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

HUMBLE DESIGN, INC,
Plaintiff,

v. **Case No. 14-144353-CB**
Hon. James M. Alexander

DESIGN FOR A DAY, LLC, ET AL,
Defendants.
_____/

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Plaintiff's motion for partial summary disposition of its Count IV seeking Replevin. The Court dispenses with oral argument pursuant to MCR 2.119(E)(3).

This case involves a dispute over the rightful ownership of a 2000 Ford Econoline Van. Plaintiff claims that non-party James Wilson intended to donate the van to it, but Defendants intercepted and unlawfully took possession of the van.

In its Complaint, Plaintiff claims that, for several years, it hired Defendant Design for a Day ("Design") to pick up and deliver personal property donated to Plaintiff. On March 1, 2013, Plaintiff claims that Design was dispatched to pick up personal property from Mr. Wilson. Unknown to Plaintiff, however, Mr. Wilson decided to donate the van along with some other property. Defendant Bernard Kipp, a Design employee, informed Mr. Wilson that he would have to pay a $75 towing fee, which he did, and the van was towed away.

On October 18, 2014, Mr. Wilson contacted Plaintiff looking for a replacement receipt for the van donation because he had misplaced the original. But Plaintiff had no record of any

such donation. This is when Plaintiff claims that it learned of the attempted donation and Defendants' wrongdoing. In its Replevin Count, Plaintiff seeks a return of the van, and now moves for summary disposition of said claim under MCR 2.116(C)(9) and (C)(10).

MCR 2.116(C)(9) tests whether the defendant's defenses are so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery. *Lepp v Cheboygan Area Schools*, 190 Mich App 726 (1991). MCR 2.116(C)(10) 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 its Complaint and a nearly illegible letter apparently authored by Mr. Wilson's wife.

Under the Revised Judicature Act, at MCL 600.2920(1), "A civil action may be brought to recover possession of any goods or chattels which have been unlawfully taken or unlawfully detained and to recover damages sustained by the unlawful taking or unlawful detention" subject to certain conditions.[1]

In response to Plaintiff's motion, Defendants present a **Verified** Answer that claims that, since June of 2010, they were "authorized to accept or reject donations based on viability and quality." And Defendants claim that they appropriately did just that. They claim that they assessed the non-running van, and Plaintiff's business model, and concluded that Plaintiff

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[1] Those conditions are:

> (a) An action may not be maintained under this section to recover possession of or damages for goods or chattels taken by virtue of a warrant for the collection of a tax, assessment, or fine in pursuance of a statute of this state.
>
> (b) An action may not be maintained under this section to recover possession of or damages for goods or chattels seized by virtue of an execution or attachment at the suit of the defendant in the execution or attachment unless the goods or chattels are exempted by law from execution or attachment.
>
> (c) An action may not be maintained under this section by a person who, at the time the action is commenced, does not have a right to possession of the goods or chattels taken or detained.
>
> (d) A writ, order, or process for delivery of goods or chattels before judgment may not be issued unless the court, after notice and a hearing and under procedures provided by rules of the supreme court, determines that the claim for recovery is probably valid and unless the party claiming a right to recover possession of the goods or chattels files a sufficient bond.

"would not and could not receive and repurpose a non-running 13-year-old van" for its business purposes. As a result, "Defendants offered to accept the van themselves, ultimately acquiring clear and lawful title and appropriately insuring the vehicle."

Defendants also claim that the present lawsuit was brought simply to harass Defendants because the parties' business relationship soured.

Although having the opportunity to file a Reply Brief addressing arguments made in Defendants' Response, Plaintiff has failed to file the same.

Based on the evidence presented by Defendants in their Verified Answer, the Court cannot conclude that "defendant's defenses are so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery" under (C)(9). The Court also cannot conclude that there are no factual disputes whereby Plaintiff is entitled to judgment as a matter of law under (C)(10).

Rather, resolution of this claim is so substantially intertwined with fact-finding and credibility determinations to render summary disposition wholly inappropriate. As a result, Plaintiff's motion for partial summary disposition is DENIED.

IT IS SO ORDERED

June 12, 2015 _____ __/s/ James M. Alexander_____
Date Hon James M. Alexander, Circuit Court Judge