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

EQUITYEXPERTS.ORG, LLC,

*Plaintiff,*

Case No. 23-202297-CB
Hon. Victoria A. Valentine

v

STONEGATE POINTE ASSOCIATION,

*Defendant.*

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**OPINION AND ORDER REGARDING**
**THE STONEGATE POINTE ASSOCIATION'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(7) AND/OR (C)(10)**
**AND**
**EQUITYEXPERTS.ORG, LLC'S MOTION FOR SUMMARY DISPOSITION**

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

HONORABLE VICTORIA A. VALENTINE

This matter is before the Court on the EquityExperts.org, LLC's Motion for Summary Disposition and The Stonegate Pointe Association's Motion for Summary Disposition Pursuant to MCR 2.116(C)(7) and/or (C)(10). This Court has reviewed the pleadings filed by the parties and the motions, responses, and reply briefs. Oral argument was held on the above-entitled motions on September 10, 2024.

## OPINION

### I.

## Overview

EquityExperts.org, LLC ("Equity") is a collection agent headquartered in Oakland County, Michigan.[1] Stonegate Pointe Association (the "Association") is a condominium association that conducts business and has a registered office in Oakland County, Michigan.[2] In August 2008, Equity and the Association entered into a "Delinquent Condominium/Homeowners Association Dues Collection Agreement and Release" (the "2008 Agreement").[3] Pursuant to the terms of the 2008 Agreement, Equity agreed to pursue collection efforts against Association co-owners who were delinquent in paying their assessments on the Association's behalf.

### A. The Relevant Contractual Provisions

The 2008 Agreement provides:

> [Equity] shall not charge [the Association] for any costs of collection services performed according to the collection procedure and schedule set forth in Schedule A. Such Schedule A costs and procedures are authorized by [the Association] and [Equity] is directed that such cost reimbursement shall be charged to each Delinquent Unit Owner.[4]

There were two exceptions to this general rule wherein Equity is entitled to its collection costs from the Association directly, namely (1) where the Association sent Equity the file for collection and it was later determined that the co-owner's bank had a mortgage foreclosure pending on the co-owner's unit at the time the Association sent the file to Equity for collection, or (2) the Association instructed Equity to suspend the foreclosure process after Equity issued a Notice of Intent to Foreclosure.[5]

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[1] Complaint ¶ 1.
[2] *Id.* ¶ 2.
[3] The Stonegate Pointe Association's Motion for Summary Disposition Pursuant to MCR 2.116(C)(7) and/or (C)(10), Exhibit 1, 2008 Agreement.
[4] *Id.* ¶ 4.
[5] *Id.*

The 2008 Agreement also provides that:

> File return or representation termination for any reason, permitted only upon 30 days prior written notice by either party to the other, shall terminate and release the parties, with no further obligation, except for payment of allowances provided herein.[6]

If either party commences legal action to enforce the 2008 Agreement, the prevailing party is entitled to reasonable attorney's fees and other costs [7] Any amendments to the 2008 Agreement are required to be made in a writing signed by both parties.[8]

In 2016, Equity sent the Association a revised agreement. This agreement would have changed the procedures for payment upon termination of the contract to require the Association to pay Equity's "unpaid fees as set forth in Schedule A and B."[9] The agreement also provided that neither party would be entitled to an award of attorney's fees, regardless of which party was considered the prevailing party, if the parties litigated the terms of the agreement. The 2016 agreement was never signed by the Association.

**B. Termination of the 2008 Agreement**

On April 19, 2017, an unnamed email account at Equity sent an email to Karen Perreman of North Point Management (the Association's property manager) stating:

> We have determined either by your direct request, or by actions taken pursuant to our contractual agreement, that these files have been terminated with our office. We appreciate the opportunity to serve your community, however, we understand that Equity Experts provides a unique model which may not best fit the objectives of all community associations.
>
> We have ceased all collection activity on this file, and the attached invoice is payable within (30) days. If you still desire to have us perform all collection activities on your files, please contact our

[6] *Id.*
[7] *Id.* ¶ 6.
[8] *Id.* ¶ 8.
[9] The Stonegate Pointe Association's Response in Opposition to Plaintiff's Motion for Summary Disposition, Exhibit 5.

> office immediately. Otherwise, we thank you for the opportunity to serve this community and appreciate your professionalism in providing timely payment of the attached invoices within (30) days from the date of this letter to resolve these files under the terms of our mutual agreement.

On May 2, 2017, counsel for the Association sent Equity a letter claiming that Equity was in prior material breach of the contract with the Association, and requested that within 10 days of the date of the letter, Equity confirm that it will honor the terms of the 2008 Agreement or provide written notice that it intends to cancel the 2008 Agreement.[10] The Association further demanded that Equity either cure its breach of the 2008 Agreement within 10 days or otherwise acknowledge that it terminated its relationship with the Association as of April 19, 2017.[11]

In its August 25, 2017 letter, the Association stated that Equity "failed to respond to our May 2, 2017 letter and failed to cure its breach of contract with Stonegate Pointe."[12] In this letter, the Association stated that "notwithstanding the fact that Stonegate Pointe has given Equity Experts significant and substantive time to respond, Equity Experts has failed to respond and terminated its agreement with Stonegate Pointe."

Jacqueline Galofaro, the general counsel at Equity, described this period by saying "I believe there was some back-and-forth subsequent to that about us continuing to work accounts or handle payoffs for certain accounts or discussions on whether we were going to terminate."[13] Equity's internal records indicate that the "file[s] were terminated" on either April 13, 2017 or April 19, 2017.[14]

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[10] The Stonegate Pointe Association's Response in Opposition to Plaintiff's Motion for Summary Disposition, Exhibit 6.
[11] *Id.*
[12] EquityExperts.org, LLC's Motion for Summary Disposition, Exhibit 5, p 12-13.
[13] *Id.*, Exhibit 3, Deposition of Jaqueline Galofaro, p 57:11-22.
[14] The Stonegate Pointe Association's Motion for Summary Disposition Pursuant to MCR 2.116(C)(7) and/or (C)(10), Exhibit 5.

Equity filed the present action on August 25, 2023. The complaint included two causes of action: breach of contract (Count I) and alternatively, unjust enrichment (Count II). Both parties now move for summary disposition. The Association argues that the case is barred by the applicable statute of limitations under MCR 2.116(C)(7), and both sides argue that they are entitled to summary disposition under MCR 2.116(C)(10) because there are no genuine issues of material fact regarding the payments due under the 2008 Agreement.

## II.

## Standards of Review

### C. MCR 2.116(C)(7)

MCR 2.116(C)(7) permits summary disposition where the claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate or to litigate in a different forum, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action.

Under MCR 2.116(C)(7), a party is not required to submit any material in support of the motion; the motion can be evaluated on the pleadings alone. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). "The contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant." *Id*. "A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence." *Id*. "In reviewing the motion, a court must review all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict them." *Yono v Dep't of Transp (Yono I)*, 495 Mich 982, 982-983; 843 NW2d 923 (2014); see also MCR 2.116(G)(5). "If the movant properly supports his or her motion by presenting facts that, if left unrebutted, would show that there is no genuine issue of material fact

that the movant [is entitled to summary disposition], the burden shifts to the nonmoving party to present evidence that establishes a question of fact." *Yono v Dep't of Transp (On Remand) (Yono II)*, 306 Mich App 671, 679-680 (2014), rev'd on other grounds, 499 Mich 636 (2016). "If the trial court determines that there is a question of fact as to whether the movant [is entitled to summary disposition], the court must deny the motion." *Id.* at 680, citing *Dextrom v Wexford Co*, 287 Mich App 406, 431 (2010).

**D. 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.*

*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.

## III.

## Analysis

### A. The Breach of Contract Claim is Barred by the Statute of Limitations

The Association argues that the breach of contract claim is barred by the applicable statute of limitations.

*i. Statute of Limitations for Breach of Contract Actions*

In general, Michigan law requires a party to bring a breach of contract action within six years. MCL 600.5807(9). The period of limitations runs from the date the claim accrues. MCL 600.5827. A breach of contract claim accrues "when the breach occurs, i.e., when the promisor fails to perform under the contract." *Blazer Foods, Inc v Rest Properties, Inc*, 259 Mich App 241, 245–46; 673 NW2d 805 (2003). Thus, to determine when the claim accrues, the Court must examine the agreement from which the contractual obligations arise. *Scherer v Hellstrom*, 270 Mich App 458, 463; 716 NW2d 307 (2006).

*ii. The Claim Accrued in May 2017*

The Association, in its motion for summary disposition and supporting exhibits, has submitted evidence sufficient to show that the Plaintiff's claim accrued in May 2017 when the Association failed to pay the amount Equity claimed was due under the 2008 Agreement. Specifically, Equity's April 19, 2017 email to Karen Perreman stating that the "files have been terminated with our office" and demanding payment of the attached invoices within 30 days is evidence that Equity considered the contract terminated as of that date.[15] Further, Equity changed the status of the files in its internal database to reflect that all of these "file[s] were terminated" on April 13, 2017 or April 19, 2017.[16]

Accordingly, under the terms of the 2008 Agreement, "[f]ile return or representation termination for any reason, permitted only upon 30 days prior written notice by either party to the other, shall terminate and release the parties, with no further obligation, except for payment of allowances provided therein."[17] Thus, when Equity gave notice of termination of the agreement on April 19, 2017 and demanded payment within 30 days, the Association had until May 19, 2017

[15] The Stonegate Pointe Association's Motion for Summary Disposition pursuant to MCR 2.116(C)(7) and/or (C)(10), Exhibit 2.
[16] *Id.*, Exhibit 5.
[17] *Id.*, Exhibit 1.

to pay without being deemed "in breach" of the contract. Because the Association did not pay the amounts allegedly due under the contract within the 30-day window, the breach of contract claim accrued on May 20, 2017.

*iii. Equity Has Not Established a Genuine Issue of Material Fact Regarding Claim Accrual*

The Association, in its motion for summary disposition, met its initial burden to show that the breach of contract claim accrued over six years before the filing of this suit, and thus, the case is barred by the statute of limitations.

The burden then shifts to Equity to present evidence that there is a genuine issue of material fact as to whether the statute of limitations bars the breach of contract claim. They failed to do so. Specifically, Equity points to three pieces of evidence that it claims support the proposition that the 2008 Agreement was not terminated until August 25, which would mean that the statute of limitations did not run before the case was filed in August 2023.

- **The August 25, 2017 Letter from The Association to Equity**

Equity's complaint alleges that the Association "terminated its contract and demanded the suspension and termination of all files placed with Equity" on August 25, 2017.[18] However, this position is contrary to the text of the letter sent by the Association's counsel on August 25, 2017. Specifically, the letter states that "[n]otwithstanding the fact that Stonegate Pointe has given Equity Experts significant and substantive time to respond, Equity Experts has failed to respond and *terminated its agreement with Stonegate Pointe.*"[19] Nowhere in the letter does it say that *the Association* was electing to terminate the 2008 Agreement as alleged in the complaint. Rather, the letter makes clear that Equity had *already terminated the agreement* prior to the Association's

[18] Complaint ¶ 6.
[19] EquityExperts.org, LLC's Motion for Summary Disposition, Exhibit 5, pp 12-13 (emphasis added).

August 25, 2017 letter. Thus, this letter is insufficient to create a genuine issue of fact as to whether the contract was terminated in April 2017.

- **Equity's Post-Termination Collection Efforts**

In support of its motion for summary disposition and its response to the Association's motion, Equity has submitted several account histories of Stonegate Pointe Association files where Equity apparently collected fees from co-owners after April 19, 2017. In a file for the property located at 234 Alhambra, Equity appears to have collected payments until February 2021.[20] Similarly, in the file for 610 Lydia Lane, Equity collected payments until February 2021.[21] Additionally, in another file for the 234 Alhambra property, it appears that Equity accepted payments until September 2022.[22] Several other files reflect that Equity accepted payments on behalf of the Association until 2021.[23]

Equity argues that the Association terminated the 2008 Agreement with Equity on August 25, 2017. So clearly Equity continued to accept payments for *years* after the contract between the parties was terminated. Consequently, these files are not evidence of when the contract was terminated because not even Equity is arguing that there was a valid contract in place when Equity was apparently collecting money from the Association's co-owners in 2021 and 2022. Rather, the files are evidence that Equity continued to collect money from the Association's co-owners *long after the termination of the contract*. Consequently, these files are not relevant to *when* the contract was terminated, and they are insufficient to establish a genuine issue of material fact that the contract was terminated in April 2017.

[20] EquityExperts.org, LLC's Motion for Summary Disposition, Exhibit 5, pp 72-78.
[21] *Id.*, pp 79-84
[22] *Id.*, pp 85-89.
[23] *Id.,* pp 90-113; 116-128.

- **Jacqueline Galofaro's Deposition Testimony**

Equity relies heavily on the deposition testimony of its general counsel, Jacqueline Galofaro, who testified as Equity's corporate representative. Ms. Galofaro did not give clear testimony on when the agreement was terminated. She testified that "I believe there was some back-and-forth subsequent to [the April 19, 2017 email] about us continuing to work accounts or handle payoffs for certain accounts or discussions on whether we were going to terminate and how we were going to work out these invoices after this notice was received…"[24] She later testified that there were conversations between representatives of Equity and representatives of the Association, and that "we finally decided we were in different positions, and we weren't going to work something out, and it was like October of '17, something like that."[25]

Thus, the only evidence that Equity can rely on is the deposition testimony of its general counsel saying that negotiations were ongoing after Equity sent the termination email in April 2017. However, the Michigan Supreme Court has held that self-serving deposition testimony which is contradicted by the clear and unambiguous documentary evidence in the case is insufficient to establish a genuine issue of material fact. See *Fuhr v Trinity Health Corp*, 495 Mich 869; 837 NW2d 275 (2013) (adopting the reasoning of the dissenting opinion in *Fuhr v Trinity Health Corp*, unpublished opinion per curiam of the Court of Appeals, issued April 16, 2013 (Docket No. 309877), which concluded that the "plaintiff failed to demonstrate a genuine issue of material fact because the only direct evidence of [his claim] was plaintiff's self-serving deposition

[24] EquityExperts.org, LLC's Motion for Summary Disposition, Exhibit 3, p 57:11-22.
[25] *Id.*, p 62:15-18.

testimony.... This evidence does not create a genuine issue of material fact because it is blatantly contradicted by the record so that no reasonable jury could believe it.").[26]

The April 19, 2017 email is clear that Equity intended to terminate the contract and collect the payments it was allegedly owed under the 2008 Agreement.[27] Equity then switched its internal files to reflect that the contract with the Association was terminated as of April 2017.[28] The termination was effectuated pursuant to paragraph 4 of the 2008 Agreement. Thereafter, there was never a written agreement to toll or rescind the April 2017 termination and/or reinstate the Agreement. Therefore, the deposition testimony of Equity's general counsel which was taken over seven years after the events at issue is not sufficient to create a genuine issue of material fact where the documentary evidence in the record is clear that Equity terminated the 2008 Agreement in April 2017 pursuant to the plain language of the Agreement.[29]

Consequently, summary disposition in favor of the Association is warranted pursuant to MCR 2.116(C)(7).

**B. The Unjust Enrichment Claim is Also Barred by the Statute of Limitations**

In addition to the breach of contract claim discussed above, Equity also includes a claim for unjust enrichment. A claim for unjust enrichment is the equitable counterpart of a legal claim for breach of contract. *AFT Michigan v Michigan*, 303 Mich App 651, 677 (2014). Our Supreme Court "has long recognized that statutes of limitation may apply by analogy to equitable claims." *Taxpayers Allied for Constitutional Taxation v Wayne Co*, 450 Mich 119, 127 n 9 (1995).

[26] See *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich. 359, 369–370; 817 NW2d 504 (2012) (explaining that an order issued by the Michigan Supreme Court that adopts the dissenting opinion in the Court of Appeals constitutes binding precedent).
[27] The Stonegate Pointe Association's Motion for Summary Disposition Pursuant to MCR 2.116(C)(7) and/or (C)(10), Exhibit 2.
[28] *Id.*, Exhibit 5.
[29] Because Equity's breach of contract claim is barred by the statute of limitations, the Court need not reach the merits of the claim.

Similarly, MCL 600.5815 provides that "[t]he prescribed period of limitations shall apply equally to all actions whether equitable or legal relief is sought." If this were not so, "a plaintiff [could] dodge the bar set up by a limitations statute simply by resorting to an alternate form of relief provided by equity." *Taxpayers*, 450 Mich at 127 n 9 (quotations and citations omitted). Additionally, MCL 600.5813 provides that "[a]ll other personal actions shall be commenced within the period of 6 years after the claims accrue and not afterwards unless a different period is stated in the statutes."

Consequently, the six-year statute of limitations also applies to Equity's unjust enrichment claim. Pursuant to MCL 600.5827, the claim accrues "at the time the wrong upon which the claim is based was done." Here, the wrong underlying Equity's unjust enrichment claim is the Association's refusal to pay for services Equity provided to the Association after Equity made a demand in April 2017. Consequently, the claim accrued in May 2017 when the Association did not send payment within thirty days as demanded in Equity's April 2017 email. Accordingly, the unjust enrichment claim is also barred by the statute of limitations, and the Association is entitled to summary disposition pursuant to MCR 2.116(C)(7).

## ORDER

Based upon the foregoing Opinion:

**IT IS HEREBY ORDERED** that the Association's Motion for Summary Disposition is GRANTED as to Count I (Breach of Contract).

**IT IS FURTHER ORDERED** that the Association's Motion for Summary Disposition is GRANTED as to Count II (Unjust Enrichment).

**This Order resolves the last pending matter and closes the case.**


HON. VICTORIA A. VALENTINE
BUSINESS COURT JUDGE

Dated: 9/11/24