

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

BELMONT FARMS LOT 10, LLC,  
a Michigan limited liability company,

Plaintiff,

Case No. 14-03902-CKB

vs.

HON. CHRISTOPHER P. YATES

MILESTONES CHILD DEVELOPMENT  
CENTER, a Michigan limited liability  
company, d/b/a MILESTONES CHILD  
DEVELOPMENT CENTER, f/k/a  
CASCADE FUNDING GROUP, LLC,

Defendant.

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ORDER AWARDING SUMMARY DISPOSITION TO DEFANDANT  
AND IMPOSING SANCTIONS UPON PLAINTIFF BELMONT FARMS

Very few businesses would fail if they could ignore their own financial obligations but collect on all financial obligations owed to them. This business model obviously seems attractive to Plaintiff Belmont Farms Lot 10, LLC (“Belmont Farms”), which filed this lawsuit in an effort to recover rent it describes as unpaid, even though Mercantile Bank Mortgage Company, LLC (“Mercantile”) assumed the right to rent from the tenant, Defendant Milestones Child Development Center (“Milestones”), in 2010. Now, three years after Belmont Farms negotiated a short sale with the approval of Mercantile, Belmont Farms has launched this action against Milestones seeking rent payments from years ago. In lieu of an answer, Milestones submitted a motion for summary disposition under MCR 2.116(C)(5), (8), and (10). Although Milestones may very well be entitled to summary disposition for a whole host of reasons, the Court shall simply award Milestones relief under MCR 2.116(C)(5) because Belmont Farms plainly has no legal claim to the rent payments it seeks in this lawsuit.

On August 14, 2006, Plaintiff Belmont Farms entered into a ten-year lease agreement with its tenant, Defendant Milestones, for property located at 2370 Belmont Center Drive, Suite 100, Belmont, Michigan. According to Belmont Farms, Milestones fell behind in its rent payments in 2008, which in turn eventually caused Belmont Farms to default on its obligation to Mercantile in 2010. As a result, Mercantile elected to assert its right to an assignment of rents following the default, and so Mercantile provided notice to Milestones on September 2, 2010, that all future rent payments should be made to Mercantile, rather than Belmont Farms. Seven months later, on April 15, 2011, Belmont Farms was able to complete a short sale with Mercantile's approval. That short sale seemingly terminated the relationship between Belmont Farms and the property it had leased to Milestones, but on May 1, 2014, Belmont Farms filed this lawsuit against Milestones seeking rent due prior to the assignment of rents on September 2, 2010. Needless to say, that claim came as a complete surprise to Milestones, which promptly responded by moving for summary disposition.

Defendant Milestones seeks summary disposition pursuant to MCR 2.116(C)(5), (8), and (10), but the Court need only consider this request under MCR 2.116(C)(5) because the Court concurs that Plaintiff Belmont Farms lacks the legal capacity to sue. "In general, '[a]n action must be prosecuted in the name of the real party in interest[.]'" *In re Beatrice Rottenberg Living Trust*, 300 Mich App 339, 356 (2013), citing MCR 2.201(B). "A real party in interest is one who is vested with the right of action on a given claim, although the beneficial interest may be in another." *Id.* "The real party in interest rule "require[es] that the claim be prosecuted by the party who by the substantive law in question owns the claim asserted[.]'" *Id.* In this respect, "the real-party-in-interest rule is essentially a prudential limitation on the litigant's ability to raise the legal rights of another[.]" *id.* at 355, which serves two purposes. First, the rule "recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy." See *City of Kalamazoo v Richland Twp*,

221 Mich App 532, 534 (1997). Second, the rule “protects a defendant from multiple lawsuits for the same cause of action.” Id.

Here, Defendant Milestones has invoked the real-party-in-interest doctrine to protect it against the threat of multiple lawsuits related to the allegedly past-due rents. Under the terms of the mortgage between Belmont Farms and Mercantile, Mercantile had a right to an assignment of rents, “including amounts past due and unpaid,” in the event of a default on the indebtedness. See Brief in Support of Motion for Summary Disposition in Lieu of Answer, Exhibit D (Construction Mortgage at page 6 of 10).<sup>1</sup> When Belmont Farms defaulted on its loan obligation to Mercantile, Mercantile exercised its right to the assignment of rents. Mercantile sent a notice to Milestones directing the tenant to make all future payments to Mercantile, see id., Exhibit E (letter dated Sept 20, 2010), and furnished notice that Mercantile “is entitled to collect rents under leases of said mortgaged premises, in accordance with the terms of said Mortgage and in accordance with MCL 554.231, *et seq.*” See id., Exhibit E (Notice of Default on the Terms and Conditions of Mortgage). Thus, Mercantile invoked its right to collect past-due rents, so Belmont Farms cannot present a claim against Milestones for that same rent obligation. Therefore, the Court must grant summary disposition to Milestones pursuant to MCR 2.116(C)(5).<sup>2</sup>

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<sup>1</sup> When reviewing a motion under MCR 2.116(C)(5), the Court “must consider the parties’ pleadings, depositions, admissions, affidavits, and other documentary evidence to determine whether the defendant is entitled to judgment as a matter of law.” See In re Quintero Estate, 224 Mich App 682, 692 (1997).

<sup>2</sup> The Court need not afford Belmont Farms an opportunity to amend because the Court has granted summary disposition pursuant to MCR 2.116(C)(5). See MCR 2.116(I)(5). In any event, the amendment proposed by Belmont Farms is unjustified. The proposed amended complaint presents a second count for breach of contract that again requests damages of past-due rents plus any equity Belmont Farms lost in the property. See Plaintiff’s Supplemental Response to Defendant’s Motion for Summary Disposition, Exhibit 1 (Amended Complaint). Belmont Farms cannot recover past-due rent because it is not the real party in interest on that claim. Further, although a borrower may recover lost equity for the breach of a contract to loan money, see Farm Credit Services of Michigan’s Heartland, PCA v Weldon, 232 Mich App 662, 682 (1998), Belmont Farms and Milestones were not parties to a contract to loan money. Thus, the claims asserted in the proposed amended complaint are not justified by law, so the amendment proposed by Belmont Farms would be futile.

Defendant Milestones has requested sanctions in the form of costs and attorney fees pursuant to MCR 2.625(A)(2), which obligates the Court to award costs as provided in MCL 600.2591 if the Court concludes that an action or defense is frivolous.<sup>3</sup> 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). Milestones argues that sanctions are warranted in this case because the claim for rent advanced by Plaintiff Belmont Farms is devoid of any arguable legal merit. To be sure, Belmont Farms knew that Mercantile had exercised its right “to take possession of the Property and collect Rents, including amounts past due and unpaid[.]” See Brief in Support of Motion for Summary Disposition in Lieu of Answer, Exhibit D (Construction Mortgage at page 6 of 10). Therefore, Belmont Farms’s argument that Mercantile merely asserted its right to future rents, leaving Belmont Farms free to collect all past-due rents, is baseless absent some agreement from Mercantile granting Belmont Farms the right to the past-due rents. Accordingly, the legal position asserted by Belmont Farms was devoid of any arguable legal merit, so the Court must award costs and attorney fees to Milestones pursuant to MCR 2.625(A)(2).

To support its claim for attorney fees, Defendant Milestones has offered evidence with respect to the hourly rate and the hours expended in defending this case. See Smith v Khouri, 481 Mich 519, 537 (2008). Based upon the Court’s review of that evidence, it seems that Milestones’s request for its attorney fees of \$8,776.25 meets the governing standards established by our Supreme Court in Smith,

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<sup>3</sup> Under Michigan law, the Court may award attorney fees ““where specifically authorized by a statute, a court rule, or a recognized exception[.]”” see Holton v Ward, 303 Mich App 718, 734 (2014), and Michigan courts generally recognize that attorney fees may be awarded pursuant to MCR 2.625(A)(2) and MCR 2.114(E). See id. at 736.

but Plaintiff Belmont Farms has the right to a hearing at which it can contest the reasonableness of that attorney-fee request. See B&B Investment Group v Gitler, 229 Mich App 1, 15-17 (1998). Thus, the Court must afford Belmont Farms an opportunity to contest that amount of attorney fees if it wishes to challenge either the hourly rate or the number of hours claimed by Milestones. Consequently, IT IS ORDERED that Milestones's motion for summary disposition under MCR 2.116(C)(5) is granted, its request for sanctions in the form of reasonable attorney fees is also granted, but Belmont Farms may request an evidentiary hearing on the amount of attorney fees within two weeks of entry of this order. If Belmont Farms makes such a request in writing, the Court shall promptly schedule a hearing. If no written request for a hearing is filed within two weeks of the entry of this order, the Court shall enter an order imposing upon Belmont Farms an obligation to pay Milestones \$8,776.25 in attorney fees.

IT IS SO ORDERED.

Dated: August 13, 2014



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