

# Court of Appeals, State of Michigan

## ORDER

Olga Wierszewski v Hartt Antiques Gallery, LLC

Docket No. 343890

LC No. 17-008817-AV

Christopher M. Murray  
Presiding Judge

Cynthia Diane Stephens

Thomas C. Cameron  
Judges

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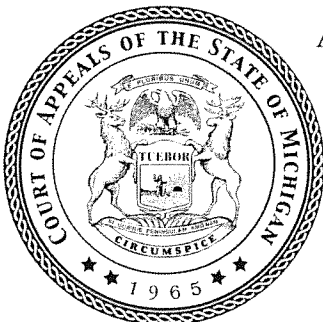
Pursuant to MCR 7.205(E)(2), the Court orders that the circuit court's April 27, 2018 order affirming the district court's October 31, 2016, February 16, 2017, and May 24, 2017 orders is REVERSED, and the matter REMANDED to the district court for further proceedings. The district court abused its discretion by denying defendant/counter-plaintiff's request for leave to amend its answer based solely on a finding of delay. See *Weymers v Khera*, 454 Mich 639, 659; 563 NW2d 647 (1997) ("Delay, alone, does not warrant denial of a motion to amend."). After reviewing the circumstances of this matter, there is no indication of bad faith or prejudice to the opposing party that would warrant denial of the motion. Cf. *id.* at 659-662 (explaining the degree of prejudice required to warrant denial of a motion to amend). On remand, the district court shall permit defendant/counter-plaintiff to amend its answer.

Because the answer, once amended, will not admit to the amount of damages due on the complaint, the district court's granting of plaintiff/counter-defendant's first motion for summary disposition and entering a sum-certain judgment on the complaint is VACATED. The amount of damages due to plaintiff/counter-defendant remains in dispute, and on remand, the district court must resolve that issue. The district court also erred by granting plaintiff/counter-defendant's second summary disposition motion. Defendant/counter-plaintiff submitted documentary evidence creating a question of fact regarding whether it was the first party to materially breach the parties' agreement, and thus, it was improper to grant summary disposition in plaintiff/counter-defendant's favor with respect to the counter-complaint. MCR 2.116(C)(10) and (G)(5); *Michaels v Amway Corp.*, 206 Mich App 644, 650; 522 NW2d 703 (1994).

This order is to have immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.



Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

OCT 23 2018

Date



Chief Clerk