

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

**JING-JIN ELECTRIC NORTH AMERICA,
Plaintiff,**

v.

**Case No. 2023-202024-CB
Hon. Victoria Valentine**

**VIA MOTORS, INC. and
IDEANOMICS, INC.,
Defendants.**

_____ /

**OPINION AND ORDER GRANTING IDEANOMICS, INC.'S MOTION FOR
SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10)**

OPINION

This matter is before the Court on Defendant Ideanomics, Inc.'s Motion for Summary Disposition Pursuant to MCR 2.116(C)(8) and (C)(10), seeking the dismissal of Plaintiff Jing-Jin Electric North America's claims, namely Count II and Counts III and IV as asserted against Defendant Ideanomics. On October 18, 2023, Plaintiff Jing-Jin Electric North America filed a Response, to which Defendant Ideanomics, Inc. subsequently filed its Reply. The Court heard oral argument on January 17, 2024, at which time the Court took the Motion under advisement.

The Court has reviewed the pleadings as well as the Motion, Response, and Reply, and has heard oral argument on the above-entitled Motion. For the reasons set forth below, Defendant Ideanomics, Inc.'s Motion for Summary Disposition is GRANTED under MCR 2.116(C)(10).

I. Factual Background

The present cause of action arises out of a Master Development Agreement¹ executed on July 1, 2022 between Jing-Jin Electric North America (“JJE”), a global technology supplier in electric drive systems, and Defendant VIA Motors, Inc. (“VIA”), a manufacturer of fully electric commercial vehicles and trucks.² Pursuant to the Master Development Agreement, VIA contracted with JJE for its engineering and development of Electric Drive Motors (“EDM”) for use in VIA’s battery electric light trucks beginning in 2023.³

On October 10, 2022, VIA issued a Purchase Order, containing a list of parts, quantities, dates of delivery, and pricing, to JJE in the total amount of \$5,780,784.00.⁴ Once JJE received the Purchase Order, it purportedly developed, engineered, and licensed the parts and timely delivered those parts to VIA.⁵ According to JJE, VIA accepted the parts without objection and has incorporated those parts into its prototype vehicles.⁶ As of December 9, 2022, however, VIA allegedly had an outstanding past due balance of \$3,988,509.60.⁷ JJE subsequently generated an Invoice, numbered PF2022120901, for the alleged outstanding balance of \$3,988,509.60 and sent that Invoice to VIA for payment on or about December 9, 2022.⁸

On January 24, 2023, Defendant Ideanomics, Inc. (“Ideanomics”), a global electric vehicle company, and VIA executed the Amended and Restated Agreement and Plan of Merger (“Purchase Agreement”), wherein Ideanomics purchased 100% of the outstanding stock of VIA in a reverse triangular merger transaction.⁹

¹ See Exhibit A of the Complaint.

² See Paragraphs 6 and 7 of the Complaint.

³ See Exhibit A and Paragraph 10 of the Complaint.

⁴ See Exhibit C of the Complaint.

⁵ See Paragraph 15 of the Complaint.

⁶ See Paragraph 16 of the Complaint.

⁷ See Paragraph 19 of the Complaint.

⁸ See Exhibits D and E of the Complaint.

⁹ See Exhibit 1 to Ideanomics’ Motion.

Meanwhile, discussions continued between JJE and VIA regarding VIA's alleged outstanding balance, and on February 1, 2023, JJE again requested payment.¹⁰ JJE sent a subsequent payment request on February 21, 2023 in which JJE notified VIA that it intends to "pause activities related to the development of the VIA Motors EDM solutions until such time that full payment [from VIA] is received."¹¹ On March 29, 2023, counsel for JJE sent a Demand Letter to VIA to seek payment of the alleged outstanding balance and to notify VIA of the possibility of court intervention should the parties be unable to resolve the matter of payment.¹² JJE alleges that the parties engaged in serious discussions regarding payment of the purported outstanding balance, wherein VIA assured JJE that Ideanomics was working diligently to get VIA additional funding to partially pay VIA's vendors past due invoices.¹³ However, JJE claims that VIA still owes the alleged outstanding balance of \$3,988,509.60.¹⁴

Consequently, JJE initiated this lawsuit against VIA and Ideanomics on August 11, 2023 in regard to the outstanding balance of \$3,988,509.60 that is purportedly due and owing to JJE for work performed under the Master Development Agreement. The Complaint alleges the following counts against Defendants: Breach of Contract (VIA) (Count I); Breach of Contract (Ideanomics) (Count II); Account Stated (Defendants) (Count III); and Unjust Enrichment (Defendants) (Count IV).

On September 29 2023, Ideanomics subsequently filed its Motion for Summary Disposition Pursuant to MCR 2.116(C)(8) and (C)(10). As stated previously, Ideanomics is

¹⁰ See Exhibit G of the Complaint.

¹¹ See Exhibit I of the Complaint.

¹² See Exhibit J of the Complaint.

¹³ See Paragraph 27 of the Complaint and generally, Exhibits K and L.

¹⁴ See Paragraph 28 of the Complaint.

seeking the dismissal of JJE’s claims, namely Count II and Counts III and IV as raised against Ideanomics.

II. Standards of Review

A motion for summary disposition pursuant to MCR 2.116(C)(8) “tests the legal sufficiency of a claim based on the factual allegations in the complaint.” *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-60; 934 NW2d 665 (2019); *Pawlak v Redox Corp*, 182 Mich App 758, 763; 453 NW2d 304 (1990). A motion for summary disposition based on the failure to state a claim upon which relief may be granted is to be decided on the pleadings alone. *Bailey v Schaaf*, 494 Mich 595, 603; 835 NW2d 413 (2013); *Parkhurst Homes, Inc v McLaughlin*, 187 Mich App 357, 360; 466 NW2d 404 (1991). Exhibits attached to pleadings may be considered under MCR 2.116(C)(8) because they are part of the pleadings pursuant to MCR 2.113(C). *El-Khalil*, 504 Mich at 163.

“All well-pleaded factual allegations are accepted as true and construed in a light more favorable to the nonmovant.” *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999); *Wade v Dep’t of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). Summary disposition is proper “when the claim is so clearly unenforceable as a matter of law that no factual development can justify a right to recovery.” *Parkhurst Homes*, 187 Mich App at 360.

“A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, 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. 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.” *Maiden*, 461 Mich at 120; *Quinto v Cross & Peters Co.*, 451 Mich 358, 362; 547

NW2d 314 (1996). “A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ.” *El-Khalil*, 504 Mich at 160 (citation omitted).

III. Count II - Breach of Contract (Ideanomics)

A. Arguments of the Parties¹⁵

With regard to JJE’s claim for Breach of Contract (Ideanomics), Ideanomics argues that it is not a party to the Master Development Agreement, which was executed approximately seven months prior to Ideanomics’ acquisition of VIA’s stock. Since Ideanomics is not a party to the Master Development Agreement, JJE cannot establish the elements of a breach of contract claim and so this claim must be dismissed against Ideanomics. Furthermore, Ideanomics argues that it cannot be held liable for VIA’s alleged breach of contract on account of its position as the corporate parent of VIA.

While JJE asserts in the Complaint that Ideanomics expressly agreed to assume VIA’s obligations, Ideanomics argues that JJE’s assertion is without factual support and is also contradictory to Section 2.2(c) of the Purchase Agreement, which specifically states that “all debts, liabilities, and duties of the Company [VIA]” shall become the “debts, liabilities, obligations and duties of the Surviving Corporation [VIA].”¹⁶ Based upon the language in the Purchase Agreement, Ideanomics maintains that it did not undertake VIA’s liabilities and so VIA’s obligations to JJE under the Master Development Agreement remain unchanged. Moreover, Ideanomics argues that any alleged, express agreement to assume VIA’s financial obligations to

¹⁵ In its Motion, Ideanomics proactively argues against a “piercing the corporate veil” theory, a de facto merger exception, and a “mere continuation” exception even though they were not specifically raised in the Complaint. JJE concedes in its Response that the Complaint does not allege certain theories of liability that were addressed by Ideanomics in its Motion. While the exceptions of merger and mere continuation will be addressed in the context of successor liability in Section III(B) of the Opinion, the Court will not address the “piercing the corporate veil” theory as that theory has not been alleged in the Complaint or argued in JJE’s Response.

¹⁶ See Exhibit 1 to Ideanomics’ Motion. Section 2.2(c) of the Purchase Agreement provides that “all references herein to the Company [VIA] relating to the period following the Closing shall be deemed to refer to the Surviving Corporation.”

JJE is barred by the Statute of Frauds since there is no written agreement signed by Ideanomics that assumes VIA's purported debt.

In opposition, JJE argues that the allegations in the Complaint give rise to its claims for Breach of Contract (and Account Stated) under a successor liability theory based on an implied assumption of liability, namely Ideanomics' purported, implied assumption of VIA's financial obligation to pay the outstanding balance owed to JJE. In support of this argument, JJE relies on an email, dated April 5, 2023, between Bjoern Goeke, the Director of Procurement, Quality & Logistics for VIA, Andy Shubnell, Director of Sales and Marketing for JJE, and Ping Yu, a JJE employee whose title is not readily identified.¹⁷ In the email, Goeke writes, "IDEX is working diligently to get VIA MOTORS additional funding to partially pay our vendors past due invoices."¹⁸ JJE clarifies that Ideanomics was working diligently to get VIA the additional funds to partially pay its vendors past due invoices. JJE contends that the actions and statements by Ideanomics may form the requisite intent to assume VIA's debt to JJE. Since the crux of the issue of successor liability is Ideanomics' intent, JJE argues that Ideanomics' intent must be explored in discovery and resolved by the trier of fact.

JJE also asserts that Ideanomics' Statute of Frauds argument is premature because it is not known at this early stage of litigation whether Ideanomics assumed liability for VIA's debt through oral communications or written communications. JJE contends further that the Statute of Frauds has not been applied to bar a claim of successor liability based on an implied assumption of liability.

¹⁷ See Exhibit K of the Complaint. See also Exhibit D and F of the Complaint to identify the individuals' titles with their respective companies.

¹⁸ See Exhibit K of the Complaint.

JJE also makes the arguments that dismissal under MCR 2.116(C)(10) is premature because JJE is entitled to develop and address its claims through discovery and there is no legal or factual basis for dismissal of the Complaint under MCR 2.116(C)(8).

B. Analysis

In Count II of its Complaint, JJE raises the following allegations, among others, relative to Ideanomics and its claim for Breach of Contract:

36. Ideanomics acquired the assets and liabilities (including the Agreement between VIA and JJE) of VIA by way of the stock sale/acquisition that closed on or around January 2023.
39. Ideanomics, for its part, expressly acknowledged and assumed this debt and promised to provide VIA with the funds necessary to repay same.
40. Despite its promises to repay the Outstanding Balance, Ideanomics failed to make any payments toward the Outstanding Balance.

“A party asserting a breach of contract must establish that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming the breach.” *Miller-Davis Co v Ahrens Construction, Inc*, 495 Mich 161, 178; 848 NW2d 95 (2014). “[A] party to a contract cannot sue a non-party to the contract for a breach of contract. In other words, in order to sue a defendant for breach of contract there must first be a contract between the plaintiff and the defendant. See *Pawlak v Redox Corp.*, 182 Mich App 758, 765; 453 NW2d 304 (1990) (holding that the plaintiff’s breach of contract claim failed because she did not establish all the elements of a contract).” *Vidosh v Trans Audit, Inc.*, unpublished per curiam opinion of the Court of Appeals, issued [August 13, 2013] (Docket No. 306746), p. 3.

The Court is mindful of JJE’s argument that it is not alleging that Ideanomics is directly liable to JJE under the Master Development Agreement, but rather Ideanomics is liable to JJE under a theory of successor liability based on an implied assumption of liability. Notwithstanding, the Court shall first address the issue of whether Ideanomics is directly liable to JJE since JJE has

raised a Breach of Contract claim against Ideanomics, identified the Master Development Agreement as the subject contract, and has attached the Master Development Agreement to the Complaint.

Upon review of the Master Development Agreement, it is clear that Ideanomics is not a party to that Agreement. As a result, JJE has not established that there was a contract between itself and Ideanomics, or that Ideanomics breached any contract with JJE, to satisfy the requisite elements of a breach of contract claim. Further, Ideanomics and VIA are separate corporate entities. Thus, Ideanomics is not responsible for the actions of VIA simply because it is the corporate parent of VIA. The Purchase Agreement identifies Ideanomics as a Nevada corporation and VIA as a Delaware corporation. Section 2.2(a) of the Purchase Agreement also states that VIA “shall by virtue of the Merger continue its corporate existence under the laws of the State of Delaware.”¹⁹ In addition, Robin Mackie, the Chief Operating Officer of Ideanomics, represented in her Declaration that Ideanomics and VIA are separate entities wherein “VIA operates independently and not at the direction of Ideanomics, just as it did prior to the Transaction.”²⁰ JJE even recognizes that Ideanomics and VIA are separate corporate entities in Paragraphs 2 and 3 of the Complaint. “It is a well-recognized principle that separate corporate entities will be respected. Michigan law presumes that, absent some abuse of corporate form, parent and subsidiary corporations are separate and distinct entities.” *Seasword v Hilti, Inc.*, 449 Mich 542, 547–48; 537 NW2d 221, 224 (1995). (Citation omitted). “Changes in ownership of a corporation's stock will not affect the rights and obligations of the company itself. The corporation survives as an entity separate and distinct from its shareholders even if all the stock is purchased by another

¹⁹ See Exhibit 1 to Ideanomics’ Motion.

²⁰ See Exhibit 2 to Ideanomics’ Motion. In Paragraph 10 of her Declaration, Robin Mackie states “Pursuant to 28 U.S.C. 1746(1), I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.”

corporation.” *GRM Indus., Inc. v Wickes Mfg. Co.*, 749 F Supp 810, 814 (WD Mich, 1990) (citations omitted).

With respect to its claim against Ideanomics under a successor liability theory based on an implied assumption of liability, JJE generally alleges in Paragraphs 21 and 27 of the Complaint that Ideanomics promised to provide VIA with the funds necessary to pay its outstanding debt to JJE under the Master Purchase Agreement. JJE alleges further in Paragraph 39 that Ideanomics expressly acknowledged and assumed VIA’s debt and promised to provide VIA with the funds necessary to repay VIA’s debt. JJE relies solely on the April 5, 2023 email to support these allegations. In the email, Goeke represents that IDEX, or Ideanomics as alleged by JJE, is working diligently to get VIA additional funding to partially pay JJE’s vendors past due invoices.²¹

“Under traditional corporate successor liability principles, the purchaser of a corporation's assets does not assume the liabilities of the seller unless (1) the purchaser expressly or impliedly agrees to assume the seller's obligations; (2) there is a consolidation or merger of the corporations; (3) the purchaser is merely a continuation of the selling corporation; or (4) the transaction is entered into fraudulently.” *GRM Indus.*, 749 F Supp at 814. See generally, *Antiphon, Inc. v LEP Transp., Inc.*, 183 Mich App 377, 382; 454 NW2d 222, 224 (1990).

“Although there is no precise rule governing the finding of implied liability, there is authority that suggests such a finding may be made where the conduct or representations relied upon by the party asserting liability indicate an intention on the part of the buyer to pay the debts of the seller. Whether such an intent exists must be determined from the facts and circumstances of each case. The factors to consider are: (1) the effect of the transfer on the creditors of the predecessor corporation; and (2) admissions of liability on the part of officers or other

²¹ See Exhibit K of the Complaint.

spokespersons of the successor corporation.” *Antiphon, Inc.*, 183 Mich App at 384 (citations omitted).

Regarding the first factor under *GRM Industries*, namely whether the purchaser expressly or impliedly agreed to assume the seller’s obligations, Section 2.2(c) of the Purchase Agreement again provides that VIA remains responsible for its liabilities, debts, obligations, and duties.²² Clearly, there was no express or contractual assumption of VIA’s financial obligations in the Purchase Agreement, nor has JJE presented any evidence to establish that Ideanomics expressly agreed or contractually agreed to assume or pay VIA’s debt. In terms of whether Ideanomics impliedly agreed to assume VIA’s obligations, JJE relies on the April 5, 2023 email in which VIA represents that Ideanomics is working to provide VIA with additional funding to partially pay VIA’s vendors.²³ Upon review of this statement, it is important to note that VIA, not Ideanomics, is making this representation. Equally important, VIA does not represent that Ideanomics is assuming VIA’s payment obligations to JJE. Rather, VIA simply states that Ideanomics is attempting to get VIA additional funding. Hence, JJE’s conclusion that VIA’s statement effectively establishes Ideanomics’ implied assumption of, or intent to impliedly assume, VIA’s debt is implausible. Thus, the April 5, 2023 email does not establish that Ideanomics impliedly agreed to assume VIA’s debt to JJE. Additionally, there is no evidence of any conduct on the part of Ideanomics that gives rise to an implied acceptance of liability.

In relation to the second and third factors under *GRM Industries*, namely whether there is a consolidation or merger of the corporations and whether the purchaser is merely a continuation of the selling corporation, Section 2.2(a) of the Purchase Agreement again provides that VIA

²² See Exhibit 1 to Ideanomics’ Motion.

²³ See Exhibit K of the Complaint.

continues its corporate existence under the laws of the State of Delaware.²⁴ This provision evidences the intent of the parties to the Purchase Agreement that VIA remain a separate entity from Ideanomics. In addition, Robin Mackie represented in her Declaration that Ideanomics and VIA are separate entities wherein “VIA operates independently and not at the direction of Ideanomics, just as it did prior to the Transaction.”²⁵ JJE also recognized in Paragraphs 2 and 3 of its Complaint that Ideanomics and VIA were separate corporate entities. In addition, VIA retained its debts, liabilities, obligations, and duties under Section 2.2(c) of the Purchase Agreement. Consequently, there is no evidence to establish that the corporations merged or consolidated or that Ideanomics is a continuation of VIA as a result of the Purchase Agreement. Regarding the fourth factor of *GRM Industries*, namely whether the transaction is entered into fraudulently, JJE has not raised any allegations in the Complaint to support this factor.

With respect to the first factor set forth under *Antiphon* regarding implied liability, namely the effect of the transfer on the creditors of the predecessor corporation, Section 2.2(c) of the Purchase Agreement again provides that VIA retains its debts, liabilities, obligations and duties following the merger. Regarding the second factor of *Antiphon*, namely the admissions of liability on the part of officers or other spokespersons of the successor corporation, JJE has presented evidence that a VIA representative acknowledged an outstanding balance or past due invoices,²⁶ however, no evidence has been presented to establish that any representative of Ideanomics admitted to or assumed any liability on behalf of VIA.

²⁴ See Exhibit 1 to Ideanomics’ Motion. The Preamble of the Purchase Agreement also identifies Ideanomics as a Nevada corporation and VIA as a Delaware corporation.

²⁵ See Exhibit 2 to Ideanomics’ Motion.

²⁶ See Exhibits F, H, and K of the Complaint.

In consideration of the factors set forth in *GRM Industries* and *Antiphon*, JJE has failed to establish that Ideanomics assumed VIA's debt to JJE under a theory of successor liability based on an implied assumption of liability.

In consideration of whether JJE's claim is barred by the Statute of Frauds, MCL 566.132(1)(b) provides as follows:

(1) 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:

(b) A special promise to answer for the debt, default, or misdoings of another person.

“[U]nder the statute of frauds, M.C.L. § 566.132(1)(b); MSA 26.922(1)(b), a special promise to answer for the debt, default, or misdoings of another is void unless it is in writing and signed by the party to be charged. See *Crest the Uniform Co v. Foley*, 806 F Supp 164, 168-169 (ED Mich, 1992) (under Michigan law, an oral promise by a person to guarantee the past debts of that person's corporation is a collateral promise covered by the statute of frauds).” *Ins. Processing Mgmt., Inc. v Nw. Health Supplies, Inc.*, unpublished per curiam opinion of the Court of Appeals, issued [July 7, 1998] (Docket No. 198065), p. 5.

In this matter, JJE has not presented any evidence to establish that Ideanomics entered into a written agreement to assume VIA's debts or liabilities. Therefore, JJE's Breach of Contract claim is also barred by the Statute of Frauds.

In light of the foregoing analysis, JJE has not established that Ideanomics assumed VIA's financial liabilities under the Master Development Agreement under a theory of successor liability based on an implied assumption of liability. Accordingly, summary disposition under MCR 2.116(C)(10) is granted as to Count II (Breach of Contract (Ideanomics)) of the Complaint.

The Court is mindful of JJE’s argument that dismissal under MCR 2.116(C)(10) is premature because JJE is entitled to develop and address its claims through discovery. In its Response, JJE argues that dismissal at this early stage in litigation is inappropriate where discovery has not begun and stands a strong chance of revealing factual support for its claims.²⁷ “In general, summary disposition is premature if granted before discovery on a disputed issue is complete. But a party must show that further discovery presents a fair likelihood of uncovering factual support for the party's position. Indeed, a party claiming that summary disposition is premature must ‘identify a disputed issue and support that issue with independent evidence.’” *Meisner L. Grp. PC v Weston Downs Condo. Ass'n*, 321 Mich App 702, 723–24; 909 NW2d 890, 901–02 (2017), quoting *Marilyn Froling Revocable Living Tr. v Bloomfield Hills Country Club*, 283 Mich App 264, 292–93; 769 NW2d 234, 251 (2009) (citations omitted). JJE relies on the April 5, 2023 email in support of its allegation that Ideanomics promised to pay VIA’s debt, however, the Court has determined in this Opinion that the email fails to support that claim. JJE also relies on the Affidavit of Account Stated by Andrew Shubnell, which is attached to the Complaint as well as its Response. However, Shubnell only references VIA, and not Ideanomics, in regard to the alleged financial obligation due and owing to JJE.²⁸ Since JJE has not provided any independent evidence in its Response that supports its claim that Ideanomics promised to pay VIA’s debt, the Court is not persuaded to deny Ideanomics’ motion on the basis that summary disposition is premature.

IV. Count III - Account Stated (Defendants)

A. Arguments of the Parties

With respect to JJE’s claim for Account Stated (Defendants), Ideanomics argues that JJE cannot demonstrate that Ideanomics failed to pay for goods received, since it is not a party to the

²⁷ See page 12 of JJE’s Response.

²⁸ See Exhibit M of the Complaint and Exhibit M to JJE’s Response.

Master Development Agreement, nor can JJE establish that a statement of account exists between JJE and Ideanomics. Ideanomics argues further that it did not agree that it owes any amount to JJE for goods received and it did not expressly assume or agree to pay VIA's outstanding debt to JJE.

Conversely, JJE argues that it has established its claim for Account Stated since it can prove that Ideanomics expressly accepted the bills by paying them or by failing to object to them in a reasonable time. JJE contends that it can also establish a claim for Account Stated under MCL 600.2145, when it filed and served Ideanomics with an affidavit of the amount due and a copy of the account attached, together with the Complaint. JJE again asserts that Ideanomics promised to fund or pay VIA's debt under a successor liability theory based on an implied assumption of liability.

B. Analysis

In Count III of its Complaint, JJE raises the following allegations, among others, relative to Ideanomics and its claim for Account Stated (Defendants):

44. VIA received these invoices and has not raised any specific objections. Instead, Defendants repeatedly confirmed the validity of the invoices and expressly promised to repay same.
45. At no point in time did Defendants dispute the Outstanding Balance due and owing to JJE.
46. An Affidavit of Account Stated between JJE and VIA is attached, demonstrating that Defendants owe JJE, over and above all legal counterclaims, the outstanding balance of \$3,988.509.60 as of August 7, 2023. (Exhibit M, Affidavit of Andy Shubnell, Director of Sales and Marketing).

“An account stated, like all contracts, requires mutual assent. Specifically, an account stated requires the manifestation of assent by both parties to the correctness of the statement of the account between them.” *Fisher Sand & Gravel Co. v Neal A. Sweebe, Inc.*, 494 Mich 543, 557; 837 NW2d 244, 252–53 (2013) (internal quotations omitted). “[T]he debtor's new promise to pay is a matter of express or implied contract, depending on the conduct of the parties. When the parties

expressly agree to the sum due, the stated account forms an express contract. By contrast, when one party's assent is inferred from inaction, the stated account operates to form an implied contract. No matter the method of assent, the debtor in an account stated action has received goods or services without having paid for them, and an action exists when the price of those goods or services is greater than the sum paid.” *Fisher*, 494 Mich at 558-59.

With respect to Paragraph 44 of the Complaint, JJE alleges that Defendants repeatedly confirmed the validity of the invoices and expressly promised to repay same. JJE presents the Affidavit of Account Stated in which Andrew Shubnell represented that as of the date of the Affidavit, “VIA owes JJE a total outstanding balance of \$3,988.509.60. The above outstanding balance accounts for Parts developed, engineered and delivered to VIA. Despite repeated demands by JJE and repeated promises to pay by VIA, VIA has failed to pay the outstanding balance due on the account.”²⁹ Notably, Shubnell’s representations reference VIA only and not Ideanomics. Furthermore, the Court has since determined in Section III(B) of this Opinion that JJE has not presented any evidence to support its allegation that Ideanomics promised to pay the purported, outstanding balance due and owing to JJE under the Master Development Agreement. Robin Mackie also declared that “Ideanomics never agreed, in writing or otherwise, to assume any of VIA’s debt or obligations to JJE under the MDA or otherwise.”³⁰ Therefore, JJE has not presented any evidence to establish that Ideanomics confirmed the validity of the invoices or expressly promised to pay those invoices.

Regarding Paragraph 45 of the Complaint, JJE argues that Defendants failed to dispute the total outstanding balance due and owing to JJE. See generally, *Keywell & Rosenfeld v Bithell*, 254 Mich App 300, 331; 657 NW2d 759, 777 (2002) (“In order to demonstrate that its fees for its

²⁹ See Exhibit M of the Complaint and Exhibit M to JJE’s Response.

³⁰ See Exhibit 2 to Ideanomics’ Motion.

services to the Bithells had become an account stated, K & R had to prove that the Bithells either expressly accepted the bills by paying them or failed to object to them within a reasonable time”). In response to the Complaint and attached Affidavit of Account Stated, however, Ideanomics timely filed its Motion for Summary Disposition in which it clearly disputes that it assumed any of VIA’s financial obligations to JJE.³¹ Thus, JJE has not established that Ideanomics failed to dispute the alleged outstanding balance, or the account stated within a reasonable time.

For all of these reasons, JJE has not established an Account Stated claim against Ideanomics. Therefore, JJE’s Account Stated claim against Ideanomics fails, and summary disposition is warranted under MCR 2.116(C)(10).

V. Count IV - Unjust Enrichment (Defendants)

A. Arguments of the Parties

Regarding JJE’s claim for Unjust Enrichment (Defendants), Ideanomics argues that it was not a party to the Master Development Agreement and as a consequence, it did not receive any benefit from JJE. Specifically, Ideanomics did not receive any services or parts developed or engineered by JJE. Since Ideanomics has not been unjustly enriched by JJE’s performance under the Master Development Agreement, JJE’s claim fails against Ideanomics.

In contrast, JJE argues that it is pursuing a claim for Unjust Enrichment under a successor liability theory and under a direct liability theory by virtue of Ideanomics’ alleged unjust retention of the benefits provided by JJE that have accrued to Ideanomics.

B. Analysis

In Count IV of its Complaint, JJE raises the following allegations, among others, relative to Ideanomics and its claim for Unjust Enrichment (Defendants):

³¹ For example, see pages 3 and 8 of Ideanomics’ Brief to its Motion. Additionally, JJE has not presented any evidence to demonstrate that it notified Ideanomics of the alleged outstanding balance prior to the filing of its Complaint.

48. Defendants received a benefit from JJE in the form of the services and Parts that JJE developed, engineered and provided, for which there is a balance due and owing of \$3,988,509.60.
49. It would be inequitable for Defendants to retain the benefit of the Parts without payment for the same.
50. To the extent JJE is not contractually compensated for the products and services provided to Defendants, Defendants will have been unjustly enriched at JJE's expense and are thus required to make restitution to JJE.

“[I]n order to sustain a claim of quantum meruit or unjust enrichment, a plaintiff must establish (1) the receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant. In other words, the law will imply a contract to prevent unjust enrichment only if the defendant has been unjustly or inequitably enriched at the plaintiff's expense.” *Morris Pumps v Centerline Piping, Inc.*, 273 Mich App 187, 195; 729 NW2d 898, 904 (2006) (citation omitted). “Whether a specific party has been unjustly enriched is generally a question of fact. However, whether a claim for unjust enrichment can be maintained is a question of law.” *Morris*, 273 Mich App at 193 (citations omitted).

The parties acknowledge that JJE groups both VIA and Ideanomics together when it alleges in Paragraph 48 of the Complaint that Defendants received a benefit from JJE “in the form of the services and Parts that JJE developed, engineered, and provided.”³² However, Ideanomics is not a party to the Master Development Agreement and as a consequence, Ideanomics did not receive any services or parts that JJE developed, engineered and provided pursuant to the Master Development Agreement. Robin Mackie also represented in her Declaration that “Ideanomics received no benefit from JJE. Ideanomics did not receive any ‘services and Parts that JJE developed, engineered and provided’ under the MDA or otherwise.”³³ While JJE makes the

³² See Paragraph 48 of the Complaint.

³³ See Exhibit 2 to Ideanomics' Motion.

conclusory statement that the unjust retention of benefits provided by JJE have accrued to Ideanomics, JJE provides no evidence or argument to identify or specify the alleged “accrual of benefits” to Ideanomics. Accordingly, JJE’s Unjust Enrichment claim against Ideanomics fails, and summary disposition is warranted under MCR 2.116(C)(10).

VI. Request to Amend

Should the Court grant summary disposition, the Plaintiff is seeking an opportunity to file an amended complaint. “If a court grants summary disposition pursuant to MCR 2.116(C)(8), (9), or (10), the court **shall** give the parties an opportunity to amend their pleadings pursuant to MCR 2.118, unless the amendment would be futile. MCR 2.116(I)(5). MCR 2.118(A)(2) provides that leave to amend a pleading shall be freely given when justice so requires.” *Weymers v Khera*, 454 Mich 639, 658 (1997) (internal quotations omitted; emphasis added). The Court finds that the interests of justice would be served by providing JJE with the opportunity to file a motion for leave to file a First Amended Complaint pursuant to MCR 2.118(A)(2). JJE will have the opportunity, in its motion, to expand upon its allegations in the Complaint and include documentary evidence that JJE believes would cure the current defects of the original Complaint. The motion must be filed and scheduled for a time to be heard no later than 14 days after the date of this Opinion.

ORDER

For the reasons set forth in the Opinion above:

IT IS HEREBY ORDERED that Defendant Ideanomics, Inc.'s Motion for Summary Disposition pursuant to MCR 2.116(C)(10)³⁴ is **GRANTED**.

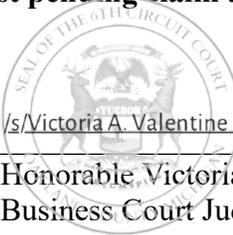
IT IS FURTHER ORDERED that JJE's Counts II, III, and IV of the Complaint are **DISMISSED** without prejudice as to Ideanomics.

IT IS FURTHER ORDERED that JJE may file a motion for leave to file a First Amended Complaint pursuant to MCR 2.118(A)(2). JJE must file and notice the motion for hearing no later than 14 days after the date of this Opinion.

IT IS SO ORDERED.

This order does NOT resolve the last pending claim and does NOT close the case.

Dated: 2/5/24


/s/Victoria A. Valentine

Honorable Victoria Valentine
Business Court Judge

³⁴ Because the Court has relied upon documentary evidence outside of the Complaint in this matter, summary disposition of JJE's claims is warranted under MCR 2.116(C)(10) and not (C)(8).