

STATE OF MICHIGAN  
COURT OF APPEALS

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AKTRIT TURRABI,

Plaintiff-Appellant,

v

RONALD TEROLLI and MARTER  
FURNITURE, INC.,

Defendants-Appellees.

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UNPUBLISHED

May 26, 2009

No. 284465

Oakland Circuit Court

LC No. 2007-082164-CK

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the trial court's orders granting in part defendants' motion for summary disposition and dismissing the case. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff first argues that the trial court erred in dismissing his breach of contract claim. The trial court's ruling on a motion for summary disposition is reviewed de novo on appeal. *Gillie v Genesee Co Treasurer*, 277 Mich App 333, 344; 745 NW2d 137 (2007). When reviewing a motion decided under MCR 2.116(C)(8), the Court accepts as true all factual allegations and any reasonable inferences drawn from them in support of the claim. Summary disposition for failure to state a claim should be upheld only when the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and thus justify recovery. *Stott v Wayne Co*, 224 Mich App 422, 426; 569 NW2d 633 (1997).

A contract is a "bargained exchange of obligations entered into by choice" between parties who have mutually agreed to all essential terms. *Ford Motor Co v Bruce Twp*, 264 Mich App 1, 12; 689 NW2d 764 (2004), rev'd on other grounds 475 Mich 425 (2006). "To state a breach of contract claim under Michigan law, a plaintiff must first establish the elements of a valid contract." *In re Brown*, 342 F3d 620, 628 (CA 6, 2003). Legal consideration is an essential element of a contract. *Yerkovich v AAA*, 461 Mich 732, 740; 610 NW2d 542 (2000). "Consideration for an agreement exists where there is a benefit on one side or a detriment suffered, or services done, on the other." *Dep't of Natural Resources v Bd of Trustees of Westminster Church of Detroit*, 114 Mich App 99, 104; 318 NW2d 830 (1982). As long as a contract contains essential terms, the law will supply missing details. *First Public Corp v Parfet*, 246 Mich App 182, 189; 631 NW2d 785 (2001), vacated in part on other grounds 468 Mich 101 (2003).

The document on which the breach of contract claim is premised shows that defendant Terolli “declared” that plaintiff was entitled to 20 percent of the profits derived by defendant Marter Furniture from the sale of furniture in six referenced shipping containers. The document does not identify any obligation undertaken by plaintiff in exchange for the promised share of the profits. “[A] promise to pay is not binding if made without consideration.” *Hess v Cannon Twp*, 265 Mich App 582, 592; 696 NW2d 742 (2005). While plaintiff contends that he gave Terolli \$30,000 in exchange for a share of the profits, the complaint alleged that the \$30,000 was paid in November 2003, six months before the alleged contract was created. A past consideration does not constitute a legal consideration for a subsequent agreement. *Shirey v Camden*, 314 Mich 128, 138; 22 NW2d 98 (1946). Therefore, the trial court did not err in concluding that the contract was invalid for want of consideration.

Plaintiff argues that even if the document does not constitute a valid contract, the evidence was sufficient to establish an implied contract and thus the trial court should not have granted defendants’ motion. As the trial court noted in its ruling, however, plaintiff had not requested such relief in response to defendants’ motion. Further, a party is bound by his pleadings, *Joy Oil Co v Fruehauf Trailer Co*, 319 Mich 277, 280; 29 NW2d 691 (1947), and a plaintiff cannot litigate issues or claims not raised in his complaint, *Belobradich v Sarnsethsiri*, 131 Mich App 241, 246; 346 NW2d 83 (1983), unless they are tried with the express or implied consent of the parties. MCR 2.118(C)(1). If an issue is not raised in the pleadings, the plaintiff can move for leave to amend the complaint. MCR 2.118(A)(2). While the trial court indicated in its ruling that it would consider a motion for leave to amend to add a claim for breach of an implied contract, plaintiff did not bring such a motion until the day of trial, approximately seven weeks later, at which time the motion was denied and the case was dismissed for other reasons. Thus, the trial court did not err in dismissing plaintiff’s breach of contract claim.

Plaintiff next argues that the trial court erred in denying his motion for leave to amend. The trial court’s ruling on a motion to amend pleadings is reviewed for an abuse of discretion. *Doyle v Hutzell Hosp*, 241 Mich App 206, 211-212; 615 NW2d 759 (2000). “An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes.” *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

After the time for amendment as of right has expired, a party may amend a pleading only by leave of the court or upon consent of the adverse party. The trial court shall freely grant leave when justice so requires. MCR 2.118(A)(2). “Leave to amend may be denied for particularized reasons, such as undue delay, bad faith, or dilatory motive on the movant’s part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, or futility of the amendment.” *Amburgey v Sauder*, 238 Mich App 228, 247; 605 NW2d 84 (1999). Undue delay, even if inexcusable, is not a valid basis in and of itself for denying leave to amend. *Stanke v State Farm Mut Auto Ins Co*, 200 Mich App 307, 321; 503 NW2d 758 (1993). However, delay may constitute a valid basis for denying leave to amend “where the delay was in bad faith or causes actual prejudice to the opponent.” *Id.* “Prejudice to a defendant that will justify denial of leave to amend is the prejudice that arises from having a fair trial; the prejudice must stem from the fact that the new allegations are offered late and not from the fact that they might cause the defendant to lose on the merits.” *Amburgey, supra* at 247.

While the trial court expressly found that the delay in seeking leave to amend was not the result of bad faith, it did find that allowing the amendment would prejudice defendants. The premise for plaintiff's claim as alleged in the complaint was that he paid defendants \$30,000 for a share of the profits from the sale of furniture and advanced loans that were not repaid. The crux of the claim sought to be alleged was that plaintiff had paid \$30,000 or more "to people who have done work and something on behalf of Marter Furniture," which had been unjustly enriched at plaintiff's expense.<sup>1</sup> Given that plaintiff sought to advance a new theory of recovery supported by previously undisclosed documents on the day of trial, the trial court did not abuse its discretion in denying the motion for leave to amend on the ground that defendants would be prejudiced by the delay. *Weymers v Khera*, 454 Mich 639, 659-660; 563 NW2d 647 (1997).

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot  
/s/ Douglas B. Shapiro

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<sup>1</sup> Plaintiff also sought to add a claim for fraud, but did not explain the basis for the claim below and has not provided any further explanation here.