

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

**PAUL LUFTY, ET AL,  
Plaintiffs,**

**v.**

**Case No. 13-137740-CK  
Hon. James M. Alexander**

**US RAC, LLC, ET AL,  
Defendants.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

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

In their Complaint, Plaintiffs allege that they loaned Defendants some \$250,000 under the terms of an October 10, 2012 Promissory Note. Plaintiffs allege that Defendants are in default on this note by failing to pay as required since April 10, 2013. On July 3, 2013, Plaintiffs loaned Defendants an additional \$15,000 under the terms of a second Promissory Note. Plaintiffs allege that Defendants have failed to pay on this note as well. Plaintiffs also claim that they made several smaller loans under verbal loan agreements. These loans were also left unpaid.

The total amount owed on these loans is \$304,327.93 – including principal and interest. Under paragraph 7(g) of the October 10, 2012 Promissory Note, Plaintiff also claims that it is entitled to possession of all assets of Defendant U.S. RAC based on its default. Plaintiff also requests that any judgment reach Defendant American RAC – which Plaintiff alleges is a mere

instrumentality of Defendants U.S. RAC and William McMurray – that benefited from the above loans. Finally, Plaintiff seeks costs of \$365 and attorney fees of \$6,175.

In support of their motion, Plaintiffs attach: (1) the October 2012 and July 2013 promissory notes, (2) the Affidavit of Plaintiff Paul Lufty, and (3) Plaintiffs’ unanswered Request for Admissions and Interrogatories. Plaintiffs now seek a judgment for \$310,867.93 against all Defendants.

To that end, Plaintiffs now seek summary disposition under MCR 2.116(C)(10), 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 February 25, 2014 Order,<sup>1</sup> Defendants were required to file a response by April 2, 2014. Defendants, however, has failed to file a response or present any other evidence contradicting Plaintiffs’ 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).

Plaintiffs also claim that Defendants failed to answer Plaintiffs Request for Admissions and

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<sup>1</sup> This Order contains an obvious typographical error – identifying the motion for summary disposition as “Defendant’s” rather than “Plaintiffs’.” Defendants, however, did not file such a motion. In any event, Defendants

Interrogatories. As a result, Plaintiffs claim that each request to admit has been deemed admitted under MCR 2.312. Therefore, Plaintiffs claim that Defendants admitted liability on the loans.

Because Defendants failed to respond to Plaintiffs' motion and discovery requests, the Court concludes that Defendants failed to present any evidence contradicting Plaintiffs' claims, and as a result, fail to establish a question of fact regarding Plaintiffs' entitlement to judgment as a matter of law.

Therefore, the Court GRANTS Plaintiffs' motion for summary disposition. Plaintiffs are entitled to judgment against all Defendants in the amount of \$304,327.93, plus costs of \$365 and attorney fees of \$6,175, for a total judgment of \$310,867.93. Plaintiffs may present an appropriate judgment for entry.

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

**IT IS SO ORDERED**

April 24, 2014  
Date

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