

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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OAKLAND EURO, LLC,

Plaintiff-Appellant,

v

OAKLAND HILLS COUNSELING, LLC,  
ROBERT M. SHIVE, JR., and KAREN G.  
SHIVE,

Defendants-Appellees.

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UNPUBLISHED

August 7, 2014

No. 316307

Oakland Circuit Court

LC No. 2013-132686-CK

Before: JANSEN, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

Plaintiff appeals the trial court's order that granted defendants' motion for summary disposition under MCR 2.116(C)(7), (C)(8), and (C)(10). For the reasons stated below, we affirm.

**I. FACTS AND PROCEDURAL HISTORY**

Defendant Robert Shive is the sole owner of defendant Oakland Hills Counseling, LLC ("OHC"). In January 2013, OHC negotiated with plaintiff to lease office space in plaintiff's commercial property.<sup>1</sup> On or about January 24, 2013, an agent of plaintiff sent a lease proposal to OHC that included this provision:

7. **IMPROVEMENTS:** Landlord, at its' expense, will prepare the premises for tenants [sic] occupancy "Turn Key" which will include the following suit modifications:

New paint and carpet throughout. . . .

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<sup>1</sup> It is apparent that defendant Robert Shive or defendant Karen Shive, or both, acted as the agent(s) of defendant OHC throughout the negotiations.

Plaintiff asserts that on February 15, 2013: (1) OHC orally agreed to accept a 10-year lease on the office and; (2) defendants Robert and Karen Shive orally contracted to pay for the cost of improvements to the office in the event that OHC declined to sign the 10-year lease agreement. Oddly, given plaintiff's claim that defendants had agreed to lease the office space, plaintiff's owner emailed Robert Shive on February 20, and explained that he was showing the office to another tenant—who plaintiff's owner believed was “viewing the building for a second time”—later that afternoon. The owner added that “[y]ou will understand that I cannot hold space without signed leases.”

Defendants never signed any lease agreement. In March 2013, plaintiff sued defendants for breach of contract in the Oakland Circuit Court. Among other things, it alleged that defendants breached the two supposed contracts that required them to: (1) personally guarantee the 10-year lease; and (2) pay for the cost of improvements to the office in the event OHC chose not to sign the 10-year lease agreement. Plaintiff later sought to add claims for promissory estoppel and quantum meruit. Defendants moved for summary disposition, and argued that the statute of frauds barred enforcement of an oral contract to lease property for more than a year.

At the motion hearing, the trial court granted defendants' request for summary disposition pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10). It stressed that neither party disputed the non-existence of any written documents related to the lease, and that MCL 566.106 barred enforcement of the alleged oral agreement for the 10-year lease. It also held that MCL 566.132(1)(b) mandated that the Shives could not be held liable as guarantors for the purported 10-year lease agreement, and that that plaintiff's lease proposal specifically stated that plaintiff would pay for any improvements.

Plaintiff appealed the case to our Court in May 2013, and argues that the lower court erred when it: (1) rejected its breach of contract claim as to defendants' supposed oral agreement to compensate plaintiff for improvement of the office space under MCL 566.132(1)(b); and (2) rejected its claim for quantum meruit.<sup>2</sup>

## II. STANDARD OF REVIEW

“This Court reviews de novo a trial court's ruling on a motion for summary disposition.” *Anzaldúa v Neogen Corp*, 292 Mich App 626, 629; 808 NW2d 804 (2011). Summary disposition is warranted under MCR 2.116(C)(7) “when a claim is barred by immunity granted by law.” *State Farm Fire & Cas Co v Corby Energy Servs, Inc*, 271 Mich App 480, 482; 722 NW2d 906 (2006). Summary disposition is warranted under MCR 2.116(C)(8) when the complaint fails to state a legal claim. *Anzaldúa*, 292 Mich App at 630. “Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” *West v Gen Motors Corp*, 469 Mich

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<sup>2</sup> Plaintiff's claims of promissory estoppel and equitable estoppel are raised in a cursory fashion in a reply brief. These issues have thus been forfeited because they were not properly raised in the brief on appeal or supported with any legal authority. See *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

177, 183; 665 NW2d 468 (2003). Summary disposition under MCR 2.116(C)(10) “cannot be avoided by conclusory assertions that are at odds . . . [with] actual historical conduct of a party.” *Aetna Cas & Surety Co v Ralph Wilson Plastics Co*, 202 Mich App 540, 548; 509 NW2d 520 (1993).

We review de novo whether the statute of frauds renders a contract unenforceable. *Kloian v Domino’s Pizza, LLC*, 273 Mich App 449, 458; 733 NW2d 766 (2006). A plaintiff’s claim of quantum meruit is also reviewed de novo. *Liggett Restaurant Group, Inc v Pontiac*, 260 Mich App 127, 137; 676 NW2d 633 (2003). To maintain a quantum meruit claim, a plaintiff must show “(1) the receipt of a benefit by the defendant from the plaintiff[,] and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant.” *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 195; 729 NW2d 898 (2006).

### III. ANALYSIS

#### A. STATUTE OF FRAUDS

MCL 566.106 reads, in full:

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.

As noted, this dispute involves a 10-year lease that was never reduced to writing. Accordingly, plaintiff’s claims related to the 10-year lease are barred by MCL 566.106. This bar includes any other agreements that are component parts of the 10-year lease—such as the oral contract where defendants agreed to pay for improvements to plaintiff’s office space in the event that OHC did not sign the 10-year lease.

Plaintiff’s appeal is based on obfuscation: one where it distinguishes the oral agreement guaranteeing payment for the improvements from the 10-year lease itself. But the oral agreement—if it ever existed—is not separate and distinct from the 10-year lease. It is a subsidiary part of it, and thus any claim related to the oral agreement is also barred by MCL 566.106.<sup>3</sup> Plaintiff cannot dissect the 10-year lease to create new claims that are explicitly prohibited by the statute.

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<sup>3</sup> The trial court’s citation of MCL 566.132(1)(b) was inapposite, as that statute prohibits “collateral promises for debts already owed.” *Manuel v Gill*, 270 Mich App 355, 376–377; 716 NW2d 291 (2006), aff’d in part and rev’d in part on other grounds 481 Mich 637 (2008). Here, defendants were in direct negotiation with plaintiff and owed plaintiff no debt. They were not “answer[ing] for the debt, default, or misdoings of another person,” so MCL 566.132(1)(b) does not apply.

Moreover, as the trial court noted, the record belies plaintiff's claims related to the oral agreement on office improvements. The January 24, 2013 lease proposal sent by plaintiff's agent to defendants states that *plaintiff* would pay for the cost of improvements to the office space. This proposal is completely inconsistent with plaintiff's assertions that it only agreed to renovate the office in preparation for OHC's immediate occupancy after Robert and Karen Shive orally agreed to pay for the costs of doing so. Further, the February 20, 2013 e-mail from plaintiff's owner to Robert Shive stated that plaintiff showed the office to another prospective tenant. The owner stressed that plaintiff "cannot hold space without signed leases." This e-mail demonstrates that plaintiff believed it had no contractual relationship with Robert and Karen Shive. Otherwise, plaintiff would not have expressed its willingness to lease the real property to another party a mere five days after the alleged oral contract was supposedly entered into.

Accordingly, notwithstanding the affidavit of plaintiff's owner, plaintiff's conduct demonstrates that it did not improve the office because of a February 15, 2013 oral contract by defendants Robert and Karen Shive on behalf of defendant OHC. The trial court thus properly awarded defendants summary disposition under MCR 2.116(C)(10).

#### B. QUANTUM MERUIT

Plaintiff has also failed to show that it is inequitable for defendants to retain the benefit of the unexercised lease. The benefits from the office improvements went almost entirely to plaintiff, as plaintiff increased the value of its own property. Equity does not require defendants to pay for unused improvements to plaintiff's property. Moreover, plaintiff failed to set forth any argument or evidence to value this nebulous benefit to defendants, and the cost of improvements would not be the proper measure. See *Island Lake Arbors Condominium Ass'n v Meisner & Assoc, PC*, 301 Mich App 384, 401-402; 837 NW2d 439 (2013) ("benefit" is determined by the plaintiff's contribution as valued to the defendant, not the cost of the plaintiff's contribution as to the plaintiff).

Accordingly, the trial court reached the correct result in dismissing the quantum meruit claim pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ Kathleen Jansen  
/s/ Henry William Saad  
/s/ Pat M. Donofrio