

STATE OF MICHIGAN

IN THE OAKLAND COUNTY CIRCUIT COURT

**ADVANCED PHARMACY, LLC,
A Michigan Limited Liability Company, and
SANJAY PATEL,**

THE HON JAMES ALEXANDER

Plaintiffs/Counter-Defendants,

CASE NO 2014-145168-CK

VS

**BEST VALUE PHARMACY, LLC,
A Michigan Limited Liability Company,
ADVANCED SENIORS HEALTH
CARE GROUP, INC.,
A Michigan Corporation,
AVINASH RACHMALE, and
DEEPAK BHALLA, Jointly and Severally,**

Defendants/Counter-Plaintiffs.

BROWN & BROWN, PLC
By: Mathew C. Brown (P40078)
By: Matthew J. Brown (P73030)
Co-Counsel for Plaintiffs/Counter-Defendants
838 West Long Lake Road, Suite 100
Bloomfield Hills, Michigan 48302
(248) 454-1120
mattbrownatty@gmail.com
matthew.brown.j@gmail.com

LEDERMANLAW PC
By: Howard Yale Lederman (P36840)
Co-Counsel for Plaintiffs/Counter-Defendants
838 West Long Lake Road, Suite 100
Bloomfield Hills, Michigan 48302
(248) 639-4696
hledermanlaw@gmail.com

MICHAEL J. LEBOW NBTA PLC
By: Michael J. Lebow NBTA (P33734)
Co-Counsel for Plaintiffs/Counter-Defendants
838 West Long Lake Road, Suite 100
Bloomfield Hills, Michigan 48302
(248) 419-1994

mjl@lebowgerlach.com

SARAH C ARNOLD (P52470)
Attorney for Defendants/Counter-Plaintiffs
7310 Woodward Avenue, Suite 500
Detroit, Michigan 48202
(313) 219-9195/(313) 265-2976
saraharnold@comcast.net
sarah.arnold@gccorp.com

GARRATT & BACHAND, PC
By: C. William Garratt (P13858)
Co-Counsel for Defendants/Counter-Plaintiffs
Best Value Pharmacy and Avinash Rachmale
74 West Long Lake Road, Suite 200
Bloomfield Hills, Michigan 48304
(248) 645-1450
thefirm@garrattbachand.net

/

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR LEAVE
TO FILE ONE PARTIAL SUMMARY DISPOSITION MOTION**

PLAINTIFFS ADVANCED PHARMACY, LLC AND SANJAY PATEL, by their undersigned counsel, respond to Defendants' July 14, 2016 Motion for Leave to File One Partial Summary Disposition as follows:

A. This Court should deny the motion, because the dispositive motion deadline has long passed, the Court has not extended it, and even before the last deadline, Defendants, though having every opportunity to move for summary disposition on Plaintiffs' Original Complaint, Counts II-VIII, for the most part, failed to do so. The Court has set three dispositive motion deadlines: **October 15, 2015, December 16, 2015, and January 15, 2016**. Except for their one October 14, 2015 limited motion for summary disposition, Defendants failed to act. (See Below)

B. This Court should deny the motion, because on Plaintiffs' First Amended

Complaint, Count I-Breach of Contract, Defendants have failed to state any valid basis for a successful MCR 2.116(C)(8) summary disposition motion.

C. This Court should deny the motion, because on Plaintiffs' First Amended Complaint, Count I-Breach of Contract, Defendants have failed to state any valid basis for a successful MCR 2.116(C)(7) summary disposition motion based on the statute of limitations.

C. This Court should deny the motion, because on Plaintiffs' First Amended Complaint, Count I-Breach of Contract, Defendants have failed to state any valid basis for a successful MCR 2.116(C)(10) summary disposition motion based on no genuine issues of material fact.

D. This Court should deny the motion, because in granting Plaintiffs leave to amend their Original Complaint to include their new Count I-Breach of Contract claims, the Court held that these claims were not futile.

E. This Court should deny the motion, because on Plaintiffs' other claims, the Complaint Amendment changed little, mainly confining Count V-Minority Shareholder Oppression, Count VII-Common Law Conversion, and Count VIII-Statutory Conversion to the January 23, 2012-January 23, 2015 period.

F. This Court should deny the motion, because before the extended dispositive motion deadline, Defendants had every opportunity to move under MCR 2.116(C)(8) and MCR 2.116(C)(10) for summary disposition on all the non-Count I-Breach of Contract claims, but Defendants failed to do so.

G. This Court should deny the motion, because before the extended dispositive

motion deadline, Defendants had every opportunity to move under MCR 2.116(C)(7) for summary disposition on Plaintiffs' claims other than Count I-Breach of Contract, Count V-Minority Shareholder Oppression, Count VII-Common Law Conversion, and Count VIII-Statutory Conversion, but Defendants failed to do so.

H. This Court should deny the motion, because a new extensive summary disposition motion would greatly prejudice Plaintiffs, by forcing them to respond to such a motion during the peak trial preparation period before the scheduled September 6, 2016 trial, thus giving Defendants an unfair advantage.

1. Plaintiffs admit the allegations as true.

2. Plaintiffs admit the First Amended Complaint filing date allegation as true. Plaintiffs admit the First Amended Complaint number of pages allegation as true. Plaintiffs neither admit nor deny the about 100 pages of exhibits allegation as irrelevant. Plaintiffs admit the eight (8) counts allegation as true.

3. Plaintiffs deny that the Court should dismiss their First Amended Complaint's Count I-Breach of Contract claims based on MCR 2.116(C)(8)-failure to state valid claims. In granting Plaintiffs' March 2, 2016 Motion for Leave to Amend Their Complaint, the Court held the proposed amendment was not futile. The Court at least implied that in their new Count I-Breach of Contract claims, Plaintiffs had stated all required breach of contract claim elements and thus stated valid claims. (Exhibit 1, 4/1/16 Order Re: Motion for Reconsideration and to Amend) Defendants' argument that the parties' written agreement, the June 5, 2008 Memorandum of Understanding, did not include any provision precluding a unilateral reduction in Plaintiffs' interest in Best Value Pharmacy ignores that no provision permitted it. The issue's resolution calls for

evidence beyond the pleadings and thus beyond an MCR 2.116(C)(8) summary disposition motion's scope. Defendants' statement that at his July 7, 2016 deposition, Plaintiff Patel did not recall "any conversations with Defendants about that subject" overlooks that any such statement is beyond the pleadings and thus beyond an MCR 2.116(C)(8) summary disposition motion's scope.

4. Plaintiffs deny that the Court should dismiss their First Amended Complaint's Count I-Breach of Contract claims based on MCR 2.116(C)(10)-no genuine issues of material fact or MCR 2.116(C)(7)-statute of limitations. Regarding no genuine issues of material fact, Defendants have mentioned only one piece of supporting evidence. Opposing evidence surrounding Plaintiff Patel's statement is substantial. Regarding the statute of limitations, in granting Plaintiffs' March 2, 2016 Motion for Leave to Amend Complaint, the Court held the proposed amendment was not futile. **The Court explained that the six-year breach of contract statute of limitations did not bar the First Amended Complaint's new Count I-Breach of Contract claims.** (Exhibit 1, 4/1/16 Order Re: Motion for Reconsideration and to Amend, pp 3-4) **As a result, on Plaintiffs' Amended Complaint Count I-Breach of Contract, the parties have litigated, and the Court has resolved, all MCR 2.116(C)(7) (statute of limitations) and MCR 2.116(C)(8)(failure to state valid claim) issues.**

Concerning Plaintiff's other claims, on October 14, 2015, Defendants moved under MCR 2.116(C)(7) for summary disposition on Plaintiff's Complaint, Count V-Minority Shareholder Oppression and for partial summary disposition on Plaintiffs' Complaint, Count VI-Common Law Conversion and on Count VII-Statutory Conversion. (Exhibit 2, 10/14/15 Defendants Best Value Pharmacy's, Avinash Rachmale's, and

Deepak Bhalla's Motion for Summary Disposition As To Counts V, VII, and VII Of Plaintiffs' Verified Complaint Pursuant to MCR 2.116(C)(7)) On February 17, 2016, the Court granted Defendants' motion in part and denied it in part. The Court granted the motion and dismissed the claims only to the extent they predated January 23, 2012. The Court denied the motion to the extent they did not predate January 23, 2012. (Exhibit 3, 2/17/16 Opinion and Order Re: Summary Disposition, pp 5-6) **Defendants have never moved for reconsideration of the Court's decision.** Thus, on Counts V, VI, and VII, the parties have litigated the MCR 2.116(C)(7) statute of limitations issues. **Therefore, on these counts, the Court has resolved them.**

Before the earlier October 15, 2015, December 16, 2015, and January 15, 2016 dispositive motion deadlines (See Exhibit 4, 3/13/15 Scheduling Order, p 1; Exhibit 5, 9/22/15 Second Stipulated Order Extending Dates, p 3; Exhibit 6, 11/24/15 Stipulated Order Extending Dates, etc., p 5), **Defendants had every opportunity to move for summary disposition on the other four claims on any recognized basis. Defendants also had the opportunity to move for summary disposition on Counts V, VII, and VIII on any recognized non-statute of limitations basis. But Defendants failed to do either by the extended deadline.** Defendants had every opportunity to move for reconsideration of the Court's February 17, 2016 decision. But Defendants failed to do so. The Complaint Amendment did not change the Counts II-VIII contents. Accordingly, Defendants' present motion is an attempt to avoid the earlier dispositive motion and motion for reconsideration deadlines. **Defendants are asking the Court to grant them special privileges not granted to other parties. The Court has every reason to deny Defendants' request.**

5. Plaintiffs deny Defendants' assertion that "Plaintiffs cannot suffer any legal prejudice" if the Court permits Plaintiffs to move for partial summary disposition as untrue. **Another Defendants' summary disposition motion based on MCR 2.116(C)(7), (8), and (10) on almost all claims, far more extensive than their first summary disposition motion, would force Plaintiffs and their counsel to spend substantial time, money, and effort on the motion response.** Furthermore, Defendants would move for partial summary disposition during the "stretch run," the prime trial preparation period. As the non-moving parties, Plaintiffs would have the burden of showing genuine issues of material fact. **So, any such motion would greatly divert Plaintiffs' time, resources, and effort from trial preparation during the peak trial preparation period.** Defendants could use the motion as an excuse to move to adjourn the trial yet again and further delay the proceedings. The Court has every reason to deny Defendants' de facto motion to adjourn the trial and further delay the proceedings.

In contrast, on any partial summary disposition motion, Defendants' burden would be minimal. **Any such motion would not divert Defendants' time, resources, and effort from trial preparation or would do so far less.** So, granting Defendants' motion and permitting them to move for partial summary disposition would greatly prejudice Plaintiffs.

6. Plaintiffs deny Defendants' suggestion that the trial will last "up to five weeks" as untrue. In their Final Pre-Trial Order, Plaintiffs estimated that "this trial will last for [4-8] days." (Exhibit 7, 5/9/16 Plaintiffs' Pre-Trial Order, p 8, Proposed Jury Instructions, M Civ JI 1.05) In their Final Pre-Trial Order, Defendants estimated that

“this trial will last for five days.” (Exhibit 8, 5/10/16 Defendants/Counter-Plaintiffs’ Final Pre-Trial Order, p 8, M Civ JI 1.05)

THEREFORE, PLAINTIFFS ADVANCED PHARMACY, LLC AND SANJAY PATEL respectfully request this Court to:

- A. Deny the motion with prejudice.
- B. Grant them further relief in accordance with principles of equity and justice.

Dated: July 15, 2016

/s/ Howard Yale Lederman
LEDERMANLAW PC
By: Howard Yale Lederman (P36840)
Co-Counsel for Plaintiffs/Counter-Defendants
838 West Long Lake Road, Suite 100
Bloomfield Hills, Michigan 48302
(248) 639-4696
hledermanlaw@gmail.com

PROOF OF SERVICE

LIST OF EXHIBITS

Exhibit 1, 4/1/16 Order Re: Motion for Reconsideration and to Amend.

Exhibit 2, 10/14/15 Defendants Best Value Pharmacy’s, Avinash Rachmale’s, and Deepak Bhalla’s Motion for Summary Disposition As To Counts V, VII, and VII Of Plaintiffs’ Verified Complaint Pursuant to MCR 2.116(C)(7).

Exhibit 3, 2/17/16 Opinion and Order Re: Summary Disposition.

Exhibit 4, 3/13/15 Scheduling Order.

Exhibit 5, 9/22/15 Second Stipulated Order Extending Dates.

Exhibit 6, 11/24/15 Stipulated Order Extending Dates.

Exhibit 7, 5/9/16 Plaintiffs’ Pre-Trial Order, p 8, Proposed Jury Instructions, M Civ JI 1.05.

Exhibit 8, 5/10/16 Defendants/Counter-Plaintiffs' Final Pre-Trial Order, p 8, M Civ JJ
1.05.

best value pharmacy\response to motion for leave to move for partial summary d 07 14 16