

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

**FORGE INDUSTRIAL STAFFING, INC,**  
**Plaintiff,**

v.

**Case No. 13-137675-CK**  
**Hon. James M. Alexander**

**BRYAN DIXON,**  
**Defendant.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Defendant's Motion for Summary Disposition. This suit arose after Defendant left his employment with Plaintiff and began working for another staffing company. On August 17, 2013, two days after his termination, Defendant signed a General Release Agreement in exchange for an \$11,751.40 payment from Plaintiff. In relevant part, this agreement contained non-compete, non-solicitation, and confidentiality provisions.

On October 11, 2013, non-party Impact Management Services hired Defendant as a Program Manager. Then on December 3, 2013, Plaintiff filed the present suit on claims that Defendant's employment with Impact breached the confidentiality and non-competition provisions of the General Release Agreement and a 2010 Propriety Interest Agreement. On December 11, 2013, the Court denied Plaintiff's motion for injunctive relief.

Defendant now moves for summary disposition under MCR 2.116(C)(10), which tests the factual support for Plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). The moving party must specifically identify the issues that he believes present no genuine issue of material fact. *Id.* at 120. The opposing party may not rest on mere allegations or

denials in his pleadings, but must, by affidavits or as otherwise provided in the rule, set forth specific facts showing a genuine issue for trial. *Id.* at 120-121. Where the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* at 120. In its Response, Plaintiff seeks summary disposition under (I)(2).

In support of his Motion, Defendant argues that Plaintiff has failed to present any evidence that Defendant has violated any portion of the Agreement. Instead, Defendant claims that Plaintiff only offers unsubstantiated “concerns” that Defendant is violating the same. Defendant also claims that the Court should dismiss Count II of Plaintiff’s Amended Complaint – which alleges a Breach of the 2010 Proprietary Interest Agreement – because the same was superseded by the 2013 General Release Agreement.

With respect to Plaintiff’s Count I, Defendant claims that Plaintiff has no evidence that Defendant violated any part of the 2013 Agreement. Under paragraph 5 of the Agreement, Defendant agreed that he “shall not . . . be employed by . . . any Competitive Business . . . in any capacity in which [Defendant’s] knowledge of [Plaintiff’s] Confidential Information would facilitate [Defendant’s] work for the Competitive Business.”

Plaintiff responds that Defendant is doing the same work for Impact that he did when employed by Plaintiff. In support, Plaintiff cites to several portions of Defendant’s deposition – where he admitted as much. As a result, Plaintiff argues that Defendant works for a competitor in a capacity where his knowledge of Plaintiff’s Confidential Information “would facilitate” his work for the competitor.

Defendant, on the other hand, attaches his own Affidavit – whereby he claims that he has not violated the 2013 Agreement. In other words, the parties present competing evidence that precludes summary disposition for either party.

Plaintiff also questions Defendant's credibility, and credibility is an issue which must be submitted to the trier of fact. *White v Taylor Distributing Company, Inc*, 275 Mich App 615; 739 NW2d 132 (2007).

Additionally, in *Vanguard Ins Co v Bolt*, 204 Mich. App. 271; 514 N.W.2d 525 (1994), the Court of Appeals held:

The granting of a motion for summary disposition is especially suspect where motive and intent are at issue or where a witness or deponent's credibility is crucial. Accordingly, where the truth of a material factual assertion of a moving party depends upon a deponent's credibility, there exists a genuine issue for the trier of fact and a motion for summary disposition should not be granted. *Vanguard Ins, supra* at 276 (internal citations omitted).

Whether or not Defendant works for Impact "in a capacity in which [his] knowledge of [Plaintiff's] Confidential Information would facilitate [his] work for [Impact]" is so substantially intertwined with fact-finding and credibility determinations as to render summary disposition wholly inappropriate.

Additionally, Plaintiff argues that summary disposition is premature because discovery will reveal evidence to substantiate its defense to this suit. Indeed, summary disposition under (C)(10) is usually premature if granted before discovery on a disputed issue is complete. *Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000).

Discovery is not set to close until May 31, 2014. Because discovery has a fair chance of uncovering factual support for Plaintiff's claims, the Court concludes that summary disposition under (C)(10) is premature.

For the foregoing reasons and viewing the evidence in the light most favorable to Plaintiff, this Court cannot conclude that there are no material facts in dispute to warrant judgment in favor of Defendant as a matter of law. As a result, Defendant's Motion for Summary Disposition as to Plaintiff Count I is DENIED.

With respect to Plaintiff's Count II for Breach of the 2010 Proprietary Interest Agreement, Defendant argues that the same must be dismissed because the 2010 Agreement was superseded by the 2013 General Release Agreement – which contained an integration clause. In its Response, Plaintiff does not challenge Defendant's argument on this issue and, therefore, concedes that summary of this claim is appropriate. As a result, Defendant's motion for summary disposition as to Plaintiff's Count II is GRANTED, and the same is DISMISSED.

**IT IS SO ORDERED.**

March 5, 2014  
Date

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