

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

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KAM KAM HOLDINGS, LLC,

Plaintiff-Appellant,

v

RITE AID OF MICHIGAN, INC.,

Defendant/Third Party Plaintiff-  
Appellee,

and

RITE AID CORP.,

Defendant-Appellee,

and

SPEED AND KOLOR KING, INC.,

Third Party Defendant.

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Before: GLEICHER, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order denying plaintiff's motion for leave to file a supplemental complaint after the trial court granted a motion for summary disposition in favor of defendants. On appeal, plaintiff argues that the trial court erred by granting defendants' motion for summary disposition because plaintiff had standing to bring its claims against defendants. Plaintiff further argues that the trial court erred by denying plaintiff's motion for leave to file a supplemental complaint. We reverse.

## I. PROCEDURAL HISTORY

On June 24, 1997, defendant Rite Aid of Michigan entered into a revised lease agreement with Utica Town Center, Inc., in which the latter agreed to lease a commercial location and its parking lot for a term of 20 years that commenced on April 1, 1997. Under the lease, Rite Aid of Michigan agreed to keep the property, including the parking lot, “in good order and repair.” On the same day, defendant Rite Aid Corporation executed an agreement, according to which it would act as a guarantor for Rite Aid of Michigan under the lease.

On October 4, 2016, Utica Town Center executed a warranty deed that transferred ownership of the subject property to Pierson-Dollar Properties, LLC. On April 10, 2017, shortly after the lease had expired, Pierson-Dollar’s attorney sent a letter to defendants demanding that defendants repair the property and the parking lot pursuant to the lease agreement. On September 13, 2017, Pierson-Dollar entered into an agreement to sell the property.<sup>1</sup> On December 26, 2017, Pierson-Dollar signed a warranty deed transferring the property to plaintiff.

Plaintiff filed a complaint alleging that defendants breached the lease by failing to repair damage to the property and the parking lot. Following the entry of a stipulated order of partial dismissal, only plaintiff’s claims pertaining to the condition of the parking lot remained. Subsequently, defendants filed a motion for summary disposition under MCR 2.116(C)(10), arguing that plaintiff lacked standing to bring its claims under the lease because plaintiff failed to produce any evidence that it had acquired Pierson-Dollar’s claims under the lease. Defendants alternatively argued that plaintiff failed to provide admissible evidence to support its claims.

Plaintiff responded to defendants’ motion for summary disposition by arguing that it had standing to bring the lawsuit because Pierson-Dollar conveyed its entire interest in the property to plaintiff, and that the covenant to keep the premises in good repair ran with the land. Plaintiff also argued that defendants lacked standing to challenge the assignment because of the statute of frauds. Plaintiff finally asserted that it had presented sufficient evidence to support its claims relating to the poor condition of the parking lot.

At a hearing on defendants’ motion for summary disposition, defendants argued that, although Pierson-Dollar had the ability to assign its claims under the lease to plaintiff, there was no evidence that plaintiff obtained such a written assignment. Plaintiff countered that it stepped into the shoes of Pierson-Dollar after it acquired the property. The trial court ultimately granted the motion exclusively on the basis that plaintiff lacked standing, reasoning that the lease expired before plaintiff acquired the property, and that plaintiff failed to provide evidence that it received a written assignment of claims relating to the lease from Pierson-Dollar. The trial court reasoned that, at most, the purchase agreement between Pierson-Dollar and plaintiff only contemplated the execution of a future assignment, but was not a transfer of rights.

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<sup>1</sup> Initially, the parties to the purchase agreement were Pierson-Dollar and Grow Green, LLC, however, Grow Green, LLC’s rights under the purchase agreement were subsequently assigned to plaintiff in an amendment to the purchase agreement.

After the trial court entered the order dismissing plaintiff's claims, plaintiff obtained a written assignment of claims from Pierson-Dollar. The assignment provided that Pierson-Dollar assigned its interest in "any and all claims, demands, lawsuits, damages, right to payment, actions, and causes of action of any kind whatsoever" to plaintiff. Plaintiff then filed a motion for leave to file a supplemental complaint so that it could raise allegations supported by the newly confirmed assignment. The trial court denied plaintiff's motion because it was procedurally improper after the dismissal of plaintiff's claims, and that defendants' arguments that plaintiff failed to provide admissible evidence to support its claims established that a supplemental complaint would be futile. This appeal follows.

## II. DISCUSSION

Plaintiff argues that the trial court erred when it granted defendants' motion for summary disposition on the basis of plaintiff's lack of standing where plaintiff provided writings that showed Pierson-Dollar assigned its claims to plaintiff. We agree.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Zaher v Miotke*, 300 Mich App 132, 139; 832 NW2d 266 (2013). "A motion for summary disposition under MCR 2.116(C)(10) tests the factual support of the plaintiff's claim and should be granted, as a matter of law, if no genuine issue of any material fact exists to warrant a trial." *Doe v Henry Ford Health Sys*, 308 Mich App 592, 596-597; 865 NW2d 915 (2014). "When evaluating a motion for summary disposition under MCR 2.116(C)(10), 'a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties . . . in the light most favorable to the party opposing the motion.'" *Innovation Ventures v Liquid Mfg*, 499 Mich 491, 507; 885 NW2d 861 (2016), quoting *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Id.*

"This Court reviews de novo questions of law such as whether the statute of frauds bars enforcement of a purported contract." *Zander v Ogihara Corp*, 213 Mich App 438, 441; 540 NW2d 702 (1995). Additionally, "the question of standing is a question of law that we review de novo on appeal." *Barclae v Zarb*, 300 Mich App 455, 467; 834 NW2d 100 (2013). "The construction and interpretation of court rules is a question of law that we review de novo." *Barclay v Crown Bldg & Dev, Inc*, 241 Mich App 639, 642; 617 NW2d 373 (2000).

"Before a court may exercise jurisdiction over a plaintiff's claim, that plaintiff must possess standing." *Salem Springs, LLC v Salem Twp*, 312 Mich App 210, 216; 880 NW2d 793 (2015). Our Supreme Court explained as follows:

[A] litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the

Legislature intended to confer standing on the litigant. [*Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010) (footnote omitted).]

“A plaintiff must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties.” *Fieger v Comm’r of Ins*, 174 Mich App 467, 471; 437 NW2d 271 (1988).

“Under general contract law, rights can be assigned unless the assignment is clearly restricted.” *Burkhardt v Bailey*, 260 Mich App 636, 653; 680 NW2d 453 (2004). “An assignee stands in the position of the assignor, possessing the same rights and being subject to the same defenses.” *Id.* A valid assignment requires “a perfected transaction between the parties which is intended to vest in the assignee a present right in the thing assigned.” *Id.* at 654 (quotation marks and citation omitted). Specific statutory requirements also come to bear. *Id.* MCL 566.132(1) states in relevant part:

In the following cases an agreement, contract, or promise is void unless that agreement, contract, or promise, or a note or memorandum of the agreement, contract, or promise, is in writing and signed with an authorized signature by the party to be charged with the agreement, contract, or promise:

\* \* \*

(f) An assignment of things in action, whether intended as a transfer for sale, for security, or otherwise.

“Thus, under Michigan law, a written instrument, even if poorly drafted, creates an assignment if it clearly reflects the intent of the assignor to presently transfer ‘the thing’ to the assignee.” *Burkhardt*, 260 Mich App at 654-655. “Moreover, with respect to an assignment, the assignor must clearly manifest a present transfer.” *Id.* at 656.

“The statute of frauds exists for the purpose of preventing fraud or the opportunity for fraud, and not as an instrumentality to be used in the aid of fraud or prevention of justice.” *Lakeside Oakland Dev, LC v H & J Beef Co*, 249 Mich App 517, 526; 644 NW2d 765 (2002). “Our Supreme Court has declined to adopt narrow and rigid rules for compliance with the statute of frauds. Instead, the Court has adopted a case-by-case approach.” *Kelly-Stehney & Assoc, Inc v MacDonald’s Indus Prod, Inc*, 265 Mich App 105, 111; 693 NW2d 394 (2005) (citation omitted). “A note or memorandum may be sufficient under the statute of frauds in any number of forms . . .” and “[i]t is well settled that the memorandum may be made at any time, at least up to the time the action is brought to enforce the contract.” *Id.* at 113-114 (quotation marks and citation omitted). Accordingly, “the writing requirement of the statute of frauds may be satisfied by several writings made at different times.” *Id.* at 114. Our Supreme Court has rejected the notion that a writing “‘must contain every detail of the agreement’ to satisfy the statute of frauds.” *Id.*, quoting *Goslin v Goslin*, 369 Mich 372, 376; 120 NW2d 242 (1963). Relatedly, our Supreme Court has ruled that written concessions in the pleadings may satisfy the provision of the statute of frauds requiring that a trust in land be supported by written evidence. *Brender v Stratton*, 216 Mich 166, 176; 184 NW 486 (1921).

In this case, the terms of the purchase agreement involved in the sale of the subject property to plaintiff included the following:

1. **Agreement to Sell.** Seller at Closing (herein defined) shall sell, transfer, and convey to Purchaser, and Purchaser shall purchase, all of Seller's right, title and interest in the [property].

A. Seller's rights include, without limitation, any and all rights Seller has pursuant to any previous lease agreements entered into with respect to the [property], an assignment of which shall be executed at closing.

In January 2019, defendants filed their motion for summary disposition challenging plaintiff's standing and evidentiary support for its claims. Plaintiff argued in response that it and Pierson-Dollar had "ratified" the assignment and "satisfied" the statute of frauds "by their subsequent conduct in honoring its terms," and provided a copy of an affidavit from a representative of Pierson-Dollar in support. In the affidavit, Pierson-Dollar's agent stated that, "[a]s part of the sale of the Property, Pierson-Dollar assigned to Plaintiff all of its right, title, and interest" in the lease, that the assignment "was part of the consideration provided to Plaintiff in exchange for the purchase price," that Pierson-Dollar intended to "assign the Lease to Plaintiff," and that Pierson-Dollar believed that the assignment was effective.

The trial court ruled that the statute of frauds was not satisfied because plaintiff provided no evidence that it actually received a written assignment from Pierson-Dollar, but rather showed, at most, that the purchase agreement contemplated the future execution of an assignment. Notably, the trial court did not acknowledge the Pierson-Dollar affidavit in its written opinion and order.

Plaintiff argues that the trial court erred when it ruled that the statute of frauds barred recognition of plaintiff's assertion that it received an assignment from Pierson-Dollar. We agree.

Plaintiff provided two writings signed by Pierson-Dollar that pertained to an assignment of its rights under the lease to plaintiff: the purchase agreement and the Pierson-Dollar affidavit. In the purchase agreement, Pierson-Dollar agreed to transfer its rights "pursuant to any previous lease agreements entered into with respect to the [property]," and that such an assignment would be "executed at closing." There is no dispute that the envisioned closing took place, in that Pierson-Dollar signed a warranty deed transferring the property to plaintiff on December 26, 2017. And in the affidavit, Pierson-Dollar's representative or agent, whose status in that regard is not disputed, stated that Pierson-Dollar intended to assign its rights under the lease to plaintiff as part of the consideration for the sale of the property, and understood that it had done so.

Pierson-Dollar, the party charged under the agreement as assignor, signed both the purchase agreement and the Pierson-Dollar affidavit, and in both writings clearly expressed its intent to assign its rights under the lease to plaintiff when plaintiff acquired the property. See *Kelly-Stehney*, 265 Mich App at 113-114. When viewed together, the two writings provided by plaintiff show Pierson-Dollar's clear intent to assign its rights under the lease to plaintiff. *Burkhardt*, 260 Mich App at 654-655.

Nonetheless, defendants argue that the Pierson-Dollar affidavit may not be used to satisfy the statute of frauds because it was executed after plaintiff filed its complaint. Although the rule that a memorandum in satisfaction of the statute of frauds may be created “at least up to the time the action is brought to enforce the contract,” *Kelly-Stehney*, 265 Mich App at 113-114 (quotation marks and citations omitted), might suggest that such an affidavit created after the action is brought might be deemed untimely, no such issue arises under the instant facts. Although defendants correctly observe that the Pierson-Dollar affidavit was executed after plaintiff filed its complaint, defendants do not address that plaintiff did not initiate this action in order to enforce the assignment, or any other facet of the purchase agreement, against the party charged as assignor, Pierson-Dollar. Plaintiff’s action was for enforcement of rights it claimed against defendants under an existing contract of unchallenged validity as the successor in interest of defendants’ contract partner. Therefore, defendants’ argument relating to the timing of the affidavit is without merit.

### III. CONCLUSION

For these reasons, we conclude that the trial court erred in holding that plaintiff lacked standing in this matter. In light of our resolution on the issue of plaintiff’s standing, we need not reach plaintiff’s alternative arguments challenging the trial court’s refusal to allow it to file a supplemental complaint to rectify any problems with plaintiff’s standing.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher  
/s/ David H. Sawyer  
/s/ Patrick M. Meter