

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ALICE ACHEE-SHARP,)
)
 Plaintiff,)
)
 v.)
)
 LENEXA REAL ESTATE PORTFOLIO)
 PARTNERS, LLC,)
)
 Defendant.)
 _____)

CIVIL ACTION
No. 19-2100-KHV

)
 LENEXA REAL ESTATE PORTFOLIO)
 PARTNERS, LLC,)
)
 Third-Party Plaintiff,)
 v.)
)
 SNOWMEN 365, LLC,)
)
 Third-Party Defendant.)
 _____)

MEMORANDUM AND ORDER

Alice Achee-Sharp filed suit against Lenexa Real Estate Portfolio Partners, LLC (“Lenexa Real Estate”) for personal injuries which she sustained when she fell on ice in its parking lot. Lenexa Real Estate asserts a third-party claim for indemnification against Snowmen 365, LLC, alleging that (1) it failed to procure insurance coverage under the parties’ contract and (2) it has refused to defend or indemnify Lenexa Real Estate against plaintiff’s claim. This matter is before the Court on the Joint Motion Of Third-Party Plaintiff Lenexa Real Estate Portfolio Partners, LLC And Third-Party Defendant Snowmen 365, LLC To Modify Pretrial Order (Doc. #258) and the Joint Motion Of Third-Party Plaintiff Lenexa Real Estate Portfolio Partners, LLC And Third-Party Defendant Snowmen 365, LLC To Reform Building Services Contract (Doc. #259), both filed

March 26, 2021. For reasons stated below, the Court overrules both motions.

The only remaining claims in this matter are the third-party claims of Lenexa Real Estate against Snowmen 365, LLC based on the parties' building services contract. On January 27, 2021, the Court overruled the parties' cross motions for summary judgment because neither party had adequately addressed the precise legal relationship between Snowmen 365, LLC and Snowmen, Inc. See Memorandum And Order (Doc. #246). Now, the parties ask the Court to equitably reform their contract to name "Snowmen, Inc." as the contractor instead of "Snowmen 365." The parties do not explain (1) why, without court intervention, they cannot reform the contract through novation or otherwise or (2) the legal basis for the Court to reform a contract based on equitable principles when one of the purported parties to the contract (Snowmen, Inc.) is not a party to this action. If all of the Snowmen entities agree to the proposed amendment, they can amend the contract without judicial intervention.¹ On the present record, however, the Court must overrule the joint motion to reform the contract.

The parties also ask to modify the pretrial order to vacate the current trial date and the associated pretrial deadlines. The parties explain that after reformation of the contract, Lenexa Real Estate will need to amend its claims against Snowmen, Inc. As noted above, the Court declines to order reformation of the contract. Moreover, Snowmen, Inc. currently is not a party to this action. Even so, to the extent that the parties are able to reform the contract (either with or without judicial intervention), they have not adequately explained why they cannot be ready to try this matter on May 3, 2021. This case was filed on February 21, 2019, and the parties have known

¹ The parties also have not provided evidentiary support for their agreement that the contract should be reformed under the scrivener's error doctrine, *i.e.* that the parties mutually intended to name Snowmen, Inc. as the contracting party. Likewise, the parties did not present such evidence on their cross motions for summary judgment.

about this issue for at least six months, litigated it extensively on the summary judgment motions and presumably prepared for trial on the affirmative defense of mistake of Snowmen 365, LLC. Except for the recent settlement of plaintiff's claim, which appears completely unrelated to the third-party indemnification claim, the parties offer no explanation for the delay in addressing this issue.² Accordingly, the Court overrules the joint motion to continue trial and modify pretrial deadlines at this late stage.

IT IS THEREFORE ORDERED that the Joint Motion Of Third-Party Plaintiff Lenexa Real Estate Portfolio Partners, LLC And Third-Party Defendant Snowmen 365, LLC To Modify Pretrial Order (Doc. #258) and the Joint Motion Of Third-Party Plaintiff Lenexa Real Estate Portfolio Partners, LLC And Third-Party Defendant Snowmen 365, LLC To Reform Building Services Contract (Doc. #259), both filed March 26, 2021 are **OVERRULED**.

Dated this 26th day of March, 2021 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge

² Before filing an answer which included the defense of mistake, Snowmen 365, LLC asked Lenexa Real Estate to substitute Snowmen, Inc. as the proper party. See Snowmen 365, LLC's Memorandum In Support Of Motion For Leave To File Amended Answer (Doc. #197) filed September 14, 2020 at 6 (Snowmen 365 offer that if Lenexa Real Estate substitutes Snowmen, Inc., both Snowmen entities would "waive any conflicts, claims, or defenses"). Lenexa Real Estate declined to do so. Accordingly, U.S. Magistrate Judge Teresa J. James granted the motion of Snowmen 365 to amend its answer. See Clerk's Minute Sheet – Telephone Pretrial Conference (Doc. #203) filed September 16, 2020 at 2. Likewise, the pretrial order includes Snowmen 365, LLC's defense of mutual mistake. See Pretrial Order (Doc. #215) filed September 29, 2020 at 18 (Snowmen 365, LLC contends that it is not proper party because contract was between Lenexa Real Estate and "an unknown entity named Snowmen 365;" asserting mutual mistake in contract and that "Snowmen, Inc." is proper third-party defendant).