a genuine issue of material fact exists as to whether – and how – the parties modified or waived payment requirements contained in the January 18, 2011, purchase agreement.⁴ As a result, the Court must deny the motion for summary disposition based upon the rights and obligations under the purchase agreement.

B. The Management Agreement.

The defendants demand summary disposition under MCR 2.116(C)(10) on Plaintiff Belcher’s claim for breach of the February 14, 2011, management agreement because, in the defendants’ view, Belcher committed the first breach of that contract. Under Michigan law, “one who first breaches a contract cannot maintain an action against the other contracting party for his subsequent breach or failure to perform.” Able Demolition, Inc v City of Pontiac, 275 Mich App 577, 585 (2007). Here, Belcher undoubtedly ran into problems with local authorities because of excessive noise emanating from the business at all hours of the night, see Brief in Support of Defendants’ Motion for Summary Disposition, Exhibit 13, and those problems redounded to the detriment of the Chhabras when they were cited for zoning violations, see id., Exhibits 11 & 12, but the parties’ management agreement

³ The significance of that provision is enhanced by the fact that it was hand-written and then initialed by all of the parties to the management agreement.

⁴ To the extent that the defendants argue that a waiver or modification lacked consideration, the Court simply must observe that the management agreement signed on February 14, 2011, made Plaintiff Belcher responsible for obligations that could be characterized as consideration for a waiver or modification of the purchase agreement.

requires the Court to undertake additional analysis before declaring that Belcher committed the first breach of that contract.

Before the defendants could terminate the management agreement with Plaintiff Belcher for failure to comply with its requirements, they had to provide written notice to him and then allow him “10 days to cure such failure after receiving written notice from the Owner describing such failure in reasonable detail.” See Brief in Support of Defendants’ Motion for Summary Disposition, Exhibit 3 (Management Agreement, § 2). The defendants insist that they furnished written notice to Belcher in the form of a hand-written letter dated August 23, 2011,⁵ see id., Exhibit 19, but Belcher testified at his deposition that he never received that notice. See Deposition of Jash’d Belcher at 50. Thus, the record gives rise to a classic question of fact that the Court simply cannot resolve on summary disposition. See West, 469 Mich at 183. Instead, a jury must determine whether Belcher did, in fact, receive written notice from the defendants as contemplated by the parties’ management agreement.

III. Conclusion

The Court is tempted to wade into the parties’ dispute and declare a winner pursuant to MCR 2.116(C)(10) as to Plaintiff Belcher’s claims under the January 18, 2011, purchase agreement and the February 14, 2011, management agreement, but genuine issues of material fact preclude an award

⁵ Although the defendants cite a raft of alleged transgressions committed by Plaintiff Belcher, the defendants have presented only one written notice, *i.e.*, the hand-written letter bearing the date of August 23, 2011. Thus, none of Belcher’s activities other than those identified in that letter can support the defendants’ termination of the management agreement. By the terms of their agreement, the parties required written notice and a ten-day cure period as preconditions to termination of the management agreement by the defendants. In advancing their first-breach argument, the defendants seem to suggest that any violation of the management agreement by Belcher – irrespective of written notice and an opportunity to cure – necessarily vitiates Belcher’s breach-of-contract claim. But the Court must enforce the parties’ contract “as written,” including the requirements of written notice and an opportunity to cure. See Rory v Continental Ins Co, 473 Mich 457, 468 (2005).

of summary disposition for either side. Accordingly, the matter shall be set for a trial by jury. The Court shall schedule a settlement conference to take place prior to the trial.

IT IS SO ORDERED.

Dated: March 3, 2014



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