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

VED SOFTWARE SERVICES, INC.,
a Michigan corporation,

Plaintiff,

Case No. 23-204527-CB
Hon. Victoria A. Valentine

v

RAMOJI MUMMINENI, an individual,

Defendant.

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OPINION AND ORDER REGARDING
PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION

At a session of said Court, held in the
County of Oakland, State of Michigan
July 11, 2024

HONORABLE VICTORIA A. VALENTINE

This matter is before the Court on the Plaintiff's Motion for Summary Disposition. This Court has reviewed the pleadings filed by the parties and the motion, response, and reply brief. Oral argument was held on the above-entitled motion.

OPINION

I.

Overview

The dispute between the parties in this case centers on an employment agreement entered into between a software consulting and programming company, VED Software Services, Inc. ("Plaintiff"), and its former employee, Ramoji Mummineni ("Defendant"). The Defendant is an Indian national who was hired by the Plaintiff to perform software programming and/or consulting services.[1] The Plaintiff sponsored the Defendant's H-1B visa application for the Defendant to be able to legally enter and work in the US.[2] The parties entered into the VED Software Services, Inc. Employment Agreement ("Employment Agreement") in August 2022. The Employment Agreement provided that the Defendant "shall not terminate this agreement during the first twenty four (24) months."[3] If the Defendant terminated the agreement before the expiration of the twenty four month term, he would be responsible for the reimbursement of certain expenses incurred by the employer:

> If Employee's employment is terminated within twenty four (24) months of the Effective Date of this Agreement due to resignation by Employee or termination of Employee for cause by Employer, Employee agrees to pay damages to Employer in the amount of all costs, fees and expenses of every nature, incurred by Employer in recruiting, hiring, employing, marketing and placing Employee, and incurred in the early termination of Employee's employment,

[1] Affirmative Defenses ¶ 3.
[2] *Id.*
[3] Verified Complaint and Jury Demand, Exhibit A, Section 5.

> whether incurred before or during Employee's employment with Employer.[4]

Per the Employment Agreement, the Defendant also agreed to accept and complete all projects throughout the period of employment:

> Employee agrees to accept and complete to the satisfaction of the client, throughout the period of employment, all projects where the Employee is selected for the project by a Client, or where the project is offered or assigned to the Employee by Employer. Employee understands and agrees that, if Employee leaves any project before completion (before the actual date of termination of the contract with the Client as per the purchase order), due to any reason whatsoever, at any stage during Employee's employment with Employer, it will cause irreparable damage and loss impossible to measure to Employer. In such an event, Employer shall be entitled to equitable relief upon any such breach, including but not limited to a permanent injunction to enforce the terms of this Section.[5]

The contract further required that the employee "agrees to be relocated anywhere in the United States."[6] As a part of his employment with the Plaintiff, the Defendant was assigned to work at an end user, KYOCERA Document Solutions America, Inc., in Fairfield New Jersey.[7] The Defendant alleges that the Plaintiff hired him on an H-1B visa tied to a worksite located in Detroit, Michigan.[8] The Defendant further alleges that the Plaintiff did not file the required H-1B Amendment petition with the USCIS to indicate that the Defendant was working in New Jersey.[9]

In addition to the worksite location issue discussed above, the Defendant has alleged that the Plaintiff violated other federal immigration laws and regulations by including an unlawful penalty for early resignation in the Employment Agreement,[10] by failing to pay the Defendant a

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[4] *Id.*, Exhibit A, Section 4.2.
[5] *Id.*, Exhibit A, Section 1.4.
[6] *Id.*, Exhibit A, Section 1.6; see also Section 7.1 ("EMPLOYEE further agrees to relocate anywhere in the United States with no conditions attached and report to the client site as directed by EMPLOYER.").
[7] Verified Complaint and Jury Demand ¶ 15.
[8] Affirmative Defenses ¶ 3.
[9] *Id.*
[10] *Id.* ¶ 2.

salary during a "benching" period from approximately August 24, 2022 to September 23, 2022,[11] and by requiring the Defendant to pay H-1B visa application fees to a third party affiliated with the Plaintiff.[12]

The Defendant sent his resignation letter to the Plaintiff in August 2023.[13] This was prior to the expiration of the twenty-four month term provided in the Employment Agreement, but the Defendant has "refused and failed to pay damages to Employer contemplated under the Agreement."[14] The Plaintiff filed the instant suit asserting causes of action for breach of contract (Count I), unjust enrichment (Count II), and promissory estoppel (Count III).

II.

Standards of Review

The Plaintiff moves for summary disposition pursuant to MCR 2.116(C)(10). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim or defense. See, e.g., MCR 2.116(G)(3)(b); *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Accordingly, "[i]n 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, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Maiden v Rozwood,* 461 Mich 109, 119-120; 597 N.W.2d 817 (1999); *Quinto*, 451 Mich at 358. The moving party "must specifically identify the issues" as to which it "believes there is no genuine issue" of material fact and support its position as provided in MCR 2.116. MCR 2.116(G)(4).

[11] *Id.* ¶ 4.
[12] *Id.,* ¶ 5.
[13] Verified Complaint and Jury Demand ¶ 16.
[14] *Id.*

Under Michigan law, the moving party may satisfy its burden of production under MCR 2.116(C)(10) by demonstrating to the court that the non-moving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. *Quinto*, 451 Mich at 361. If the moving party properly supports its motion, the burden "then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Id.* at 362. If the moving party fails to properly support its motion for summary disposition, the nonmoving party has no duty to respond and the trial court should deny the motion. MCR 2.116(G)(4). See also *Meyer v City of Center Line*, 242 Mich App 560, 575; 619 NW2d 182 (2000) (concluding that the trial court erred when it granted an improperly supported motion for summary disposition under MCR 2.116(C)(10)).

In all cases, MCR 2.116(G)(4) squarely places the burden on the parties, not the trial court, to support their positions. A reviewing court may not employ a standard citing mere possibility or promise in granting or denying the motion. *Maiden*, 461 Mich at 120-121 (citations omitted), and may not weigh credibility or resolve a material factual dispute in deciding the motion. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). Rather, summary disposition pursuant to MCR 2.116(C)(10) is appropriate if, and only if, the evidence, viewed most favorably to the non-moving party fails to establish any genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362, citing MCR 2.116(C)(10) and (G)(4); *Maiden*, 461 Mich at 119-120. A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. *El-Khalil v Oakwood Healthcare*, Inc, 504 Mich 152, 160; 934 NW2d 665 (2019)(citation omitted). Granting a motion for summary disposition under MCR 2.116(C)(10) is warranted if the substantively admissible evidence shows that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362-363.

Motions for summary disposition pursuant to MCR 2.116(C)(10) are generally premature if filed before discovery is complete. See *Colista v Thomas*, 241 Mich App 529, 537; 616 NW2d 249 (2000). "However, summary disposition before the close of discovery is appropriate if there is no reasonable chance that further discovery will result in factual support for the nonmoving party." *Id.* at 537-538.

III.

Analysis

A. Breach of Contract

The Plaintiff argues that there is no genuine issue of material fact as to its claim for breach of contract. Under Michigan law "[a] party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach." *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich 161, 178; 848 NW2d 95 (2014). A court's "goal in contract interpretation is to give effect to the intent of the parties, to be determined first and foremost by the plain and unambiguous language of the contract itself." *Wyandotte Elec Supply Co v Electrical Technology Sys, Inc*, 499 Mich 127, 143-144; 881 NW2d 95 (2016). "[I]t has long been the law in this state that courts are not to rewrite the express terms of contracts." *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 199-200; 747 NW2d 811 (2008). See also *Kendzierski v Macomb County*, 503 Mich 296, 311-312; 931 NW2d 604 (2019) (emphasis in original) ("A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be *enforced as written*" and a court "will not create ambiguity where the terms of the contract are clear.").

Here, the Defendant argues that the Employment Agreement is void because it was predicated on the violation of immigration law. As a general matter, "contracts founded on acts

prohibited by a statute, or contracts in violation of public policy, are void." *Johnson v QFD, Inc*, 292 Mich App 359, 365; 807 NW2d 719 (2011) (citations omitted). But not every statutory or regulatory violation will render the parties' contract void and unenforceable. *Id*. Indeed, where the Legislature has "directly spoken" on the matter and provided an express remedy in the statute at issue, the statutory remedy may be sufficient and the statutory violation will not render the agreements between the parties void. *Id*. at 366 (citing *Maids Int'l, Inc v Saunders, Inc*, 224 Mich App 508, 511; 569 NW2d 857 (1997)).

i. The Defendant Does Not Have Standing to Raise Immigration Issues

In this case, the Defendant cites alleged violations of federal immigration law that he argues render the contract unconscionable and illegal, including the requirement that the Defendant work outside of the Metropolitan Statistical Area ("MSA") included in his H-1B work visa and the requirement that the Defendant pay a third party affiliated with the Plaintiff for the H-1B visa application fees.[15]

Pursuant to 8 USC 1182(n)(2)(A), the Secretary of Labor has established an administrative procedure that allows aggrieved H-1B visa holders to seek redress. See 20 CRF 655.805(a). The administrative process is summarized as follows:

> Under the INA, an aggrieved party must first file a complaint with the Wage and Hour Division of the DOL, which then makes a determination of the validity of the complaint. 8 U.S.C. §

[15] In the Defendant's Affirmative Defenses, he also argued that Section 4.2 of the Employment Agreement, which requires payment of certain liquidated damages if the employee terminates the contract prior to the end of the contract term constitutes an unlawful penalty in violation of 8 USC 1182(n)(2)(C)(vi)(I). The Defendant has not raised this in his response brief, and so it is not before the Court. "Trial Courts are not the research assistants of the litigants; the parties have a duty to fully present legal arguments for its resolution of their dispute." *Walters v Nadell*, 481 Mich 377, 388; 751 NW2d 431 (2008). "A party abandons a claim when it fails to make a meaningful argument in support of its position." *Berger v Berger*, 277 Mich App 700, 712; 747 NW2d 336 (2008). Michigan jurisprudence is well-settled that this trial court need not divine the intentions, search for arguments, or otherwise make conclusions on a party's behalf. *Mitcham v City of Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959) ("It is not enough . . . to simply announce a position or assert an error and then 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").

> 1182(n)(2)(A)-(n)(5)(A). If the party is dissatisfied with this decision, he can then make an appeal to an administrative law judge. 20 C.F.R. §§ 655.840, 655.820, 655.840. If the party disagrees with the administrative law judge's decision, he can then petition to the Secretary of Labor for review. 20 C.F.R. §§ 655.840, 655.845. After appealing to the Secretary of Labor, the party may then pursue remedies in the appropriate United States District Court. 20 C.F.R. § 655.850. [*Panwar v Access Therapies, Inc*, 975 F Supp 2d 948, 955 (SD Ind, 2013)].

Federal courts have found that there is no private right of action for a claim of violation of 8 USC 1182, absent an exhaustion of administrative remedies. *Id.*; see also *Venkatraman v REI Sys, Inc*, 417 F3d 418, 424 (CA 4, 2005) (holding there is no private right of action for violations of 8 USC 1182(n)).

Consequently, this is not the proper forum to litigate the immigration law violations the Defendant raises. The Defendant must go through the administrative process established by the Department of Labor to seek redress for any violations of immigration law related to his H-1B visa.

ii. The Defendant Has Not Shown that the Contract is Void

Under Michigan law, "[a] contract is valid only if it involves a proper subject matter, and a proposed contract is concerned with a proper subject matter only if the contract performance requirements are not contrary to public policy." *Morris & Doherty, PC v Lockwood*, 259 Mich App 38, 672 NW2d 884 (2003). Indeed, "[c]ourts have a duty to refuse to enforce a contract that is contrary to public policy." *Soaring Pine Cap Real Est & Debt Fund II, LLC v Park St Grp Realty Servs, LLC*, 511 Mich 89, 101; 999 NW2d 8 (2023) (citation omitted). In determining whether a contract provision is contrary to public policy, courts look to "the policies that ... have been adopted by the public through our various legal processes, and are reflected in our state and federal constitutions, our statutes, and the common law." *Id.* (citation omitted).

Not all statutory or regulatory violations by one of the contracting parties will render the parties' contract void and unenforceable. *Johnson*, 292 Mich App at 365. Where the legislature has directly spoken in the statute at issue and provided an adequate remedy for violations of the statute, the violation will not render the contract void. *Maids Int'l, Inc v Saunders, Inc*, 224 Mich App 508, 512; 569 N.W.2d 857, 858 (1997).

In this case, assuming the Plaintiff did commit violations of federal immigration law in its relationship with the Defendant, the Defendant has a remedy provided by federal statute and regulations to address those issues. Consequently, the Court does not find that by simply claiming violations of federal immigration law is a basis for this Court to invalidate the underlying Employment Agreement.

iii. **No Genuine Issues of Material Fact Regarding the Defendant's Breach of the Employment Agreement**

Under Michigan law, to prove its breach of contract claim, the Plaintiff is required to "establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach." *Miller-Davis*, 495 Mich at 178. Here, the Plaintiff has done so and the underlying facts are not in dispute. The parties entered into the Employment Agreement which required the Defendant to work for VED for 24 months, and he resigned before the expiration of the term, thereby causing VED to suffer damages. The Court is satisfied that the Plaintiff has met its burden under MCR 2.116(C)(10) and summary disposition in its favor is warranted.

B. Unjust Enrichment

In addition to the breach of contract claim discussed above, the Plaintiff moves for summary disposition of its unjust enrichment claim. The Plaintiff argues that the Defendant "was

unjustly enriched as he failed to perform his part of the bargain in working for VED for at least twenty-four months and for quitting without completing his project with Kyocera."[16]

In general, "[a] claim of unjust enrichment does not apply if there is an express contract." *Able Demolition v Pontiac*, 275 Mich App 577, 586 n 4; 739 NW2d 696 (2007). Here, there is an express written contract that the Court grants summary disposition in favor of the Plaintiff therefore, the unjust enrichment claim cannot proceed. Accordingly, the Plaintiff's request for summary disposition as to Count II is DENIED.

C. Promissory Estoppel

Finally, the Plaintiff argues that there is no genuine issue as to any material fact that VED reasonably relied on the Defendant's agreement to perform under the Employment Agreement and the Defendant failed to perform his obligations. Like the claim for unjust enrichment, where there is a written contract, a litigant cannot pursue a claim for promissory estoppel. *Fountain v Chippewa Cnty Rd Comm'n*, unpublished per curiam opinion of the Court of Appeals, issued Dec. 3, 2002 (Docket No. 235625), p 2 n 3 ("Because there was a written contract, there can be no implied contract, and thus no recovery for unjust enrichment or promissory estoppel."). See also *APJ Assocs, Inc v N Am Philips Corp*, 317 F3d 610, 617 (CA 6, 2003) ("For the court to apply promissory estoppel under Michigan law, it must find that an implied agreement exists between the parties, in the absence of an express contract.").

As noted above, the existence of an express written contract in this case precludes recovery for promissory estoppel. Accordingly, the Plaintiff's request for summary disposition as to Count III is DENIED.

[16] Brief in Support of Plaintiff's Verified Motion for Summary Disposition against Defendant, p 10.

ORDER

Based upon the foregoing Opinion:

IT IS HEREBY ORDERED that Plaintiff VED Software Services, Inc.'s Motion for Summary Disposition is GRANTED as to Count I (Breach of Contract).

IT IS HEREBY ORDERED that Plaintiff VED Software Services, Inc.'s Motion for Summary Disposition is DENIED as to Count II (Unjust Enrichment).

IT IS HEREBY ORDERED that Plaintiff VED Software Services, Inc.'s Motion for Summary Disposition is DENIED as to Count III (Promissory Estoppel).

This Order does not resolve the last pending matter as the issue of damages remain.

/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
CIRCUIT COURT JUDGE

Dated: 7/11/24