

STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

ELITE MEDICAL STAFFING, LLC,

Plaintiff,

vs.

Case No. 2022-001657-CB

LAKESIDE MANOR NUSING &
REHABILITATION CENTER, LLC and
PIONEER HEALTH CARE MGMT., INC.,

Defendant.

_____ /

OPINION AND ORDER

Plaintiff Elite Medical Staffing, LLC (“Plaintiff”) has filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Defendant Lakeside Manor Nursing & Rehabilitation Center, LLC and Pioneer Health Care Mgmt., Inc. (“Defendants”) failed to file a response to the motion.

I. Factual and Procedural History

This is a collection action. Plaintiff is a healthcare staffing company, Defendant Lakeside Manor Nursing & Rehabilitation Center, LLC (“Defendant Lakeside”) is Plaintiff’s customer, and Defendant Pioneer Health Care Mgmt., Inc. (“Defendant Pioneer”) is Defendant Lakeside’s management company. On November 22, 2021, the Parties entered into an Agreement for Supplemental Staffing (“Agreement”). See Plaintiff’s Exhibit B. Plaintiff alleges that Defendants have failed to pay \$370,757.00 in billed charges which are past-due. On May 4, 2022, Plaintiff filed its four count complaint against Defendants asserting the following: count I – breach of contract, count II – account stated, count III – unjust enrichment/quantum meruit, and count IV –

alter ego. On October 12, 2023, Plaintiff filed the instant motion for summary disposition arguing that there is no genuine issue of material fact as it relates to Defendants' failure to pay for services rendered. Defendants failed to file a response to the motion. On November 6, 2023, the Court took the matter under advisement.

II. Standard of Review

A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). The Court reviews a "motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). "A litigant's mere pledge to establish an issue of fact at trial cannot survive summary disposition under MCR 2.116(C)(10)." *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). "The court rule plainly requires the adverse party to set forth specific facts at the time of the motion showing a genuine issue for trial." *Id.* "Summary disposition under MCR 2.116(C)(10) is appropriately granted if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Greene v AP Products, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006). "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds could differ. *Debano-Griffin v Lake Co*, 493 Mich 167, 175; 828 NW2d 634 (2013).

III. Arguments and Analysis

Plaintiff argues that that Defendants have failed to pay \$370,757.00 in billed charges which are past-due, despite the fact that Plaintiff performed under the contract as required. "A party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was

a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach.” *Miller-Davis Co v Ahrens Const*, 495 Mich 161, 178; 848 NW2d 95 (2014). “The party asserting a breach of contract has the burden of proving its damages with reasonable certainty, and may recover only those damages that are the direct, natural, and proximate result of the breach.” *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003). In support of its argument, Plaintiff has attached timesheets of its staff and invoices for the services provided. See Exhibit 3 to Plaintiff’s Exhibit C. Plaintiff has also provided the affidavit of Rachel Gearhart (“Gearhart”), who is Plaintiff’s controller. See Plaintiff’s Exhibit C. In her affidavit, Gearhart states, in relevant part, the following:

8. Attached hereto as Exhibit 2 are a series of invoices for services that Elite issued and submitted to Lakeside Manor. Based upon my knowledge as Controller and custodian of these records, these invoices are genuine. Based upon my knowledge as Controller, each of these invoices were sent to Lakeside Manor.

9. Attached hereto as Exhibit 3 are the invoices along with accompanying documentation that includes the following:

a. Accurate and complete copies/images of employee/staff timesheets for services rendered at Lakeside Manor. Each of these images was submitted by staff to Elite’s business team, which contemporaneously saved such images. These are records of a regularly conducted business activity, which the staff complete and which are regularly maintained by Elite for billing purposes; and

b. Correspondence, including text messages, with Lakeside Manor staff related to confirmation of shifts worked, canceled, or scheduled, for Elite’s staff. This correspondence is regularly sought and saved by Elite as part of its regular business activity of documenting services that it has provided to client, including, but not limited to, Lakeside Manor.

10. Attached hereto as Exhibit 4 are a series of email communications between staff from Elite and staff from Lakeside Manor related to Elite’s services and billing and collections for such services. As Controller and custodian of these records, I affirm that these email communications are genuine and came from Elite’s email system/server. I further personally attest to the genuineness of all emails in Exhibit 4 that I was personally a party to, either as sender, recipient, or cc recipient. *Id.*

Plaintiff further argues that Defendants corporate representative, Fahim Uddin (“Uddin”), could not identify any specific defect in Plaintiff’s performance under the Agreement. See Plaintiff’s Exhibit D, p. 64: 8-23. Her testimony was, in relevant part, as follows:

Q: Okay. All right. How about this? What do you think my client did wrong?

A: I don’t know. I wasn’t there to see it.

Q: Okay. So you don’t know what my client did wrong?

A: I don’t know because I wasn’t there providing – seeing the services that they were providing or not.

Q: Has anyone told you that my client did something wrong?

A: I mean, there’s a lot of times that you have agencies that provided bad services. I don’t know specifically.

Q: If you can, please identify a specific comment you heard from anyone about something my client did wrong.

A: I don’t know with specificity any kind of comment that I could –

Q: Okay.

A: I’m not involved with that there. *Id.*

Plaintiff’s CEO, Dale Kirry (“Kirry”) has submitted an affidavit dated May 2, 2022, stating that “[t]he total unpaid principal balance on these invoices is \$370,757.00. In addition, \$49,699.89 in late fees have accrued, for a total outstanding balance of \$420,456.89.” See Plaintiff’s Exhibit E, p. 1. Plaintiff argues that pursuant to Section III(A) of the Agreement, Plaintiffs are entitled to an additional late charge of 18% on past due amounts. The Agreement specifically states “[i]f payment is not received by the terms outlined, then EMS will add an additional late charge of 18% interest to the original invoice amount.” See Plaintiff’s Exhibit B p. 2. At the time of the filing of this motion, the amount of interest accrued is \$77,087.71. See Chart on p. 4 of Plaintiff’s Motion. Based on the evidence presented by Plaintiff only, as Defendants have failed to file a response, the Parties have a signed Agreement, Plaintiff submitted the invoices, Defendants failed to pay, and Defendants’ corporate representative could not point to a single thing Plaintiff did wrong. Additionally, MCR 2.116(G)(4) reads as follows:

A motion under subrule (C)(10) must specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact. When a

motion under subrule (C)(10) is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her.

Here, as previously noted, Defendants failed to file a response to the motion. Accordingly, for the reasons discussed above, Plaintiff's motion for summary disposition is granted.

IV. Conclusion

For the reasons set forth above, Plaintiff's motion for summary disposition is GRANTED. Judgment is entered in Plaintiff's favor and against Defendants for \$370,757.00 in unpaid invoices plus \$77,087.71 in late fees for a total amount of \$447,844.71. Pursuant to MCR 2.602(A)(3), this *Opinion and Order* resolves the last pending claim and closes the case.

IT IS SO ORDERED.



HONORABLE RICHARD L. CARETTI
Circuit Court Judge

DATE: November 7, 2023

cc: Robert Dindoffer, Esq.
Craig Romanzi, Esq.

