

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

**1605 SOUTH TELEGRAPH, LLC,
Plaintiff,**

v.

**Case No. 15-145142-CB
Hon. James M. Alexander**

**1900 ASSOCIATES, LLC,
Defendant.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court Defendant’s motion for summary disposition. The Court dispenses with oral argument pursuant to MCR 2.119(E)(3).

Plaintiff currently leases office space to nonparty Norman Yatooma & Associates (“Yatooma”) under the terms of a March 2014 Commercial Property Lease. Since the Lease did not include a personal guaranty, Plaintiff took a security interest in Yatooma’s assets to secure payment of rent. Plaintiff claims that it perfected its security interest in Yatooma’s assets pursuant to an August 25, 2014 UCC Financing Statement.

When it signed Plaintiff’s lease, Yatooma was involved in litigation with Defendant (its former landlord) for non-payment of rent. In September 2014, Defendant obtained a money judgment against Yatooma in excess of \$400,000.

After Defendant attempted to collect on its judgment by garnishing accounts receivable, Plaintiff moved in the prior suit to intervene to protect its alleged security interest. The Court denied Plaintiff’s motion and stated that Plaintiff “can file your own case.” Plaintiff then did so – filing the present case in January of this year. In this suit, Plaintiff seeks a declaration that it

has a superior right in the accounts receivable and other collateral listed in the August 25, 2014 UCC Financing Statement.

Defendant now moves for summary disposition – arguing that Plaintiff’s case is “an impermissible collateral attack of a prior decision of this Court, it is barred by collateral estoppel, and Plaintiff’s whole case is based upon a purported perfected security interest which was not entered in honest or good faith.”

To its end, Defendant now moves for summary disposition under MCR 2.116(C)(7), which determines whether a claim is barred, among other grounds, by a “prior judgment” or “other disposition of a claim before commencement of the action.” MCR 2.116(C)(7). The Court accepts the plaintiff’s well-pleaded allegations as true and construes them in the plaintiff’s favor unless the allegations are contradicted by documentary evidence. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999); *Huron Tool & Eng’g Co v Precision Consulting Services, Inc*, 209 Mich App 365, 376-77; 532 NW2d 541 (1995).

1. Collateral Attack

Defendant first argues that the Court should dismiss Plaintiff’s Complaint because it is an impermissible collateral attack on the Court’s denial of Plaintiff’s prior motion to intervene. Defendant further argues that, if Plaintiff disagreed with that ruling, its recourse was to file an appeal – not file the present lawsuit.

Generally, “a collateral attack occurs whenever a challenge is made to a judgment in any manner other than through a direct appeal.” *People v Howard*, 212 Mich App 366, 369; 538 NW2d 44 (1995).

As stated, on October 22, 2014, the Court denied Plaintiff's motion to intervene in the prior lawsuit and stated that Plaintiff should file its own action regarding Defendant's collection efforts that Plaintiff believed interfered with its perfected security interest. Plaintiff did just that. It defies logic that Defendant somehow spins Plaintiff's following the Court's direction as a collateral attack on the Court's prior denial of Plaintiff's motion to intervene.

Further, the Court's denial of Plaintiff's motion to intervene was not a judgment on the merits of Plaintiff's claims. Rather, it was a ruling on the procedural mechanism that Plaintiff may employ in order for the Court to reach the merits of said claim.

Defendant's odd motion on this ground is DENIED.

2. Collateral Estoppel.

Next, Defendant argues that Plaintiff's Complaint should be dismissed because it is barred by collateral estoppel.

"Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding." *Porter v City of Royal Oak*, 214 Mich App 478, 485; 542 NW2d 905 (1995). Our Supreme Court has held:

Generally, for collateral estoppel to apply three elements must be satisfied: (1) "a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment"; (2) "the same parties must have had a full [and fair] opportunity to litigate the issue"; and (3) "there must be mutuality of estoppel." *Monat v State Farm Ins Co*, 469 Mich 679, 682-685; 677 NW2d 843 (2004), quoting *Storey v Meijer, Inc*, 431 Mich. 368, 373 n 3; 429 N.W.2d 169 (1988).

Defendant, as the collateral estoppel proponent, bears the burden of establishing its applicability. *Detroit v Qualls*, 434 Mich 340, 357-358; 454 NW2d 374 (1990).

In its motion, Defendant advances little reasoning in support of its claim and concludes “[t]he Court decided the issue of whether the Plaintiff has the right to prevent Defendant from collecting its sizeable judgment against [Yatooma] and the Court held that Plaintiff could not prevent Defendant from pursuing its judgment.” The Court disagrees.

Rather, as stated, the Court did not rule on the merits of Plaintiff’s claim – whether Defendant was interfering with Plaintiff’s purported perfected security interest. There was no final judgment on this issue. Rather, the Court simply ruled that intervention in the prior suit was not the proper mechanism to adjudicate such claims.

Because Defendant failed to establish the elements necessary for collateral estoppel to apply, Defendant’s motion on this basis is also DENIED.

3. Good Faith.

Finally, Defendant argues that Plaintiff’s Complaint should be dismissed because Plaintiff’s purported security interest “was devoid of good-faith.”

The Court of Appeals has reasoned: “Every contract or duty within the UCC, in general, and Article 9, in particular, imposes an obligation of good faith upon the parties in the performance or enforcement thereof.” *Yamaha Motor Corp v Tri-City Motors & Sports, Inc*, 171 Mich App 260, 271; 429 NW2d 871 (1988); citing MCL 440.1203, 440.9105(4).

The *Yamaha Motor Corp* Court continued:

[The] good faith obligation applies to every contract *or duty*. This imposes the obligation of good faith not only on the parties to the contract but also on third persons who have duties arising out of their relationship to the transaction. In the context of Article 9 secured transactions, good faith means honesty in fact in the conduct or transaction concerned. **The decision of the trier of fact** regarding a party’s good faith, or lack of good faith, will not be reversed on appeal unless clearly erroneous. *Yamaha Motor Corp*, 171 Mich App at 271-272 (emphasis added) (internal citations omitted).

On this issue, Defendant relies solely on the *Yamaha Motor Corp* decision as a basis for its motion. For reasons not quite clear, however, Defendant ignores that the *Yamaha Motor Corp* Court acknowledged that “the trier of fact” decides a party’s good faith or lack thereof. Yet, somehow, Defendant argues that it is entitled to summary disposition of Plaintiff’s Complaint under (C)(7) because Plaintiff did not have good faith.

Defendant’s argument, however, relies heavily on and substantively attacks the facts surrounding Plaintiff’s security interest. It appears, therefore, that Defendant’s motion is actually one properly considered under a (C)(10) standard, which considers the factual support for a Plaintiff’s claims.

But the Court finds that resolution Defendant’s motion (and the good-faith issue) is so substantially intertwined with fact-finding and credibility determinations to render summary disposition wholly inappropriate. As a result, Defendant’s motion for summary disposition on this basis is also DENIED.

IT IS SO ORDERED.

June 2, 2015
Date

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