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

JONATHAN B. FRANK, P.C.,
a Michigan professional corporation,

Plaintiff, **Case No. 21-189453-CB**

Hon. Michael Warren

v

SMARTWAY AUTO, INC.,
a Michigan corporation,

Defendant.

OPINION AND ORDER
DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY DISPOSITION UNDER MCR 2.116(C)(10) &
GRANTING SMARTWAY'S MOTION FOR PARTIAL SUMMARY DISPOSITION AS TO COUNT I-ALTER EGO

At a session of said Court, held in the
County of Oakland, State of Michigan
September 20, 2022

PRESENT: HON. MICHAEL WARREN

OPINION

I
Overview

The instant action is before this Court on the Plaintiff's Motion for Partial Summary Disposition under MCR 2.116(C)(10) and SmartWay's Motion for Partial

Summary Disposition as to Count I-Alter Ego. Having reviewed the Motions, Responses,[1] and Replies, and otherwise being fully informed in the premises, oral argument is dispensed as it would not assist the Court in its decision-making process.[2]

At stake in these motions is whether the Plaintiff is impermissibly seeking to enforce a consent judgment in a "proceeding supplementary to judgment"? Because under these circumstances this new case is a permissible attempt to pierce the corporate veil, the answer is "no."

Also at stake is whether the Plaintiff has supported a claim for piercing the corporate veil based upon the Defendant's alleged status as an "undisclosed owner/investor" or as a creditor/lender when the Plaintiff fails to cite authority to support this theory? Because the argument is deemed abandoned, the claim is dismissed.

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[1] The Defendant's Amended Response to the Plaintiff's Motion for Partial Summary Disposition on Count I (Alter Ego) was accepted for filing on February 23, 2022. The Plaintiff did not file a separate response to Defendant's Motion for Partial Summary Disposition on Count I. Rather, the Plaintiff merely stated, in its response to the Defendant's separate Motion for Partial Summary Disposition as to Count II, that "[f]or the reasons set forth in the briefs supporting Plaintiff's motion for summary disposition of Count I, Defendant is liable on the *alter ego* claim. There is no doubt that the underlying judgment Defendants, Karet Projects, LLC and Jewel Island, LLC, were sham entities with no structure, capitalization or respect for corporate formalities." Pl's Response filed May 4, 2022, p 1.

[2] MCR 2.119(E)(3) provides court 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 sets 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.

II
Procedural Posture

The Consent Judgment

On January 13, 2021 a Consent Judgment (the "Judgment") in the amount of $200,000 was entered by this Court in Case No. 20-183862-CB in favor of the Plaintiff Jonathan B. Frank, P.C. ("Frank") and against Thomas LeFevre ("LeFevre"), Jewel Island, LLC ("Jewel Island"), and Karet Projects, ("Karet"), jointly and severally.[3] The Judgment arose out of Frank's claim for unpaid legal bills for legal services performed on behalf of Lefevre, Jewel Island, and Karet beginning in 2017.[4]

Jewel Island operated a marina in Harrison Township and Karet operated a restaurant at the Partridge Creek Mall. LeFevre signed the Judgment "personally, and as Manager of Jewel Island and Karet."[5] LeFevre signed the Consent Judgment "because [he] was not collectible, and neither are Jewel Island, LLC and Karet Projects, LLC and I did not want to spend money on an attorney challenging the lawsuit."[6]

Even though he signed the Consent Judgment "personally, and as Manager of Jewel Island and Karet," LeFevre testified in a deposition that he was not sure of the identities of the members of either Jewel Island or Karet.[7] Articles of Organization for

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[3] Pl's Motion, Exh C, Consent Judgment.

[4] *See* Case No. 20-183862-CB, Complaint. Pl's Motion, Exh A, Jonathan Frank Affidavit.

[5] Pl's Motion, Exh C, Consent Judgment.

[6] *Id.*, Exh E, LeFevre Affidavit.

[7] *Id.,* Exh D, Lefevre 4/6/21 Deposition, p 18; Def's Response, Exh YY, Lefevre 2/11/22 Deposition, p 15.

Jewel Island filed on November 28, 2017 with the State of Michigan are signed by Jerome Moffit ("Moffit") as President and list Moffit as the resident agent.[8] Karet was organized under the laws of Wyoming in January 2015 and a "Foreign LLC Annual Statement" filed with the State of Michigan for 2018 lists LeFevre as the Resident Agent and is signed by Moffit as a Member.[9]

The Promissory Notes

A January 1, 2017 Promissory Note between Jewel Island (as "Borrower") and SmartWay Auto, Inc. ("SmartWay") (as "Creditor") for the amount of $250,000 (the "Jewel Island Note") was purportedly signed by LeFevre as a Managing Member.[10] On September 7, 2017, Karet (as "Borrower") and SmartWay (as "Creditor") executed a Promissory Note for the amount of $1,500,000 (the "Karet Note").[11] The Karet Note was purportedly signed by LeFevre as Managing Member of Karet.[12]

Leonard Nadolski ("Nadolski") is the president and sole owner of SmartWay.[13] LeFevre and Nadolski allegedly have a longstanding business relationship including a

[8] Def's Motion, Exh A, Articles of Organization.

[9] *Id.*, Exh B, "MI/Foreign LLC Annual Statement."

[10] *Id.* at Exh OO, January 1, 2017, Promissory Note. LeFevre stated that he did not recognize the signature on the January 1, 2017, note as his. Def's Motion, Exh YY, LeFevre 2/11/22 Dep, p 43.

[11] *Id.* at Exh PP, September 7, 2017, Promissory Note.

[12] *Id.* LeFevre acknowledged that the signature on the Karet Note appeared to be his. Def's Res, Exh YY, LeFevre 2/11/22 Dep, p 58 LeFevre's signature as Managing Member is also on a security agreement for the Karet Loan. *See* Def's Res, Exh PP, Security Agreement dated September 7, 2017. There does not appear to be a security agreement for the Jewel Island loan.

[13] Pl's Motion, Exh B, Nadolski Dep, p 19.

real estate development in Florida and a marina in St. Clair Shores.[14] SmartWay's major business is making auto loans to purchasers of autos from affiliated dealerships.[15] Kevin Travers ("Travers"), vice president of SmartWay testified in his deposition that, although the predominate business of SmartWay is auto loans, SmartWay has "done some financing over the years for different partnerships we may have had with different companies we've run into."[16]

The Current Action

Frank filed the instant action seeking to recover the amount of the Consent Judgment from SmartWay. Frank never sought garnishment on the bank accounts or sought to seize the property of LeFevre, Jewel Island, or Karet.[17]

Frank alleges that SmartWay is liable for the amount of the Judgment under an "alter ego" theory (Count I). Frank alleges that Jewel Island and Karet are "sham companies" and that SmartWay, as either an "undisclosed investor and/or owner" or as creditor/lender of Jewel Island and/or Karet, is responsible for the Judgment amount.[18] Both Frank and SmartWay move for summary disposition under MCR 2.116(C)(10).

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[14] First Amended Complaint, ¶ 7.

[15] Pl's Motion, Exh H, Travers Dep, pp 7-8.

[16] Travers went on to state: "[w]e've done some equipment financing. We've even done some residential mortgage financing. Not a lot of that. Predominately its mostly all auto loans for the most part." Pl's Motion, Exh H, Travers' Dep, p 7.

[17] Def's Motion, Exh XX, Jonathan Frank Dep, pp 145-146.

[18] Frank also seeks, under the Michigan Uniform Voidable Transactions Act (MUVTA), MCL 566.31 *et seq.* to avoid transfers made from Jewel Island to SmartWay (Count II). SmartWay has filed a separate motion

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

for summary disposition on Count II and that motion is addressed in a separate opinion and order issued by this Court.

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.

IV
The Arguments

SmartWay argues that Frank's claim for a remedy under an Alter Ego/Piercing the Corporate Veil theory is not tenable in this case because this case is a "proceeding supplementary to initial judgment." Frank counters that this is not a "proceeding supplementary to initial judgment" but a new case properly before this Court.

Frank argues that the "corporate veil" of Jewel Island and Karet should be pierced to hold SmartWay responsible for payment on the Consent Judgment because SmartWay, either as an "undisclosed owner/investor" or a creditor, operated the entities. SmartWay argues that such a claim cannot be supported under existing Michigan law.

V
The Law: Alter Ego/Piercing the Corporate Veil

"Corporations, even when owned by a sole shareholder, are separate entities under the law." *Diez v Davey*, 307 Mich App 366, 381 (2014), citing *Lakeview Commons Ltd Partnership v Empower Yourself, LLC*, 290 Mich App 503, 509 (2010). Additionally, "Michigan law presumes that, absent some abuse of corporate form, parent and subsidiary corporations are separate and distinct entities." *Seasword v Hilti, Inc*, 449 Mich 542, 547-548 (1995).

The presumption respecting a corporation as a separate and distinct entity is often referred to as the "corporate veil." *Id.* at 548. The "'corporate veil' may be pierced only where an otherwise separate corporate existence has been used to 'subvert justice or cause a result that [is] contrary to some other clearly overriding public policy.'"[19] *Id.* quoting *Wells v Firestone Tire and Rubber Co*, 421 Mich 641, 650 (1984). "[T]he fiction of a distinct corporate entity separate from the stockholders is a convenience introduced in the law to subserve the ends of justice. When this fiction is invoked to subvert justice, it is ignored by the courts." *Wells*, 421 Mich at 650. "[P]iercing the veil of a corporate entity is an equitable remedy sparingly invoked to cure certain injustices that would otherwise go unredressed . . . ." *Gallagher v Persha*, 315 Mich App 647, 654 (2016).

[19] Count I of the Second Amended Complaint is entitled "Alter Ego." The allegations in Count I and the arguments made by the parties in their motions discuss the rules for piercing the corporate veil under Michigan law. Michigan case law appears to treat alter ego claims as those seeking to pierce the corporate veil. *See RDM Holdings, LTD v Continental Plastics, Co,* 281 Mich App 678, 705 (2008).

The Michigan Court of Appeals has articulated a three-pronged standard for piercing the corporate veil:

> For the corporate veil to be pierced, the corporate entity must be a mere instrumentality of another individual or entity. Further, the corporate entity must have been used to commit a wrong or fraud. Additionally, and finally, there must have been an unjust injury or loss to the plaintiff. There is no single rule delineating when a corporate entity should be disregarded, and the facts are to be assessed in light of a corporation's economic justification to determine is the corporate form has been abused. [*Rymal v Baergen*, 262 Mich App 274, 293-294 (2004) citing *Foodland Distrib v Al-Naimi*, 220 Mich App 453, 457 (1996).]

VI
This Case is Not a "Proceeding Supplementary to Judgment" and Frank is Permitted to File a New Case Seeking to Enforce the Judgment against SmartWay

SmartWay first argues that Frank's claim for a remedy under an Alter Ego/Piercing the Corporate Veil theory is not available in this case because this case is a "proceeding supplementary to initial judgment." In support of this argument, SmartWay relies on *Green v Ziegelman*, 282 Mich App 292 (2009) (*Green I*).

In *Green I,* the plaintiffs brought suit against two corporations and the sole shareholder of both. A judgment was entered against only one of the corporations. *Id.* at 296-297. Plaintiffs subsequently brought a motion under MCL 600.6101 *et seq.,* and MCR 2.621, the statute and court rule governing "proceedings supplementary to judgment" seeking financial information on the corporation. *Id.* at 297. Based upon the information it received, plaintiffs filed a motion to pierce the corporate veil and impose personal liability on the shareholder and the trial court granted the motion. *Id.* at 297-298.

The Court of Appeals vacated the judgment against the shareholder finding that the purpose of the proceedings supplemental to judgment is to "subject any nonexempt assets of the *judgment debtor* to the satisfaction of any judgment against the *judgment debtor*." *Id.* at 303 (emphasis in original). The court noted that the shareholder was not a judgment debtor and that the trial court improperly used "a proceeding *supplementary to judgment* to enter an additional judgment against a party not previously subject to a judgment on the claim at issue." *Id.* at 303-304 (emphasis in original). The court concluded that MCR 2.621 and [MCL 6101 *et seq.*] do not provide any authority for such a ruling in the context of piercing the corporate veil." *Id.* at 304. The court in *Green I* declined to answer the question of whether a plaintiff could "file a new and separate action against [the shareholder], outside of [MCL 600.6101 *et seq.*], under a corporate veil piercing theory . . . ." *Id.* at 305.

The question left open in *Green I* was later answered in *Gallagher v Persha*, 315 Mich App 647 (2016). In *Gallagher*, the plaintiffs brought a breach of contract claim and received a judgment against a corporation. Plaintiffs subsequently brought a separate cause of action against the sole shareholder of the corporation seeking to pierce the corporate veil. The trial court dismissed the piercing the corporate veil claim finding that it was a remedy and not a separate cause of action. *Id.* at 652-653.

The Court of Appeals noted that piecing the veil of a corporate entity is a remedy, not a separate cause of action. *Id.* at 654. However, the Court went on to hold:

> But this case is not controlled by that principle, for what is at issue here is how a judgment-plaintiff procedurally pursues the piercing remedy once it is established that the corporate entity cannot pay the judgment, and there is some evidence or reason to believe that the corporate form has been abused to avoid legal obligations. We know that supplementary proceedings under MCR 2.612 and MCL 600.6104(5) cannot be utilized, see *Green v Ziegelman*, 282 Mich App 292, 303, 767 NW2d 660 (2009) (*Green I*), but must the remedy be pleaded as part of the original case or forever be barred? *Or can a new case be filed to enforce the outstanding judgment against responsible shareholders if the facts allow piercing of the corporate veil even if no separate cause of action has been pleaded?* [*Gallagher*, 315 Mich App at 654 (emphasis added).]

The court answered the latter question in the affirmative:

> We hold that plaintiffs were entitled to bring a new action in an attempt to enforce the prior [judgment against the corporation] against [the shareholder]. While we continue to recognize that piercing the corporate veil is merely a remedy to be applied in certain limited circumstances, the concern that there be a separate cause of action to support this type of equitable relief does not arise when, as in this case, there already exists a judgment based upon one or more causes of action. [*Gallagher*, 315 Mich App at 661.]

In the present case, Frank is not seeking to recover from SmartWay in a proceeding supplemental to judgment as in *Green I*. Rather, Frank has filed a new case seeking to enforce the Judgment against SmartWay under an alter ego/veil piercing theory – which is recognized as a proper cause of action under *Gallagher*.[20] Accordingly, summary disposition is denied on this issue.

[20] SmartWay also argues that Frank cannot rely on the Consent Judgment to establish the amount allegedly owed to Frank. SmartWay argues that it is not precluded by the doctrines of res judicata and collateral estoppel from challenging the Consent Judgment. However, this Court has already rejected SmartWay's attempts to collaterally attack the Consent Judgment. See Order Regarding SmartWay Auto Inc.'s Motion in Limine to Exclude Consent Judgment from Prior Case dated February 22, 2022.

VII
Summary Disposition is Properly Granted in Favor of SmartWay Where Frank has Not Supported a Claim for Piercing the Corporate Veil Based upon SmartWay's Status as Either an "Undisclosed Owner/Investor" of SmartWay or as a Lender to SmartWay

"The traditional basis for piercing the corporate veil has been to protect a corporation's creditors where there is a unity of interest of the stockholders and the corporation and where the stockholders have used the corporate structure in an attempt to avoid legal obligations." *Rymal,* 262 Mich App at 293; *Dutton Partners, LLC v CMS Energy Corp*, 290 Mich App 635, 642 n 4 (2010). Thus, under the traditional basis, piercing the corporate veil serves to hold a corporation's shareholders liable.[21]

In addition, Michigan Courts have recognized that the doctrine of piercing the corporate veil may apply where there is a parent-subsidiary relationship. See, e.g., Dutton *Partners*, 290 Mich App at 642-643; *Bodnar v St John Providence, Inc*, 327 Mich App 203, 229-230 (2019).[22] In a parent-subsidiary relationship, "the parent, as owner of all or most of the subsidiary's stock, is able to exert control over the subsidiary." *Maki v Copper Range Co*, 121 Mich App 518, 524 (1982).

[21] Michigan courts have also allowed piercing of the corporate veil to hold members of limited liability companies personally liable. *See e.g., Florence Cement Co v Vettraino*, 292 Mich App 461, 472 (2011).

[22] Although the courts in *Dutton Partners* and *Bodnar* conducted the veil piercing inquiry, ultimately the courts found no basis to pierce the corporate veil between the parent and subsidiaries in those cases.

In this case, Frank is not asserting a traditional alter ego/piercing the corporate veil case because he is it not seeking to hold the members (owners) of Jewel Island and Karat liable for the Judgment. Rather, Frank seeks to enforce the Consent Judgment against a separate entity, SmartWay. There is no evidence that SmartWay had a membership interest in the Jewel Island or Karet LLCs. Additionally, there is no allegation or evidence of a parent/subsidiary relationship between SmartWay and Jewel Island - or between SmartWay and Karet.

Rather, Frank alleges that SmartWay was an "undisclosed investor and/or owner of Karet and/Jewel Island." Frank also argues that, even if SmartWay is only a lender to Jewel Island and Karet, the corporate veil should be pierced because SmartWay exercised control over the entities.

However, Frank fails to explain what his argument means and fails to cite any authority or make any argument to support the application of the piercing of the corporate veil doctrine as to an "undisclosed investor/owner." As such, the argument is deemed abandoned. *Mitcham v Detroit*, 355 Mich 182, 203 (1959) ("It is not enough . . . 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 elaborate for him his arguments, and then search for authority either to sustain or reject his position"); *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)); *People v Bennett*, unpublished per curiam opinion of the Court of Appeals decided April 8, 2008, Docket No. 274390, p. 3 ("We similarly decline to address whether the application of MCL 768.27a in this case violated defendant's right to due process. . . . [H]e devotes a single, short paragraph to this issue with no analysis and little citation to relevant authority. A party cannot assert a position and then it to this Court to search for authority to sustain or reject that position, or to unravel and elaborate for him his arguments" (citations omitted)). 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).

On the other hand, Frank cites authority in support of its argument that the piercing the corporate veil doctrine should be extended to SmartWay in its role as a creditor/lender because SmartWay controlled "every aspect of [Jewel Island's] business" and "maintained an abnormally tight level of oversight regarding payment of [Karet's] liabilities."

First, Frank cites *Krivo Indus Supply Co v Nat'l Distillers & Chem Corp*, 483 F2d 1098 (CA 5, 1973), where a group of creditors sued a major creditor of the same corporation to collect debts owed by the corporation. The Fifth Circuit examined the case under federal legal precedent applying the "instrumentality" theory in cases involving the

debtor/creditor relationship. *Id.* at 1104-1106. Under the "instrumentality" theory, a corporation may be held liable for the debts of a subservient corporation. *Id.* at 1103. The court in *Krivo* determined that "the controls required for liability under the 'instrumentality' rule amounts to total domination of the subservient corporation, to the extent that the subservient corporation manifests no separate corporate interests of its own and functions only to achieve the purposes of the dominant corporation." *Id.* at 1106. The court in *Krivo* applied the "instrumentality" theory to the creditor-debtor relationship before it but ultimately determined that the plaintiff "failed to establish the requisite degree of control." *Id.* at 1114.

In the second case cited by Frank, *FAMM Steel, Inc v Sovereign Bank*, 571 F3d 93 (CA 1, 2009), the court, citing *Krivo* and two federal district court cases, noted that "[w]here the theory is recognized, a lender may be held liable under the common-law instrumentality theory when the lender exerts such a degree of control over the borrower that the borrower becomes a mere business conduit for the lender." *Id.* at 104. However, the court did not apply the instrumentality theory to the lender in that case. The court, which was applying Massachusetts law, determined that neither the Supreme Judicial Court nor the Appeals Court of that state has ever adopted the theory. *Id.*

Frank has not provided any Michigan authority applying the piercing the corporate veil theory in a lender/borrower situation. Frank also does not explain why this Court should follow *Krivo* and does not explain how expanding the piercing doctrine

to the lender/borrower context is consistent with Michigan law on the subject. As was previously noted, under Michigan law "piercing of the veil of a corporate entity is an equitable remedy sparingly invoked . . . ." *Gallagher*, 315 Mich App at 654. Frank does not provide a basis to extend the piercing the corporate veil doctrine to SmartWay in its role as a lender/creditor and this Court declines to do so.

Furthermore, it is well-settled that equity will not take jurisdiction where there is a "full, complete, and adequate remedy at law." *Madugula v Taub*, 496 Mich 685, 706 (2014). Here it is not readily apparent that Frank has no adequate remedy at law where no efforts by Frank were made to collect on the bank accounts or seize the assets of LeFevre, Jewel Island or Karet. *See Gallagher*, 315 Mich App at 654 (noting that piecing the corporate veil is an equitable remedy and that the issue before it was how "a judgment-plaintiff procedurally pursues the piercing remedy once it is established that the corporate entity cannot pay the judgment").

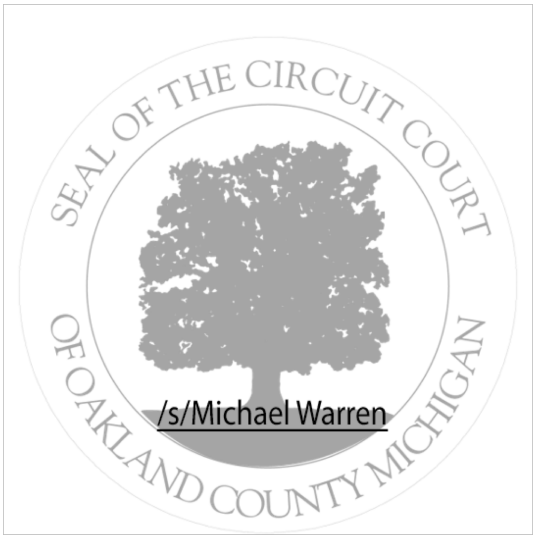
For the above-stated reasons, the Court concludes that summary disposition in favor of the Defendant is proper on Count I of the Plaintiff's Complaint.

ORDER

Based upon the foregoing Opinion, the Plaintiff's Motion for Partial Summary Disposition under MCR 2.116(C)(10) is DENIED, and SmartWay's Motion for Partial Summary Disposition as to Count I – Alter Ego is GRANTED.

The Defendant's request for attorney fees under MCR 1.109(E)(5) is DENIED.[23]

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



[23] The Defendant relies on essentially the same argument as that made in its counterclaim for abuse of process, that this case has been undertaken for the improper purpose of "harassment and shakedown" of Mr. Nadolski. This Court has granted the Plaintiff's motion for summary disposition on the counterclaim under MCR 2.116(C)(8) in a separate Opinion and Order. Based upon the record before it, the Court cannot say that the Plaintiff's First Amended Complaint was "interposed for any improper purpose." MCR 1.109(E)(5).