

STATE OF MICHIGAN
IN THE THIRD CIRCUIT COURT OF MICHIGAN

AB MARKETERS, LLC,

Plaintiff,

-v-

MYLOCKER.COM, LLC,

Defendant.

Case No. 15-001479-CB
Hon. Daniel P. Ryan 15-001479-CB

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CATHY M. GARRETT

/s/ Michelle Howard

OPINION

I. Introduction

This action is before the Court on a motion for summary disposition filed by Defendant, MyLocker.com, LLC pursuant to MCR 2.116(C)(7) (statute of frauds), and (8). For the reasons more fully explained below, the Court will deny Defendant's motion.

II. Facts and Procedural History

Plaintiff, AB Marketers, LLC is in the business of marketing its own consumer products through e-commerce websites. (Complaint, ¶ 5). Defendant designs and manufactures customized sportswear and clothing items. (Complaint, ¶ 6).¹

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Defendant indicates that it presumes the allegations in Plaintiff's complaint to be true for purposes of its motion for summary disposition only, but otherwise denies these allegations.

Although located in Detroit, Defendant sells its products worldwide, and markets them on its website. (Complaint, ¶¶ 2, 6).

At some point, Defendant was interested in developing its own e-commerce website that would allow its customers to design and purchase custom sportswear. (Complaint, ¶ 8). Defendant apparently expressed an interest in retaining Plaintiff to provide technical support and assist with the construction of Defendant's e-commerce website. (Complaint ¶¶ 11-12). The parties purportedly reached an agreement to the effect that Defendant would reimburse Plaintiff for its out-of-pocket staffing costs, as well as pay Plaintiff ten percent of the amount of Defendant's future gross income from the sales generated by Defendant's e-commerce website. (Complaint, ¶¶ 15-18, 23, 26). According to Plaintiff, there was a written agreement between the parties which is in the possession and control of Defendant, notably contained on the computer hard drives and computer servers owned and utilized by Defendant. (Complaint, ¶ 27).

Plaintiff alleges that as a result of its investment of resources into Defendant's e-commerce website, Defendant is now receiving tens of millions of dollars in revenue, yet Defendant has failed to compensate Plaintiff in spite of Plaintiff's demands for payment. (Complaint, ¶¶ 20-22). On February 4, 2015, Plaintiff filed suit against Defendant, alleging breach of contract, and unjust enrichment/quantum meruit. The instant motion followed.

III. Standard of Review

Summary disposition may be granted under MCR 2.116(C)(7) when a claim is barred by the statute of frauds. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). The allegations in the complaint are accepted as true unless contradicted by the evidence. *Id.*

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. *Id.* All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Id.* The motion may be granted only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Id.*

IV. Analysis

A. Breach of Contract

At the outset, Defendant challenges Plaintiff's breach of contract claim based on Michigan's statute of frauds, which provides in relevant part:

In the following cases an agreement, contract, or promise is void unless that agreement, contract, or promise, or a note or memorandum of the agreement, contract, or promise is in writing and signed with an authorized by the party to be charged with the agreement, contract, or promise:

(a) An agreement that, by its terms, is not to be performed within 1 year from the making of the agreement.

MCL 566.132(1)(a).

In reliance on this statutory provision, Defendant argues that Plaintiff's breach of contract claim is barred because it is based on an alleged oral agreement that cannot be fully performed within one year. Defendant's argument is predicated on the absence of a written agreement between the parties. In this regard, Defendant points out that Plaintiff did not attach any documents to its complaint, nor does the complaint contain a description of a specific agreement, namely the essential terms.

However, the Court must accept the allegations in Plaintiff's complaint as true, unless contradicted by the evidence. *Maiden, supra*. Significantly, Plaintiff alleges that a written contract exists, including the details of the ostensibly unperformed promises. (Complaint, ¶¶ 15, 27). Defendant has not furnished any evidence which would otherwise contradict these allegations. On the contrary, as indicated earlier, Defendant has actually assumed the truth of the allegations in Plaintiff's complaint. Under these particular circumstances, the Court finds that Defendant has not established it is entitled to the relief which it seeks at least at the present time.² Defendant's motion for summary disposition as to Plaintiff's breach of contract claim is accordingly denied.

B. Unjust Enrichment/Quantum Meruit

Next, Defendant contends that Plaintiff has not adequately alleged a claim for unjust enrichment, the elements of which are: (1) the receipt of a benefit by the defendant from the plaintiff, and (2) an inequality resulting to the plaintiff because of the retention of the benefit by the defendant. *Morris Pumps v Centerline Piping, Inc, 272*

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Given the resolution of Defendant's initial argument, it is unnecessary for the Court to address Defendant's premature suggestion that to the extent Plaintiff is able to demonstrate the existence of an express contract satisfying the statute of frauds, it cannot proceed under a theory of unjust enrichment.

Mich App 187; 195 NW2d 898 (2006). As aptly noted by Defendant, “the primary function of a pleading in Michigan is to give notice of the nature of the claim or defense sufficient to permit the opposite party to take a responsive position.” See *Stanke v State Farm Mut Automobile Ins Co*, 200 Mich App 307, 317; 503 NW2d 758 (1993).

When viewing Plaintiff’s complaint as a whole,³ it is apparent on its face that Plaintiff has plead more than a receipt of a benefit, and resultant inequality. As can be seen, Plaintiff has identified the type of services it provided to Defendant for which it was purportedly uncompensated, notably technical support, and assistance with the development of Defendant’s e-commerce website. (Complaint ¶¶ 11-12). Although Plaintiff has not stated in exacting detail each task it performed for Defendant, Plaintiff has alleged something more certain than that Defendant was in receipt of a benefit. As such, the Court finds that the complaint is sufficiently specific for Defendant to adequately prepare its defense. Defendant’s motion for summary disposition with regard to Plaintiff’s unjust enrichment/quantum meruit claim is consequently denied.

Defendant’s motion for a more definite statement is granted as to Plaintiff’s breach of contract and/or quantum meruit claim(s). Plaintiff shall provide the dates on which the alleged services were furnished by Plaintiff to Defendant, in addition to the details of those services,

/s/ Daniel P. Ryan

Circuit Judge

DATED:

5/15/2015

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In the first paragraph of its claim for unjust enrichment/quantum meruit, Plaintiff realleges all the previous paragraphs as if fully set therein. (Complaint, ¶ 31).