

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

HUNTINGTON NATIONAL BANK, a
national banking association,

Plaintiff/Counter-Defendant,

Case No. 13-04003-CKB

vs.

HON. CHRISTOPHER P. YATES

JALIL RIZQALLAH, a/k/a Jerry Rizqallah;
SS AND SONS, LLC,

Defendants/Counter-Plaintiffs.

ORDER DENYING CROSS-MOTIONS FOR SUMMARY DISPOSITION

Defendant Jalil Rizqallah (“Jerry Rizqallah”) may well be his brother’s keeper, but was he also his brother’s familial financing arm? After the entry of a large judgment against Joe Rizqallah and two entities that he controlled, his brother Jerry Rizqallah negotiated with Plaintiff Huntington National Bank (“HNB”) in an attempt to salvage some of Joe Rizqallah’s property. Jerry Rizqallah purchased real property on Algoma Road in Rockford through a short sale that netted \$420,000 for HNB. As a result, HNB released its lien on that property. But when the subsequent sale of the assets of Joe Rizqallah’s company, J&L Foods, LLC (“J&L Foods”), yielded no return to HNB, the bank filed this case claiming that Jerry Rizqallah breached his obligation to provide HNB with \$175,000, which Jerry Rizqallah now owes to HNB either as a matter of contract or promissory estoppel.¹ Jerry Rizqallah responded with counterclaims against HNB for breach of contract and unjust enrichment. Each side has moved for summary disposition under MCR 2.116(C)(10).

¹ Plaintiff HNB also has asserted a right to the assets of J&L Foods that were transferred to Defendant SS and Sons, LLC, but that claim does not appear to be at issue on summary disposition. Accordingly, the Court need not consider that request for claim and delivery at this juncture.

“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. “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. 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.” West v General Motors Corp, 469 Mich 177, 183 (2003).

Plaintiff HNB’s breach-of-contract claim against Jerry Rizqallah rests upon the premise that the parties entered into a binding contract that obligated Jerry Rizqallah to reimburse the bank to the tune of \$175,000 if the sale of the J&L Foods assets did not yield that amount of money. To be sure, a letter dated April 31, 2012, from HNB Vice President Carolyn Kroman to “J&L Estates, Attn: Jerry Rizqallah” tied “the purchase offer for property located at 8450-8460 Algoma Rd., Rockford MI by Mr. Jerry Rizqallah” to “the net proceeds from the sale of J&L Foods [at] \$175,000[.]” See Brief in Support of Plaintiff’s Motion for Partial Summary Disposition, Exhibit A. But the record does not establish whether Jerry Rizqallah ever signed or formally approved the terms in the letter. Under Michigan law, “[b]efore there can be a legally enforceable obligation[,] there must be an offer and acceptance.” J&L Investment Co, LLC v DNR, 233 Mich App 544, 552 (1999). “Acceptance must be unambiguous and in strict conformance with the offer.” Eerdmans v Maki, 226 Mich App 360, 364 (1997). Because genuine issues of material fact exist regarding acceptance of the terms set forth in the April 31, 2012, letter from HNB to Jerry Rizqallah, the Court must deny summary disposition to both sides under MCR 2.116(C)(10) on HNB’s claim for breach of contract.

Similarly, the Court cannot award summary disposition to either side on HNB's promissory-estoppel claim. "The elements of promissory estoppel are (1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee, and (3) that in fact produced reliance or forbearance of that nature in circumstances such that the promise must be enforced if injustice is to be avoided." Novak v Nationwide Mut Ins Co, 235 Mich App 675, 686-687 (1999). "In determining whether a requisite promise existed," a court must "objectively examine the words and actions surrounding the transaction in question as well as the nature of the relationship between the parties and the circumstances surrounding their actions." Id. Here, HNB Vice President Kroman sent the April 31, 2012, letter to "J&L Estates, Attn: Jerry Rizqallah," but the letter states that "[c]oncurrent with the sale of the real property Joe Rizqallah or Jerry Rizqallha [sic] *as power of attorney for Joe Rizqallah* will grant HNB an assignment of seller's interest in J&L Foods." See Brief in Support of Plaintiff's Motion for Partial Summary Disposition, Exhibit A (emphasis added). This language strongly suggests that any promise concerning the assets of J&L Foods was made by Joe Rizqallah himself or through his disclosed agent, Jerry Rizqallah. Because a disclosed agent cannot be held personally liable for an obligation of his principal, Riddle v Lacey & Jones, 135 Mich App 241, 246-247 (1984), HNB has no recourse against Jerry Rizqallah if he was simply acting as his brother's agent with respect to the assets of J&L Foods. At this point, the Court cannot grant summary disposition under MCR 2.116(C)(10) to either side on HNB's claim for promissory estoppel because a genuine issue of material fact exists as to whether Jerry Rizqallah was speaking for himself or his brother, Joe Rizqallah, in his dealings with HNB.

Nor can the Court award summary disposition to either side on the counterclaims advanced by Defendant Jerry Rizqallah. The Court recognizes that the counterclaims for breach of contract

and unjust enrichment present mutually exclusive theories, see Belle Isle Grill Corp v City of Detroit, 256 Mich App 463, 478 (2003), but Jerry Rizqallah can plead such alternative theories “where there are questions of fact concerning the existence and terms of the contract[.]” Fodale v Waste Mgmt of Michigan, Inc, 271 Mich App 11, 36 (2006). Plaintiff HNB accurately points out that liability on both counterclaims stands or falls on the outcome of HNB’s claims against Jerry Rizqallah because HNB’s success on a breach-of-contract or promissory-estoppel claim forecloses Jerry Rizqallah from proving breach of contract or unjust enrichment by HNB. But the counterclaims may well support damages in favor of Jerry Rizqallah if he can convince a jury that HNB breached a contract between the parties or received unjust enrichment.² See Lawrence v Will Darrah & Associates, Inc, 445 Mich 1, 6-8 (1994). Accordingly, although HNB’s claims and Jerry Rizqallah’s counterclaims may be two sides of the same coin, the counterclaims and HNB’s claims cannot be treated as purely redundant. Thus, the Court must deny both sides’ requests for summary disposition under MCR 2.116(C)(10) on Jerry Rizqallah’s counterclaims for breach of contract and unjust enrichment.

IT IS SO ORDERED.

Dated: May 27, 2014



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

² To the extent that Defendant Jerry Rizqallah seeks attorney fees as a measure of damages, however, that claim cannot survive under Michigan law. Our Court of Appeals has explained that the “right to recover attorney fees as an element of damages is not triggered by the foreseeability of loss. Instead, attorney fees are recoverable only when expressly authorized by statute, court rule, or a recognized exception.” Burnside v State Farm Fire and Casualty Co, 208 Mich App 422, 426-427 (1995).