

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

ADVANCE PLUMBING SUPPLY,
Plaintiff,

v.

Case No. 13-134892-CK
Hon. James M. Alexander

GARDELLA HOMES 1, LLC,
Defendant.

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OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on “Plaintiff’s Motion for Summary Disposition & Judgment Against Defendant.” The Court dispenses with oral argument pursuant to MCR 2.119(E)(3).

In its Complaint, Plaintiff alleges that it sold and delivered goods, wares, merchandise, and rendered services to Defendant prior to July 31, 2012. Plaintiff claims that Defendant owes \$33,863.56 for said goods and services. Despite repeated demands, however, Defendant refuses to pay. With interest, Plaintiff claims that Defendant now owes \$35,422.21. Plaintiff attaches Defendant’s customer statement, credit application, and an affidavit of account to its Complaint.

Although Plaintiff does not specify the Court Rule that it seeks relief, the Court will treat Plaintiff’s request as a (C)(10) motion, which tests the factual support for Plaintiff’s claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Under (C)(10), “In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.” *Quinto v Cross & Peters Co*, 451 Mich 358,

362; 547 NW2d 314 (1996), citing Neubacher v Globe Furniture Rentals, 205 Mich App 418, 420; 522 NW2d 335 (1994).

Pursuant to the Court's December 19, 2013 Order Re: Plaintiff's Motion for Summary Disposition, Defendant was required to file a response by January 29, 2014. Defendant, however, has failed to file a response or present any other evidence contradicting Plaintiff's claims. The Michigan Court of Appeals has held that:

A party opposing a motion brought under C(10) may not rest upon the mere allegations or denials in that party's pleadings, but must by affidavit, deposition, admission, or other documentary evidence set forth specific facts showing that there is a genuine issue for trial. . . . [W]here the opposing party fails to come forward with evidence, beyond allegations or denials in the pleadings, to establish the existence of a material factual dispute, the motion is properly granted. McCormic v Auto Club Ins Ass'n, 202 Mich App 233, 237; 507 NW2d 741 (1993) (internal citations omitted).

In its motion, Plaintiff also claims that Defendant likewise failed to answer Plaintiff's Request for Admissions. As a result, each request to admission has been deemed admitted under MCR 2.312. Therefore, Plaintiff claims that Defendant admitted the liability alleged due. As a result, Plaintiff claims that it is entitled to summary disposition and judgment against Defendant in the amount of \$35,422.21, plus costs of \$228.15, for a total judgment of \$35,650.36.

The Court concludes that Defendants fail to present any evidence contradicting Plaintiff's claims, and as a result fail to establish a question of fact regarding Plaintiff's entitlement to judgment as a matter of law. Therefore, the Court shall GRANT Plaintiff's motion for summary disposition and enter a judgment against Defendant in the amount of \$35,650.36.

IT IS SO ORDERED

February 18, 2014
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge