

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

COMFORCARE FRANCHISE SYSTEMS, LLC,

Plaintiff,

v

Case No. 23-203856-CB
Hon. Michael Warren

PLATINUMCARE, INC. d/b/a
COMFORCARE HOME CARE - CHESTER SOUTH,
NATAKI HARBIN HUDSON and JERROD HUDSON,

Defendants.

OPINION AND ORDER REGARDING
PLAINTIFF COMFORCARE FRANCHISE SYSTEMS, LLC'S
MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10)

At a session of said Court, held in the
County of Oakland, State of Michigan
September 3, 2025

PRESENT: HON. MICHAEL WARREN

OPINION

I
Overview

The claims in this matter arise out of a certain Franchise Agreement and Guaranty between the parties. Before the Court is the Plaintiff's Motion for Summary Disposition

under MCR 2.116(C)(10). Oral argument is dispensed as it would not assist the Court in its decision-making process.¹

At stake is whether the Plaintiff is entitled to summary disposition of its claim for Breach of Franchise Agreement (Count I) under MCR 2.116(C)(10)? Because there are no genuine issues of material fact, the answer is “yes,” and summary disposition is granted as to liability only on this basis.

Also at stake is whether the Plaintiff is entitled to summary disposition of its claim for Breach of Guaranty (Count II) under MCR 2.116(C)(10)? Because there are no genuine issues of material fact, the answer is “yes,” and summary disposition is granted as to liability only on this basis.

Furthermore at stake is whether the Plaintiff is entitled to summary disposition of its claim for Unjust Enrichment (Count III) under MCR 2.116(C)(10)? Because a party may not bring a claim for unjust enrichment where there is an express contract between the parties, and the Plaintiff brought this claim in the alternative, the answer is “no,” and the claim is dismissed.

¹ MCR 2.119(E)(3) provides courts with discretion to dispense with or limit oral argument and to require briefing. MCR 2.116(G)(1) specifically recognizes application of MCR 2.119(E)(3) to summary disposition motions. Subrule (G)(1) additionally authorizes courts to issue orders establishing times for raising and asserting arguments. This Court’s Scheduling Order clearly and unambiguously set the time for asserting and raising arguments, and legal authorities to be in the briefing – not to be raised and argued for the first time at oral argument. Therefore, both parties have been afforded due process as they each had notice of the arguments and an opportunity to be heard by responding and replying in writing, and this Court has considered the submissions to be fully apprised of the parties’ positions before ruling. Because due process simply requires parties to have a meaningful opportunity to know and respond to the arguments and submissions which has occurred here, the parties have received the process due.

Finally at stake is whether the Plaintiff is entitled to an award of attorney fees under the Franchise Agreement? Because the Plaintiff has failed to substantiate the amount or reasonableness of the request, the answer is “no,” and the request is denied without prejudice.

II Background and the Complaint

The Defendant Platinumcare, Inc. is an owner and operator of a ComForCare franchise in Pennsylvania. [Defendant’s Response, p 3.] The Plaintiff and the Defendant entered into a Franchise Agreement effective October 31, 2016. [Motion, Exhibit A.] The Franchise Agreement contained the following relevant provisions:

9. FRANCHISE FEES

...

B. ROYALTY AND SERVICE FEE

Franchisee agrees to pay Franchisor a non-refundable royalty and service fee of between 3% and 5% of Franchisee’s total Gross Sales as outlined on attached Addendum E.

The ongoing and continuing royalty and service fee is due and payable 28 days subsequent to the end of each two week billing cycle, based on the Gross Sales for that billing period. All ComForCare Franchisees will utilize bi-weekly billing cycles.

In addition to the royalty and service fees as described above. Franchisor has the right to collect from Franchisee monthly an amount equal to any taxes, including corporate income tax and license fees that the federal government or the state

government in which the Franchisee is located imposed on the royalty fees payments paid by Franchisee to Franchisor. This payment is in addition to the royalty and service fee payments described above.

...

D. ROYALTY FEE REPORTS

Each royalty fee payment shall be accompanied or preceded by a royalty report, as may be required by Franchisor, itemizing the Gross Sales for the preceding reporting period and any other reports required. Franchisee shall provide Franchisor with the Gross Sales information and royalty report on or before the 28th day following each bi-weekly billing cycle for the previous reporting period by facsimile transmission, internet, telephone, or other method of delivery Franchisor reasonably directs.

...

G. HEALTHMANAGER SERVICE FEES

Beginning thirteen (13) months from the Licensure Date of your franchised business, Franchisee will pay to ComForCare on a bi-weekly basis, a HealthManager Service and Maintenance Fee of \$115, for each territory owned by Franchisee. Beginning twenty-five (25) months and thereafter from the Licensure Date of your franchised business, Franchisee will pay to Franchisor, on a bi-weekly basis, a HealthManager Service Fee of \$115, for each territory owned by Franchisee.

...

K. GENERAL MARKETING FEE

Beginning 24 months after the Licensure Date of your franchised business, Franchisee will remit General Marketing Fees to Franchisor of 1% of Gross Sales (as defined in this section) for general corporate marketing purposes such as, but not necessarily including or limited to, graphic design, public relations consultants and National Alliance

relationship development and account maintenance. The General Marketing Fees are not directly applied to any national or regional advertising initiative. Such fees will be due 28 days after the end of each bi-weekly billing period and will be deducted from your bank account via ACH.

...

M. LATE FEES AND INTEREST ON LATE PAYMENTS

Franchisee is not entitled to withhold payments due Franchisor under this Agreement on grounds of alleged nonperformance by Franchisor. Any payment or royalty report not actually received by Franchisor on or before the date due shall be deemed late and overdue. Franchisor shall debit from Franchisee through ACH a late fee of up to \$75.00 if a royalty report is not submitted on its due date or if a royalty fee, or any other fee, is not paid when due. All unpaid obligations under this Agreement or if a royalty fee, or any other fee, is not paid when due. All unpaid obligations under this Agreement also bear interest plus 2% from the date due until paid at the lessor of (i) the prime commercial rate of interest as reported by J.P. Morgan Chase Bank of New York or by any other bank designated by Franchisor (but in no event less than 10% per annum), or (ii), the maximum allowed by applicable law.

...

F. CUSTOMER AND LOCATION RESTRICTION

...

11. A violation of the customer and location restriction policy may subject franchisee to a payment to the affected franchisee (or franchisees) if franchisee services clients in other franchisee's territories without permission or authorization Franchisee is responsible (rather than Franchisor) for any payments or penalties owed to other franchisees for such infractions. ComForCare has no obligation to investigate or enforce this provision.

12. In the event Franchisor assists in resolving an issue between two or more franchisees regarding a violation of the customer and location restriction policy, Franchisor may charge the involved parties a client resolution fee that is the greater of \$500 or \$50/hour . . . ComForCare has no obligation to assist in the investigation of such matters.

. . .

13. RECORDS AND REPORTS

A. ACCOUNTING AND RECORDS

During the Term, Franchisee will, at Franchisee's expense, maintain and preserve for at least five (5) years from the date of their preparation, full, complete and accurate books, records and accounts including, but not limited to, sales slips, coupons, purchase orders, payroll records, check stubs, bank statements, employment time records, financial statements, sales tax records and returns, cash receipts and disbursements, journals and ledgers, records of EFT or ACH transactions, backup or archive records of information maintained on any computer system, and accounting and other records in accordance with Generally Accepted Accounting Principles and any other information required in writing by Franchisor and in the form and manner Franchisor prescribes in the Operations Manuals or otherwise in writing.

. . .

17. TERMINATION

A. Franchisee acknowledges and agrees that each of Franchisee's obligations described in this Agreement is a material and essential obligation of Franchisee; that non-performance of the obligations adversely and substantially affect the Franchisor and the System; and that the exercise by Franchisor of the rights and remedies set forth is appropriate and reasonable.

. . .

20. ENFORCEMENT

...

C. WAIVER OF OBLIGATIONS

No delay, waiver, omission or forbearance on the part of Franchisor to exercise any right, option, duty or power arising out of any breach of default by Franchisee under this Agreement constitutes a waiver by Franchisor to enforce any right, option, duty or power against Franchisee or as to any subsequent breach or default by Franchisee. Acceptance by Franchisor of any payments due to it subsequent to the time at which the payment is due, is not deemed to be a waiver of Franchisor of any preceding breach by Franchisee of any terms, provisions, covenants or conditions of this Agreement.

[Plaintiff's Motion, Exhibit A.]

On October 31, 2016, Nataki Harbin Hudson and Jerrod Hudson (the "Guarantors") executed a certain Guaranty and Assumption of Obligations. [Plaintiff's Motion, Exhibit B.] The Guarantors agreed to be liable for all obligations under the Franchise Agreement, "both monetary and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities." [*Id.*]

The Plaintiff argues that the Defendants have breached the Franchise Agreement and the Guaranty by failing to pay the required fees and failing to remit the required reports. [Plaintiff's Motion, p 11.] The Plaintiff provided notices of default under the agreements on June 3, 2022, and August 29, 2022 [Plaintiff's Motion, Exhibit D], and alleges that the defaults were not cured.

The Defendants argue that the Plaintiff acknowledged an ongoing communication regarding territory in an email exchange in February 2022. [Defendants’ Response, Exhibit A.] The Defendants further argue that the Plaintiff interfered with the Defendants’ ability to operate and service clients within its designated territory by failing to take corrective action when notified of the problem.

III Standard of Review

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 (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 (1999); MCR 2.116(C)(10); MCR 2.116(G)(4); *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.* 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 (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 121-120 (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 (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 (1999). 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 (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.

IV
Count I- Summary Disposition is Granted
As to the Breach of Contract Claim

A
The Allegations

The Complaint contains the following allegations relating to its claim for Breach of Contract:

35. The Franchise Agreement is a valid and enforceable agreement which requires, among other things, that Defendants: (a) operate the franchise and otherwise conduct business for a period of ten years; (b) provide to ComForCare the Gross Sales information and royalty reports on or before the 28th day following each bi-weekly billing cycle for the previous reporting period; and (c) promptly pay all fees, royalties, and other monetary obligations when due as set forth in the Franchise Agreement.

36. Defendants have breached their obligations to ComForCare and under the Franchise Agreement by failing to remit or otherwise promptly pay to ComForCare over \$160,000 in past due fees and royalties, plus accruing interest and late fees, since January 2022.

37. Defendants have further breached their obligations under the Franchise Agreement by failing to remit Gross Sales information and royalty reports when due since March 2022.

38. ComForCare performed all of its obligations to Defendants under the Franchise Agreement.

39. As a direct and proximate result of Defendants' breaches of the Franchise Agreement as described herein, ComForCare has suffered and will continue to suffer, damages in excess of \$160,000.

[Complaint, pp 7-8.]

B **The Law**

A claim for breach of contract lies when the following elements are established: “(1) parties competent to contract; (2) a proper subject matter; (3) legal consideration; (4) mutuality of agreement; and (5) mutuality of obligation.” *Thomas v Leja*, 187 Mich App 418, 422 (1991). A plaintiff may recover in a breach of contract action when it proves that the defendant’s breach was the proximate cause of the harm the plaintiff suffered. *Chelsea Inv Group LLC v City of Chelsea*, 288 Mich App 239, 254 (2010).

The cardinal rule when interpreting contracts is to ascertain and give effect to the intention of the parties. *Zurich Ins Co v CCR & Co (on rehearing)*, 226 Mich App 599, 603 (1997). “In interpreting a contract, it is a court’s obligation to determine the intent of the parties by examining the language of the contract according to its plain and ordinary meaning.” *In re Smith Trust*, 480 Mich 19, 24 (2008). Courts “must interpret a contract in a way that gives every word, phrase, and clause meaning, and must avoid interpretations that render parts of the contract surplusage.” *Klapp v United Ins Group Agency Inc*, 468 Mich 459, 468 (2003). Courts may not strain to find ambiguity and must read contracts to avoid an absurd or unreasonable result. *Scott v Farmers Ins Exchange*, 266 Mich App 557, 561 (2005); *Miller v Van Kampen*, 154 Mich App 165, 168 (1986). Ultimately, courts must strive to enforce the agreement intended by the parties.

Whether contract language is ambiguous is a preliminary question of law. *UAW-GM Human Resource Center v KSL Rec Corp*, 228 Mich App 486, 491 (1998) (citation omitted). A contract is unambiguous when it fairly admits of but one interpretation. *Holmes v Holmes*, 281 Mich App 575, 594 (2008). If the language of the contract is clear and unambiguous, it must be enforced as written. *Smith Trust*, 480 Mich at 24. A written contract is ambiguous if after reading the entire document its language reasonably can be understood in differing ways (i.e., the language is susceptible to more than one reasonable interpretation). *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 70 (1991). “A provision in a contract is ambiguous if it irreconcilably conflicts with another provision, or when it is equally susceptible to more than a single meaning.” *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 715 (2005) (citation omitted). In making this determination, contractual language is to be construed according to its plain and ordinary meaning. In fact, published Michigan jurisprudence has long held that the terms of contracts are to be enforced as written unless it violates Michigan public policy. *Rory v Cont’l Ins Co*, 473 Mich 457, 461, 468 (2005) (“[U]nless a contract provision violates law or one of the traditional defenses to the enforceability of a contract applies, a court must construe and apply unambiguous contract provisions as written. . . . [T]he judiciary is without authority to modify unambiguous contracts or rebalance the contractual equities struck by the contracting parties because the judiciary is without authority to modify unambiguous contracts or rebalance the contractual equities struck by the contracting parties because fundamental principles of contract law preclude such subjective post hoc judicial determinations of reasonableness”; “A fundamental tenant of

our jurisprudence is that unambiguous contracts are not open to judicial construction and must be enforced as written”). See also *Little v Kin*, 468 Mich 699, 700 (2003) (“Where the language of a legal instrument is plain and unambiguous, it is to be enforced as written and no further inquiry is permitted”). Furthermore, the court is required to read the contract as a whole, giving harmonious effect, if possible, to each word and phrase in order to avoid an interpretation that would render any part of the contract surplusage or nugatory. *Klapp*, 468 Mich at 468. Ultimately, courts must strive to enforce the agreement intended by the parties.

C Analysis

The Defendants argue that the Plaintiff breached the contract first by failing to investigate and enforce the territorial requirements of the contract, and that the Defendants ceased payments because of the breach. However, the Defendants fail to articulate a particular section of the Franchise Agreement that was allegedly breached. As such, the argument is deemed abandoned. How the Court could possibly evaluate this argument without the violated passages and determine if a potential breach of contract exists is a mystery. It is not this Court’s job to scour the record to make the Defendants’ arguments for them. *Barnard Mfg v Gates Performance*, 285 Mich App 362 (2009), citing *Carmen v San Francisco Unified School Dist*, 237 F3d 1026, 1031 (CA 9, 2001); *Adler v Wal-Mart Stores, Inc*, 144 F3d 664, 672 (CA 10, 1998) (“Thus, where the burden to present such specific facts by reference to exhibits and the existing record was not

adequately met below, we will not reverse a district court for failing to uncover them itself”); *Forsyth v Barr*, 19 F3d 1527, 1537 (CA 5, 1994) (noting that vague and conclusory assertions that the evidence demonstrates a question of fact are insufficient-the nonmoving party must identify specific evidence in the record); *L S Heath & Son, Inc v AT & T Information Sys, Inc*, 9 F3d 561, 567 (CA 7, 1993) (concluding that “a district court need not scour the record to determine whether there exists a genuine issue of fact to preclude summary judgment”); *Guarino v Brookfield Twp Trustees*, 980 F2d 399, 404 (CA 6, 1992) (stating that the appellants’ “argument that the district court erred in not searching the record sua sponte is wholly without merit”).

Even if the Court were to look past the Defendants’ abandonment of their position (which the Court does not), it fails. To support their argument, rather than citing the specific section, the Defendants attach one email from February 2022 and one email from April 2024.

The February 2022 email confirms a conversation regarding monthly reports and indicates only: “As agreed, I will not process payment for the royalty reports until we touch base with you.” [Defendants’ Response, Exhibit A.] There is nothing in the email that “acknowledged the ongoing communication about the territory and its requirements for maintaining the franchise relationship” as asserted by the Defendants’ in their Response. This email does not support the Defendants’ defense relative to the territory issue.

The Defendants' only other evidence that payments were withheld because of the Plaintiff's breach is an email from April 2024. [Defendants' Response, Exhibit B.] The email is between the Defendants and a third-party franchisee in a separate location, and not the Plaintiff. The email is also from 2024. The Defendants allegedly began withholding payments in 2022, two years earlier. The 2024 email cannot support the Defendants' withholding of payments in 2022. This email does not support the Defendants' defense relative to the territory issue.

The Defendants argue that discovery is necessary to investigate their defense. However, this argument is not persuasive for three independent reasons. First, discovery closed three months before the Defendants filed their Response. Second, the Defendants should have their own communications to the Plaintiff regarding the issue. They have attached absolutely nothing to support their allegation that they sought out the Plaintiff's assistance, and the Plaintiff refused to help. Even if the 2024 email were suggestive of that concern, it was two years after the Defendants stopped making payments. The Defendants offer absolutely no communications sent to the Plaintiff regarding the territory dispute.

Finally, and most importantly, there is nothing in the Franchise Agreement that requires the Plaintiff to investigate or enforce the territorial designations. The Defendants do not point to any particular section of the Franchise Agreement that requires the Plaintiff to investigate and enforce the territory restrictions. As noted by the Plaintiff and

quoted above, the Franchise Agreement places the burden on the Franchisee (the Defendants) to monitor and enforce its territory. Where there are concerns, the Franchisee is directed to handle those issues with the other franchisee or be subject to a fee for the Franchisor's assistance. Even if discovery were not closed, discovery could not lead to documents that establish a breach without the obligation to act.

Noticeably absent from the Defendants' briefing is any affidavit supporting their defense. The Defendants have produced no evidence to establish a defense to their failure to pay or provide reports. Accordingly, summary disposition as to liability only under MCR 2.116(C)(10) is appropriate in the Plaintiff's favor as to the claim for Breach of Contract (Count I).

V
Count II - Summary Disposition is Granted
As to the Breach of Guaranty Claim

A
The Allegations

The Complaint contains the following allegations relating to its claim for Breach of Guaranty:

41. The Guaranty is a valid and enforceable agreement between ComForCare, N. Hudson, and J. Hudson.

42. Pursuant to the Guaranty, the Hudsons personally guaranteed and assured the full and complete performance of the Defendants under the Franchise Agreement, which included performing all obligations and paying all fees, royalties, and interest when due and owing.

43. The Hudsons breached the Guaranty by failing to remit Gross Sales information and royalty reports and the outstanding payments and other monetary obligations to ComForCare as required under the Franchise Agreement and Guaranty.

44. ComForCare demanded that the Hudsons satisfy the obligations of the Defendants under the Franchise Agreement, but N. Hudson and J. Hudson failed and refused to do so.

45. As a direct and proximate result of Defendants' breaches of the Franchise Agreement and the Hudsons' breach of the Guaranty as described herein, ComForCare has suffered and will continue to suffer, damages in excess of \$160,000.

[Complaint, pp 8-9.]

B The Law

“Contracts of guaranty are to be construed like other contracts and the intent of the parties, as collected from the whole instrument and the subject-matter to which it applies, is to govern.” *Comerica Bank v Cohen*, 291 Mich App 40 (2010), *quoting First Nat’l Bank v Redford Chevrolet Co*, 270 Mich 116, 121 (1935) (citation omitted).

C Analysis

The Plaintiff has argued that the Guarantors are liable for breach of guaranty. In support of its argument, the Plaintiff attaches the Guaranty and discovery responses wherein the Guarantors admit that they executed the Guaranty. The Defendants failed to respond to the request for summary disposition as to claim for Breach of Guaranty aside

from requesting that the Motion be dismissed. 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 (2008). By failing to cite appropriate authority or cogently apply analysis of the same, any argument for amendment is deemed abandoned. *Houghton v Keller*, 256 Mich App 336, 339-340 (2003) (“failure to properly address the merits of [one’s] assertion of error constitutes abandonment of the issue;” a party “may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims . . . nor may he give issues cursory treatment with little or no citation of supporting authority” (citations omitted)); *Mitcham v City of Detroit*, 355 Mich 182, 203 (1959) (“It is not enough for an appellant in his brief simply to 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”); *Wilson v Taylor*, 457 Mich 232, 243 (1998) (“A mere statement without authority is insufficient to bring an issue before this Court”).

Based on the foregoing, summary disposition is appropriate in the Plaintiff’s favor under MCR 2.116(C)(10) as to the Plaintiff’s claim for Breach of Guaranty (Count II).

VI
Count III – The Unjust Enrichment Claim Is Dismissed

A
The Law

“The elements of a claim for unjust enrichment are: (1) receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant.” *Barber v SMH (US), Inc.*, 202 Mich App 366, 375 (1993) (citation omitted). In other words, the law will imply a contract to prevent unjust enrichment only if the defendant has been unjustly or inequitably enriched at the plaintiff’s expense. *Morris Pumps v Centerline Piping Inc*, 273 Mich App 187, 195 (2006).

Our Court of Appeals has summarized unjust enrichment as follows:

“The essential elements of a quasi contractual obligation, upon which recovery may be had, are the receipt of a benefit by a defendant from a plaintiff, which benefit it is inequitable that the defendant retain.” *MEEMIC* [v Morris, 460 Mich 180,] 198 [(1999)], quoting *Moll v Wayne Co*, 332 Mich 274, 278-279 (1952). Thus, in order to sustain a claim of quantum meruit or unjust enrichment, a plaintiff must establish (1) the receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant. *Barber v SMH (US), Inc*, 202 Mich App 366, 375 (1993). In other words, the law will imply a contract to prevent unjust enrichment only if the defendant has been unjustly or inequitably enriched at the plaintiff’s expense.

[*Morris Pumps*, 273 Mich App at 195-196.]

The doctrine of unjust enrichment does not apply “when an express contract already addresses the pertinent subject matter.” *Liggett Restaurants Group, Inc v City of Pontiac*, 260 Mich App 127, 137 (2003). See also *Landstar Express America, Inc v Nexteer Auto Corp*, 319 Mich App 192, 202-203 (2017) (dismissal was proper as there was an express contract covering the same subject matter as the equitable claims); *Hudson v Mathers*, 283 Mich App 91, 98 (2009) (a “contract may not be implied under a theory of unjust enrichment” when the parties have “an express contract in place”); *King v Ford Motor Credit Co*, 257 Mich App 303, 327 (2003) (“a contract will not be implied under the doctrine of unjust enrichment where a written agreement governs the parties’ transaction”).

B Analysis

The parties agree there is a Franchise Agreement and a Guaranty. The Plaintiff does not make any allegations in the Complaint that are separate or unique from its claim for Breach of Contract. Accordingly, dismissal of the claim for Unjust Enrichment (Count III) is warranted. Based on the foregoing, the Plaintiff’s claim for Unjust Enrichment (Count III) is dismissed under MCR 2.116(C)(10).

VII Contractual Attorney Fees

Contractual attorney fees are a category of damages that must be pled and proven to be awarded. See, e.g., *Fleet Business Credit, LLC v Kraphol Ford Lincoln Mercury*, 274 Mich App 584, 598 (2007); *Pransky v Falcon Group, Inc.*, 311 Mich App 164 (2015). The Plaintiff

requests a total amount of attorney fees but provides no breakdown, let alone the basis for those fees, outside of the provision in the Franchise Agreement. A party “may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims . . . nor may he give issues cursory treatment with little or no citation of supporting authority.” *Houghton v Keller*, 256 Mich App 336, 339-340 (2003). Furthermore, the Plaintiff has the burden of proving its attorney fees, which would require an exhaustive analysis of many factors and jurisprudence, all of which is ignored by the Plaintiff. See, e.g., *In re Eddy’s Estate*, 354 Mich 334, 347 (1958) (“the burden of proof is on the bank claimant for attorney fees”); *Smith v Khouri*, 481 Mich 519, 528-529 (2008) (addressing many factors to award attorney fees). Because contractual attorney fees have not been substantiated or proven, the Plaintiff’s request is deemed abandoned in the briefing. *Houghton*. 256 Mich App at 339-340; *Mitcham v City of Detroit*, 355 Mich 182, 203 (1959). This remains an issue for trial.

ORDER

Based on the foregoing Opinion:

- (1) The Plaintiff’s Motion for Summary Disposition pursuant to MCR 2.116(C)(10) of its claims for Breach of Contract (Count I) and Breach of Guaranty (Count II) is GRANTED, as to liability only;

- (2) The Plaintiff's Motion for Summary Disposition pursuant to MCR 2.116(C)(10) of its claim for Unjust Enrichment (Count III) is DENIED and the claim for Unjust Enrichment (Count III) is hereby DISMISSED; and
- (3) The Plaintiff's request for attorney fees under the Franchise Agreement is denied without prejudice.

This is NOT a final order and DOES NOT close this case.

/s/ Michael Warren

HON. MICHAEL WARREN
CIRCUIT COURT JUDGE

