

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

LEO KREISER,
Plaintiff,

v

Case No. 01-21759-CK
HON. PHILIP E. RODGERS, JR.

WILLIAM F. CLOUS and
TONI L. CLOUS, jointly and severally,

Defendants.

Thomas W. Annelin (P29695)
Attorneys for Plaintiff

Matthew D. Vermetten (P43425)
Donald A. Brandt (P30183)
Attorneys for Defendants

**DECISION AND ORDER GRANTING
DEFENDANTS' MOTION FOR SUMMARY DISPOSITION**

This is a breach of contract action. In his Complaint, the Plaintiff alleged that he had an employment agreement with the Defendants which provided, among other things, that the Defendants would provide housing for the Plaintiff. The Plaintiff worked for the Defendants from on or about February 19, 1996 through December 31, 2000. The Defendants never provided housing for the Plaintiff.

The Defendants filed a Motion for Summary Disposition pursuant to MCR 2.116(C)(8) and (10). The Defendants claim that they are entitled to judgment as a matter of law because there is no genuine issue of material fact and the Plaintiff has failed to state a claim upon which relief can be granted. The Plaintiff filed a response to the motion, relying upon MCR 2.116(C)(9) failure to state a valid defense, the existence of factual issues which preclude granting summary disposition pursuant to MCR 2.116(C)(10), and the handwritten draft of an agreement.

On November 15, 2001, the Court heard the oral arguments of counsel and requested that the

parties file supplemental briefs addressing the issue of whether the alleged contract was within the Statute of Frauds. MCL 566.132; MSA 26.922. The Defendants filed a supplemental brief, but did not address this issue. The Plaintiff did file a supplemental affidavit in opposition to the Defendants' motion which similarly does not address the Statute of Frauds issue.

The Court now issues this written decision and order and, for the reasons stated herein, grants the Defendants' Motion and dismisses the case with prejudice.

STANDARD OF REVIEW

MCR 2.116(C)(8)

A motion for summary disposition pursuant to MCR 2.116(C)(8), failure to state a claim upon which relief can be granted, is tested by the pleadings alone. Only the legal basis of the complaint is examined. The factual allegations of the complaint are accepted as true, along with any inferences which may fairly be drawn therefrom. Unless the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery, the motion should be denied. *Mills v White Castle System, Inc*, 167 Mich App 202, 205; 421 NW2d 631 (1988).

MCR 2.116(C)(9)

A concise summary of the appropriate standard of review was set forth by the Court of Appeals in *City of Hazel Park v Potter*, 169 Mich App 714, 718; 426 NW2d 789 (1988):

A motion for summary disposition pursuant to MCR 2.116(C)(9), formerly GCR 1963, 117.2(2), for failure to state a valid defense tests the legal sufficiency of the pleaded defense. Such motion is tested by reference to the pleadings alone, with all well-pled allegations accepted as true. The proper test is whether defendant's defenses are "so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery." *Hanon v Barber*, 99 Mich App 851, 854-855; 298 NW2d 866 (1980). In addition, summary disposition is improper under this rule when a material allegation of the complaint is categorically denied. *Pontiac School Dist v Bloomfield Twp*, 417 Mich 579, 585; 339 NW2d 465 (1983).

MCR 2.116(C)(10)

MCR 2.116(C)(10) provides that summary disposition may be entered on behalf of the moving party when it is established that, “except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.”¹

The applicable standard of review for a motion for summary disposition brought pursuant to MCR 2.116(C)(10) was set forth in *Smith v Globe Life Ins Co*, 460 Mich. 446; 597 NW2d 28 (1999) as follows:

This Court in *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996), set forth the following standards for reviewing motions for summary disposition brought under MCR 2.116(C)(10):

In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J. Walter Thompson*, 437 Mich 109,

¹ The Plaintiff cited the outdated standard. The test is no longer whether “the kind of record that might be developed would leave open an issue upon which reasonable minds might differ.” Instead, the Plaintiff must now present documentary evidence establishing the existence of a material factual dispute.

115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins. Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

I.

There is no genuine issue of material fact. The Plaintiff claims that, as a part of his contract of employment, the Defendants promised to provide him with housing. There was no written contract signed by the parties. The Plaintiff worked for the Defendants for nearly five (5) years.

The statute of frauds states:

No estate or interest in lands, other than leases for a term not exceeding 1 year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing. MCL 566.106; MSA 26.906.

Every contract for the leasing for a longer period than 1 year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof be in writing, and signed by the party by whom the lease or sale is to be made, or by some person thereunto by him lawfully authorized in writing. . . MCL 566.108; MSA 26.908.

Simply put, a lease or sale of real property must, to survive a challenge under the statute of frauds, (1) be in writing and (2) be signed by the landlord or seller or someone lawfully authorized by the landlord or seller in writing. See, *Zurcher v Herveat*, 238 Mich App 267; 605 NW2d 329 (1999).

In the instant case, the alleged agreement to provide housing was not in writing and was not signed by the seller or someone lawfully authorized by the seller in writing. Therefore, the Plaintiff has failed to state a claim upon which relief can be granted. MCR 2.116(C)(8). The Defendants' Motion for Summary Disposition is granted. This case is dismissed with prejudice.

The Defendants are entitled to their reasonable and necessary attorney fees and actual costs. The Defendants shall file an affidavit within 7 days of the date of this Order regarding reasonable

and necessary attorney fees and actual costs or same shall be deemed waived. The Plaintiff shall file any objection(s) to said fees and costs within 14 days of the date of this Order.

IT IS SO ORDERED.

This Decision and Order resolves the last pending claim and closes the case.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: S/ 12/7/01