

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

BECKETT FAMILY RENTALS, LLC, a
Michigan limited liability corporation; and
MICHAEL J. BECKETT, an individual,

Plaintiffs,

vs.

SCHWEITZER TITLE AGENCY, LTD.,
a Michigan limited liability company,

Defendant.

Case No. 13-03627-CBB

HON. CHRISTOPHER P. YATES

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OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR
SUMMARY DISPOSITION, BUT DENYING MOTION FOR SANCTIONS

The plaintiffs have allowed a simple set of facts to give birth to far-fetched causes of action for breach of contract and negligence. On November 26, 2008, Beckett Family Rentals, LLC (“BFR”) bought the real property located at 1022 Quarry Avenue in Grand Rapids. The title agent hired for that transaction, Schweitzer Title Agency, LTD. (“Schweitzer”), was obligated to remit payment at the close of the sale to the City of Grand Rapids for two outstanding water bills. The parties agree that Schweitzer made that payment, but BFR and Michael Beckett contend that the payment was made one day late, resulting in fees and interest that were tacked onto the tax bill for 2008. BFR then failed to pay its property taxes in 2009 and 2010, and the City of Grand Rapids decided to foreclose on the property on September 9, 2011. BFR and Michael Beckett argue that, but for Schweitzer’s failure to timely pay the 2008 water bill, the City of Grand Rapids would not have foreclosed on the property in 2011 because BFR would only have owed two years’ delinquent taxes. Therefore, BFR brought this action against Schweitzer for breach of contract and negligence to recover an exorbitant amount of damages that BFR

contends it would have been able to realize from the rental of the property had the foreclosure not occurred. In response, Schweitzer filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10) as to both claims coupled with a request for sanctions pursuant to MCR 2.114 and MCR 2.625 on the claims advanced by Michael Beckett.

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’s factual analysis is confined to the allegations found in the pleadings. Id. In contrast, a “motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint[.]” Corley v Detroit Board of Education, 470 Mich 274, 278 (2004), so the Court must 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.” Id. Here, Defendant Schweitzer seeks summary disposition under both MCR 2.116(C)(8) and (10), so the Court will lay the factual background by first relying on the allegations contained in the complaint and then supplementing those allegations with the evidence submitted by the parties.

In 2008, BFR hired Schweitzer to provide title-commitment services in connection with BFR’s purchase of the property located at 1022 Quarry Avenue in Grand Rapids. See Complaint for Breach of Contract and Negligence, ¶ 30. One such service was the remission of all necessary closing funds to pay the outstanding tax and utility bills owing on the closing date of November 26, 2008. Id., ¶ 13. On November 26, 2008, the Winter 2007 and Summer 2008 taxes had already been paid, but two water bills were past due. See Brief in Support of Defendant’s Motion for Summary Disposition, Exhibit E (marked-up title commitment, Schedule B – Section I). Thus, Schweitzer issued two checks totaling \$568.83 to the City of Grand Rapids on December 2, 2008, to satisfy the outstanding water bills, and the City of Grand Rapids processed those checks on December 11, 2008. See id., Exhibit G.

Sometime between the date Schweitzer issued the checks and the date the City of Grand Rapids processed the checks, the city issued a Winter 2008 property-tax bill in the amount of \$614.53, which included: (1) the past-due water bills totaling \$568.83; (2) millage taxes totaling \$45.12; and (3) fees amounting to 58 cents. See Brief in Support of Defendant’s Motion for Summary Disposition, Exhibit I. Consequently, when the City of Grand Rapids received the funds from Schweitzer in the amount of \$568.83, it applied: (1) \$526.61 to the past-due water bills; (2) \$41.77 to the millage taxes; and (3) 45 cents to the fees. Id. This left a remaining balance of \$45.70, which BFR never paid. Id. BFR also neglected to meet its property-tax obligations for 2009 and 2010, see id., so the City of Grand Rapids foreclosed on the property on September 9, 2011. See Complaint for Breach of Contract and Negligence, ¶ 18.

BFR and Michael Beckett contend that Schweitzer was obligated to pay the water bills one day earlier, and that if Schweitzer had remitted those funds by December 1, 2008, BFR would not have had an outstanding tax obligation for 2008. BFR and Michael Beckett further argue that if they did not have an outstanding obligation to the City of Grand Rapids in 2008, the City of Grand Rapids would not have foreclosed on the property in 2011. Therefore, BFR and Michael Beckett brought this lawsuit against Schweitzer on April 22, 2013, alleging breach of contract and negligence. Discovery has closed, and Schweitzer now presents a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10) and a motion for sanctions pursuant to MCR 2.114 and MCR 2.625.

II. Motion for Summary Disposition

The Court may grant summary disposition pursuant to MCR 2.116(C)(8) only if “the claims alleged are ‘so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.’” Maiden, 461 Mich at 119. In contrast, “[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). “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. Keeping these principles in mind, the Court must review each of the plaintiffs’ claims.

A. Count One – Breach of Contract.

Michigan law requires a plaintiff in a breach-of-contract action to 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.” Miller-Davis Co v Ahrens Constr, Inc, 296 Mich App 56, 71 (2012). Plaintiff Michael Beckett cannot establish that he had a contract with Defendant Schweitzer. Rather, the contract at issue was the title commitment between Schweitzer and BFR. See Brief in Support of Plaintiff’s Response to Defendant’s Motion for Summary Disposition, Exhibits 8 and 9. Thus, Michael Beckett cannot maintain a claim for breach of contract. See AFSCME Council 25 v Wayne County, 292 Mich App 68, 80 (2011).

Additionally, Plaintiff BFR cannot establish that it sustained damages as a result of Defendant Schweitzer’s breach of contract. Both sides agree that Schweitzer was obligated to remit \$568.83 of the sale proceeds to the City of Grand Rapids to pay the outstanding water bills and that Schweitzer made this payment on December 2, 2008. See Brief in Support of Defendant’s Motion for Summary Disposition, Exhibit G. BFR alleges that because this payment was made one day late, “interest and fees were added to the total amount owing, and these amounts were not paid due to the Plaintiff’s expectation that the Defendant would fulfil their express contractual obligations in a timely manner.” See Complaint for Breach of Contract and Negligence, ¶ 16. Thus, BFR contends that the late payment of the water bill caused the 2011 foreclosure, id., ¶¶ 17-18, but this assessment of the facts is simply inaccurate.

Sometime between December 2, 2008, the date Schweitzer issued checks to the City of Grand Rapids, and December 11, 2008, the date the City of Grand Rapids cashed Schweitzer's checks, see Brief in Support of Defendant's Motion for Summary Disposition, Exhibit G, the City of Grand Rapids issued the Winter 2008 tax bill in the amount of \$614.53, which included: (1) the past-due water bills totaling \$568.83; (2) millage taxes totaling \$45.12; and (3) fees totaling 58 cents. See id., Exhibit I. The City of Grand Rapids then applied the funds received from Schweitzer as follows: (1) \$526.61 to the past-due water bills; (2) \$41.77 to the millage taxes; and (3) 45 cents to the fees. Id. Consequently, the city records indicate that BFR still owes \$42.22 for the outstanding water bill. But the records also indicate that the city applied \$42.22 of the funds received from Schweitzer to BFR's 2008 winter tax obligation. Id. Accordingly, BFR's 2008 tax deficiency of \$45.70 relates entirely to amounts that BFR owed for its Winter 2008 taxes but neglected to pay, not fees or interest accrued in connection with Schweitzer's failure to pay the water bill by December 1, 2008. Thus, BFR cannot establish that it suffered damages as a result of Schweitzer's alleged breach of contract, and the Court must grant summary disposition in favor of Schweitzer pursuant to MCR 2.116(C)(10).

B. Count Two – Negligence.

Plaintiffs BFR and Michael Beckett also cannot maintain their claim for negligence against Defendant Schweitzer. To establish a claim for negligence, the plaintiffs must prove four elements: "(1) duty; (2) breach of that duty; (3) causation, both cause in fact and proximate causation; and (4) damages." Romain v Frankenmuth Mutual Ins Co, 483 Mich 18, 21-22 (2009). Michael Beckett was not even a party to the sale of the property, so he cannot establish that Schweitzer owed him any duty. In addition, title insurers cannot be held liable in tort. See Wormsbacher v Phillip R Seaver Title Co, Inc, 284 Mich App 1, 3-4 (2009) ("[N]o Michigan court has ever held that a title insurer or agent has a professional duty of care to those who employ them, outside of their contractual obligations."). Thus,

Schweitzer did not owe a duty to BFR, so the Court must grant Schweitzer's motion for summary disposition under MCR 2.116(C)(8) on the plaintiffs' claim for negligence.

III. Motion for Sanctions

Defendant Schweitzer also requests attorney fees as a sanction for having to defend against the plaintiffs' frivolous claims. See MCR 2.114(F) & 2.625(A)(2). A claim is "frivolous" if any of the following conditions are met: (i) "[t]he party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party[;]" (ii) "[t]he party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true[;]" or (iii) "[t]he party's legal position was devoid of arguable legal merit." See MCL 600.2591(3)(a). Here, Schweitzer does not contend that the plaintiffs filed this action in an attempt to cause it harassment, embarrassment, or injury. Further, the Court finds that the plaintiffs genuinely misunderstood the facts that provided the basis for their claim, *i.e.*, how the funds paid by Schweitzer to the City of Grand Rapids were applied to the outstanding water and tax bills. And had the plaintiffs been correct in their factual assertions, they may have had a viable claim against Schweitzer, so their complaint was not devoid of legal merit. See Silich v Rongers, 302 Mich App 137, 150 (2013). Therefore, because none of the conditions of MCL 600.2591(3)(a) has been satisfied, the Court must deny Schweitzer's request for sanctions pursuant to MCR 2.114(F) and 2.625(A)(2).*

IV. Conclusion

In sum, the Court must grant summary disposition in favor of Defendant Schweitzer under MCR 2.116(C)(10) on Plaintiff BFR's claim for breach of contract. Also, the Court must award summary

* The Court recognizes that Schweitzer narrowed its request for sanctions to the claims asserted by Plaintiff Michael Beckett, but the inclusion of Michael Beckett as a party did not complicate this matter. Thus, the inclusion of Michael Beckett as a party plaintiff does not rise to the level of conduct subject to sanctions.

disposition in favor of Schweitzer pursuant to MCR 2.116(C)(8) on BFR's claim for negligence. The Court must also grant summary disposition in favor of Schweitzer under MCR 2.116(C)(8) on Michael Beckett's claims for breach of contract and negligence. But because the Court concludes that the claims brought by the plaintiffs were not frivolous, the Court must deny Schweitzer's request for sanctions under MCR 2.114(F) and 2.625(A)(2).

IT IS SO ORDERED.

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

Dated: March 24, 2014



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