STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF CALHOUN

THE YATOOMA LAW FIRM, P.C.,
A Michigan Professional Corporation,
Plaintiff,

Case No. 2024-0009- CB
Hon. Brian K. Kirkham

v.

TANYA ROBIN, an Individual, BASAM ROBIN, an Individual, TRBR, INC d/b/a SUPERIOR BUICK, GMC, a Michigan Corporation, TRBR IIM, Inc. d/b/a SUPERIOR BUICK, a Michigan Corporation, and SUPERIOR ROSE, LLC, a Michigan Limited Liability Company,
Defendants.

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RULING AND ORDER FOR SUMMARY DISPOSITION

This case comes before the court on Plaintiff's four Count Complaint essentially alleging breach of contract. Following the completion of discovery and mediation, the Plaintiff filed a Motion For Summary Disposition, hereinafter referenced as "SD". The Defendant disputed the Motion, and the matters in dispute were extensively briefed and argued.

STATEMENT OF FACTS

There are two matters involved in this case. The first involves all the Defendants except Superior Rose, LLC, and the second case involves Defendants Tanya Robin and Superior Rose, LLC. The first case has been identified by the parties as the GM case. The second case has been identified by the parties as the Superior Rose case. To avoid confusion, the court will adopt the party's identification of the two actions.

Under the Common Allegations the Plaintiff alleges the following:

9. On December 16, 2021, Tanya, Basam, TRBR and TRBR II entered into an engagement agreement with Plaintiff, in which they contracted to pay for legal services.
10. On April 18, 2022, Tanya and Superior Rose entered into an engagement agreement with Plaintiff, in which they contracted to pay for legal services.
11. Defendants have failed to pay for all legal services rendered.

Defendants responded to Plaintiff's Complaint as follows:

9. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and therefore, they are denied. Plaintiff failed to attach a copy of the contract to the Complaint.
10. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and therefore, they are denied. Plaintiff failed to attach a copy of the contract to the Complaint.
11. Defendants deny as untrue the allegations of this paragraph.

Notwithstanding the initial dispute as to the existence of a contract, the Defendants subsequently acknowledged that an engagement agreement was entered into by the parties.

The parties engaged in discovery, which shed light upon the issues in dispute. During the deposition of Defendant, Tanya Robin, she confirmed the existence of the contract in the GM case as follows.

Q. Okay. And you signed an engagement agreement with Mr. Yatooma's office in December of 2021?
A. Correct.

Deposition, pg. 10, lines 6-8.

Further in the deposition, Defendant, Tanya Robin, also confirmed the contract in the Superior Rose case:

Q. Well, does this sound correct? On or about April 18, 2022 you signed an engagement agreement with Mr. Yatooma's office to handle that case?
A. Yes.
Q. We'll just call that one Superior Rose case?
A. Correct.

Deposition, pg. 31, lines 14-19.

Basam Robin, in his deposition, confirmed that he entered into an agreement with Plaintiff. The following exchange occurred:

Q. And you recall entering into an engagement agreement with Mr. Yatooma's office for him to represent you in the—your case against GM, correct?
A. Yes.

Deposition, pg. 6, lines 24-25, pg. 7, lines 1-2.

During further discovery, Plaintiff submitted Requests To Admit to the Defendants. The following Request To Admit were proffered to Defendants and they answered as follows:

REQUEST TO ADMIT NO. 1: Admit that on December 16, 2021, Defendants, Tanya Robin, Basam Robin, TRBR Inc., and TRBR II Inc. entered into an agreement with Plaintiff, in which they contracted to pay for legal services in connection with the GM case.
RESPONSE: ... Answering further, Defendants state that they entered into an Engagement Agreement with Plaintiff on December 16, 2021.
REQUEST TO ADMIT NO. 8: Admit that on April 18, 2022, Tanya Robin and Superior Rose, LLC entered into an engagement agreement with Plaintiff, in which they contracted to pay for legal services in connection with the Superior Rose Case.

RESPONSE: ... Answering further, Defendants state that they entered into an Engagement Agreement with Plaintiff on April

Plaintiff has alleged that the Defendants failed to pay as agreed. Plaintiff filed a four count Complaint alleging one count for breach of contract and one count for account stated in both cases.

STANDARD OF REVIEW

Plaintiff filed a Motion For Summary Disposition pursuant to MCR 2.116 (C)(10) claiming that "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".

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 22, 206(2012). The moving party has the initial burden of supporting his or her position by affidavits, depositions, admissions, or other documentary evidence. *Coblentz v Novi,* 475 Mich 558, 569 (2006).

When evaluating a motion under MCR 2.116(C)(10), the court must consider all evidence submitted by the parties in a light most favorable to the nonmoving party. *Maiden v Rozwood,* 461 Mich 109, 120 (1999).

SD must be granted pursuant to MCR 2.116(C)(10) if "there is no genuine issue of material fact." *El-Khalik v Oakwood Hearthcare Inc.,* 504 Mich 152, 160 (2019). "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." Id. Mere speculation or promise to offer factual support at trial is insufficient to overcome a motion for SD and the opposing party must set forth specific facts demonstrating a genuine issue for trial at the time of the motion. *Maiden*, supra at 121.

Pursuant to MCR 2.116(G)(5) the court must consider "[t]he affidavits, together with the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties, ... when the motion is based on subrule (C)(1)-(7) or (10). Only the pleadings may be considered when the motion is based on subrule (C)(8) or (9)".

"In presenting a motion for SD, the moving party has the initial burden of supporting its position". *Quinto v Cross & Peters Co.*,451 Mich 358, 362 (1996). The burden then shifts to the party opposing the motion "to establish that a genuine issue of disputed fact exists." Id.

LEGAL ANALYSIS

Plaintiff filed the SD motion as to Counts II and Count IV, which contain the Breach of Contract counts as to both cases. Plaintiff relies upon the paragraph 2 of the Engagement Agreement, which provides in part:
"Billing statements shall be sent to The Client for legal services rendered in connection with The Representation. The Client understands and agrees that it has seven days from the date of its Billing Statement to dispute in writing any Billing Statement for legal services or costs and expenses. Any dispute not submitted to The Firm by The Client within seven days shall be forever waived."

Plaintiff further relies on additional language in paragraph 2, which provides, 'The Client further agrees to pay The Firm's fees on an hourly basis."

The substance of Plaintiff's argument is that billings were submitted to Defendants, which they did not object to and failed and refused to pay.

Defendants filed pleadings in opposition to Plaintiff's motion. Defendants assert that "months would pass without Defendants receiving even a single invoice or update". In response to Request To Admit No. 4 and 11, Defendants answered: " RESPONSE: Defendants object to this request as overly broad, vague, ambiguous and otherwise unclear, because Plaintiff has failed to define the phrase "billed," and that phrase is subject to multiple interpretations. Answering further, Defendants state only that they received invoices months after work was allegedly performed." (Emphasis added).

In the Plaintiff's Request To Admit, hereinafter "RTA", Defendants were asked if they received: "bill number 12698, RTA no. 15; bill number 12701, RTA no. 16; bill no. 12774, RTA no. 17; bill number 12839, RTA no. 18; bill number 12891, RTA 19; bill number 21558, RTA no. 20; bill number 12365, RTA no. 21; bill number 12412, RTA no. 22; bill number 12455, RTA no. 23; bill number 12526, RTA no. 24; bill number 12578, RTA no. 25; bill number 12697, RTA no. 26; bill number 12700, RTA

no. 27, bill number 12773, RTA no. 28; bill number 12838, RTA no. 29; bill number 12890, RTA no. 30; and bill number 21557, RTA no. 31.

Answering RTA 15-31, Defendants responded, "Defendants state that they received the invoice months after it was supposedly due, and Plaintiffs are not presently owed any funds under the invoice".

Based upon the forgoing, there is no dispute that the Defendants received the invoices, bills for services rendered by Plaintiff.

Defendant's defense is that because they didn't receive monthly invoices, they could not object within 7 days, and therefore they are not liable for the balances owed to Plaintiff. To further support Defendant's defense, Defendants rely upon section 5 contained in both Engagement Agreements, which provides, "if the Billing Statement is not paid in full within fifteen (15) days of mailing, The Client's balance shall accrue interest at the rate of 7% per annum from the date of mailing ..."

To support Defendants' defense, they rely upon *Flamm v Scherer,* 40 Mich App 1, 9 (1972), which held; "one who first breaches a contract cannot maintain an action against the other contracting party for his subsequent breach or failure to perform." *Flamm,* dealt with a contract for the sale of 80 acres of pickled cucumbers, grown from seed supplied by the buyer. The buyer was to provide SMR 58 seed, which is a fast-growing seed. The buyer however supplied SAMR 18 seed, and the farmer refused to use the seed. Additionally, the buyer was to provide a final cost they were willing to pay for the crop. Buyer never supplied the seed and never set the price for the cucumbers. When buyer filed suit, the court ruled that buyer breached the contract by failing to comply with the contract.

Flamm is clearly distinguishable from the facts in the instant case.

The primary goal in the construction or interpretation of any contract is to assess and honor the intent of the parties. *Rasheed v Chrysler Corp,* 445 Mich 109, 127n28 (1994). To determine the intent of the parties, "the Court must read the contract language, giving it its plain and ordinary meaning". *Innovation Ventures v Liquid Mfg.* 499 Mich 491, 507 (2016).

"[I]f two provisions of the same contract irreconcilably conflict with each other, the language of the contract is ambiguous." *Klapp v United Ins. Group Agency Inc.*, 468 Mich 459, 467 (2003).

To support a breach-of-contract claim a party must establish three elements: "(1) there was a contract, (2) the other party breached the contract, and (3) the breach resulted in damages to the party claiming breach." *Bank of America, NA v First American Title Ins Co,* 499 Mich 74, 100 (2016).

The question in many contract cases comes down to the materiality of the performance. This question can be answered by resorting to examination of the contract language and the claimed breach.

In *Walker & Co. v Harrison,* 347 Mich 630 (1957), the Plaintiff, a sign advertising company, filed suit when the Defendant stopped making the lease payments. Defendant claimed that the Plaintiff first breached the contract when it failed to maintain the sign where someone had thrown a tomato at the sign, and the sign had spiderwebs and rust on it. The court stated that to determine whether a breach occurred, the court must examine whether the alleged action was "material". The court identified many factors, which are identified in 1 *Restatement, Contracts,* subsection 275, as follows:

"In HN1 determining the materiality of a failure fully to perform a promise the following circumstances are influential:

"(a) The extent to which the injured party will obtain the substantial benefit which he could have reasonably anticipated.

"(b) The extent to which the injured party may be adequately compensated in damages for lack of complete performance:

"(c) The extent to which the party failing to perform has already partly performed or made preparations for performance.

"(d) The greater or less hardship on the party failing to perform in terminating the contract.

"(e) The willful, negligent or innocent behavior of the party failing to perform.

"(f) The greater or less uncertainty that the party failing to perform will perform the remainder of the contract."

Walker, supra at 634-635.

The court held, "There was no valid ground for defendants' repudiation and their failure thereafter to comply with the terms of the contract was itself a material breach. Id.

A couple of cases are illustrative on the consideration of materiality. In *J R Snyder Co. Soble,* 57 Mich App 485 (1975), the court held that the failure of a party to follow the prescribed method for appointment of an arbitrator was a de minimus error and not sufficient to set aside the arbitration award.

In *Holtzlander v Brownell,* 182 Mich App 716 (1990), the court relying upon *Walker,* held that the failure of the Plaintiff to transfer title to 75 junk cars used for parts, in the sale of Plaintiff's auto salvage yard, was not a material breach that affected a substantial or essential part of the contract.

In Defendant's Brief in Opposition to Plaintiffs' Motion of SD they allege, the provisions of the contractual provisions requiring Plaintiff to submit invoices for services and assessing interest if not paid within 15 days, created "a contractual obligation on Plaintiff to provide the invoices to Plaintiff (sic) within at least seven days of the date listed therein."

There is no provision in the contract requiring Plaintiff to submit invoices within any particular time. The court will not rewrite the party's contract. Defendants are not prejudiced by the delay, as their right to object is preserved, for the 7 days after receipt. Further, interest does not accrue until 15 days after receipt. The only party prejudiced by the delay in sending invoices is the Plaintiff.

As there was no contract provision requiring Plaintiff to submit invoices within a specified time, Defendants claim that Plaintiff committed the first material breach is baseless.

Defendant has also alleged other accounting errors in Plaintiff's billing.

The contract between the parties provides, "The Client understand and agrees that it has seven days from the date of its Billing Statement to dispute in writing

any Billing Statement for legal services or costs and expenses. Any dispute not submitted to The Firm by The Client within seven days shall be forever waived."

Defendant, Tanya Robin, testified in her deposition as follows concerning any disputes she made concerning the invoices:

Q. Okay. Did you – did you ever dispute an invoice with Mr. Yatooma at anytime?
A. I can't remember.

Pg. 17, Lines 13-15

Q. On Exhibit 2, you said that you didn't think any of that work was done. Did you ever send any sort of a communication to Mr. Yatooma's office indicating that you're disputing that those things were ever done?
A. I personally never did. Possibly my husband spoke to him about it.

Pg. 27, Lines 9-14

Q. Okay. Did you ever dispute any of the items contained on this invoice with Mr. Yatooma or his office?
A. My attorney disputed. I'm not sure exactly line by line which one he disputed.
Q. At the – at anytime prior to us being in litigation, did you dispute this?
A. Me personally?
Q. Yes.
A. No.

Pg. 32, Lines 15-23

Q. Did you send anything in writing to Mr. Yatooma saying I Don't agree with any of these charges? This didn't happen? You didn't do this?
A. Possibly in a text message. I would have to go back and look.

Pg. 35, Lines 12-17

Basam Robin testified in his deposition as follows:

Q. Okay. I'm gonna have you look at Exhibit 1. I don't know what order she left those. I can put them – and Exhibit 1 is invoice 12773. Do you recall receiving this invoice?
A. I didn't receive nothing. It was – everything was going

through Tanya, my wife, email.

Q. Okay. So you never received any of the invoices?

A. No.

Pg. 7, Lines 12-19

Basam Robin testified further;

Q. Okay, So when those bills came in, she wasn't handing them to you, and saying, hey, take a look at this, or anything like that?

A. I don't remember, to honest with you.

Q, You don't remember whether you looked at any bills at anytime?

A. No. No.

Q. So you don't know whether or when this bill was sent? This one that we're talking about, Exhibit 1?

A. No.

Q. You don't have any reason to believe that it wasn't sent in September of 2022?

A. I don't remember.

Q. And then I would assume that you never disputed any of the items contained on this bill with Mr. Yatooma's office?

A. No. I never did nothing. I mean, I don't remember nothing, none of these bills.

Pg. 8, Lines 8-25

The moving party has the initial burden of supporting their claim for SD. When the moving party meets that burden, the burden then shifts to the nonmoving party to show that a genuine issue of material facts exists. *Smith v Globe Ins Co,* 460 Mich 446 (1999).

Defendants have alleged a few accounting and other disputes concerning the invoices. However, Defendants did not dispute these within the seven days provided for in the contract, and therefore these disputes are forever waived.

CONCLUSION AND RULING

It is very clear from the testimony of the Defendants that they did not dispute any of the invoices provided by the Plaintiff. Additionally, Defendants have submitted no other evidence that they disputed the billings sent to them.

Considering all the evidence presented, in the light most favorably to the nonmoving party, the court is firmly convinced that Summary Disposition in favor of Plaintiff is appropriate as to Count I and Count IV. This Ruling shall serve as an Order for Summary Disposition for the Plaintiff. The court having granted SD as to Counts I and IV, the remaining Counts are moot.

This is a final order that resolves the last pending claim and closes the case.

Dated: 3-19-2025

HON. BRIAN K. KIRKHAM