

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

**CLARK HILL, PLC,
Plaintiff,**

**Case No. 24-206416-CB
Hon. Victoria A. Valentine**

v.

**JASON ABRO,
RAYMOND ABRO,
GEORGE BRIKHO, JR,
JOHN BRIKHO,
TELEGRAPH MUSICAL COMPANY, LLC,
JAZZ CLUB 2, LLC,
EVERGREEN MANAGEMENT GROUP, LLC,
CITIZENS FOR SENSIBLE CANNIBAS REFORM,
FB LAPEER PRV, LLC,
1333 IMLAY CITY ROAD, LLC,
GEORGE BRIKHO, SR.,
BASSIMO BRIKHO,
SUZANNE BRIKHO, and
SUITE B, INC.,
Defendants.**

**OPINION AND ORDER REGARDING DEFENDANTS' MOTION FOR SUMMARY
DISPOSITION UNDER MCR 2.116(C)(7), (8), AND (10)**

At a session of said Court held on the
21st day of October 2024 in the County of
Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter is before the Court on Defendants' Motion for Summary Disposition under MCR 2.116(C)(7), (8), and (10). The Court has reviewed the pleadings, the Motion for Summary Disposition, the Response, and the Reply. Oral argument was held on the Motion.

This matter arises out of Clark Hill, PLC's legal services provided to Defendants. Clark Hill alleges Evergreen and its members retained it in February 2017 to provide legal services relating to a ballot initiative, zoning issues, and applications for marihuana licenses (Response, p

2; Exhibit 1). Clark Hill claims a balance due for these services in the amount of \$252,183.75 (Response, Exhibit 1, ¶ 132). The invoices for these services run from November 1, 2017, through November 20, 2018 (Exhibit 4 to First Amended Complaint). These services will be referred to as “Ballot and Ordinance Services.”

Clark Hill alleges that Defendants Jason Abro, George Brikho, Raymond Abro, John Brikho, Jazz Club, Telegraph Musical, and Evergreen retained Clark Hill in February 2017 to represent them on matters relating to the Jazz Club and City of Detroit regulations (Response, Exhibit 1, ¶ 133). The invoices for these services run from February 2022 through March 2023 (Exhibit 5 to First Amended Complaint). Clark Hill alleges a balance due for these matters in the amount of \$65,277.20 (*Id.* at ¶ 134). These services will be referred to as “Jazz Club Services.”

Clark Hill further alleges that Defendants George Brikho, FB Lapeer, PRV, LLC, and 1333 Imlay City Road, LLC, retained Clark Hill to represent them and Suzanne Brikho in a medical marihuana application and litigation in two lawsuits with the City of Lapeer. *Id.* at ¶ 136. Clark Hill alleges a balance due for these matters in the amount of \$20,993.00. *Id.* at ¶ 137. The invoices for these services run from April 2022 through November 2022 (Exhibit 6 to First Amended Complaint). These services will be called the “Lapeer Services.”

Clark Hill further alleges that George Brikho, Suzanne Brikho, Jazz Club, and Blackstone Harvest, LLC, retained Clark Hill to represent them in services related to pre-qualification applications with the Cannabis Regulatory Agency and municipalities. *Id.* at ¶ 139. Clark Hill alleges a balance due for these matters in the amount of \$21,173.00. *Id.* at ¶ 140. The invoices for these services run from July 2021 through July 2023 (Exhibit 7 to First Amended Complaint). These services will be referred to as “Application Services.”

Finally, Clark Hill alleges that Defendants George Brikho, Suzanne Brikho and Suite B Inc. retained Clark Hill to perform legal services relating to pre-qualification applications with the Cannabis Regulatory Agency. *Id.* at ¶ 142. Clark Hills alleges a balance due for these matters in the amount of \$1,288. *Id.* at ¶ 143. These services will be referred to as “Suite B Services.”

Specifically, Plaintiff alleges Breach of Contract Ballot and Ordinance Amount Owed (Count I), Breach of Contract Jazz Club Amount Owed (Count II), Breach of Contract Lapeer Amount Owed (Count III), Breach of Contract Brikho Application Amount Owed (Count IV), Account Stated Ballot and Ordinance Amount Owed (Count V), Account Stated Jazz Club Amount Owed (Count VI), Account Stated Lapeer Amount Owed (Count VII), Account Stated Brikho Application Amount Owed (Count VIII), Violations of the Michigan Uniform Voidable Transactions Act (Count IX), Violations of the Michigan Uniform Voidable Transactions Act (Count X), Piercing the Corporate Veil or Alter Ego (Count XI), Quantum Meruit (Count XII), Unjust Enrichment (Count XIII), and Breach of Suite B Amount Owed (Count XIV).

Defendants have requested this Court dismiss the entirety of the First Amended Complaint pursuant to MCR 2.116(C)(7), (8) and (10).

Standard of Review

A MCR 2.116(C)(7)

MCR 2.116(C)(7) provides for summary disposition where a claim is barred by the statute of limitations. The Court of Appeals has explained the standard of review:

Under MCR 2.116(C)(7) . . . this Court must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties. The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. This Court must consider the documentary evidence in the light most favorable to the nonmoving party. If there is no factual dispute, whether a plaintiff’s claim is barred under a principle set forth

in MCR 2.116(C)(7) is a question of law for the court to decide. If a factual dispute exists, however, summary disposition is not appropriate.

RDM Holdings, LTD v Continental Plastics Co, 281 Mich App 678, 687; 762 NW2d 529 (2008) (citations omitted.)

B
MCR 2.116(C)(8)

A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, not whether the complaint can be factually supported. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160; 934 NW2d 665 (2019); *Pawlak v Redox Corp*, 182 Mich App 758, 763; 453 NW2d 304 (1990). A motion for summary disposition based on the failure to state a claim upon which relief may be granted is to be decided on the pleadings alone. *Bailey v Schaaf*, 494 Mich 595, 603; 835 NW2d 413 (2013); *Parkhurst Homes, Inc v McLaughlin*, 187 Mich App 357, 360; 466 NW2d 404 (1991).

“All well-pleaded factual allegations are accepted as a true and construed in a light most favorable to the nonmovant.” *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999); *Wade v Dep’t of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). Summary disposition is proper when the claim is so clearly unenforceable as a matter of law that no factual development can justify a right to recovery. *Parkhurst Homes*, 187 Mich App at 360; *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

C
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 v Rozwood*, 461 Mich 109, 120 (1999); MCR 2.116(C)(10); MCR 2.116(G)(4); *Quinto*, 451 Mich at 362. 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)).

Analysis

A

Summary Disposition under MCR 2.116(C)(7)

Defendants seek dismissal of Counts I-VIII and XII-XIV under (C)(7), relying upon MCL 600.5813 and MCL 600.5807(8) as to the breach of contract and account stated claims. Defendants rely upon MCL 600.5807(9) as to the unjust enrichment claims.

Defendants seek dismissal of all claims under (C)(7), arguing that all claims are barred because the services took place in 2017. A review of the invoices attached to the First Amended Complaint shows that there are only six invoices (of the approximately 48 invoices attached) that

contain services rendered prior to March 26, 2018. Defendants offer no argument as to why the claims for services after March 26, 2018 should also be dismissed.

Additionally, the invoices clearly contain litigation-related services, according to the descriptions provided. In *Seyburn, Kahn, Ginn, Bess, Deitch and Serlin, P.C. v Bakshi*, 483 Mich 345 (2009), the Michigan Supreme Court held that where litigation services are involved, the accrual date for recovery of unpaid fees begins when the attorney-client relationship is terminated, and not on the date of last payment. Defendants argue that the first breach took place in September 2017 when the state court case ended, and the claim accrued at that time. Defendants offered no authority for their argument that the attorney-client relationship is terminated, for purposes of the *Seyburn* analysis, at each stage of litigation. Under *Seyburn*, the statute of limitations did not accrue until the Court of Appeals matter was dismissed and the attorney-client relationship terminated. Additionally, whether there was a balance due at the time the state court matter ended is a question of fact.

Defendants argue that failure to join Citizen's treasurer as a party warrants dismissal of all claims. Defendants provide no authority for their position that a treasurer is personally liable for nonpayment of the invoices. Defendants do not suggest the treasurer was a member or shareholder of any of the Defendant entities. Defendants also provide no authority for their position that failure to join a party warrants dismissal of all claims. "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).

Defendants argue that the claims for violations of the Michigan Uniform Voidable Transactions Act are also time barred under MCL 600.5813 and MCL 600.5815. However, the statute provides that a claim "shall be commenced within the period of 6 years after the claims

accrue.” Defendants first argue that “the debts arose in 2017, which time bars Clark Hill’s claims” (Motion, p 20). But accrual of a fraudulent transfer action does not occur when the debt arose, but rather when the transfer took place. MCL 600.5827 states that “the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results.” The alleged transfers took place in 2021, so that the claims are within the six-year limitation.

Defendants next argue that the fraudulent transfer claims are barred because Plaintiff knew about the transfers more than two years ago. According to Defendants, “Clark Hill became aware of the claim as early as July 23, 2021” (Motion, p 20). Defendants rely upon MCL 600.5855 to argue that there is a 2-year statute of limitations period for these claims; however, MCL 600.5855 is an exception to the 6-year limitation meant to extend the statute for those claims that are fraudulently concealed in some manner. MCL 600.5855 does not operate to limit the statute of limitations.

Summary disposition under MCR 2.116(C)(7) is denied.

B

Summary Disposition under MCR 2.116(C)(8)

Defendants seek dismissal under (C)(8) of the breach of contract claims because Plaintiff failed to attach a copy of the contract to the First Amended Complaint. The First Amended Complaint alleges a contract between the parties. In Response to the Motion for Summary, Plaintiff submitted an Affidavit indicating that it is believed the Engagement Letter was signed, but a copy could not be located (Response, Exhibit 1). Plaintiff has stated a claim.

Defendants next argue that the account stated claims cannot prevail because “the parties did not mutually assent to the legal fees charged” (Motion, p 12). However, whether the parties assented to the legal fees is a question of fact. “The distinction between MCR 2.116(C)(8) and

(C)(10) is one with an important difference: a claim’s legal sufficiency as opposed to a claim’s factual sufficiency.” *El-Khalil*, 504 Mich 152, 159; 934 NW2d 665 (2019).

The remainder of Defendants’ arguments all rely on the allegation that Plaintiff’s claims are time-barred. Defendants provide no authority for the argument that time-barred claims are subject to dismissal under (C)(8). Because this Court has found that the claims are not time-barred, those arguments also fail.

Summary disposition under (C)(10) is premature, as the parties have not engaged in discovery.

Defendants requested this Court enter a bond because “the claims brought by the Plaintiff are false and are knowingly false and are made without regard to other obligations.” This sentence is the lone support for the request and is not sufficient to support the extreme remedy of a bond for anticipated future litigation costs.

In light of the foregoing,

Defendants’ Motion for Partial Summary Disposition under MCR 2.116(C)(7), (8) and (10) is denied.

IT IS SO ORDERED

This is not a final order and does not close the case.



Dated: October 21, 2024