

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PLANTE MORAN TRUST, as TRUSTEE
OF THE GRETCHEN C. VALADE
IRREVOCABLE LIVING TRUST u/a/d
JANUARY 15, 2009,

Plaintiff,

Case No. 22-013482-CB

-v-

Hon. Annette J. Berry

BYZANTINE HOLDINGS, LLC,

Defendant.

OPINION AND ORDER

At a session of said Court held in the Coleman
A. Young Municipal Center, Detroit, Wayne
County, Michigan,
on this: 5/31/2024

PRESENT: Honorable Annette J. Berry
Circuit Judge

This case is before the Court on a motion for summary disposition pursuant to MCR 2.116(C)(10) filed by Plaintiff Plante Moran Trust, as Trustee of the Gretchen C. Valade Irrevocable Living Trust u/a/d January 15, 2009 (the Trust). For the reasons stated below, the Court will grant the motion and enter judgment against Defendant Byzantine Holdings, LLC and in favor of Plaintiff.

This case arises from the alleged breach of a promissory note and forbearance agreement by Byzantine. In January 2017, the Trust extended a line of credit to Byzantine. A promissory note (the Note) was executed under which the Trust agreed to

loan Byzantine up to five million dollars. The Note had a term of three years, after which it would convert to a Short-Term Demand Note, which was payable on written demand of the Trust. The Note provided in pertinent part:

The Gretchen C. Valade Irrevocable Trust dated January 15, 2009, (“Lender”) agrees to loan sums of money to Byzantine Holdings, LLC, (“Borrower”) from time to time, up to a maximum of Five Million (\$5,000,000) Dollars, provided that Borrower is not in default under this Note.

Loan Payment and Terms

The date of any loans made under this line of credit will be shown in the attached Exhibit A and interest shall accrue at the applicable federal rate (“AFR”) and the term of this Promissory Notes shall be three (3) years. After three (3) years, the Promissory Note becomes a Short-Term Demand Note and is payable on demand by the Lender in writing. Otherwise, it rolls over as a Short-Term Demand Note under the terms as outlined in this Promissory Note.

* * *

Default

Borrower agrees that the failure to pay the principal when due under this Note, if such default is not cured within ninety days after the due date of such payment, shall constitute an “Event of Default.” Upon the occurrence of an Event of Default, this Note shall become due immediately without demand or notice. The amount outstanding shall include any costs incurred in collecting what is owed following default, including reasonable attorney fees, whether or not a lawsuit is commenced as part of the collection process, provided that any amount owed under this Promissory Note may be collected from the proceeds of the Policy, as this is a non-recourse Promissory Note. Borrower waives presentment for payment, protest and notice of protest and nonpayment of this Note.

Between 2017 and August 2020, David Sutherland acted as trustee of the Trust and permitted the Trust to lend Byzantine \$7,598,519.30, over \$2.5 million more than the

Note's limit of \$5 million. Plaintiff Plante Moran took over as trustee in August of 2020, and in October 2020 made a written demand to Byzantine for payment of all amounts due and owing under the Note.

In December 2020, the Trust and Byzantine entered into a Loan Forbearance and Repayment Agreement (Forbearance Agreement). The Forbearance Agreement provides in relevant part:

A. Borrower, as Borrower, executed and delivered to Lender a certain Byzantine Holdings, LLC Line of Credit Promissory Note dated January 1, 2017 ("Note"), a copy of which Note is attached hereto as Exhibit A and incorporated herein by reference.

B. By notice dated October 10, 2020, Lender accelerates the amounts due under the Note.

C. Borrower and Lender desire to enter into this Agreement to memorialize their agreements as to the amount due under the Note, interest to accrue thereon and a payment plan for Borrower to pay the sums due under the Note, among other matters.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. Loan Balance. While the stated maximum principal amount of the Note is \$5,000,000, Borrower acknowledges that Lender advanced \$7,598,519.30 in principal under the Note. As of December 31, 2020, the sum of \$111,901.70 in interest at the AFR (as defined in the Note) shall be due on such principal balance and, as such, at December 31, 2020, the balance due under the Note shall be the sum of \$7,710,421.

2. Payment Date. Borrower acknowledges that all amounts due under the Note are due and payable on January 7, 2021. Borrower has informed Lender that it cannot pay the amounts due under the Note on such date.

3. Payment Schedule. Lender has agreed to forbear from taking enforcement or other action to collect on the Note on the condition that Borrower make the following installment

payments on the following dates (time being of the essence hereof):

January 4, 2021: \$500,000 and transfer of Borrower's interest in G4 Detroit Holdings, LLC.
April 15, 2021: \$750,000
July 15, 2021: \$1,000,000
October 15, 2021: \$1,000,000
January 3, 2021: \$1,000,000
April 15, 2021: \$1,000,000
July 15, 2021: \$1,000,000
October 17, 2022: The remaining balance due.

Pursuant to the Forbearance Agreement, Byzantine made a \$500,000 payment in January 2021. In April 2021, the parties amended the Forbearance Agreement ("Amended Forbearance Agreement") to indicate that the amount owed as of December 31, 2020 was \$7,791,521. The other terms remained unchanged. On April 15, 2021, Byzantine made a contractual extension payment, which gave it another month to make the \$750,000 April payment. However, Byzantine made no further payments on the Note. On May 21, 2021, the Trust notified Byzantine that it was in default of the Amended Forbearance Agreement.

Plante Moran then initiated the instant action against Byzantine, bringing claims of Breach of Contract, Unjust Enrichment, and Promissory Estoppel. Currently before the Court is Plante Moran's motion for summary disposition as to all claims.

2. Standard of Review

Plante Moran brings its motion pursuant to MCR 2.116(C)(10). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Id.* Summary disposition under MCR 2.116(C)(10) is warranted when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of

law. *Id.* When reviewing a motion for summary disposition under MCR 2.116(C)(10), the documentary evidence submitted by the parties is viewed in the light most favorable to the nonmoving party. *Id.* A genuine issue of material fact exists if “the record leaves open an issue upon which reasonable minds might differ.” *Johnson v Vanderkooi*, 502 Mich 751, 761; 918 NW2d 785 (2018).

3. Analysis

A. Breach of Contract

Plante Moran argues that it is entitled to summary disposition on its claims that Byzantine breached both the Note and the Amended Forbearance Agreement when it failed to repay the loan amount.

“The goal of contract interpretation is to determine and enforce the parties’ intent on the basis of the plain language of the contract itself.” *Bayberry Group, Inc v Crystal Beach Condo Association*, 334 Mich App 385, 393; 964 NW2d 846 (2020). Unambiguous contract language must be enforced as written. *Rory v Continental Insurance Co*, 473 Mich 457, 468; 703 NW2d 23 (2005).

In the present case, Byzantine does not dispute that the Note and the Amended Forbearance Agreement are valid, enforceable contracts. Regarding the Note, under the clear and unambiguous terms of the Note, Byzantine agreed to pay interest on any loan balance. Byzantine also agreed that, once demand for payment was made, it had 90 days to pay all amounts due and owing under the Note. It is uncontested that Byzantine did not pay the over \$7.5 million owed within 90 days of the Trust’s demand for payment. Thus, Byzantine is in breach of the Note.

With regard to the Amended Forbearance Agreement, Byzantine agreed to make installment payments until the balance of the outstanding loan was paid. It is uncontested that Byzantine only made one \$500,000 payment under the Forbearance Agreement and has otherwise failed to make any payments. As of May 17, 2021, Byzantine was in breach of the Amended Forbearance Agreement, rendering Byzantine liable for outstanding principal in the amount of \$7,291,521.00, plus interest and the cost to the Trust for seeking enforcement of the Note, including reasonable attorney fees. Accordingly, Plaintiff is entitled to judgment in its favor on the breach of contract claims.

In its response to the instant motion, Byzantine states that “Plaintiff’s motion must be denied because the claims asserted in this lawsuit are barred by the Gretchen C. Valade Irrevocable Living Trust u/a/d January 15, 2009’s (“Trust”) breach of contract, negligence, unclean hands, as well as by the doctrines of frustration of purpose, impossibility, and estoppel.” It should be noted that while Byzantine has filed a numbered response to Plante Moran’s motion, it has not filed an accompanying brief. Other than the statement quoted above, Byzantine does not expand upon these arguments. That is, Byzantine does not provide any facts or legal authority to support its bare assertions. A party may not merely announce a position and thereafter leave it to this Court to discover and rationalize the basis for the claim, and then hunt for the requisite legal authority to either sustain or reject it. *Palo Group Foster Care, Inc v Department of Social Services*, 228 Mich App 140, 152; 577 NW2d 200 (1998). When “a party fails to cite any supporting legal authority for its position, the issue is deemed abandoned.” *Johnson v Johnson*, 329 Mich App 110 126; 940 NW2d 807 (2019). Accordingly, Byzantine has abandoned the issue of its affirmative defenses and the Court will not consider them.

Byzantine also argues that the Trust was the first party to breach the Forbearance Agreement when the Trust filed suit against 601 Piquette on March 20, 2021. Again, Byzantine fails to support this argument with any relevant factual and legal authority. Further, while the Amended Forbearance Agreement does provide that the Trust “has agreed to forbear from taking enforcement or other action to collect under the Note,” there has been no evidence presented that the action taken against 601 Piquette was to collect on the Note. 601 Piquette was not a party to the Note and therefore no action could have been taken against 601 Piquette to collect on the Note.

Finally, the Court will deny Byzantine’s request to file a counterclaim in this case. MCR 2.203(E) provides that “[a] counterclaim. . . must be filed with the answer or filed as an amendment in the manner provided by MCR 2.118.” Byzantine did not file a counterclaim with its answer to the complaint. Therefore MCR 2.118 directs the manner by which Byzantine could seek leave to file a counterclaim. MCR 2.118(A) provides in relevant part:

(1) A party may amend a pleading once as a matter of course within 14 days after being served with a responsive pleading by an adverse party, or within 14 days after serving the pleading if it does not require a responsive pleading.

(2) Except as provided in subrule (A)(1), a party may amend a pleading only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires.

Byzantine fails to specify what claims it wishes to bring or the factual basis for any proposed claims. Accordingly, the Court will deny the request to file a counterclaim.

B. Promissory Estoppel and Unjust Enrichment

Plante Moran makes alternative claims for promissory estoppel and unjust enrichment in the event that this Court finds that the Note and Amended Forbearance Agreement are unenforceable. The Court will dismiss these claims because quasi-contractual remedies such as promissory estoppel are inapplicable when the parties have made an express contract covering the same subject matter. See *HJ Tucker & Assoc, Inc v Allied Chucker and Engineering Co*, 234 Mich App 550, 573; 595 NW2d 176 (1999).

For the reasons stated in the foregoing Opinion,

IT IS ORDERED that Plaintiff Plante Moran Trust, as Trustee of the Gretchen C. Valade Irrevocable Living Trust u/a/d January 15, 2009's motion for summary disposition is hereby **GRANTED**.

IT IS FURTHER ORDERED that judgement in the amount of \$7,291,521.00, plus interest and the cost to Plaintiff for seeking enforcement of the Note, including reasonable attorney fees is hereby entered in favor of Plaintiff and against Defendant Byzantine Holdings, LLC on Count I and Count II of the Complaint.

IT IS FURTHER ORDERED that Plaintiff's Claims of Promissory Estoppel and Unjust Enrichment are hereby **DISMISSED**.

IT IS FURTHER ORDERED that a separate hearing will be set to determine the final computation of damages, including reasonable attorney fees.

THIS IS A FINAL ORDER AND DOES CLOSE THE CASE.

IT IS SO ORDERED.

DATED: zMay 31, 2024

Circuit Judge



/s/ Annette J. Berry
May 31, 2024