

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

**COMPUTER CONSULTANTS OF  
AMERICA, INC,  
Plaintiff,**

**v.**

**Case No. 14-139918-CK  
Hon. James M. Alexander**

**IDINTERACT, INC,  
Defendant.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Defendant’s Motion for Partial Summary Disposition and to Dismiss. Plaintiff is in the business of placing IT professionals in IT firms. Defendant is an IT firm that develops, markets, and distributes transactional social media and performs customer relationship management and verification services. In February 2014, the parties entered into an Agreement whereby Plaintiff would refer IT candidates to Defendant for placement. In return, Defendant would pay Plaintiff a “placement fee” based on each candidate’s estimated gross annual compensation.

Relevant to the current motion, in December 2013, Plaintiff referred Fuhad Ahmad to fill an opening for a technical staff position with Defendant. Mr. Ahmad entered into an employment contract with Defendant on December 17, 2013, and his first day of work was December 18. In its Answer, Defendant claims that it terminated Mr. Ahmad on March 14, 2014, and he worked his final day on March 17. Plaintiff, on the other hand, claims that Defendant terminated Mr. Ahmad on March 17.

The duration of Mr. Ahmad's employment is relevant because the parties' Agreement stated that Defendant would not have to pay the placement fee if the employee worked 90 days or less. Specifically, the Permanent Placement Search Agreement provides (at Paragraph IV):

[Plaintiff] warrants that should the candidate leave or be terminated for any reason within a 90 day period, the placement fee will be refunded and [Defendant] will not be obligated to pay any additional fees. This guarantee does not apply if the employee is terminated due to business reasons such as lay off due to financial constraints, merger or acquisition, or departmental reorganization.

Following Mr. Ahmad's termination, Defendant refused to pay the placement fee – apparently based on the belief that Mr. Ahmad worked 90 days or less. As stated, however, Plaintiff disagrees and sued to recover said fee for Mr. Ahmad (\$11,900) and another employee.<sup>1</sup> Plaintiff seeks this recovery under breach of contract, account stated, and unjust enrichment theories.

Defendant now moves for partial summary disposition under MCR 2.116(C)(8) and (C)(10). A (C)(8) motion tests the legal sufficiency of the complaint, and a (C)(10) motion tests the factual support for Plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

### **1. The placement fee.**

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.”

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<sup>1</sup> Plaintiff claims that it is owed \$15,000 for its placement of Mohamed Mohamud.

*Holmes v Holmes*, supra at 594; quoting *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997).

Defendant argues that it is entitled to summary disposition for two reasons. First, Mr. Ahmad's employment was only 90 days (from December 18, 2013 to March 17, 2014). As a result, Defendant owes Plaintiff no placement fee. Next, Plaintiff's unjust enrichment claim cannot be maintained when there is an express contract covering the disputed subject matter.

In response, Plaintiff argues that there are factual questions about Mr. Ahmad's termination date and whether he was terminated for business reasons "such as layoff due to financial constraints." If Defendant terminated Mr. Ahmad for "business reasons," then Plaintiff would be entitled to the placement fee regardless of the duration of his employment.

Initially, the Court rejects Plaintiff's argument that Mr. Ahmad's employment was for longer than 90 days. It is undisputed that Mr. Ahmad began working for Defendant on December 18, 2013. Even if he worked a full day on March 17, 2014, this was only the 89<sup>th</sup> day after his start date. And should the Court count December 18 as day one in this calculation (as Plaintiff apparently suggests), then Mr. Ahmad still only worked 90 days at the time of his termination. As a result, the Court finds that Mr. Ahmad was terminated within the 90-day period contemplated by Paragraph IV of the parties' Agreement.

Next, the Court must determine whether Defendant terminated Mr. Ahmad for "business reasons." If so, then Plaintiff is not entitled to payment of the placement fee.

On this issue, Defendant submits the affidavit of Matthew Standish, its CEO, who claims that Mr. Ahmad was terminated for performance reasons. In response, Plaintiff attaches Mr. Ahmad's affidavit. In it, Mr. Ahmad claims that he was informed that he was being terminated "due to lack of work." He further claims that he was never told that his work was the reason for

his termination, and Mr. Standish affirmatively told him that he would be considered for part time work in the future.

Because the parties present competing evidence about the reason for Mr. Ahmad's termination, summary disposition on this issue is inappropriate.

Further, in its Reply Brief, Defendant suggests that Mr. Ahmad's "unsupported assertion that he was laid-off is contradicted by" other evidence. In other words, Defendant specifically questions Mr. Ahmad's credibility, and credibility must be submitted to the trier of fact. *White v Taylor Distributing Company, Inc*, 275 Mich App 615; 739 NW2d 132 (2007). The *White* Court reasoned that, "courts 'may not resolve factual disputes or determine credibility in ruling on a summary disposition motion'" *White, supra* at 625, citing *Burkhardt v Bailey*, 260 Mich App 636, 646-647; 680 NW2d 453 (2004); and *Foreman v Foreman*, 266 Mich App 132, 135-136; 701 NW2d 167 (2005).

For all of 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 whereby Defendant is entitled to judgment as a matter of law. As a result, Defendant's Motion for Summary Disposition of Plaintiff's breach of contract or account stated claims is DENIED.

## **2. Unjust Enrichment.**

With respect to Plaintiff's claim for unjust enrichment, Defendant claims Michigan law provides that said claim cannot be maintained when there is an express contract covering the same subject matter.

On this issue, Plaintiff does not respond, and therefore, does not dispute Defendant's entitlement to judgment as a matter of law. And indeed, it is well settled that an unjust

enrichment claim cannot be maintained when there is an express contract covering the disputed subject matter. *Campbell v Troy*, 42 Mich App 534, 537; 202 NW2d 547 (1972).

For the foregoing reason, Defendant is entitled to summary disposition of Plaintiff's unjust enrichment claim, and the same is DISMISSED.

**IT IS SO ORDERED.**

July 23, 2014  
Date

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