

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

C&P TRUCKING, LLC,

Plaintiff,

vs.

T&C FOODS, INC.,

Defendant.

Case No. 13-04499-CZB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER DENYING DEFENDANT’S MOTION FOR SUMMARY
DISPOSITION AND GRANTING PLAINTIFF RELIEF UNDER MCR 2.116(I)(2)

In this case, a large load of meat went on the lam in a tractor trailer, leading to a beef between shipper C&P Trucking, LLC (“C&P”) and purchaser T&C Foods, Inc. (“T&C”) when T&C refused to be cowed into paying for the substandard shipment. Specifically, C&P found itself in possession of 32,000 pounds of cook-only meat when two potential buyers canceled their orders to purchase the product. Instead of discarding the load, C&P set out to find a buyer on its own. Eventually, C&P struck a deal with Defendant T&C, which offered to purchase the load for \$19,200. But when T&C attempted to sell the meat to non-cook facilities, the United States Food and Drug Administration (“FDA”) stepped in and ordered T&C to cancel those downstream sales. T&C, in turn, arranged for the disposal of the load and stopped payment on its \$19,200 check to C&P. That prompted C&P to file this action to recover the sale price of \$19,200 as well as additional costs and expenses. With discovery now closed, T&C has requested summary disposition under MCR 2.116(C)(8) and (10). The Court concludes that T&C has no right to summary disposition. Instead, the Court shall award summary disposition to C&P pursuant to MCR 2.116(I)(2).

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 Defendant T&C has asked for relief on both of these grounds, the Court shall first consider the complaint and then the evidence in the record. Thankfully, the parties have significantly simplified the Court’s work by essentially agreeing upon all of the important facts underlying this dispute.

On July 20, 2012, Landstar Global Logistics (“Landstar”) served as the broker setting up a transaction involving the shipment of 32,929 pounds of cook-only meat from Golden State Foods Corp. (“Golden State”) in Conyers, Georgia, to Nestle PLT (“Nestle”) in Solon, Ohio. See Brief in Support of Plaintiff’s Response to Defendant’s Motion for Summary Disposition, Exhibits 1 & 6. Plaintiff C&P was hired to make the delivery, but while the load of cook-only meat was in transit, Nestle canceled its order, so Landstar redirected the load to a different customer. See id., Exhibit 6 (Affidavit of Casey Nemeth, Attachment A: four-page narrative). But when that customer also canceled, Golden State and Landstar released the load of cook-only meat to C&P “to be dumped.” See id., Exhibit 3. At that point, C&P began searching on its own for a buyer and, on July 25, 2012, reached out to T&C. See id., Exhibit 6. Based upon a conversation between Casey Nemeth of C&P and Tom Nuberg of T&C, the load was rerouted to the T&C facility in Grandville. See id.

On the morning of July 25, 2012, Tom Nuberg of T&C inspected the load and then offered to pay Plaintiff C&P 60 cents per pound for 32,000 pounds of cook-only meat. See Brief in Support of Plaintiff's Response to Defendant's Motion for Summary Disposition, Exhibit 6. T&C thereafter unloaded the shipment of meat and issued a corporate check for \$19,200 to C&P for full payment. See id.; Defendant's Brief in Support of Motion for Summary Disposition, Exhibit 4. Then, after accepting the load, T&C began searching for buyers of the meat. But when T&C lined up purchasers that were not cook-only facilities, the FDA intervened to block such sales. See Brief in Support of Plaintiff's Response to Defendant's Motion for Summary Disposition, Exhibit 6 (Affidavit of Casey Nemeth, Attachment A: four-page narrative). This left T&C with few options to sell the cook-only meat,¹ so T&C simply disposed of the load in a landfill on July 27, 2012, and then stopped payment on the \$19,200 check to C&P. See id., Exhibit 5 (charge-back notice).

On May 15, 2013, Plaintiff C&P filed this action against Defendant T&C, seeking damages for the \$19,200 canceled check and additional costs and expenses based upon claims for breach of contract, promissory estoppel, unjust enrichment, and fraud and misrepresentation. After the two sides engaged in discovery, T&C filed a motion for summary disposition under MCR 2.116(C)(8) and (10), arguing that C&P had no legal authority to sell the cook-only meat. In its response, C&P characterizes this dispute as a simple breach of a fully performed, non-executory agreement, which obligates T&C to make good on its purchase of what was clearly marked as cook-only meat. Thus, the Court must decide whether this case presents a straightforward issue of contract interpretation or a more sophisticated dispute under the Michigan Food Law of 2000, MCL 289.1101, *et seq.*

¹ The United States Department of Agriculture deems it appropriate to cook and sell meat on which *E. coli* is found during processing if the meat is labeled as "cook-only" because the cooking process purportedly renders the meat safe to eat. But the market for such meat is limited.

II. Legal Analysis

Defendant T&C has cited MCR 2.116(C)(8) and (10) in its motion for summary disposition, but the Court plainly must consider materials outside the complaint in order to resolve the motion. Accordingly, 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. T&C argues that no genuine issue of material fact prevents the Court from deciding that Plaintiff C&P lacked authority to sell the cook-only meat, so all of C&P’s claims must fail. In contrast, C&P insists that the Court should award summary disposition in its favor pursuant to MCR 2.116(I)(2).²

Defendant T&C’s argument is built upon the Michigan Food Law of 2000, MCL 289.1101, *et seq.*, which broadly applies to “the manufacture, production, processing, packing, exposure, offer, possession, and holding any food for sale[.]” as well as “the sale, dispensing and giving of food[.]” See MCL 289.1103. Because Plaintiff C&P engaged in “the sale . . . of food” when it struck a deal to provide the contents of its truck to T&C for \$19,200, the Food Law governs that transaction. In addition, because the Food Law ordinarily requires a vendor to have a license in order to sell food in Michigan, see MCL 289.4101(1), C&P ran afoul of the Food Law when it sold 32,000 pounds of

² To be precise, Plaintiff C&P asserts that “Judgment should be granted in favor of Plaintiff pursuant to Court Rule.” See Plaintiff’s Response to Defendant’s Motion for Summary Disposition. The Court interprets that language as a request for relief pursuant to MCR 2.116(I)(2), which states that “[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party.”

meat without a license. See MCL 289.5101(1)(d). Finally, such a violation of the Food Law could be punished by an administrative fine, see MCL 289.5105(1), or prosecution for a misdemeanor. See MCL 289.5107(1). In sum, C&P’s sale of the meat – whether cook-only or not – to T&C rose to the level of a transgression of Michigan law.

Defendant T&C’s establishment of a violation of Michigan law by Plaintiff C&P, however, does not end the Court’s analysis. To be sure, Michigan law generally holds that a “contract made in violation of a statute is void and unenforceable.” American Trust Co v Michigan Trust Co, 263 Mich 337, 339 (1933). This principle, known as the wrongful-conduct rule, is “rooted in the public policy that courts should not lend their aid to a plaintiff who founded his cause of action on his own illegal conduct.” Orzel v Scott Drug Co, 449 Mich 550, 559 (1995). But “the wrongful-conduct rule is a general rule, and, like all general rules, it has limitations and exceptions.” Id. at 561. Thus, the “mere fact that the plaintiff engaged in illegal conduct at the time of his injury does not mean that his claim is automatically barred under the wrongful-conduct rule.” Id. “To implicate the wrongful-conduct rule, the plaintiff’s conduct must be prohibited or almost entirely prohibited under a penal or criminal statute.” Id. “In contrast, where the plaintiff’s illegal act only amounts to a violation of a safety statute, such as traffic and speed laws or requirements for a safe workplace, the plaintiff’s act, while illegal, does not rise to the level of serious misconduct sufficient to bar a cause of action by application of the wrongful-conduct rule.”³ Id. Accordingly, the Court must determine whether the Food Law constitutes a fundamentally “penal or criminal statute” or, instead, a “safety statute” in order to decide whether the wrongful-conduct rule bars C&P’s claims.

³ Defendant T&C’s request for a much broader bar based upon our Supreme Court’s decision in Stokes v Millen Roofing Co, 466 Mich 660 (2002), is entirely unfounded. That dispute involved a violation of the Construction Lien Act, which expressly forecloses an unlicensed contractor from seeking legal redress for uncompensated work. See id. at 673, citing MCL 339.2412. The Food Law contains no such categorical prohibition.

The Court has discovered a paucity of precedent addressing the distinction between a “penal or criminal statute” and a “safety statute” for purposes of the wrongful-conduct rule.⁴ Therefore, the Court must take its lead entirely from Poch v Anderson, 229 Mich App 40 (1998), which established that a provision of the Liquor Control Act “prohibiting selling or furnishing alcohol to persons under twenty-one years of age” constitutes “a safety statute, the violation of which does not by itself bar a plaintiff’s cause of action.” See id. at 50, citing MCL 436.33. As a result, our Court of Appeals permitted a 21-year-old plaintiff to proceed with claims against a 19-year-old defendant arising from an automobile accident caused by the defendant’s poor driving, even though the 21-year-old plaintiff had furnished alcohol to the 19-year-old defendant in contravention of the Liquor Control Act. See id. at 50-53. Significantly, the statute at issue in that case, MCL 436.33,⁵ “provide[d] that a person who knowingly furnishes alcohol to a minor is guilty of a misdemeanor[.]” Farm Bureau Mut Ins Co v Blood, 230 Mich App 58, 62 (1998). Therefore, although the Food Law carries the possibility of prosecution on a misdemeanor charge for selling meat without a license, see MCL 289.5107(1), the Food Law nonetheless constitutes a “safety statute” that does not dispossess Plaintiff C&P of its ability to pursue claims by dint of the wrongful-conduct rule. See Poch, 229 Mich App at 50.

⁴ In calling for consideration of “whether there is a ‘safety statute’ exception to the ‘wrongful conduct’ rule, and if so, how such an exception is to be defined[.]” Justice Stephen J. Markman has observed that “[a]scertaining the parameters of the ‘wrongful conduct’ rule is an exercise essential to the preservation of a fair and equitable civil justice system, and indispensable to the maintenance of public respect for this system.” See Matthews v Wyant, 465 Mich 853, 854 (2001) (Markman, J, dissenting). Although our Supreme Court at first acceded to Justice Markman’s clarion call and granted leave to appeal in a case for the purpose of addressing that issue, see Matthews v Republic Western Ins Co, 477 Mich 986, 987 (2007), our Supreme Court ultimately reversed itself and denied leave to appeal in that case, see Matthews v Republic Western Ins Co, 478 Mich 864 (2007), leaving the Orzel decision as its final word on the subject.

⁵ “The Michigan Liquor Control Act was repealed and replaced with the Michigan Liquor Control Code of 1998,” Shorecrest Lanes & Lounge, Inc v Liquor Control Commission, 252 Mich App 456, 457-458 n1 (2002), and the language contained in MCL 436.33 found a new home at MCL 436.1701. See id.

Having determined that the wrongful-conduct rule presents no impediment to Plaintiff C&P in its effort to obtain redress from Defendant T&C, the Court must decide whether either party has the right to summary disposition on the merits. Count One of the complaint presents a simple claim for breach of contract, asserting that C&P struck a deal with T&C to sell 32,000 pounds of meat for \$19,200, but T&C reneged on that agreement by stopping payment on its check to C&P after T&C accepted the meat. “A party claiming a breach of contract must establish by a preponderance of the evidence (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 Construction, Inc, 296 Mich App 56, 71 (2012). Here, the Court finds no genuine issue of material fact as to any of these three elements. The parties plainly entered into a contract requiring T&C to purchase 32,000 pounds of meat for 60 cents per pound. Notwithstanding the inspection of the meat by T&C before the bargain was struck, T&C stopped payment on its \$19,200 check to C&P after T&C took possession of the meat.⁶ And as a result of T&C’s actions, C&P was deprived of its contractual right to payment of \$19,200 for the cook-only meat it delivered to T&C. Accordingly, the Court shall grant summary disposition under MCR 2.116(I)(2) to C&P on its claim for breach of contract. In arriving at this result, the Court leaves unresolved the separate claims for promissory estoppel, unjust enrichment, and fraud and misrepresentation, but the Court notes that those claims appear to be, at best, redundant and, at worst, unsustainable. Additionally, the Court must leave the matter of damages for breach of contract unresolved at this point.

⁶ The Court is unsympathetic to Defendant T&C’s contention that it had no knowledge of the cook-only designation at the time of the transaction because all of the meat was clearly labeled “For Cooking Only.” See Brief in Support of Plaintiff’s Response to Defendant’s Motion for Summary Disposition, Exhibit 4. Moreover, Plaintiff C&P afforded T&C ample time to physically inspect the meat prior to striking a deal. “It is not the job of this Court to save litigants from their bad bargains,” see Wells Fargo Bank, NA v Cherryland Mall Ltd Partnership, 295 Mich App 99, 126 (2011), so the Court cannot invalidate the transaction that T&C voluntarily undertook.

III. Conclusion

For all of the reasons set forth in this opinion, the Court concludes that Defendant T&C has no right to summary disposition under MCR 2.116(C)(8) and (10). Instead, the Court concludes that Plaintiff C&P is entitled to summary disposition under MCR 2.116(I)(2) on its claim in Count One of the complaint for breach of contract. Beyond that, the Court must leave the remaining claims in the complaint as well as the matter of damages for breach of contract for future resolution.

IT IS SO ORDERED.

Dated: March 5, 2014



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