

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

**OAK ELECTRIC SERVICE, INC and  
RUSSELL GARY PIPIA,  
Plaintiffs,**

**v.**

**Case No. 14-140570-CK  
Hon. James M. Alexander**

**TEAM RAY TECHNOLOGIES, LLC, ET AL,  
Defendants.**

---

**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Defendants’ motion for summary disposition. In their Complaint, Plaintiffs allege that they provided electrical services to Defendants Team Ray and Hydra-Quip beginning in March 2012. After each job, Plaintiff Oak Electric would issue an invoice to Hydra-Quip for the amount owed. Plaintiffs allege that Hydra-Quip failed to pay all amounts due – leaving a balance of \$19,084.86.

Separately, Plaintiffs allege that Plaintiff Pipia “personally loaned money to Defendant Hydra-Quip for January and February 2013 rent totaling \$21,041.66.” In return, Defendants were to pay back the loan, plus an additional 6% in interest.

When the monies hadn’t been paid by October 2013, Plaintiff Pipia allegedly spoke with Defendant Thomas Ray about the outstanding balance. Plaintiffs claim that Ray acknowledged the business debts and stated that Defendants would sell some equipment to pay the outstanding balances. Plaintiffs also allege that Ray “stated that if Defendants Hydra-Quip and/or Team Ray were unable to pay . . . then [he] would take personal responsibility for the amounts owed.”

In January 2014, after Defendants sold the equipment for “roughly \$600,000,” Pipia contacted Ray, who then refused to pay anything and “told [Pipia] to sue them.”

As requested, in May 2014, Plaintiffs sued on claims of: (1) Breach of Contract (Oak Electric against Hydra-Quip and Team Ray), (2) Account Stated (Oak Electric against Hydra-Quip and Team Ray), (3) Breach of Contract (Pipia as to all Defendants), (4) Unjust Enrichment, and (5) Promissory Estoppel (as to Defendant Ray). Plaintiffs seek \$40,126.52, plus costs, interest, and attorney fees.

In response to the lawsuit, Defendants filed the present motion for summary disposition – seeking the same under MCR 2.116(C)(7) and (C)(8). A motion under (C)(7) determines whether a claim is barred, among other grounds, by a statute of limitations. And a (C)(8) motion tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

In their motion, Defendants argue that Plaintiffs’ claims against Thomas Ray are barred by the statute of frauds. Defendants also argue that they are entitled to summary disposition of Plaintiffs’ claims for account stated, unjust enrichment, and promissory estoppel because Plaintiffs fail to state a claim for said actions.<sup>1</sup>

### **1. Defendant Thomas Ray.**

It makes sense to first address Plaintiffs’ claims against Defendant Thomas Ray. As stated, Defendants argue that said claims are barred by MCL 566.132(1)(b). The cited statute provides:

---

<sup>1</sup> The Court will note that Defendants repeatedly state that they seek summary on behalf of Defendant Hydra-Quip in their motion. But at oral argument on said motion, Defendants waived their summary request on behalf of Hydra-Quip.

In the following cases an agreement, contract, or promise is void unless that agreement, contract, or promise, or a note or memorandum of the agreement, contract, or promise is in writing and signed with an authorized signature by the party to be charged with the agreement, contract, or promise:

...

(b) A special promise to answer for the debt, default, or misdoings of another person.

In response to Defendants' motion, Plaintiffs argue that Ray's promise to repay the amounts loaned for January and February 2013 rent (totaling \$21,041.66) was actually an **original** promise. As such, it may be excepted from the statute of frauds under Michigan law. See *Schier, Deneweth & Parfitt, PC v Bennett*, 206 Mich App 281, 282; 520 NW2d 705 (1994); and *Highland Park v Grant-Mackenzie Co*, 366 Mich 430, 443-444, 446-447; 115 NW2d 270 (1962). This is so because one is not answering for the debt of another when no debt yet exists. As a result, original promises may be excepted from the statute.

And, as stated, Plaintiffs' Amended Complaint specifically alleges that Plaintiff Pipia "personally loaned money to Defendant Hydra-Quip for January and February 2013 rent totaling \$21,041.66, in exchange for **all Defendants promising** to pay back the loan, plus an additional 6% interest on the money borrowed." (Amended Complaint, at paragraph 13) (emphasis added).

Plaintiffs support this assertion with the Pipia's Affidavit, in which he claims that he loaned the rent money based on Mr. Ray's personal promise **before** Mr. Pipia paid the rent directly to the landlord. As a result, Plaintiffs claim that the money was loaned on behalf of Thomas Ray **and** Hydra-Quip, and Mr. Ray personally promised repayment.

In their Reply, Defendants claim that Plaintiffs' response on this issue is an about-face from their Complaint – which only alleges that Pipia loaned Hydra-Quip the rental money. But,

as reproduced above, Plaintiffs' Amended Complaint alleges that "all Defendants" promised repayment, and "all Defendants," by definition, includes Mr. Ray.

For the foregoing reason, the Court finds that Plaintiffs' claim regarding **the rent loan** can proceed as to Defendant Thomas Ray individually because it may constitute an original promise, which is excepted from the statute of frauds.

With respect to Plaintiffs' claim for past due electrical services, however, Mr. Ray's verbal promise falls squarely within the statute of frauds, and the Court rejects Plaintiffs' attempt to plead equitable claims (Counts IV and V) in an attempt to circumvent the statute.

For all of the foregoing reasons, the Court GRANTS Defendants' (C)(7) motion in part. Each of Plaintiffs' claims against Thomas Ray regarding only the electrical services debt is DISMISSED. Regarding the rent loan, however, Plaintiffs may proceed individually against Defendant Ray under their Counts III, IV, and V.<sup>2</sup>

## **2. Defendant Team Ray.**

With respect to Team Ray, Plaintiffs offer no compelling theory why it should be included as a Defendant in this lawsuit. To the extent that Plaintiffs claim Team Ray's liability on the electrical services contract, the same is rejected because Plaintiffs only allege services provided to Hydra-Quip.

With respect to the rent loan, Plaintiff's affidavit claims that only Thomas Ray and Hydra-Quip promised repayment on the same. Because Plaintiffs fail to claim that Team Ray made any promises, the Court finds that it cannot be liable on this debt.

---

<sup>2</sup> The Court notes that Plaintiffs' Promissory Estoppel (Count V) claim is only pled against Defendant Thomas Ray, and Plaintiff may proceed with this claim. This is so because considering only the pleadings and viewing all well-pled factual allegations in the light most favorable to Plaintiff, this Court cannot conclude that said claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery under (C)(8).

For all of the foregoing reasons, considering only the pleadings and viewing all well-pled factual allegations in the light most favorable to Plaintiffs, this Court concludes that Plaintiffs' claims against Team Ray are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. As a result, Defendants' motion for summary disposition under (C)(8) is GRANTED, and Plaintiffs' Complaint as to Team Ray only is DISMISSED in its entirety.

**Summary**

To summarize, Defendants' motion for summary disposition is GRANTED IN PART.

All claims against Defendant Thomas Ray with respect to the electrical services invoices are DISMISSED. Plaintiffs, however, may proceed on their claims against Mr. Ray for breach of contract (Count III), unjust enrichment (Count IV), and promissory estoppel (Count V), but only with respect to the rent loan.

Defendants' motion regarding Team Ray, however, is GRANTED, and all claims against Team Ray are DISMISSED.

**IT IS SO ORDERED.**

October 15, 2014  
Date

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