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

HANTZ CAPITAL FUNDING, LLC,

Plaintiff,

Case No. 2019-174715-CB
v **Hon. Michael Warren**

MICHIGAN INTERLOCK, LLC, MICHELE ILENE COMPTON, ALCOHOL DETECTION SYSTEMS, LLC, DEI HOLDINGS, INC. d/b/a DIRECTED ELECTRONICS, INC.

Defendants.

OPINION AND ORDER GRANTING
MOTION FOR PARTIAL SUMMARY DISPOSITION
AGAINST DEFENDANT MICHIGAN INTERLOCK, LLC

At a session of said Court in the
County of Oakland, State of Michigan
May 12, 2021

PRESENT: HON MICHAEL WARREN

OPINION

I
Overview

The present cause of action arises out of a Master Lease and Security Agreement (the "Agreement") dated July 22, 2016 which Hantz Capital Funding, LLC ("Hantz") entered with Michigan Interlock, LLC ("MIL") under which Hantz agreed to purchase

284 Breath Alcohol Ignition Interlock Devices and then lease those same units to MIL in exchange for MIL making sixty monthly payments. MIL ceased making monthly payments after March 1, 2018.

In its Complaint, Hantz alleges claims of claim and delivery/replevin (Count I), statutory conversion (Count II), and breach of contract (Count III) against MIL.[1]

Before the Court is a Motion for Partial Summary Disposition against MIL under MCR 2.116(C)(9) and (10) as to Count III of the Complaint for breach of contract. Oral argument is dispensed as it would not assist the Court in its decision-making process.[2]

At stake in this Motion is:

- Whether summary disposition against MIL of Count III of the Complaint for breach of contract is warranted under MCR 2.116(C)(9) where MIL has denied material allegations of the Complaint? Because the answer is "no," the Motion for Partial Summary Disposition under MCR 2.116(C)(9) is denied.

- Whether summary disposition against MIL of Count III of the Complaint for breach of contract is warranted under MCR 2.116(C)(10) where MIL has abandoned its affirmative defenses of impossibility and frustration of purpose

[1] Pursuant to a Lease Purchase and Sale Agreement, and in full and final settlement of this cause of action, Hantz sold, transferred, conveyed and assigned all of its rights, title, and interest in the Agreement and its claims to Alcohol Detection Systems, LLC ("ADS"). By way of the March 12, 2021 Order for Substitution of Parties, "Defendants Alcohol Detection Systems, LLC and DEI Holdings, Inc. are substituted for Hantz Capital Funding, LLC as Plaintiff pursuant to MCR 2.202(B)."

[2] 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.

and the doctrines of equitable estoppel and set-off do not apply? Because MIL has failed to set forth evidence to create a genuine issue of material fact for trial, the answer is "yes" and the Motion for Partial Summary Disposition under MCR 2.116(C)(10) is granted.

II
The Agreement and the Complaint

The parties agree that Hantz and MIL executed the Agreement dated July 22, 2016. The purpose of the Agreement is reflected in the Recital:

RECITAL

> The purpose of this agreement is to provide for the lease of certain equipment. Lessee is in the business of leasing alcohol ignition interlock devices to individuals. Lessee does not have sufficient funds to purchase such devices. Lessee will select goods it wishes Lessor to purchase and lease to it.
>
> [Agreement, p 1.]

The Agreement reflects that the "term of each Proposal [for leased goods] shall be 5 years." [Agreement, p 1.]

The Agreement identifies the binding effect of the lease and the governing law as follows:

> 19. *Binding Effect*. This lease shall be binding upon and shall insure to the benefit of Lessor and Lessee and their respective heirs, administrators, successors, and assigns.
>
> * * *

> 21. *Governing Law*. This lease agreement shall be subject to and governed by the laws of the state of Michigan, and the parties consent to jurisdiction of the Michigan courts over this agreement and over the parties in any proceeding to enforce this agreement.
>
> [Agreement, p 4.]

The Proposal under the Agreement reflects that the first payment date is September 1, 2016 and the last payment date is August 1, 2021, and the monthly payment amount is $4,757.99. [Proposal.] MIL admits that it agreed to make monthly payments of $4,757.99 to Hantz for a period of sixty months. [Answer, p 3.]

The parties agree that MIL ceased making monthly payments to Hantz after March 1, 2018. [Answer, pp 4, 10]. In its Complaint, Hantz alleges that MIL breached the Agreement by ceasing its monthly payments:

> 43. MIL's agreement to pay Hantz a monthly amount of $4,757.99 in exchange for Hantz's agreement to purchase 284 BAIIDs for $200,000 constitutes a valid and binding contract between the parties.
>
> 44. MIL ceased making monthly payments on the Master Agreement.
>
> 45. MIL's ceasing of monthly payments constitutes a material breach of the contract.
>
> 46. As a proximate result, Hantz has suffered damages, including but not limited to $151,912.11, the amount of money due and owing under the Master Agreement.
>
> [Complaint, ¶43-¶46.]

During December 2020, Hantz sold, transferred, conveyed and assigned to ADS all of its rights, title and interest in and to the Agreement, including Hantz' claims in this cause of action. [Lease Purchase and Sale Agreement.]

III
Arguments

The Motion for Partial Summary Disposition seeks relief against MIL pursuant to MCR 2.116(C)(9) and (10). The Motion argues summary disposition is appropriate under MCR 2.116(C)(9) because MIL has no viable defenses to Hantz' claim for breach of contract where it admits it failed to pay as promised. The Motion further argues that summary disposition is appropriate under MCR 2.116(C)(10) because there is no genuine issue of material fact that MIL entered into the Agreement, promised to make sixty monthly payments and failed to make those payments as promised after March 1, 2018. The Motion seeks judgment against MIL in the amount of $194,129.84.

In response, MIL seeks summary disposition in its favor pursuant to MCR 2.116(I)(2) because it argues this Court lacks jurisdiction where a forum selection clause in a Distributor Agreement between ADS and MIL requires that disputes between ADS and MIL be litigated in the state of Maryland. MIL further argues that summary disposition in favor of ADS and DEI is improper because there is insufficient evidence that ADS and DEI own the debt and questions of fact exist regarding whether ADS and/or DEI caused MIL to breach the Agreement. Finally, MIL argues that the Motion must be denied under the doctrine of equitable estoppel.

IV
Standard 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 (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 (1996).

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 (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*, 461 Mich at 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, supra* 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." *Quinto*, 451 Mich 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]).

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.

C
MCR 2.116(I)(2)

MCR 2.116(I)(2) provides that "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party."

V
Summary disposition under MCR 2.116(C)(9) is improper because MIL denied material allegations in the Complaint

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, 48 (1990); *Fancy v Egrin*, 177 Mich App 714, 724 (1989); *Heligman v Otto*, 161 Mich App 735, 738 (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.

In the instant case, MIL has categorically denied material allegations of Count III of the Complaint for breach of contract and has asserted several affirmative defenses.

Consequently, granting summary disposition against MIL of Count III of the Complaint for breach of contract pursuant to MCR 2.116(C)(9) is improper.

VI
Summary disposition is warranted because there is no genuine issue of material fact that MIL breached the Agreement resulting in contract damages of $ 194,129.84, this Court has jurisdiction, and the MIL's other defenses are meritless

A
Contract Principles

A party claiming a breach of contract "must establish by a preponderance of the evidence that (1) there was a contract, (2) which the other party breached, and (3) thereby resulting in damages to the party claiming breach of contract." *Miller-Davis Co v Ahrens Constr, Inc,* 495 Mich 161, 178 (2014).

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). If the language of the contract is clear and unambiguous, it must be enforced as written. *Phillips v Homer*, 480 Mich 19, 24 (2008).

A contract is unambiguous when it fairly admits of but one interpretation. *Holmes v Holmes*, 281 Mich App 575, 594 (2008). Courts must enforce unambiguous contracts as written. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 512 n 7 (2007). "If the contract

language is clear and unambiguous, its meaning is a question of law." *Butler v Wayne Co*, 289 Mich App 664, 671-672 (2010) (citation and internal quotations omitted).

B
There is no genuine issue of material fact that MIL breached the Agreement resulting in damages of $194,129.84

The uncontroverted evidence presented to the Court establishes beyond dispute that MIL entered into the Agreement with Hantz, MIL agreed to make sixty monthly payments to Hantz through August 2021, Hantz fully performed under the Agreement and MIL failed to perform as promised where it ceased making payments after March 1, 2018. Under MCR 2.116(G)(4), the party opposing a motion for summary disposition is required to "set forth specific facts showing that there is a genuine issue for trial" and if the party fails to do so, "judgment, if appropriate, shall be entered against him or her" (emphasis added). "If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted." *Smith v Globe Life Ins Co*, 460 Mich 446, 455; (1999) (internal quotation omitted).

Given the lack of evidence challenging the Motion, there is no triable issue of fact regarding MIL's breach of the Agreement and indebtedness in the amount of $194,129.84.

C
MIL consented to the jurisdiction of Michigan courts in any proceeding to enforce the Agreement

The Agreement reflects that MIL consented to the jurisdiction of Michigan courts to enforce the Agreement:

> 21. *Governing Law*. This lease agreement shall be subject to and governed by the laws of the state of Michigan, and the parties consent to jurisdiction of the Michigan courts over this agreement and over the parties in any proceeding to enforce this agreement.
>
> [Agreement, p 4.]

In a flawed attempt to seek summary disposition in its own favor under MCR 2.116(I)(2) MIL sets forth a lengthy argument regarding a mandatory forum selection clause in a Distributor Agreement between ADS and MIL. The present cause of action arises out of the Agreement entered by Hantz and MIL, not a Distributor Agreement. The Distributor Agreement is irrelevant to the pending Motion and is not properly before this Court. This is nothing more than a poorly executed and unconvincing sleight of hand - the trick has been exposed.

C
There is no question of material fact that ADS and DEI own MIL's indebtedness under the Agreement

An assignment is a contract governed by the legal rules applicable to the construction and interpretation of other contracts. See generally, *Burkhardt v Bailey*, 260 Mich App 636, 652-653 (2004).

By way of a Lease Purchase and Sale Agreement executed in December 2020, Hantz sold, transferred, conveyed and assigned to ADS all of its rights, title and interest in and to the Agreement, including Hantz' claims in this cause of action. [Lease Purchase and Sale Agreement.]

The Lease and Sale Agreement states, in pertinent part, as follows:

> WHEREAS, MIL, according to Hantz, has breached its obligations under the Lease Agreement by failing to make payments thereunder as and when due (the "Known Lease Default");
>
> WHEREAS, Hantz commenced a lawsuit in the Circuit Court of the State of Michigan for Oakland County (the "Court"), identified as Case Number 2019-174715-CB (the "Lawsuit"), alleging that Defendants [ADS and DEI] are in possession of the BAIIDS leased under the Lease Agreement and seeking replevin of the BAIIDs (sic) leased under the Lease Agreement, as well as money damages;
>
> WHEREAS, Defendants denied liability in the Lawsuit but desired to resolve the Lawsuit under the terms of this Agreement; and WHEREAS, Hantz offered to sell, and ADS agreed to purchase, subject to the terms and conditions of this Agreement, Hantz's rights existing under the Lease Agreement, including but not limited to Hantz's claims in the Lawsuit, or relating to the BAIIDs.
>
> NOW, THEREFORE, in consideration of the payments and promises made by and from ADS in favor of Hantz, and in consideration of Hantz conveying to ADS its rights as to the Lease Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Defendants and Hantz agree as follows:
>
> **AGREEMENT**
>
> 1. Purchase and Sale. Subject to the terms and conditions set forth herein, Hantz affirms it sold, transferred, conveyed, and assigned to ADS all of Hantz's rights, title, and interest in and to the Lease Agreement

(the "Conveyance"). In consideration of the Conveyance, ADS, in conjunction with its insurer, shall pay to Hantz, in cash or by wire transfer, the sum of [redacted] legal United States tender (the "Settlement Payment"). Hantz warrants and defends the title to the Lease Agreement unto ADS, its respective successors and assigns, forever, against the lawful claims and demands of all persons other than MIL claiming by, from, or under Hantz.

[Lease Purchase and Sale Agreement, pp 1-2.]

Hantz represented and warranted to ADS that:

i. Hantz is the owner of the Lease Agreement and has not sold, transferred, conveyed, or otherwise altered the ownership rights of the Lease Agreement since it was first executed except for the Conveyance to ADS reflected in this Agreement;

ii. The Lease Agreement is transferred free and clear of any liens, encumbrances or claims of Hantz or any person claiming to be by, through or under Hantz; and

iii. Hantz has not done or committed or willingly suffered to be done or committed any act, matter, or thing that would cause the Lease Agreement to be charged or encumbered in any matter[;]

iv. The full payoff amount owed by MIL under the Lease Agreement is $194,129.84 as of October 12, 2020.

[Lease and Purchase Agreement, p 2.]

The Lease and Purchase Agreement reflects clear intent by Hantz to sell, transfer, convey and assign to ADS all of Hantz's rights, title, and interest in and to the Agreement.

Hantz' assignment is further reflected in the March 12, 2021 Stipulation for Substitution of Parties:

> **WHEREAS** Hantz Capital Funding, LLC ("Hantz") and Defendant Michigan Interlock, LLC ("MIL") entered into a Master Lease and Security Agreement (the "Agreement") for certain equipment on July 22, 2016.
>
> **WHEREAS** Hantz filed breach of contract, claim and delivery, and statutory conversion claims against MIL on June 19, 2019. In addition, Hantz brought claims against Defendants Alcohol Detection Systems, LLC ("ADS") and DEI Holdings, Inc. ("DEI") for claim and delivery, statutory conversion, and unjust enrichment.
>
> **WHEREAS** Hantz and Defendants ADS and DEI reached a settlement, and then later entered into a written Confidential Settlement Agreement on December 18, 2020. Pursuant to the Settlement Agreement, Hantz assigned all of its rights, title, and interest in this case and in the Master Lease and Security Agreement to Defendants ADS and DEI, as further stated in the Settlement Agreement.
>
> **NOW THEREFORE IT IS STIPULATED** by and between the parties, through their respective counsel, that ADS and DEI shall substitute for Hantz as the Plaintiff in this lawsuit pursuant to MCR 2.202(B), which provides "If there is a change or transfer of interest, the action may be continued by or against the original party in his or her original capacity…"
>
> [March 12, 2021 Stipulation for Substitution of Parties.]

Pursuant to that stipulation, the Court entered the March 12, 2021 Order for Substitution of Parties and ordered that "Defendants Alcohol Detection Systems, LLC and DEI Holdings, Inc. are substituted for Hantz Capital Funding, LLC as Plaintiff pursuant to MCR 2.202(B)."

MIL's argument that there is insufficient proof that ADS and DEI own MIL's indebtedness is not persuasive.

In addition, because ADS was not sold, transferred, conveyed, or assigned Hantz's rights, title, and interest in and to the Agreement until December 2020, it is factually

impossible for ADS to have caused MIL to default on its contractual obligations under the Agreement. After all, MIL's default occurred years prior - when MIL ceased making monthly payments after March 1, 2018. Indeed, MIL acknowledges that "ADS and DEI were not parties to the Hantz contract when the default took place. . . ." [Response, p 14.]

D
The unchallenged argument regarding Michigan Interlock's affirmative defense of impossibility and frustration of purpose is well supported and any contrary argument is deemed abandoned

"The doctrines of frustration of purpose and supervening impossibility/impracticability are related excuses for nonperformance of contractual obligations and are governed by similar principles." *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133 (2003).

In response to the Motion, MIL has neither challenged nor addressed ADS and DEI's argument that the affirmative defenses of impossibility and frustration of purpose fail as a matter of law. As a result, these defenses are deemed abandoned. After all, "[t]rial 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).

E
The doctrine of equitable estoppel is inapplicable

Equitable estoppel is a doctrine that precludes a party from asserting or denying the existence of a particular fact. *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 140-141 (1999). "Equitable estoppel arises where a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, the other party justifiably relies and acts on that belief, and the other party will be prejudiced if the first party is allowed to deny the existence of those facts." *Van v Zahorik*, 460 Mich 320, 335 (1999). Michigan law has long recognized that an estoppel can occur by silence where the silent party had a duty or obligation to speak or take action. *Lisee v Secretary of State*, 388 Mich 32, 46 (1972); *Conagra*, 237 Mich 109.

MIL has failed to sufficiently establish that the doctrine of equitable estoppel should bar enforcement of the Agreement which required MIL to make sixty monthly payments through August 2021 and which MIL failed to do after March 1, 2018. MIL's arguments do not allege that ADS made representations to MIL regarding the enforceability of the Agreement before the Court. Instead, MIL argues that representations were made by ADS to MIL regarding product warranties for the Breath Alcohol Ignition Interlock Devices financed by the Agreement. That issue is being litigated in Maryland between MIL and ADS. This no different than the poorly executed sleight of hand of trying to apply to this case to the selection of forum provision in the

Distributor Agreement between MLI and ADS. Any warranty issue is irrelevant to the rights acquired by ADS under the Agreement in this case.

F
The doctrine of set-off is inapplicable

"Setoff is a legal or equitable remedy that may occur when two entities that owe money to each other apply their mutual debts against each other." *Walker v Farmers Ins Exch*, 226 Mich App 75, 79 (1997). "A set-off is a counter demand which a defendant holds against a plaintiff, arising out of a transaction extrinsic of plaintiff's cause of action, the object of which is to liquidate the whole or a part of plaintiff's demand, according to the amount of the set-off, and like the modern recoupment is in the nature of a cross action." *Roemelmeyer v Roemelmeyer's Estate*, 219 Mich 322, 330-331 (1922) (quotation marks and citation omitted).

MIL has not identified any debt owed to it by ADS and DEI. MIL is not entitled to a set-off for the claims it has raised against ADS and DEI in the state of Maryland that have yet to be adjudicated. What exactly is to be offset is a bewildering mystery. This Court need not divine or conjure argument, or scour the record, to make MIL's argument for it. See, e.g., *Walters,* 481 Mich at 388; *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)).

ORDER

Based on the foregoing Opinion, the Motion for Partial Summary Disposition against Defendant Michigan Interlock, LLC is GRANTED solely under MCR 2.116(C)(10).[3]

/s/Michael Warren
_____/
HON. MICHAEL WARREN
CIRCUIT COURT JUDGE

[3] Although the Plaintiff prayed for a judgment, because the Plaintiff did not indicate whether it would still be seeking relief under Counts I and II (thereby keeping the case open), it must submit a proposed judgment in light of this ruling pursuant to MCR 2.602(B)(7).