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

DIE SERVICES INTERNATIONAL, LLC,
a Michigan limited liability company,

Plaintiff,

Case No. 24-206893-CB
Hon. Victoria A. Valentine

v

GROUPER STAMPING, LLC,
a Delaware limited liability company,

Defendant.

OPINION AND ORDER REGARDING
PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION
UNDER MCR 2.116(C)(9) AND (C)(10)

At a session of said Court, held in the
County of Oakland, State of Michigan
August 26, 2024

HONORABLE VICTORIA A. VALENTINE

This matter is before the Court on the Plaintiff's Motion for Summary Disposition Under MCR 2.116(C)(9) and (C)(10). 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 on August 14, 2024.

OPINION

I.

Overview

Plaintiff Die Services International, LLC is a Michigan limited liability company with a place of business in Belleville, Michigan.[1] Defendant Grouper Stamping, LLC is a Delaware limited liability company with an office in Auburn Hills, Michigan, operating under the name "Shiloh Wellington."[2]

In late September 2023, the Defendant sought the Plaintiff's assistance on an emergency basis because it was unable to meet the production demands for its customer, KTH Shelburne Manufacturing, Inc. ("KTH").[3] The Plaintiff and the Defendant entered into an agreement whereby the Plaintiff would accept and install two die tools and manufacture certain automotive parts (the "Parts") that would be sold to KTH.[4]

Representatives from KTH were directly in contact with the Plaintiff from the very beginning of this arrangement. Scott Massie, Assistant Manager of Purchasing at KTH, sent George Zotos and Paul Kenaan (both employees of the Plaintiff) an email on September 26, 2023 in which he instructed "Plan on shipping 2,000+ per day to KTH Shelburne, later in the week, KTH St. Paris will need 2,000 parts as well. We have already reached out to Shiloh about sending in the next round of coils plus baskets to keep the parts flowing."[5]

The Defendant issued two purchase orders on September 26, 2023. The first purchase order was a Blanket Purchase Order, which listed an order quantity of 500,000 pieces and a unit price of $11.50 per piece.[6] Per the terms of the Blanket Purchase Order, the "quantity shown is an estimated annual usage only and does not represent any firm commitment to purchase specified quantities."[7]

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[1] First Amended Complaint ¶ 3.
[2] *Id.* ¶ 4.
[3] *Id.* ¶¶ 8-9.
[4] *Id.* ¶¶ 1, 10.
[5] First Amended Complaint, Exhibit A.
[6] "Corrected" Grouper Stamping, LLC's Response to Plaintiff's Motion for Summary Disposition Under MCR 2.116(C)(9) and MCR 2.116(C)(10), Exhibit 1.
[7] *Id.*

The second purchase order listed an order quantity of 2,000 units of two separate Parts with a total purchase price of $46,000.[8]

The Plaintiff began manufacturing the Parts on September 26 and began shipping them to KTH on September 27.[9] The Plaintiff alleges that "DSI complied with KTH's directive to make 2,000 of the Parts daily for KTH and also make Parts for Grouper Stampings St. Paris, Ohio facility."[10] The Plaintiff also alleges that when it ran out of materials to manufacture the Parts, the Defendant arranged for more to be delivered.[11]

On October 17, 2023, George Zotos, the Plaintiff's Technical Sales, Engineering & Estimating Manager, emailed representatives of the Defendant regarding an ongoing late payment issue, stating "Because of these repeated payment delays, we must take a position that Shiloh will have to pay DSI for the full amount of open receivables prior to this stamping tool leaving DSI."[12] Zotos said that the Plaintiff was willing to continue running production, but it "must be paid in full before the tool is picked up, whenever that may be."[13]

In response, Jonathan Greenberg, the Deputy General Counsel at Dura Shiloh sent an email to Dan Solea of the Plaintiff on October 20, 2023 regarding the return of the die stamping tool.[14] Mr. Greenberg stated that the tool was owned by American Honda Motor Co., Inc. ("Honda") and it was entrusted to Shiloh as a bailee. Mr. Greenberg demanded the return of the die stamping tool, arguing that the failure to do so "will cause immediate, irreparable harm to Shiloh, KTH and

[8] "Corrected" Grouper Stamping, LLC's Response to Plaintiff's Motion for Summary Disposition Under MCR 2.116(C)(9) and MCR 2.116(C)(10), Exhibit 2.
[9] First Amended Complaint ¶ 15.
[10] *Id.* ¶ 16.
[11] *Id.* ¶ 17.
[12] First Amended Complaint, Exhibit C.
[13] *Id.*
[14] "Corrected" Grouper Stamping, LLC's Response to Plaintiff's Motion for Summary Disposition Under MCR 2.116(C)(9) and MCR 2.116(C)(10), Exhibit 4.

Honda, including possible line-down stoppage."[15] As to the production dispute, Mr. Greenberg argued that the Defendant did not order any parts beyond the 2,000 included in the initial September 26, 2023 purchase order, but the Plaintiff, without the Defendant's knowledge or consent, proceeded to stamp 66,000 sets of parts.[16]

On October 23, representatives of the Plaintiff and Defendant exchanged a series of emails regarding the payment due to the Plaintiff and the return of the die stamping tool. Steven Rowe, Executive Vice President at the Plaintiff, summarized an earlier call when he stated, "To confirm our discussion, Shiloh's offer is to pay DSI the $1,536,078 owed over the next 15 weeks ($102,405.20 per week) with the first payment made before we release the tool." Bob Lipka, a Vice President and General Manager at Shiloh responded that he was "confirming your statement below," and further stated that Shiloh would issue an additional purchase order for 64,786 sets of Parts.[17] Mr. Rowe responded that "we accept your offer and look forward to the PO and first payment. We will then release the tool as discussed."[18]

According to the Plaintiff, the Defendant made its first payment and issued the additional purchase order on October 23 and 24.[19] The Plaintiff then released the die stamping tool to the Defendant.[20] After receiving the tool, the Defendant made seven additional weekly payments through December 10, 2023.[21] After making only two weekly payments over the next five weeks, the Defendant requested to reduce the amount of weekly payments to $51,202.60, and the Plaintiff accepted this new arrangement, reserving all rights.[22] Over the next nine weeks, the Defendant

[15] *Id.*
[16] *Id.*
[17] Plaintiff's Motion for Summary Disposition Under MCR 2.116(C)(9) and (C)(10), Exhibit D.
[18] *Id.*
[19] First Amended Complaint ¶¶ 26-27.
[20] *Id.* ¶ 27.
[21] *Id.* ¶ 28.
[22] *Id.* ¶¶ 29-30.

made six payments in various amounts, some more and some less than $51,202.60, and missed two payments entirely.[23] The Plaintiff alleges that after the last payment was made on March 15, 2024, the amount remaining to be paid was $325,972.30.[24]

The Plaintiff filed its First Amended Complaint on April 18, 2024 with causes of action for Breach of Contract (Count I), Account Stated (Count II), Promissory Estoppel (Count III),[25] and Unjust Enrichment (Count IV). The Plaintiff now moves for summary disposition of its claim for Account Stated (Count II) pursuant to MCR 2.116(C)(9) an MCR 2.116(C)(10).

II.

Standards of Review

A. MCR 2.116(C)(9)

MCR 2.116(C)(9) permits summary disposition when "the opposing party has failed to state a valid defense to the claim against him or her." A motion for summary disposition under MCR 2.116(C)(9) tests the sufficiency of the defendant's pleadings and is decided by the pleadings alone. *In re Smith Estate*, 226 Mich App 285, 288; 574 NW2d 388 (1997). All well-pled allegations must be accepted as true, and only if the non-moving party's defenses are so clearly untenable as a matter of law that no factual development could possibly deny a plaintiff's right to recovery, should the motion be granted. *Grebner v Clinton Charter Twp*, 216 Mich App 736, 740; 550 NW2d 265 (1996).

Summary disposition under MCR 2.116(C)(9) is generally improper where a material allegation of the complaint is categorically denied. *Nasser v Auto Club Ins Ass'n,* 435 Mich 33, 47-48; 457 NW2d 637 (1990); *Fancy v Egrin*, 177 Mich App 714, 724; 442 NW2d 765 (1989);

[23] *Id.* ¶ 31.
[24] *Id.* ¶¶ 32-33.
[25] Promissory Estoppel and Unjust Enrichment were pleaded in the alternative.

Heligman v Otto, 161 Mich App 735, 738; 411 NW2d 844 (1987) (summary disposition for failure to state a valid defense held improper where defendants categorically denied some of plaintiff's material allegations). Under MCR 2.111(C)(3), a statement that the defendant lacks knowledge or information sufficient to form a belief as to the truth of an allegation has the effect of a denial. MCR 2.111(C)(3). Furthermore, "[t]he fact that the defense ultimately might be unsuccessful in whole or in part does not render it invalid for purposes of MCR 2.116(C)(9), nor does the fact that it ultimately might be found not to create a genuine issue of material fact to be resolved at trial, thus entitling plaintiff to summary disposition." *Nasser,* 435 Mich at 48.

B. 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 NW2d 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).

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.*

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. Summary Disposition is Not Warranted Pursuant to MCR 2.116(C)(9)

Here, the Plaintiff first moves for summary disposition pursuant to MCR 2.116(C)(9). The allegations in the FAC that underly Count II of the First Amended Complaint are:

> 44. As alleged above, DSI issued invoices for the Parts to Grouper Stamping demanding payment for the amounts stated therein.
>
> 45. When Grouper Stamping failed to pay those invoices, DSI and Grouper Stamping agreed to a set schedule for payment of the Debt, i.e., the Payment Agreement.
>
> 46. Grouper Stamping failed to make all payments required by Payment Agreement, even after DSI agreed to reduce the weekly payment amount as an accommodation.
>
> 47. Grouper Stamping agreed to that the Debt was owed and did not object to it.
>
> 48. Accordingly, Grouper Stamping owes $325,972.30 to DSI, which amount represents the unpaid balance on the Debt due per the Payment Agreement and DSI's invoices for the Parts.

In its Answer and Affirmative Defenses to First Amended Complaint, the Defendant answers Paragraphs 44-46 of the First Amended Complaint by stating that it "lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph." Per MCR 2.111(C), this has the effect of a denial. MCR 2.111(C)(3). As to Paragraphs 47-48, the Defendant states that the allegations are "denied because untrue" and references the attached Counter-Affidavit of Account. Additionally, the Defendant also asserts multiple affirmative defenses, including, but not limited to, a lack of consideration, a lack of quantity term, estoppel, laches, want of equity, and unclean hands.

Because the Defendant has categorically denied material allegations in Count II of the First Amended Complaint and has also asserted affirmative defenses, summary disposition pursuant to MCR 2.116(C)(9) is not warranted.[26]

B. Summary Disposition Pursuant to MCR 2.116(C)(10) is Not Warranted

i. Law of Account Stated

"An account stated 'is a contract based on assent to an agreed balance, and it is an evidentiary admission by the parties of the facts asserted in the computation and of the promise by the debtor to pay the amount due.'" *Fisher Sand & Gravel Co v Neal A Sweebe, Inc*, 494 Mich 543, 557; 837 NW2d 244 (2013) (citations and quotations omitted). Like all contracts, an account stated requires mutual assent. *Id.* "[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." *Id*. at 558-59.

Michigan law provides a burden-shifting procedure for account stated claims as follows:

> In all actions brought in any of the courts of this state, to recover the amount due on an open account or upon an account stated, if the plaintiff or someone in his behalf makes an affidavit of the amount due, as near as he can estimate the same, over and above all legal counterclaims and annexes thereto a copy of said account, and cause a copy of said affidavit and account to be served upon the defendant,

[26] The Plaintiff, in its Reply brief, argues that the Defendant's Answer and Affirmative Defenses did not provide the requisite factual support under MCR 2.111(F)(3). This argument, raised for the first time in the Reply brief, is tantamount to raising a new argument to support the Plaintiff's motion to which the Defendant was not afforded the opportunity to respond. See *Kinder Morgan Michigan, LLC v City of Jackson*, 277 Mich App 159, 174; 744 NW2d 184 (2007) (declining to address issues first raised in a reply brief because "[r]eply briefs must be confined to rebuttal, and a party may not raise new or additional arguments in its reply brief"). Accordingly, this argument was not properly presented.

> with a copy of the complaint filed in the cause or with the process by which such action is commenced, such affidavit shall be deemed prima facie evidence of such indebtedness, unless the defendant with his answer, by himself or agent, makes an affidavit and serves a copy thereof on the plaintiff or his attorney, denying the same.[27]

If a plaintiff files an affidavit pursuant to MCL 600.2145 but the affidavit is defective or is rebutted by the defendant with a counter-affidavit, "the plaintiff simply is left with the burden to prove its case in the usual fashion." *Lipa v Asset Acceptance, LLC*, 572 F Supp 2d 841, 851 (ED Mich, 2008).

ii. The Counter-Affidavit Sufficiently Rebuts the Prima Facie Case of Account Stated

Here, the Plaintiff takes issues with the Defendant's Counter-Affidavit of Account, arguing that the Counter-Affidavit (i) does not call into question the Defendant's agreement to repay the debt, (ii) does not deny that it made payments, and that it (iii) does not show that the amount due is inaccurate.[28]

The Plaintiff filed an Affidavit of Account with its First Amended Complaint that was signed by Steven S. Rowe, the Executive Vice President for the Plaintiff.[29] Mr. Rowe stated that, based on his personal knowledge and review of the Plaintiff's books and business records, "Grouper Stamping owes $325,972.30 to DSI, above all legal setoffs and counterclaims."[30] The Affidavit also attaches a statement of account that includes the total invoiced amount of $1,536,078, and a total paid of $1,210,105.70. The statement of account confirms that the balance due is $325,972.30.

[27] MCL 600.2145.
[28] Plaintiff's Motion for Summary Disposition Under MCR 2.116(C)(9) and (C)(10), p 8.
[29] First Amended Complaint, Exhibit D.
[30] *Id.* ¶ 2.

In response, the Defendant filed a Counter-Affidavit of Account with its Answer that was signed by Blaise Flack, the Defendant's Chief Financial Officer.[31] Mr. Flack stated that, "As near as I can estimate, Grouper Stamping LLC denies the amount due as claimed by Plaintiff."[32]

The Plaintiff challenges whether the Counter-Affidavit is sufficient to rebut the prima facie case for account stated pursuant to MCL 600.2145. The statute itself simply requires that the Defendant submit an affidavit denying the Plaintiff's affidavit of the amount due. "The Michigan statute governing the account stated procedure merely requires the affidavit be denied, […] it does not specify the form or precision of the denial." *Sodexo Mgmt, Inc v Detroit Pub Sch*, 200 F Supp 3d 679, 694 (ED Mich, 2016).

The Court of Appeals evaluated a similar "bare bones" counter-affidavit and found that it was sufficient under MCL 600.2145 to rebut the prima facie evidence of an account stated. *CIT Tech Fin Servs, Inc v Detroit Bd of Educ*, unpublished per curiam opinion of the Court of Appeals, issued July 27, 2010 (Docket No. 288164). In that case, the trial court granted summary disposition in favor of the plaintiff on the claim of an account stated. *Id.* at 4. The plaintiff filed an affidavit of an account stated with its complaint, and the defendants filed a countervailing affidavit with their answer "stating that defendants 'dispute [ ] the facts contained in the Affidavit of Account Stated attached to plaintiff's complaint,' without further detail or explanation." *Id.* The Court of Appeals held that the defendants' affidavit was sufficient because it "denies the claims in the plaintiff's affidavit" and therefore, "there is no prima facie case of an account stated." *Id.* at 5. The Court of Appeals further observed that "there remains a genuine issue of material fact regarding the existence of the account stated because defendants' denial is evidence of no mutual agreement regarding the amount due." *Id.*

[31] Answer and Affirmative Defenses to First Amended Complaint, Exhibit A.
[32] *Id.* ¶ 4.

Like the counter-affidavit in *CIT Tech*, the Defendant's counter-affidavit is "bare bones," but it is sufficient to rebut the prima facie case of an account stated pursuant to MCL 600.2145. The counter-affidavit denies the amount due claimed by the Plaintiff, which is all that the statute requires. Accordingly, the Plaintiff is left with the burden to prove its case in the usual fashion. *Lipa,* 572 F Supp at 851.

iii. There are Genuine Issues of Disputed Fact that Preclude Summary Disposition

In addition to relying on MCL 600.2145, the Plaintiff also argues that it has established the existence of an account stated by presenting evidence of an express understanding through words and acts. Specifically, the Plaintiff alleges that the parties reached an agreement in which the Defendant would repay its debt to the Plaintiff in fifteen weekly installments of $102,405.20 as evidenced in the October 23 email exchange.[33] In response, the Defendant argues that it has a number of valid defenses, including a lack of consideration, a lack of quantity term, a failure to state a claim upon which relief can be granted, a lack of good faith, the Plaintiff's own conduct, estoppel laches, want of equity and unclean hands, the Plaintiff's first breach, and the parol evidence rule.

As noted above, generally a motion under MCR 2.116(C)(10) is premature prior to the completion of discovery. *Colista,* 241 Mich App at 537. If a party opposes a motion for summary disposition on the ground that discovery is incomplete, "the party must at least assert that a dispute does indeed exist and support that allegation by some independent evidence." *Davis v City of Detroit*, 269 Mich App 376, 379–80; 711 NW2d 462 (2005) (citation omitted). The key question then, is "whether further discovery stands a fair chance of uncovering factual support for the

[33] Plaintiff's Motion for Summary Disposition Under MCR 2.116(C)(9) and (C)(10), p 10; Exhibit D.

opposing party's position." *Marilyn Froling Revocable Living Tr v Bloomfield Hills Country Club*, 283 Mich App 264, 292; 769 NW2d 234 (2009).

In its Response, the Defendant argues that there was no mutual assent to an account stated because the Plaintiff obtained an email agreement for the payment installment plan "through the threat of an illegal act,"[34] namely holding the tooling hostage until the Defendant paid the Plaintiff's invoices "which included charges for parts produced in excess of the purchase order."[35] In support of its position, the Defendant points to George Zotos's October 17 email in which he states that the Plaintiff's invoices must be paid in full before the die stamping tool will be returned.[36]

Under longstanding principles of contract law, a contract entered into under duress is voidable. See *Clement v Buckley Mercantile Co*, 172 Mich 243, 253; 137 NW 657 (1912). To succeed on a claim of duress, plaintiffs must establish that they were illegally compelled or coerced to act by fear of serious injury to their persons, reputations, or fortunes. *Apfelblat v Nat'l Bank Wyandotte-Taylor*, 158 Mich App 258, 263; 404 NW2d 725 (1987). Fear of financial ruin alone is insufficient to establish economic duress; it must also be established that the person applying the coercion acted unlawfully. *Skaates v Kayser*, 333 Mich App 61, 79-80; 959 NW2d 33 (2020) (holding that although defendant claimed that he believed that if he did not sign the final agreement

[34] In oral argument, Plaintiff cited the Special Tools Lien Act (MCL 570.553) for the proposition that it was permitted under Michigan law to retain possession of the tooling until it was paid by the Defendant. This statute grants an end user a lien on tools in their possession "belonging to the customer for the amount due the end user from the customer." However, Michigan courts have interpreted a similar statute (the molder's lien statute) to mean that the parts producer's lien is valid only to the extent that its customer, the party for whom the parts producer is manufacturing parts, is the owner of the tool. *Gateplex Molded Prod Inc v Collins & Aikman Plastics, Inc*, 260 Mich App 722, 730; 681 NW2d 1 (2004) ("The ordinary usage of the words 'belonging to' connotes ownership."). Here, the record indicates that the tools belonged to Honda, not the Defendant. See "Corrected" Grouper Stamping, LLC's Response to Plaintiff's Motion for Summary Disposition Under MCR 2.116(C)(9) and MCR 2.116(C)(10), Exhibit 4. Accordingly, this statute is not controlling.

[35] "Corrected" Grouper Stamping, LLC's Response to Plaintiff's Motion for Summary Disposition Under MCR 2.116(C)(9) and MCR 2.116(C)(10), p 13.

[36] First Amended Complaint, Exhibit C.

he would be "homeless, unemployed, uninsured, and without any income," a fear of financial ruin cannot by itself, establish economic duress).

Voidable contracts can subsequently be ratified, however. *Apfelblat*, 158 Mich App at 262; *Epps v. 4 Quarters Restoration LLC*, 498 Mich 518, 553 n 32; 872 NW2d 412 (2015) ("A voidable contract may typically be ratified by the party with the power of avoidance, rendering the contract fully enforceable by either party."). Ratification may be express or implied, so long as there is knowledge of the material facts relating to the initial contract. *Apfelblat*, 158 Mich App at 262 (citation omitted). Ratification is usually a question of fact. *Wexford Twp v Seeley*, 196 Mich 634, 640; 163 NW 16 (1917).

In this case, there are genuine issues of material fact regarding the underlying agreement that is the basis for the Plaintiff's claim for account stated, including (but not limited to):

- Whether the October 23, 2023 email exchange constitutes an assent to an agreed upon balance.
- Whether the agreement was voidable based on Plaintiff's threat to withhold the tooling.
- If the contract was rendered voidable by the Plaintiff's threat, whether the agreement was subsequently ratified by the Defendant's continued payments.
- Whether the "wrongful-conduct" rule or the doctrine of unclean hands are applicable to bar the Plaintiff's recovery.

Because discovery has not yet concluded, answering these and other questions based on the limited record before the Court would be premature. Accordingly, summary disposition in favor of the Plaintiff pursuant to MCR 2.116(C)(10) is not warranted at this time.

ORDER

Based upon the foregoing Opinion:

IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Disposition pursuant to MCR 2.116(C)(9) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Disposition pursuant to MCR 2.116(C)(10) is DENIED.

This Order does NOT resolve the last pending matter and does NOT close the case.

/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
CIRCUIT COURT JUDGE

Dated: 8/26/24