

STATE OF MICHIGAN
COURT OF APPEALS

NAWAL RAGHEB, as Personal Representative of
the Estate of MOUFID RAGHEB, Deceased,

UNPUBLISHED
October 1, 1999

Plaintiff/Counterdefendant-Appellant,

v

No. 203100
Oakland Circuit Court
LC No. 94-488357 CK

CITY CENTER PHYSICIANS, P.C., and
GORDHAN DIORA, M.D.,

Defendants/Counterplaintiffs-
Appellees.

Before: Gribbs, P.J., and O'Connell and R.B. Burns*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order denying her motion for reconsideration of its order granting defendants' motion for partial summary disposition of plaintiff's breach of contract claims.¹ We affirm in part, reverse in part, and remand to allow plaintiff to amend the complaint.

This appeal involves an action against defendants for breach of a contract to purchase plaintiff's decedent's medical practice. Defendant Diora made a written offer to purchase the practice for \$50,000, but noted that the offer was contingent on the parties signing a lease for the office space in which the practice was housed. Defendant Diora later clarified that this offer was made on behalf of defendant City Center Physicians. The negotiations for the lease of the premises broke down, however, and no lease agreement was ever signed. Ultimately, plaintiff sold the medical practice to another buyer for \$6,000, and brought suit against defendants for breach of contract. Defendants moved for summary disposition of plaintiff's breach-of-contract claims, and the trial court held that, because a lease was not signed in compliance with the statute of frauds, the entire contract for the sale of the medical practice was unenforceable as a matter of law. The court also denied plaintiff's request to amend the complaint to add claims of promissory estoppel, fraud, and unjust enrichment. Plaintiff's motion for reconsideration was denied.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Although defendants moved for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10), the more appropriate court rule is MCR 2.116(C)(7) (claim barred by statute of frauds). Accordingly, we review the trial court's decision as though it were made pursuant to the more appropriate court rule. *Shirilla v Detroit*, 208 Mich App 434, 437; 528 NW2d 763 (1995). We review a trial court's decision whether to grant a motion for summary disposition under MCR 2.116(C)(7) de novo to determine whether the moving party was entitled to judgment as a matter of law. *Limbach v Oakland Co Bd of Co Rd Comm'rs*, 226 Mich App 389, 395; 573 NW2d 336 (1997). In making this determination, we must consider all documentary evidence in the light most favorable to the nonmoving party. *Barrow v Pritchard*, 235 Mich App 478, 480; ___ NW2d ___ (1999). Additionally, we must accept the contents of the complaint as true unless specifically contradicted by documentary evidence submitted by the moving party. *Sewell v Southfield Public Schools*, 456 Mich 670, 674; 576 NW2d 153 (1998).

In this case, the offer to purchase the medical practice was expressly made contingent on the signing of a lease agreement covering the premises on which the practice was maintained. However, the lease agreement, which provided that the lease was for a five-year period, was never signed. A lease for more than a one-year period is subject to the statute of frauds. The applicable statute-of-frauds provision is as follows:

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 [MCL 566.108; MSA 26.908.]

Therefore, because the lease was never signed, it is void and unenforceable under the statute of frauds.

Plaintiff contends, however, that this does not render the entire contract unenforceable, arguing that the statute of frauds is inapplicable because the lease was only an incidental term of the contract to purchase the medical practice. However, where the terms of a contract are not severable and one term is invalid under the statute of frauds, the entire contract is unenforceable. *Thorbahn v Walker's Estate*, 269 Mich 586, 591; 257 NW 892 (1934); *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 537; 473 NW2d 652 (1991) (Riley, J.). The primary consideration in determining whether a contract is entire or severable is the intention of the parties. *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 641; 534 NW2d 217 (1995). "As a general rule, a contract is entire when, by its terms, nature and purpose, it contemplates that each and all of its parts are interdependent and common to one another and to the consideration" *Lansing v Lansing Twp*, 356 Mich 641, 658; 97 NW2d 804 (1959). In this case, there is no evidence that the lease term was a separate, distinctly independent provision. The evidence presented, even when viewed in the light most favorable to plaintiff, demonstrates that the parties intended for the contract to be contingent on the lease. Therefore, we conclude that the lease provision was part of an entire, non-severable agreement for the purchase of the medical practice. As noted above, because the lease was not signed, it is unenforceable under the statute of frauds. Thus, the absence of a signed lease as required by the agreement renders the entire contract for the purchase of the medical practice unenforceable. The trial court appropriately granted defendants' motion for summary disposition.

Plaintiff, however, argues that the statute of frauds does not bar the enforcement of the agreement for the purchase of the medical practice because defendants breached their implied duty to act in good faith when they refused to sign an acceptable lease. “Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.” 2 Restatement Contracts, 2d, § 205, p 99. Also, a party to a contract may not avoid liability for breach where that party hinders the fulfillment of a condition to that contract. *Stanton v Dachille*, 186 Mich App 247, 258; 463 NW2d 479 (1990), quoting 17A CJS, Contracts, § 468, p 645. However, plaintiff presented no evidence that defendants refused to sign the lease in bad faith. The evidence indicates that defendants objected to various terms of the lease and that the parties were in the process of negotiating an agreement regarding those terms. Specifically, defendants wanted sinks installed in each examining room. The deposition of plaintiff’s brother, who was conducting the negotiations, further indicates that no agreement was reached regarding the sinks. Plaintiff’s brother stated that he believed the demand for sinks was an obstructionist delaying tactic; however, this allegation was based on opinion and speculation and was unsupported by any evidence. We therefore conclude that, even considering the evidence in the light most favorable to plaintiff, there is no evidence that defendants breached a duty of good faith in refusing to sign the lease. Accordingly, defendants were entitled to judgment as a matter of law on plaintiff’s contract claims.

Plaintiff also argues that the trial court erred when it denied her request for leave to amend the complaint to add claims of promissory estoppel, fraud, and unjust enrichment. The trial court held that amendment would be futile. We review the trial court’s decision whether to grant leave to amend the complaint for an abuse of discretion. *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997). Leave to amend a complaint “shall be freely given when justice so requires.” MCR 2.118(A)(2). Ordinarily, a motion to amend should be granted, but it may be denied if the amendment would be futile. *Weymers, supra* at 658. “An amendment is futile if it merely restates the allegations already made or adds allegations that still fail to state a claim.” *Lane v Kindercare Learning Centers, Inc*, 231 Mich App 689, 697; 588 NW2d 715 (1998).

We conclude that the trial court abused its discretion in concluding that amendment would be futile and therefore denying leave to amend. In order to successfully claim promissory estoppel, a plaintiff must demonstrate reliance on a promise that the promisor should reasonably have expected to induce reliance. *Marrero v McDonnell Douglas Capital Corp*, 200 Mich App 438, 442; 505 NW2d 275 (1993). Additionally, the promise will only be enforced if necessary to avoid injustice. *Id.* Here, plaintiff claimed that she relied on the promise to purchase the practice by giving defendant Diora access to the practice. Furthermore, plaintiff alleges that defendant Diora never intended to purchase the practice, but only made the promise in order to gain access to the practice’s clients for the purpose of “stealing” those clients. Therefore, plaintiff argues, defendant Diora’s promise was illusory and was a misrepresentation. Moreover, plaintiff contends that defendants have been unjustly enriched by defendant Diora’s conduct in luring the practice’s clients away. We conclude that justice requires that plaintiff be allowed to amend the complaint to add these claims. Amendment would not be futile because plaintiff’s allegations do not fail to state a claim. The trial court should not test the factual validity of the allegations, but only determine whether they are legally valid. An amendment would be futile if, “ignoring the substantive merits of the claim, it is legally insufficient on its face.” *Hakari v Ski*

Brule, Inc., 230 Mich App 352, 355; 584 NW2d 345 (1998). Therefore, the trial court abused its discretion in denying plaintiff's request for leave to amend.

Affirmed in part, reversed in part, and remanded to allow plaintiff to amend the complaint. We do not retain jurisdiction.

/s/ Roman S. Gibbs

/s/ Peter D. O'Connell

/s/ Robert B. Burns

¹ The trial court granted summary disposition of plaintiff's claims for breach of contract to purchase the medical practice, but the order did not dispose of either plaintiff's claim for breach of fee agreement or defendants' counterclaim for conversion of medical equipment. Later, the trial court entered an order on stipulation of the parties dismissing all the remaining claims.