

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

**AUGUSTUS PROPERTY INVESTORS, INC,  
Plaintiff,**

v.

**Case No. 13-136969-CK  
Hon. James M. Alexander**

**THE HOME STORE, LLC,  
Defendant.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Defendant’s motions for summary disposition. In March 2011, the parties contracted for Defendant to act as Plaintiff’s property manager for several residential properties. Under this contract, Defendant would be paid to collect rent, arrange for building repairs, negotiate new leases, and otherwise maintain the properties.

Each month, Defendant provided a monthly statement on each property – detailing the income and expenses. In its First Amended Complaint, Plaintiff generally alleges that Defendant “refused to substantiate numbers appearing on summary monthly statements.” Plaintiff also claims that Defendant charged for repairs and utility payments that were never made. As a result, Plaintiff sued on breach of contract and fraud claims.

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 motions, Defendant argues that it is entitled to summary disposition because the parties agreed that Plaintiff must dispute, in writing, any of the monthly statements within 45 days. But Plaintiff failed to do so, and under the parties' agreement, this failure resulted in Plaintiff's approval of any charges. Defendant also argues that Plaintiff's fraud claim cannot succeed because Plaintiff cannot identify any fraud.

Michigan law is well-established that "a court must construe and apply unambiguous contract provisions as written." *Rory v Cont'l Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). Further, "[a] contract must be interpreted according to its plain and ordinary meaning." *Holmes v Holmes*, 281 Mich App 575, 593; 760 NW2d 300 (2008), citing *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 107; 577 NW2d 188 (1998). "Under ordinary contract principles, if contractual language is clear, construction of the contract is a question of law for the court." *Holmes v Holmes*, supra at 594; quoting *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997).

Paragraph 6 of the parties' agreement provides (in relevant part):

**MONTHLY STATEMENTS:** The Agent shall render to the Owner, monthly, an itemized statement for each property of receipts and disbursements incurred in connection with the management and operation of The Premises. This statement will be sent by approximately the twentieth (20<sup>th</sup>) day of each month. . . . The statement shall be deemed approved by Owner unless Agent is notified in writing within forty five (45) days from the date of statements setting forth the errors.

Defendant argues that it never received any written objection to any of the "thousands" of monthly statements that it provided to Plaintiff. In response, Plaintiff claims that it did "frequently identify errors," but according to Plaintiff's CFO, James House, he only did so in

person or on the phone. This despite the parties' Agreement specifically requiring said objections be in writing. Based on its failure to notify in writing, the time for Plaintiff's objections has passed, and Plaintiff has approved each monthly statement provided by Defendant.

The Court also rejects Plaintiff's argument that paragraph 7 somehow provides three years to bring claims based on errors in the statements. Plaintiff's interpretation is both strained and contrary to the express 45-day provision found in paragraph 6.

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).

But in this case, while discovery may ultimately reveal errors in the monthly statements, this Court is enforcing the negotiated agreement of the parties – that any objections were required to be raised (in writing) long ago. Discovery will not change that. Plaintiff approved the statements. Because Plaintiff's claims for both breach of contract and fraud are founded on errors and mischarges statements that it approved, Defendant is entitled to summary disposition.

For the foregoing reasons and viewing the evidence in the light most favorable to Plaintiff, this Court concludes that there are no material facts in dispute and Defendant is entitled to judgment as a matter of law. As a result, Defendant's Motion for Summary Disposition under (C)(10) is GRANTED, and Plaintiff's Complaint is DISMISSED.

**IT IS SO ORDERED.**

June 25, 2014 \_\_\_\_\_  
Date

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