

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

THE HUNTINGTON NATIONAL
BANK, a national banking association,

"Case No.: 23-118643-CB

Plaintiff,

v.

Judge Brian S. Pickell
(P-57411)

STAT EMERGENCY MEDICAL
SERVICES, INC., a Michigan
corporation; SEMS PROPERTY
MANAGEMENT, LLC, a Michigan
limited-liability company; STAT EMS,
LLC, a Michigan limited-liability
company; STEPHEN M. LUND, an
individual; MARC G. LUND, an
individual; and JOSEPH KARLICHEK,
an individual, jointly and severally,

Defendants.

Lisa A. Hall (P70200)
Plunkett Cooney
Attorneys for Plaintiff
333 Bridge Street NW
Suite 530
Grand Rapids, Michigan 49504
616-752-4615
lhall@plunkettcooney.com

Jonathan C. Biernat (P68736)
Biernat Law Group
Attorneys for SEMS Property Management, STAT EMS, & Stephen M. Lund
134 Market Street
Mount Clemens, Michigan 48043
586-493-5377
biernatlawgroup@gmail.com

Matthew S. McKone (P62998)
The McKone Law Firm, PLLC
Attorneys for Joseph Karlischek
117 West Oliver Street
Owosso, Michigan 48867
810-410-4204
mckonema@gmail.com

**ORDER ON PLAINTIFF'S MOTION FOR SUMMARY
DISPOSITION ON COUNTS I, II, III, IV, AND VI
PURSUANT TO MCR 2.116(C)(9) and (10)**

INTRODUCTION

On February 26, 2024, Plaintiff The Huntington National Bank (hereinafter "Plaintiff") filed with the Court its subject written motion for summary disposition on Counts I, II, III, IV, and VI pursuant to MCR 2.116(C)(9) and (10) and brief in support thereof dated February 23, 2024 (hereinafter collectively "the summary-disposition motion"). On March 4, 2024, Plaintiff filed with the Court its subject written motion for entry of default judgment against Defendant Marc Lund and brief in support thereof dated March 4, 2024 (hereinafter collectively "the default-judgment-entry motion").

On March 11, 2024, Defendant Joseph Karlichek filed with the Court his written response in opposition to the summary-disposition motion dated March 11, 2024. On March 13, 2024, Defendants SEMS Property Management, LLC; STAT EMS, LLC; and Stephen Lund filed with the Court their written response in opposition to the summary-disposition motion dated March 12, 2024. On March 20, 2024, Defendant Marc Lund (hereinafter collectively "Defendants") filed with the Court his written response in opposition to the default-judgment-entry motion dated March 20, 2024 (hereinafter collectively "the responses").

On March 14 and 15, 2024, Plaintiff filed with the Court its written replies to the respective responses in connection with the summary-disposition motion dated March 13 and 14, 2024, respectively. On March 21, 2024, Plaintiff filed with the Court its

written reply to the response in connection with the default-judgment-entry motion dated March 21, 2024.

The Court held a hearing for oral argument on the summary-disposition and default-judgment-entry motions on March 18 and 25, 2024, respectively. The Court incorporates herein by reference the respective arguments, facts, issues, law, and statements laid out in the summary-disposition and default-judgment-entry motions, responses, and replies and at the hearings and, thereby, dispenses with a lengthy presentation here of same. For the reasons stated below, the summary-disposition and default-judgment-entry motions **GRANTED IN PART/DENIED IN PART**.

COURT'S ANALYSIS

Plaintiff is moving for summary disposition pursuant to MCR 2.116(C)(9) and (10). The parties are already sufficiently familiar with the standard applicable to the Court's analysis of each such motion such that the Court does not recite the standards here.

To begin, with respect to only Defendants SEMS Property Management LLC; STAT EMS, LLC; and Stephen Lund, the Court **GRANTS** the summary-disposition motion with respect to liability only at this time. This is appropriate under MCR 2.116(C)(9). More specifically, the Court decides that, when it considers only the pleadings in this case, pursuant to MCR 2.116(C)(9) and arguments put forth by Plaintiff in support of the summary-disposition motion (for example, the subject bankruptcy mandatory stay and doctrine of *res judicata* are not applicable here), as to

liability, no factual development by any of Defendants SEMS Property Management LLC; STAT EMS, LLC; and Stephen Lund could possibly deny Plaintiff's right to recovery as a matter of law. That is, as to liability, they have failed to state a valid defense to the claims asserted against them by Plaintiff (i.e., the pleaded defense is so clearly untenable).

Such grant is appropriate as well under MCR 2.116(C)(10). More specifically, the Court decides that, when it considers the record in this case- e.g., any affidavits, pleadings, depositions, admissions, and other admissible evidence submitted by the parties- and gives the benefit of reasonable doubt to Defendants SEMS Property Management LLC; STAT EMS, LLC; and Stephen Lund, pursuant to MCR 2.116(C)(10) and arguments put forth by Plaintiff in support of the summary-disposition motion (for example, the bankruptcy mandatory stay and doctrine of *res judicata* are not applicable here), as to liability, the record does not leave open an issue as to liability on which reasonable minds might differ. That is, as to liability, there is no genuine issue as to any material fact such that Plaintiff is entitled to judgment as a matter of law.

The Court shall decide the amount of damages as to Defendants SEMS Property Management LLC; STAT EMS, LLC; and Stephen Lund at a later hearing ... specifically, no earlier than following the confirmation hearing on the debtor's plan of liquidation in the subject "Chapter 11" bankruptcy case.

Next, with respect to only Defendant Marc Lund, the Court **GRANTS** the default-judgment-entry motion with respect to liability only at this time. More specifically, the Court decides that the law firm of Schafer & Weiner properly accepted

service of the subject summons and complaint on behalf of Defendant Marc Lund. In this way, he has not sufficiently shown to the Court sufficiently good cause for his failure to make a timely response to the complaint and the Court to set aside the subject default against him. The Court shall decide the amount of damages as to Defendant Marc Lund at a later hearing ... specifically, no earlier than following the confirmation hearing on the debtor's plan of liquidation in the "Chapter 11" bankruptcy case.

However, with respect to only Defendant Joseph Karlichek, the Court **DENIES** the summary-disposition motion. This is appropriate under MCR 2.116(C)(9). More specifically, the Court decides that, when it considers only the pleadings in this case, pursuant to MCR 2.116(C)(9) and arguments put forth by Defendant Joseph Karlichek in opposition to the summary-disposition motion, a factual development by Defendant Joseph Karlichek could possibly deny Plaintiff's right to recovery as a matter of law. That is, Defendant Joseph Karlichek alleges that, among other things, unaware to and unforeseeable by Defendant Joseph Karlichek, Defendant Marc Lund intentionally and fraudulently signed the subject 2022 promissory note on behalf of Defendant Joseph Karlichek and committed other intentional, fraudulent acts that resulted in a default on the subject promissory note that Defendant Joseph Karlichek admits that he signed.

Such denial is appropriate as well under MCR 2.116(C)(10) ... **assuming that discovery in this matter had not dosed by March 18, 2024** (i.e., the date that the Court held the hearing for oral argument on the summary-disposition motion). More specifically, the Court decides that, when it considers the record in this case-e.g., any affidavits, pleadings, depositions, admissions, and other admissible evidence submitted

by the parties - and gives the benefit of reasonable doubt to Defendant Joseph Karlichek, pursuant to MCR 2.116(C)(10) and arguments put forth by Defendant Joseph Karlichek in opposition to the summary-disposition motion, the record leaves open at least one issue on which reasonable minds might differ. Testimony of Defendant Joseph Karlichek himself by way of his sworn affidavit, standing alone (i.e., that, among other things, unaware to and unforeseeable by Defendant Joseph Karlichek, Defendant Marc Lund fraudulently signed the subject 2022 promissory note on behalf of Defendant Joseph Karlichek and committed other intentional, fraudulent acts that resulted in a default on the subject promissory note that Defendant Joseph Karlichek admits that he signed), can be sufficient to establish a genuine question of fact. *Je1,oett v Mesick Consol Sch Dist*, 332 Mich App 462,476 (2020). That is, there is a genuine issue as to at least one material fact such that Plaintiff is not entitled to judgment as a matter of law.

CONCLUSION

In view of the above, the summary-disposition and default-judgment-entry motions are **GRANTED IN PART/DENIED IN PART**. In its analysis leading to this grant, the Court did not assess credibility, weigh evidence, or resolve any factual disputes.

The Court does not award costs or fees to any of the parties.

This is not a final order, and the case remains open.

IT IS HEREBY RESPECTFULLY SO ORDERED.

May 15, 2024


Judge Brian S. Pickell (P57411)

cc: Counsel of Record
Court File

Proof of Service: The undersigned certifies that a copy of the foregoing Court's Order on Plaintiff's Motion for Summary Disposition, executed 5/15/24, was issued to the attorneys and/or parties of record, to the above cause by emailing to the same to them at their respective email addresses listed on the pleadings, on:

Date: May 15, 2024.

s/Michelle A. Cruz