

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

**CITIZENS BANK, NATIONAL ASSOCIATION,  
Plaintiff,**

v.

**Case No. 14-143542-CK  
Hon. James M. Alexander**

**ROBERT B SOLOMON, ET AL,  
Defendants.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Plaintiff’s motion for summary disposition on its breach of guaranty claim against Defendants Robert B. Solomon; OKI, LLC; Robert B. Solomon Holding Company; Olga’s FMC, LLC; and 1940 Northwood, LLC (“Defendants”). The Court dispenses with oral argument pursuant to MCR 2.119(E)(3).

According to Plaintiff’s First Amended Complaint, on November 30, 2010, Defendant Olga’s Kitchen, Inc. entered into a loan agreement with Plaintiff that included a Term Loan, a Revolving Line of Credit Loan, and an Equipment Line of Credit Loan.<sup>1</sup> Each loan agreement was executed by Olga’s Kitchen on November 30, 2010 and delivered to Plaintiff. The Term Loan and Equipment Line of Credit were required to be repaid by November 30, 2013, and the Revolving Line of Credit Loan was required to be repaid by May 30, 2012.

To secure repayment on these loans, Defendants executed Guaranty Agreements (also dated November 30, 2010) in Plaintiff’s favor. As further security (on the same date), all Defendants

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<sup>1</sup> Olga’s Kitchen has filed for Chapter 11 Bankruptcy, and as a result, claims against this entity are presently stayed.

except Solomon also executed a Security Agreement granting Plaintiff a first-priority security interest in all of their assets.

Plaintiff claims that the Term Loan, a Revolving Line of Credit Loan, and an Equipment Line of Credit Loan were all amended and extended several times, ultimately resulting in the execution of a Second Forbearance Agreement dated December 9, 2013. On the same date, Olga's Kitchen also executed a Consolidated, Amended and Restated Promissory Note.

Plaintiff claims that Defendants failed to make the required payments under the Agreements' terms, and as a result, notified Olga's Kitchen and Defendants on March 26, 2014 and again on May 29, 2014 of their failure to repay as agreed. Ultimately, neither Olga's Kitchen, nor Defendants, repaid the loans by the expiration of the term or upon demand.

Plaintiff claims that it is owed a total of \$2,577,459.69 through July 7, 2015 (representing \$2,041,666.63 in principal, \$247,254.43 in pay rate interest, \$69,530.09 in accrual interest, \$118,416.67 in default interest, a \$50,000 forbearance fee, and \$50,591.87 in unreimbursed legal fees and costs).

Plaintiff also claims that interest continues to accrue at the rate of \$790.39 per day (\$450.11 in pay rate interest, \$113.43 in accrual interest, and \$226.85 in default interest). Plaintiff further claims that it continues to incur attorneys' fees and costs for which Defendants are responsible.

As a result, Plaintiff seeks a judgment for this amount, plus contractual attorney fees and costs and continuing interest until the judgment date.

To its end, Plaintiff now moves for 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).

In support of its motion, Plaintiff attaches: (1) the Affidavit of Plaintiff's Vice President in the Restructuring Management Group; (2) each of the aforementioned loan agreements, guarantees, and amendments; and (3) the Affidavit of Plaintiff's attorney, C. David Bargamian (re: attorney fees).

Under the Court's July 29, 2015 Order, Defendants were required to file any response brief by September 23, 2015. All Defendants, however, failed to file a response or present any evidence contradicting Plaintiff's 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).

As a result, the Court concludes that Defendants fail to present any evidence contradicting Plaintiff's claims, and as a result fail to establish a question of fact regarding Plaintiff's entitlement to judgment as a matter of law. Therefore, the Court shall GRANT Plaintiff's motion for summary disposition under (C)(10) and enter a judgment against Defendants for \$2,577,459.69 through July 7, 2015 (plus accruing interest of \$790.39 per day from July 7, 2015 through today's date).

Plaintiff may present an appropriate judgment for entry.

**IT IS SO ORDERED.**

October 12, 2015  
Date

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