

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

**AUGUSTUS PROPERTY INVESTORS, INC,  
Plaintiff/Counter-Defendant,**

v.

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

**THE HOME STORE, LLC,  
Defendant/Counter-Plaintiff.**

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**AMENDED OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Defendant’s third motion for summary disposition on two remaining claims in its counter-complaint against Plaintiff. In March 2011, the parties contracted for Defendant to act as Plaintiff’s property manager for several residential properties. Under the contract, Defendant was paid to collect rent, arrange for building repairs, negotiate new leases, and otherwise maintain the properties. Each month, Defendant submitted a monthly statement on each property for Plaintiff to review – detailing the income and expenses incurred.

In its First Amended Complaint, Plaintiff alleged that Defendant “refused to substantiate numbers appearing on summary monthly statements.” Plaintiff also claimed that Defendant charged for repairs and utility payments that were never made. As a result, Plaintiff sued Defendant on breach of contract and fraud claims. Defendant then brought a (C)(10) motion for summary disposition arguing that any dispute the Plaintiff had with the monthly statements was considered “approved” since no dispute was made by Plaintiff, in writing, within 45 days as the parties’ contract required. This Court held that there were no material facts in dispute and Defendant was entitled to judgment as a matter of law because both of Plaintiff’s claims - breach

of contract and fraud – were founded on errors and mischarges in statements that Plaintiff approved when it failed to dispute the monthly statements submitted by Defendant.

Defendant now moves for summary disposition under MCR 2.116(C)(10), which tests the factual support for the remaining 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 motion, Defendant argues that it is entitled to summary disposition on its breach of contract claim for a \$7,492.88 balance due on the final November 20, 2013 statement. Defendant points out that the Court has already ruled these financial statements are final and binding on the parties. Defendant also seeks the contract interest due on the November 20, 2013 statement in the amount of \$1,049.00. Therefore, Defendant requests a total award of \$8,541.88 in its favor.

In response, Plaintiff argues that Defendant is not entitled to summary disposition because it filed its Complaint disputing the November 20, 2013 statement within the 45-day period required under the parties' contract. Plaintiff then argues that Defendant withheld information preventing it from disputing the statement.

But Plaintiff offers no authority for its argument that the filing of a Complaint is written notice within the meaning of the parties' agreement. And Michigan law is clear that, "A party may not merely announce a position and leave it to [the] Court to discover and rationalize the

basis for the claim.” *National Waterworks, Inc v International Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007).

The same reasoning this Court applied in dismissing Plaintiff’s complaint applies here. The parties entered into an agreement in 2011 and negotiated material terms such as a 45-day written notification requirement by the owner. If no such writing was made by the owner disputing any errors, then the monthly statement was deemed approved per the parties’ agreement. As such, this Court held:

... [T]his Court is enforcing the negotiated agreement of the parties – that any objections were required to 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 in the amount of \$8,541.88. As a result, Defendant’s Motion for Summary Disposition under (C)(10) is GRANTED.

Defendant’s request for costs and attorney fees is DENIED.

This Order is a Final Order that resolves the last pending claim and closes the case.

**IT IS SO ORDERED.**

November 7, 2014  
Date

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