

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

**JUSTIN’S FINE JEWELRY, INC,
Plaintiff,**

v.

**Case No. 14-141737-CK
Hon. James M. Alexander**

**CK DETROIT, INC and
DIVA DESIGN, INC,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant Diva Design’s motion for summary disposition.¹ In its Complaint, Plaintiff claims that it sent “vast amounts” of jewelry to Defendants to be held on consignment until sold. If the items were not sold, they were to be returned to Plaintiff. These transactions were recorded in a series of written statements. Plaintiff claims that Defendants breached the parties’ agreements “by failing to return or pay for the jewelry.” Plaintiff filed the present suit seeking damages in the principal amount of \$759,184.94, plus interest.

Diva responded to this lawsuit by filing the present motion for summary disposition – essentially arguing that it is a stranger to Plaintiff’s transactions with Defendant CK Detroit. To its end, Diva now moves for summary disposition under MCR 2.116(C)(8) and (C)(10) – seeking dismissal of Plaintiff’s Complaint.

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. A motion

¹ Plaintiff obtained a Default Judgment against Defendant CK Detroit on September 22, 2014.

under this subrule may be granted only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Wade v Dept of Corrections*, 439 Mich 158; 483 NW2d 26 (1992).

A motion under (C)(10) 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).

With its Complaint, Plaintiff attached a "Statement" that establishes the amount of the indebtedness. This Statement identifies "CK Detroit Inc./Diva Design Wholesale" as the entities responsible for the debt.

Additionally, in its response to Diva's motion, Plaintiff attaches the Affidavit of its President, Hassan Arzy. Mr. Arzy claims that Defendants requested that all invoices be billed to CK Detroit and shipped to Diva. Further, both Diva and CK Detroit paid invoices for the items – which were all "signed for" by Diva.

Diva's current motion is founded on the premise that "Plaintiff altered invoices to include Diva Design Wholesale on the final billing statement" that only applied to CK Detroit. Again in its Reply Brief, Diva argues that "Plaintiff altered invoices to include [Diva] on the final billing statement." In other words, Diva disputes the credibility of Plaintiff's evidence of the debt.

But credibility is an issue that 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).

It would be wholly inappropriate for this Court to weigh or disregard evidence on a motion for summary disposition – which is what Diva suggests the Court do in order to rule in its favor.

For the foregoing reasons and accepting all well-pled factual allegations as true and construed in a light most favorable to the nonmovant, the Court cannot conclude that Plaintiff’s claims are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” As a result, summary disposition under (C)(8) is inappropriate and DENIED.

Additionally, 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 under (C)(10) is also DENIED.

IT IS SO ORDERED.

September 24, 2014
Date

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