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

MICHAEL LATAS & ASSOCIATES,
An assumed name of
ATLANTIC ALCHEMY COMPANY, LLC,

Plaintiff, **Case No. 24-207557-CB**
v **Hon. Michael Warren**

OLIVEIRA CONTRACTING, INC.

Defendant,

OPINION AND ORDER REGARDING
DEFENDANT'S MOTION FOR SUMMARY DISPOSITION
PURSUANT TO MCR 2.116(C)(1) AND MCR 2.116(C)(10)
and
PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION
PURSUANT TO MCR 2.116(C)(10)

At a session of said Court, held in the
County of Oakland, State of Michigan
November 6, 2025

PRESENT: HON. MICHAEL WARREN

OPINION

I
Overview

Michael Latas & Associates (the "Plaintiff"), a Michigan limited liability, has brought this action against Olivera Contracting, Inc. (the "Defendant"), foreign corporation, claiming that it has breached a contract by failing to pay for employee search

services rendered to the Defendant. Before the Court are competing motions for summary disposition. Oral argument is dispensed as it would not assist the Court in its decision-making process.[1]

At stake is whether the Defendant is entitled to summary disposition of the Plaintiff's claims under MCR 2.116(C)(1) because the forum selection clause of the agreement fixing Michigan as the forum is unenforceable? Because the Defendant failed to raise this issue in a timely fashion, the answer is "no," and summary disposition is denied.

Further at stake is whether the Plaintiff is entitled to summary disposition of the Plaintiff's breach of contract claims under MCR 2.116(C)(10)? Because the contract is unambiguous and there are no genuine issues of any material fact, the answer is "yes," and summary disposition is granted in the Plaintiff's favor.

Finally at stake is whether the Defendant is entitled to summary disposition of the Plaintiff's unjust enrichment claims under MCR 2.116(C)(10)? Because there is a contract

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

between the parties that covers the same subject matter, the answer is "yes," and summary disposition is granted.

II
Background and the Complaint

The parties largely agree on the material facts. The Plaintiff is an executive search firm located in Michigan which focuses on the construction industry. The Defendant is a New York contracting firm. The Defendant accepted the following letter agreement on February 1, 2024, from the Plaintiff:

> We would be honored to begin our custom-tailored search process to find candidates for your chief estimator position. The process begins upon receipt of a signed copy of this agreement.
>
> There is a non-refundable $1,000 retainer for this project. When Oliveira Contracting, a branch, office, or affiliate hire any of our referrals for any position, our fee is 25 percent of the first year's annualized target earnings minus the previously paid retainer. The placement fee is due 30 days after acceptance of the position. If the hired candidate is released by the client within 6 months, then we will provide a credit that can be used toward a replacement's placement fee.
>
> This agreement is subject to and governed by the terms and conditions of the Latas Services Agreement located at http://www.latas/com/terms. Client indicates agreement to terms by signing below.
>
> [Complaint, Exhibit A.]

The parties agree that the Defendant contacted the Plaintiff through the Plaintiff's website and eventually spoke with a representative located in Michigan. The Defendant

paid the non-refundable retainer fee of $1,000. The Plaintiff presented possible candidates for employment to the Defendant. On February 20, 2024, one of the proposed candidates accepted an offer of employment with the Defendant. The Plaintiff sent an invoice for the placement fee less the retainer on February 23, 2024. On March 22, 2024, the Defendant terminated the candidate's employment and notified the Plaintiff of the termination. The Plaintiff presented alternative candidates, but none were offered a position. The Plaintiff demanded payment of the placement fee under the terms of the letter agreement. The Defendant refused to pay the placement fee unless an acceptable candidate was secured. The Plaintiff brought claims for breach of contract and unjust enrichment.

III
Standards of Review

A
MCR 2.116(C)(1)

Summary disposition may be granted where "[t]he court lacks jurisdiction over the person or property." MCR 2.116(C)(1). A motion for summary disposition based on the lack of personal jurisdiction is resolved based on the pleadings and the evidence, including affidavits. *Lease Acceptance Corp v Adams*, 272 Mich App 209, 218 (2006). "The plaintiff bears the burden of establishing [personal] jurisdiction over the defendant[.]" *Yoost v Caspari*, 295 Mich App 209, 221 (2012) (citations and quotation marks omitted); *Lease Acceptance Corp*, 272 Mich App at 218. To succeed against a pretrial motion to dismiss for lack of personal jurisdiction, a plaintiff need only make a *prima facie* showing. *Yoost v*

Caspari, 295 Mich App at 221. "The plaintiff's complaint must be accepted as true unless specifically contradicted by affidavits or other evidence submitted by the parties." *Id*. "[W]hen allegations in the pleadings are contradicted by documentary evidence, the plaintiff . . . must produce admissible evidence of his or her prima facie case establishing jurisdiction." *Id.* (emphasis added). "A personal jurisdiction analysis involves a two-fold inquiry: (1) do the defendants' acts fall within the applicable long-arm statute and (2) does the exercise of jurisdiction over the defendants comport with the requirements of due process? *W H Froh, Inc v Domanski*, 252 Mich App 220, 226." *Lease Acceptance Corp.*, 272 Mich App at 218-19.

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 v Rozwood,* 461 Mich 109, 119-120 (1999); MCR 2.116(C)(10); MCR 2.116(G)(4); *Quinto*, 451 Mich at 358. The moving party "must specifically identify the issues" as to which it "believes there is no genuine issue" of material fact and support its position as provided in MCR 2.116. MCR 2.116(G)(4).

Under Michigan law, the moving party may satisfy its burden of production under MCR 2.116(C)(10) by demonstrating to the court that the non-moving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. *Quinto*, 451 Mich at 361. If the moving party properly supports its motion, the burden "then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Id.* at 362. If the moving party fails to properly support its motion for summary disposition, the nonmoving party has no duty to respond and the trial court should deny the motion. MCR 2.116(G)(4). See also *Meyer v City of Center Line*, 242 Mich App 560, 575 (2000) (concluding that the trial court erred when it granted an improperly supported motion for summary disposition under MCR 2.116[C][10]).

In all cases, MCR 2.116(G)(4) squarely places the burden on the parties, not the trial court, to support their positions. A reviewing court may not employ a standard citing mere possibility or promise in granting or denying the motion. *Maiden*, 461 Mich at 121-120 (citations omitted), and may not weigh credibility or resolve a material factual dispute in deciding the motion. *Skinner v Square D Co*, 445 Mich 153, 161 (1994). Rather, summary disposition pursuant to MCR 2.116(C)(10) is appropriate if, and only if, the evidence, viewed most favorably to the non-moving party fails to establish any genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362, citing MCR 2.116(C)(10) and (G)(4); *Maiden*, 461 Mich at 119-120 (1999). A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. *El-Khalil v Oakwood Healthcare,*

Inc, 504 Mich 152, 160 (2019) (citation omitted). Granting a motion for summary disposition under MCR 2.116(C)(10) is warranted if the substantively admissible evidence shows that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362-363.

IV
Jurisdiction Under MCL 600.745

A
The Law

MCL 600.701 establishes when personal jurisdiction may be exercised over an individual:

> The existence of any of the following relationships between an individual and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise general personal jurisdiction over the individual or his representative and to enable such courts to render personal judgments against the individual or representative.
>
> (1) Presence in the state at the time when process is served.
>
> (2) Domicile in the state at the time when process is served.
>
> (3) Consent, to the extent authorized by the consent and subject to the limitations provided in section 745.

Section 745 provides limitations on when personal jurisdiction may be exercised when the basis for such jurisdiction arises from a contract:

> (2) If the parties agreed in writing that an action on a controversy may be brought in this state and the agreement provides the only basis for the exercise of jurisdiction, a court of this state shall entertain the action if all the following occur:

> (a) The court has power under the law of this state to entertain the action.
> (b) This state is a reasonably convenient place for the trial of the action.
> (c) The agreement as to the place of the action is not obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means.
> (d) The defendant is served with process as provided by court rules.
>
> [MCL 600.745.]

As such, forum selection clauses are generally enforceable. The Court of Appeals has explained:

> It has been recognized by both this Court and by the United States Supreme Court that parties may agree, even in advance of litigation, to submit to the personal jurisdiction of a particular forum. See *Burger King Corp v Rudzewicz,* 471 US 462, 472, n 14; 105 S Ct 2174; 85 L Ed 2d 528 (1985); *National Equipment Rental, Ltd v Miller,* 73 Mich App 421, 424 (1977).
>
> [*Lease Acceptance Corp*, 272 Mich App at 219.]

Indeed, a party seeking to avoid a contractual forum selection clause bears a "heavy burden" of showing that the clause should not be enforced. *The Bremen v Zapata Off-Shore Co,* 407 US 1, 17-18 (1972). "In general, Michigan courts enforce forum-selection clauses, and Michigan's public policy favors the enforcement of contractual forum-selection clauses and choice-of-law provisions." *Barshaw v Allegheny Performance Plastics, LLC*, 334 Mich App 741 729 (2020) (quotation marks and citations omitted). See also *Rolls-Royce Sols Am, Inc v ACS Mfg*, 619 F Supp 3d 756, 763 (ED Mich, 2022). Nevertheless, if a written agreement provides the sole basis for personal jurisdiction, all the requirements

of 745 must be met to obtain jurisdiction. See, e.g., *Lease Acceptance*, 272 Mich App at 220; *Rolls-Royce Sols Am, Inc v ACS Mfg*, 619 F Supp 3d at 763.

B
Analysis

The Defendant does not challenge three of the four requirements of Section 745. That is, it does not challenge that (1) "the court has power under the law of this state to entertain the action," (2) the agreement was not "obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means," and (3) service of process. MCL 600.745(2)(a), (c)-(d). Instead, the Defendant argues that Michigan is not a "reasonably convenient place for the trial of the action" as required by MCL 600.745(2)(b).

The Plaintiff argues that because the Defendant agreed to Michigan in the contract, any argument against jurisdiction has been waived. True enough. But the Defendant's position is not jurisdictional, it is rooted in due process and the requirements of Section 745. After an exhaustive discussion, the Court of Appeals incorporated the Michigan Supreme Court's decision in *Cray v Gen Motors Corp,* 389 Mich 382, 395-396 (1973) as "a useful framework to assist trial courts in deciding this issue." *Lease Acceptance Corp,* 272 Mich App at 229 n 13. Accordingly, when ascertaining whether a forum is reasonably convenient, the Court is to evaluate

> these three factors and their subparts:
>
> 1. The private interest of the litigant.
>   a. Availability of compulsory process for attendance of

unwilling and the cost of obtaining attendance of willing witnesses;
b. Ease of access to sources of proof;
c. Distance from the situs of the accident or incident which gave rise to the litigation;
d. Enforceability [sic [sic]] of any judgment obtained;
e. Possible harassment of either party;
f. Other practical problems which contribute to the ease, expense and expedition of trial;

2. Matter of public interest.
a. Administrative difficulties which may arise in an area which may not be present in the area of origin;
b. Consideration of the state law which must govern the case.
c. People who are concerned by the proceeding.

3. Reasonable promptness in raising the plea of *forum non conveniens.*

[*Lease Acceptance Corp*, 272 Mich App at 227, quoting *Radeljak v Daimler-Chrysler Corp*, 475 Mich 598, 605-606 (2006), quoting *Cray*, 389 Mich at 396 (quotation marks deleted).]

1
Private Interests of the Litigants

The Plaintiff has one witness in Michigan. While the Plaintiff attempts to include phone calls and emails arising in Michigan, those items are easily producible in any forum. The Defendant is located in New York, as is one of the Plaintiff's employees and the candidate related to the dispute. The cost of travel for at least three people from New York to Michigan would be much higher than the cost of one person travelling to New York. Additionally, as the Plaintiff, it is unlikely that his attendance would need to be compelled. On the other hand, the Defendant and each of its witnesses are in New York. If any of those witnesses do not appear voluntarily, compelling their appearance would

be difficult. This sub-factor weighs against enforcing the agreement.

Aside from witness testimony, the ease of access to proofs is neutral and does not weigh in either favor. Likewise, because there is no accident or physical aspect to this matter, that factor does not weigh in either party's favor.

If the Plaintiff obtains a judgment in its favor, it will not have the ability to enforce that judgment against the Defendant here in Michigan. Any judgment would have to be domesticated to New York, causing additional judicial resources that would be unnecessary if the matter proceeded in New York from inception. This sub-factor weighs against enforcing the agreement.

None of the remaining sub-factors are applicable to this matter.

As to the private interests of the litigants, the factor weighs against enforcing the forum selection clause in the parties' agreement. However, as there is actually no genuine issues of material fact, this issue is practically mitigated.

2
Matters of Public Interest

The agreement at issue concerns a narrow issue that is only relevant to the parties to this case. There are no issues that will have an effect on the community or be of concern to anyone other than the litigants themselves. The agreement calls for Michigan law to govern any action, and New York courts are able to apply Michigan law to an action

before them.

The Defendant argues that Michigan has no interest, while New York has a greater interest because the contract affects a New York business. This argument is not persuasive because it assumes that the Defendant will receive a ruling in its own favor. Michigan can also be seen as having an interest in contracts made in its state and ensuring that payment is made on those contracts to support its businesses.

As to matters of public interest, this factor is neutral and does not weigh in favor of or against enforcing the forum selection clause.

3
Promptness in Raising Issue

The Defendant raised the jurisdictional issue in its Affirmative Defenses on June 27, 2024. However, the Defendant waited to file its Motion for Summary Disposition on this basis until May 15, 2025, i.e., nearly one year later.[2] The parties filed their Joint Case

[2] The Defendant argues that a delay in bringing this Motion is justified if the affirmative defense is pled. [Response, p 11.] The Defendant fails to cite any binding authority for its position. The Defendant may not announce its position in the form of conclusions and leave it to the Court to make the connection or find the authority. *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, issued 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 leave it to this Court to search for authority to sustain or reject that position. (sic) or to unravel and elaborate for him his arguments." (citations omitted)). Bennett, p 3. After all, "[t]rial courts are not the research assistants of the litigants; the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute." *Walters v Nadell*, 481 Mich 377, 388 (2008). Simply put, the Defendant has failed to present its arguments, and the Court need not divine the analysis or advocate on its behalf.

Management Plan on November 13, 2024 (¶¶ 3, 4), in which the Defendant agreed that jurisdiction is proper in this Court. From November 2024 through the filing of the instant Motion, the parties have expended many hours and attorney fees engaging in discovery. The Defendant does not provide any reason for waiting nearly one-year since filing the Answer to bring this Motion. If the Defendant was concerned about being able to bring New York witnesses to Michigan, that issue would have been raised long before this Motion. For instance, the parties sought extensions for discovery, including conducting depositions, in January 2025. The Defendant made no mention in those filings that Michigan was not a reasonable jurisdiction.

Because of the time and litigation that has taken place since the Defendant filed its Answer claiming a lack of jurisdiction, this factor weighs in favor of enforcing the forum selection clause.

This Court has broad discretion in deciding this Motion and determining the weight of the factors. *Lease Acceptance Corp,* 272 Mich App at 223. The delay is given great weight. The Defendant cannot engage in litigation for one year and then determine that this Court is not a reasonably convenient jurisdiction for the parties. Although it was included as an Affirmative Defense, the Defendant made no effort to bring the issue to this Court for consideration. In doing so, it allowed the Plaintiff to proceed with its litigation and expend attorney fees in pursuit of its claims. Aside from travel for witnesses, the Defendant offers no reason why Michigan would not be reasonably convenient. This length of time for bringing this motion weighs heavier than the location of witnesses. This is particularly true

in 2025, where many witnesses may be able to testify via Zoom (assuming the applicable Rules of Court are met), alleviating the Defendant's only concern.

The Defendant argues that its due process will be violated if this case proceeds in Michigan. However, the Defendant does not provide any authority to establish that this analysis is applicable in this matter. Jurisdiction is conferred under MCL 600.745(2), which does not require a due process analysis. "A freely-negotiated forum-selection provision that is not unreasonable or unjust 'does not offend due process.'" *Rolls-Royce*, 619 F Supp 3d at 762. Stated another way, if the requirements of Section 745 are met, there is no due process violation. Since such requirements are met here, the due process argument fails.

V
Summary Disposition as to Breach of Contract is Warranted

A
Allegations

The Complaint, pp. 4-5, sets forth the following allegations as to the breach of contract:

> 22. The Search Agreement, including its reference to and incorporation of the Terma [sic] and Conditions, constitutes a valid contract between the parties for which consideration was given.
>
> 23. Plaintiff fulfilled its obligations under the contract by conducting a candidate search, review process, and presenting multiple candidates to OLIVERIA for interview and consideration.

24. Defendant OLIVEIRA did hire and employ Joseph Luongo, a candidate presented by Latas.

25. Defendant OLIVERIA breached its contract with Latas by failing to pay the agreed-upon fee for the work provided by Latas.

26. As a direct and proximate result of the breach, Latas has suffered damages of $44,000 together with ongoing service charges.

B
The Law

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

The cardinal rule when interpreting contracts is to ascertain and give effect to the intention of the parties. *Zurich Ins Co v CCR & Co (on rehearing)*, 226 Mich App 599, 603 (1997). "In interpreting a contract, it is a court's obligation to determine the intent of the parties by examining the language of the contract according to its plain and ordinary meaning." *In re Smith Trust*, 480 Mich 19, 24 (2008). Courts "must also give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory." *Klapp v United Ins Group Agency Inc*, 468

Mich 459, 468 (2003). Courts may not strain to find ambiguity and must read contracts to avoid an absurd or unreasonable result. *Scott v Farmers Ins Exchange,* 266 Mich App 557, 561 (2005); *Miller v Van Kampen,* 154 Mich App 165, 168 (1986). Ultimately, courts must strive to enforce the agreement intended by the parties.

Whether contract language is ambiguous is a preliminary question of law. *UAW-GM Human Resource Center v KSL Rec Corp*, 228 Mich App 486, 491 (1998) (citation omitted). A contract is unambiguous when it fairly admits of but one interpretation. *Holmes v Holmes*, 281 Mich App 575, 594 (2008). If the language of the contract is clear and unambiguous, it must be enforced as written. *Smith Trust*, 480 Mich at 24. A written contract is ambiguous if after reading the entire document its language reasonably can be understood in differing ways (i.e., the language is susceptible to more than one reasonable interpretation). *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 70 (1991). "A provision in a contract is ambiguous if it irreconcilably conflicts with another provision, or when it is equally susceptible to more than a single meaning." *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 715 (2005) (citation omitted). In making this determination, contractual language is to be construed according to its plain and ordinary meaning. In fact, published Michigan jurisprudence has long held that the terms of contracts are to be enforced as written unless it violates Michigan public policy. *Rory v Cont'l Ins Co,* 473 Mich 457, 461, 468 (2005) ("unless a contract provision violates law or one of the traditional defenses to the enforceability of a contract applies, a court must construe and apply unambiguous contract provisions as written. . . . [T]he judiciary

is without authority to modify unambiguous contracts or rebalance the contractual equities struck by the contracting parties because fundamental principles of contract law preclude such subjective post hoc judicial determinations of reasonableness"; "A fundamental tenant of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be *enforced as written*" [emphasis in original]). See also *Little v Kin,* 468 Mich 699, 700 (2003) ("Where the language of a legal instrument is plain and unambiguous, it is to be enforced as written and no further inquiry is permitted"). Furthermore, the court is required to read the contract as a whole, giving harmonious effect, if possible, to each word and phrase in order to avoid an interpretation that would render any part of the contract surplusage or nugatory. *Klapp,* 468 Mich at 468. Ultimately, courts must strive to enforce the agreement intended by the parties.

C
Analysis

The parties agree that the contract was executed, the retainer fee was paid, a candidate was placed, and the candidate worked for the Defendant for a period of less than six months. The agreement provides: "When Oliveria Contracting . . . hire[s] any of our referrals for any position, our fee is 25 percent of the first year's annualized target earnings minus the previously paid retainer. The placement fee is due 30 days after acceptance of the position. If the hired candidate is released by the client within 6 months, then we will provide a credit that can be used toward a replacement's placement fee."

The Defendant argues that "a placed candidate's employment must last at least 30 days in order for payment to come due." [Defendant's Motion, p 16.] The Defendant further argues that the invoice sent at acceptance does not create the obligation to pay, rather it is not an obligation to pay until it is due, which is 30 days after acceptance, and because the candidate was fired before the invoice's due date, no payment was due.[3] [Defendant's Response, p 7.] This reading is wrong. There is nothing in the agreement that indicates no payment will be due if the candidate is employed for less than 30 days. The contract unambiguously states that ***when*** the Defendant hires a candidate presented by the Plaintiff, the Plaintiff's fee ***is*** 25% of the first year's annualized salary, minus any retainer paid. The fee applies once the candidate is hired by the plain terms of the agreement. The fact that the Plaintiff allows the Defendant a thirty-day period in which to make the payment does not support the Defendant's argument. In order for the agreement to have the Defendant's desired meaning, additional language limiting that liability within the first 30 days would be required. That language is absent.

The contract is clear on its face, and the terms are supported by the incorporated Latas Services Agreement, which provides that "[f]ees for the Services will be invoiced upon acceptance of the position." [Plaintiff's Response, Exhibit 2.] The Services Agreement also provides that "the right to replacement candidates is voided" if the payment is not received within thirty days of when the original payment was due. [*Id.*] There is nothing in

[3] The Defendant does not address the fact that the invoice "Payment Terms" indicate that the payment is due "UPON RECEIPT," meaning immediately.

the Services Agreement that provides for a 30-day period in which to fire a candidate and avoid paying the fee that was invoiced upon hiring.

The Defendant argues that it is "beyond dispute that rather than render the curative performance that the Agreement expressly contemplates, acknowledge that payment was not due, and that Oliveria was entitled to a credit, MLA demanded full payment of the $44,000 Invoice amount – even though Oliveria expressly advised that it would pay when MLA successfully placed a replacement candidate." [Defendant's Motion, p 16.] The Defendant further argues that the Plaintiff failed to mitigate its damages by finding a replacement candidate, at which time it would have been paid for the services. This argument only highlights the Defendant's flawed position. The agreement does not allow the Defendant to withhold payment until it decides that the proper candidate has been hired and retained. The agreement is clear and unambiguous. If a candidate accepts a position, the fee is owed. If that person does not remain employed for 6 months, and if the fee has been paid, the Defendant will issue a credit and offer replacement candidates. Under the terms of the Services Agreement, the Plaintiff had no obligation to replace the candidate where the payment was not timely made.

The Defendant's arguments are an attempt to change the terms of the agreement it made with the Plaintiff. It is not entitled to do so. There is nothing in the contract that requires the candidate be perfect before payment is due. Further, the Defendant's argument that the Plaintiff is seeking payment for a service it did not provide is unavailing. The Plaintiff was to provide potential candidates for employment. It undisputedly did that,

as the Defendant hired one of those potential candidates. The Plaintiff performed its duties under the contract. The agreement does provide relief for the Defendant if a candidate does not maintain employment, but that relief is only available, according to the Plaintiff's terms, if the Defendant paid the invoice.

The Defendant does not challenge the requested damages of $44,000. As such, a judgment for such damages is warranted.

VI
Summary Disposition as to Unjust Enrichment is Warranted

A
Law

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

Our Court of Appeals has summarized unjust enrichment as follows:

> "'The essential elements of a quasi contractual obligation, upon which recovery may be had, are the receipt of a benefit by a defendant from a plaintiff, which benefit it is inequitable that the defendant retain.'" *MEEMIC* [*v Morris*, 460 Mich 180,] 198 [(1999)], quoting *Moll v Wayne Co,* 332 Mich 274, 278-279 (1952). Thus, in order to sustain a claim of quantum meruit or unjust enrichment, a plaintiff must establish (1) the receipt of a

> benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant. *Barber v SMH (US), Inc,* 202 Mich App 366, 375 (1993). In other words, the law will imply a contract to prevent unjust enrichment only if the defendant has been unjustly or inequitably enriched at the plaintiff's expense.
>
> [*Morris Pumps, 273* Mich App at 195.]

The doctrine of unjust enrichment does not apply "when an express contract already addresses the pertinent subject matter." *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 137 (2003). See also *Gore v Flagstar Bank*, 474 Mich 1075 (2006) (affirming this Court in granting a Judgment Not Withstanding the Verdict when a jury found a contract existed and was not breached, but awarded damages under promissory estoppel); *Landstar Express America, Inc v Nexteer Automotive Corp*, 319 Mich App 192, 202-203 (2017) (dismissal was proper as there was an express contract covering the same subject matter as the equitable claims); *Hudson v Mathers*, 283 Mich App 91, 98 (2009) (a "contract may not be implied under a theory of unjust enrichment" when the parties have "an express contract in place"); *King v Ford Motor Credit Co*, 257 Mich App 303, 327 (2003) ("a contract will not be implied under the doctrine of unjust enrichment where a written agreement governs the parties' transaction").

B
Analysis

The parties both agree that there is an express contract between them. The Plaintiff does not make any allegations in the Complaint as to unjust enrichment that are separate

or unique from their claims under breach of contract. Accordingly, summary disposition of the claims for unjust enrichment is warranted.

Based on the foregoing, the Plaintiff's claim for unjust enrichment (Count II of the Complaint) is dismissed under MCR 2.116(C)(10).

ORDER & JUDGMENT

In light of the foregoing Opinion:

(1) The Defendant's Motion for Summary Disposition is DENIED under MCR 2.116(C)(1) and GRANTED as to Count II (Unjust Enrichment); and

(2) The Plaintiff's Motion for Summary Disposition as to Count I for breach of contract is GRANTED under MCR 2.116(C)(10) AND JUDGMENT IN FAVOR OF THE PLAINTIFF AND AGAINST THE DEFENDANT IN THE AMOUNT OF $44,000.00 IS HEREBY ENTERED.

THIS ORDER AND JUDGMENT RESOLVES THE LAST PENDING CLAIM AND CLOSES THE CASE.

/s/ Michael Warren

HON. MICHAEL WARREN
CIRCUIT COURT JUDGE