

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

ITRIA VENTURES, LLC,

Plaintiff,

Case No. 2024-207634-CB

vs.

Hon. Victoria Valentine

KORE-COM LLC, and BRUCE DANIEL
DEBOER,

Defendants.

Nicholas J. Ellis (P73174)
Raymond J. McVeigh (P84799)
Foley & Lardner LLP
500 Woodward Avenue, Suite 2700
Detroit, MI 48226-3489
(313) 234-7100
nellis@foley.com
rmcveigh@foley.com

Diane E. Xagoraris (P32106)
PO Box 584
Armada, MI 48005-2340
586-992-3561
dexagoraris@yahoo.com

Attorneys for Plaintiff

Attorney for Defendants

OPINION AND ORDER GRANTING PLAINTIFF ITRIA VENTURES, LLC'S
MOTION FOR SUMMARY DISPOSITION

At a session of said Court held on the
13th day of January 2025 in the County of
Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter is before the Court on Plaintiff ITRIA VENTURES, LLC's motion for summary disposition under MCR 2.116(C)(10), to which Defendants have failed to file a response, as well as failing to respond to email communications from the

Court's chambers regarding the motion. The Court, having reviewed the pleadings and Plaintiff's Brief, which contains supporting exhibits and an affidavit, dispenses with oral argument under MCR 2.119(E)(3). For the reasons set forth below, the Court respectfully GRANTS Plaintiff's Motion under MCR 2.116(C)(10).

FACTS

Plaintiff Itria Ventures LLC alleges that it is engaged in the business of providing financial accommodations to its business customers through, *inter alia*, the purchase of merchant accounts receivable. On or about November 8, 2023, Plaintiff entered into a Receivables Sale Agreement ("RSA")¹ with Defendant Kore-Com LLC ("Kore-Com"). Pursuant to this RSA, Plaintiff, identified as "Purchaser," purchased from Defendant Kore Com, identified as "Merchant," the Merchant's Receivables in the amount of \$75,000 ("Amount Sold") for the stated "Purchase Price" of \$60,000.² The RSA also provides that the "Purchase Price" is the gross dollar amount before the application of fees ("Fees") in the stated amount of \$3,500. Under the RSA the "Funded Amount" totals \$56,5000, which represents the "Purchase Price *less* Fees."³

The RSA further provides for a "Purchased Percentage" of 8.14%, which represents the percentage of Receivables that "Purchaser will receive until the

¹ See Plaintiff's MSD Exhibit A.

² While Plaintiff's Complaint, Brief, and attached Affidavit indicate the purchase price is \$75,000, the RSA specifically provides:

Purchase Price: Sixty Thousand Dollars _____ (\$ 60,000.00).

The purchase price ("Purchase Price") is a gross amount before application of fees ("Fees"). The amount funded to you under this Agreement ("Funded Amount") will be net of the Fees specified below.

³ See Plaintiff's MSD Exhibit A, p 1. (Emphasis in original).

Merchant has delivered the Amount Sold (“Purchased Percentage”), on the periodic basis specified below.”⁴ This “Periodic Amount” is identified as \$1,562.50.⁵

The RSA sets forth certain actions taken directly or indirectly by or on behalf of Merchant, which would constitute a “Material Breach” without any prior notice from Purchaser, which includes:⁶

7. Material Breach.

A. Material Breach. Any of the following actions taken directly or indirectly by or on behalf of Merchant will constitute a “Material Breach,” without any prior notice from Purchaser:

- (i) The breach of any representation, warranty, covenant or agreement of Merchant set forth in this Agreement;

The RSA provides that in the event of a Material Breach, Plaintiff is entitled to receive all “Contract Damages” and to recover Costs of Collection:⁷

8. Purchaser Remedies upon Material Breach. Merchant agrees that, upon the occurrence of a Material Breach, Purchaser may, and Merchant hereby authorizes Purchaser to, pursue any and all of the following remedies, to the extent permitted by law, without prior notice to Merchant: (a) Purchaser shall be entitled to receive all Contract Damages (as defined) from Merchant.

- (b) Purchaser will be entitled to recover from Merchant all Costs of Collection.

“Contract Damages” are defined as “an amount equal to the Amount Sold, less all or prior receipts of Receivables by Purchaser plus any applicable fees and charges under this Agreement.”⁸ “Costs of Collection is defined “as permitted by law, any and all costs, fees and expenses, including reasonable attorneys’ fees . . .”⁹

Contemporaneous with the execution of the RSA, Defendant Bruce Deboer, as Guarantor, executed a Guaranty of Performance whereby he guaranteed "Merchant's complete and timely performance of the obligations specified in Section

⁴ See Plaintiff’s MSD Exhibit A, p 1.

⁵ See Plaintiff’s MSD Exhibit A, p 1.

⁶ See Plaintiff’s MSD Exhibit A, p 7, Section 7(A)(i).

⁷ See Plaintiff’s MSD Exhibit A, pp 7-8, Section 8(a) and (b).

⁸ See Plaintiff’s MSD Exhibit A, p 8, Section 8.

⁹ See Plaintiff’s MSD Exhibit A, p 8, Section 8.

6 hereof upon the occurrence of a Material Breach.”¹⁰ Guarantor further agreed that in the event of Merchant's Material Breach, Guarantor agreed that “the obligations of Guarantors shall remain in effect and enforceable by Purchaser until the entire Amount Sold has been received by Purchaser . . .”¹¹

Plaintiff’s affidavit of its employee Harrison Smalbach, which is attached to its Brief, avers that “[o]n or about February 26, 2024, Merchant failed to remit to Plaintiff the Remittance Amount pursuant to the terms of the RSA as they came due, even though Merchant was continuing to collect accounts receivables.”¹² Accordingly, Plaintiff provided notice of breach to Merchant.¹³ However, according to Mr. Smalbach, Merchant did not cure its Material Breach nor provide any explanation as to why the Remittance Amount was not due and owing to Plaintiff under the express, unequivocal terms of the RSA.¹⁴

Following Merchant's failure to cure its Material Breach, Mr. Smalbach avers that Plaintiff provided notice of breach to Guarantor and requested payment.¹⁵ Guarantor, however, failed to remit to Plaintiff the balance of the Amount Sold plus reasonable attorneys' fees and costs incurred by Plaintiff as a result of Merchant's Material Breach.¹⁶ Mr. Smalbach further avers that the balance of the Amount Sold that is due and owing totals \$53,150.00, plus interest.¹⁷

¹⁰ See Plaintiff’s MSD Exhibit A, p 12, Section 16.

¹¹ See Plaintiff’s MSD Exhibit A, p 12, Section 16.

¹² See Affidavit attached to Plaintiff’s MSD Brief, ¶8.

¹³ See Affidavit attached to Plaintiff’s MSD Brief, ¶9.

¹⁴ See, Affidavit attached to Plaintiff’s MSD Brief, ¶9.

¹⁵ See Affidavit attached to Plaintiff’s MSD Brief, ¶10.

¹⁶ See Affidavit attached to Plaintiff’s MSD Brief, ¶10.

¹⁷ See Affidavit attached to Plaintiff’s MSD Brief, ¶9 and Plaintiff’s MSD Exhibit B.

Accordingly, Plaintiff filed its 2-Count Complaint alleging Breach of Contract, and Breach of Guaranty, which seeks damages in an amount not less than \$53,150,00 plus attorney fees, interest and cost. Defendants filed an Answer, essentially indicating that they lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations. And the Court record does not reflect that Defendants filed any Affirmative Defenses to Plaintiff's claims.

Plaintiff now files its Motion for Summary Disposition under MCR 2.116(C)(10), which attaches supporting exhibits and an Affidavit evidencing its entitlement to a judgment in his favor. And as previously stated, Defendants fail to file a response to this motion and consequently fail to refute the claims and facts alleged by Plaintiff.

ANALYSIS

Summary disposition under MCR 2.116(C)(10) may be granted where "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." This motion tests the factual sufficiency of the complaint and "must specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact." MCR 2.116(G)(4). The moving party bears the initial burden of supporting its position. *Smith v Globe Life Ins Co*, 460 Mich 446, 455 (1999). "Affidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted in the motion are required . . . when judgment is sought based on [MCR 2.116(C)(10)]." MCR 2.116(G)(3)(b).

“The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rest on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in the pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.” *Smith*, 460 Mich at 455 (citations omitted; emphasis added).

If the motion for summary disposition is properly made and supported, an adverse party must, by affidavit or otherwise, “set forth specific facts showing there is a genuine issue for trial.” MCR 2.116(G)(4). If the adverse party fails to respond, and if appropriate, the court shall grant the summary disposition motion. MCR 2.116(G)(4).

Here, The Court file does not reflect that Defendants filed a response to the motion for summary disposition brought under MCR 2.116(C)(10) or filed any affirmative defenses to Plaintiff’s claim. Consequently, Plaintiff’s uncontroverted evidence and legal authority demonstrate the non-existence of a genuine issue of material fact for purposes of granting summary disposition pursuant to MCR 2.116(C)(10).

Further, it is well-settled that “[t]rial courts are not the research assistants of the litigants” and that “the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute.” *Walters v Nadell*, 481 Mich 377, 388 (2008). A party may not “leave it up to this Court to discover and rationalize the basis for his claims, or unravel and rationalize the basis for his arguments, and then search for

authority either to sustain or reject his position.” *Mitcham v City of Detroit*, 355 Mich 182, 203 (1959) “A party may not merely announce its position and leave it to this Court to discover and rationalize the basis for [its] claims, or give issues cursory treatment with little or no citation to supporting authority.” *Wolfe v Wayne-Westland Community Schs*, 267 Mich App 130, 139 (2005). *See also Moses, Inc v Southeast Mich Council of Governments*, 270 Mich App 401, 417 (2006) (“If a party fails to adequately brief a position, or support a claim with authority, it is abandoned.”). Consequently, by failing to challenge or respond to the Plaintiff’s legal authorities and argument, Defendants have abandoned any contrary position.

CONCLUSION

Based on the forgoing Opinion, Plaintiff’s Motion for Summary Disposition against Defendants is GRANTED. Accordingly, by January 27, 2025, Plaintiff is directed to present an Order and/or Judgment consistent with this Opinion pursuant to MCR 2.602(B)(2) or (B)(3), which shall be a final order and close out the case.

IT IS SO ORDERED.



DATED 1/13/25