

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

WOODSIDE 1003, LLC, a Michigan
limited liability corporation; and WOODSIDE
PARTNERS, a Michigan partnership,

Plaintiffs,

vs.

JON BOS, PSY. D., P.C., a Michigan
corporation, d/b/a CASCADE CLINICAL
& NEUROPSYCHOLOGY, P.C.; and
JON BOS, an individual; and LINDA V.
BOS, an individual, jointly and severally,

Defendants.

Case No. 13-06154-CKB

HON. CHRISTOPHER P. YATES

ORDER DENYING JON BOS'S MOTION FOR SUMMARY DISPOSITION,
BUT GRANTING LINDA BOS'S MOTION FOR SUMMARY DISPOSITION

On October 25, 2007, Jon Bos, Psy. D., P.C. ("Jon Bos P.C.") entered into a five-year lease agreement with Woodside Partners ("Woodside") for office space located at 1013 Parchment Drive. See First Amended Complaint, Exhibit 3 (Office Lease). Woodside alleges that, as the end of the five-year term drew near, Jon Bos P.C. was roughly \$40,000 behind on its rent obligations, and that Jon Bos P.C. moved out of the office space on August 1, 2011, without satisfying its debt. *Id.*, ¶¶ 17-20. Thus, Woodside brought an action for breach of contract against Jon Bos P.C. on July 2, 2013. Woodside also named Jon Bos, individually, as a defendant based upon a personal guaranty signed on October 25, 2007. *Id.*, Exhibit 3 (Personal Guaranty Agreement). Later, Woodside amended its complaint to add a claim against Linda Bos based upon "information and belief by written statements made by Defendant Jon Bos" that Linda Bos had also signed a personal guaranty. *Id.*, ¶ 55. At this early stage of litigation, Jon Bos and Linda Bos have both requested summary disposition under MCR 2.116(C)(8) and (10).

First, Jon Bos asserts that the Court should grant his request for summary disposition pursuant to MCR 2.116(C)(8) and (10) because he did not sign the personal guaranty in his individual capacity. A motion for summary disposition pursuant to MCR 2.116(C)(8) “tests the legal sufficiency of the complaint.” Maiden v Rozwood, 461 Mich 109, 119 (1999). Here, the Court concludes that Plaintiff Woodside has pleaded facts giving rise to a claim for breach of a personal guaranty. Woodside alleges that Jon Bos signed a personal guaranty for the lease obligations of Jon Bos P.C., see First Amended Complaint, ¶ 45, that Jon Bos P.C. breached its obligations under the lease, id., ¶ 44, and that Jon Bos has not satisfied his personal guaranty of Jon Bos P.C.’s lease obligations. Id., ¶ 48. Consequently, the Court cannot grant Jon Bos’s motion for summary disposition under MCR 2.116(C)(8).

Additionally, the Court cannot grant Jon Bos’s request for summary disposition under MCR 2.116(C)(10). Such a motion “tests the factual sufficiency of the complaint[.]” Maiden, 461 Mich at 120, and summary disposition is not appropriate under MCR 2.116(C)(10) unless “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). Jon Bos contends that the personal guaranty does not clearly indicate whether he is personally liable on the lease because he signed the personal guaranty as “Jon Bos Psy D. P.C. President.”¹ See First Amended Complaint, Exhibit 3 (Personal Guaranty Agreement). The addition of the “Psy D. P.C. President” after Jon Bos’s signature, however, does not render the personal guaranty ambiguous. See C & C Equipment Co v Kinnie Annex Truck Rental, Inc, No 265079, slip op at 2 (Mich App Feb 15, 2007) (unpublished opinion). The personal guaranty clearly refers to the guarantor, *i.e.*, Jon Bos, and the lessee, *i.e.*, Jon Bos P.C., as separate persons, “compelling the conclusion that [Jon Bos] signed in his individual capacity and not merely as a representative of”

¹ The Court may interpret unambiguous contracts as a matter of law, but the interpretation of an ambiguous contract must be left to the trier of fact. Klapp v United Ins Group Agency, 468 Mich 459, 469 (2003).

Jon Bos P.C. Id. Further, “a corporate guarantee would have been meaningless” because Jon Bos P.C. was already obligated to Woodside under the terms of the lease. See id. Thus, the personal guaranty is not ambiguous, and it clearly obligates Jon Bos as a personal guarantor of the lease agreement, so the Court must deny Jon Bos’s request for summary disposition under MCR 2.116(C)(10).

Linda Bos likewise requests summary disposition under MCR 2.116(C)(8) and (10), but the Court must review her motion under MCR 2.116(C)(7) because she argues that the claim against her should be dismissed based upon the statute of frauds. In reviewing a motion brought pursuant to MCR 2.116(C)(7), the Court must accept the contents of the complaint as true “unless contradicted by the documentation submitted by the movant.” See Maiden, 461 Mich at 119. Here, Linda Bos contends that the claim against her must be dismissed because she never signed a document promising to guaranty the debt of Jon Bos P.C. See MCL 566.132(1)(b) (“A special promise to answer for the debt, default, or misdoings of another” must be in writing); see also Brief in Support of Defendant Linda Bos’ Motion for Summary Disposition and To Impose Sanctions for Filing a Frivolous Claim, Exhibit 5 (Affidavit of Linda Bos, ¶¶ 5-7). During the hearing on this motion, Plaintiff Woodside admitted that it is not likely to discover a written personal guaranty signed by Linda Bos, so the Court must grant Linda Bos’s motion for summary disposition pursuant to MCR 2.116(C)(7).²

IT IS SO ORDERED.

Dated: January 31, 2014



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

² The Court shall deny Linda Bos’s demand for sanctions for filing a frivolous claim because Woodside initially made its claim against Linda Bos based upon a written statement from her husband indicating that she had also signed a personal guaranty. See Brief in Support of Linda Bos’ Motion for Summary Disposition and To Impose Sanctions for Filing a Frivolous Claim, Exhibit 3.