

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

**UNITED SHORE FINANCIAL SERVICES, LLC,
Plaintiff,**

v.

**Case No. 14-143594-CK
Hon. James M. Alexander**

**LENDING BEE, INC, ET AL,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Plaintiff’s motion for summary disposition. Plaintiff is a mortgage wholesaler that contracted with Defendant Lending Bee for mortgage broker services. Under the terms of the April 19, 2012 Wholesale Broker Agreement, Lending Bee presented residential mortgage loan packages to Plaintiff for funding.

The Broker Agreement, at Article V, also required Lending Bee to reimburse Plaintiff for losses on the loans when there was a defect in the loan’s origination (regardless of cause) or if Plaintiff was required to repurchase the loan from a secondary-market investor.

In its Complaint, Plaintiff claims it funded fifteen residential mortgages presented by Lending Bee. Plaintiff ultimately sold these loans on the secondary mortgage loan market. All of these loans were later determined to be submitted on packages containing fraudulent or inaccurate borrower information. These “fraudulent loans” totaled \$4,210,180.

Plaintiff claims that it was (or will be) forced to repurchase these fraudulent loans from the secondary market investors, which resulted in substantial damages that Lending Bee was contractually required to reimburse. Because Lending Bee failed to do so, Plaintiff filed the

present action. To its end, Plaintiff now seeks \$2,006,498.28 in damages (representing \$1,857,237.45 in unpaid principal loan balance, \$60,207.55 in damages relating to repurchased loans, and \$89,017.28 in Yield Spread Premiums paid to Lending Bee).

Plaintiff now moves for summary disposition seeking a judgement for this amount under MCR 2.116(C)(10), which tests the factual support for its claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

In support of its motion, Plaintiff attaches: (1) the Wholesale Broker Agreement; (2) a loan/damages chart; (3) the deposition transcript of its expert, Linda Terrasi; (4) summaries of the fraud investigation unit on the fifteen loans; (5) a notice of default sent to Lending Bee on June 2, 2014; (6) loan repurchase notices and settlement statements on several of the loans; and (7) a complete loan list.

Under the Court's July 30, 2015 Order, Lending Bee was required to file a response brief to Plaintiff's motion no later than September 23, 2015. But Lending Bee failed to file any response.

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).

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).

Because Lending Bee filed no response and otherwise failed to present any evidence contradicting Plaintiff's claims, Defendant failed to establish a question of fact that precludes summary disposition in Plaintiff's favor on its breach of contract claim.¹

As a result, the Court GRANTS Plaintiff's motion for summary disposition and will enter judgment against Lending Bee in the amount of \$2,006,498.28.

IT IS SO ORDERED.

October 15, 2015
Date

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

¹ Because the Court granted complete relief against Lending Bee under Plaintiff's Count I for breach of contract, the remainder of Plaintiff's claims against said Defendant are moot.