

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

**GHANNAM INVESTMENTS, LLC,**  
**Plaintiff,**

v

**Case No. 2015-146992-CB**  
**Hon. Wendy Potts**

**PRLANTA OF MICHIGAN, INC. d/b/a**  
**PRLANTA FINE JEWELRY & TIMEPIECES,**  
**And MAIDA KAYAYAN,**  
**Defendants.**

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**OPINION AND ORDER RE:**  
**DEFENDANTS' MOTION FOR SUMMARY DISPOSITION**

At a session of Court  
Held in Pontiac, Michigan

On

FEB 11 2016

This matter is before the Court on Defendants' Motion for Summary Disposition. On October 20, 2015, the parties entered into a Stipulation Waiving Oral Argument Regarding Defendants' Motion for Summary Disposition.

By way of background, Plaintiff and Prlanta Fine Jewelry & Timepieces, Inc.<sup>1</sup>, as "Borrower," executed a promissory note on May 12, 2018 in order to memorialize Plaintiff's loan of \$200,000.00. The promissory note was then personally guaranteed by the late Masis Kayayan, President of Prlanta Fine Jewelry & Timepieces ("Prlanta Fine Jewelry"), Defendant

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<sup>1</sup> The borrower on the Promissory Note and Guaranty is listed as "Prlanta Fine Jewelry and Timepieces, Inc." Plaintiff has named Prlanta Fine Jewelry & Timepieces, the d/b/a of Prlanta of Michigan, Inc., as a defendant in this matter.

Maida Kayayan, and David A. Binkley. On account of Defendants' alleged default on the promissory note, Plaintiff has initiated the action herein.

In their Motion for Summary Disposition, Defendants are requesting the Court to dismiss Plaintiff's Complaint against Prlanta of Michigan, Inc. pursuant to MCR 2.116(C)(8) and (C)(10). Defendants also request summary dismissal of Count II, Breach of Guaranty, to the extent Plaintiff seeks to assert that particular claim against Marie Kayayan.

Specifically, Defendants are seeking summary disposition in relation to Prlanta of Michigan, Inc. for the reasons that it was not a party to the promissory note or guaranty agreement and the claim under the note was previously discharged in bankruptcy and is subsequently barred under the theory of res judicata. Additionally, Defendants are requesting the Court to grant summary disposition with respect to Marie Kayayan for the reason that she is not a party to the promissory note and guaranty and the Complaint fails to state a claim against her.

In response, Plaintiff argues that Prlanta of Michigan, Inc. is a proper party to the lawsuit because it executed the subject promissory note and guaranty while doing business as Prlanta Fine Jewelry & Time Pieces. Plaintiff maintains that the bankruptcy case was filed under Chapter 7, wherein Masis Kayayan filed individually. Under a Chapter 7 bankruptcy action, a corporation or partnership does not receive bankruptcy discharge, but rather that business entity is dissolved. Since Prlanta of Michigan, Inc. is not dissolved, the corporation is a viable party to this lawsuit. Next, Plaintiff contends that Marie Kayayan and Defendant Maida Kayayan are the same individual and therefore, responsible for payment of the promissory note as a personal guarantor.

When reviewing a summary disposition motion pursuant to MCR 2.116(C)(8), all well-pleaded factual allegations are accepted as true and are construed in a light most favorable to the non-movant. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). The Court only considers the pleadings in a (C)(8) motion. *Id.* “A court may only grant a motion pursuant to MCR 2.116(C)(8) where the claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Wade v Dep't of Corr.*, 439 Mich 158, 163; 483 NW2d 26 (1992).

“A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties...in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law.” *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999); *Quinto v Cross & Peters Co.*, 451 Mich. 358, 362; 547 N.W.2d 314 (1996).

Upon review of the Promissory Note and Guaranty<sup>2</sup>, the Court observes that Prlanta Fine Jewelry & Timepieces, Inc. was recorded as the “Borrower” of the sum of \$200,000.00 plus interest. In their motion, Defendants assert that “Prlanta Fine Jewelry & Timepieces, Inc. was apparently a trade name used by non-party Masis Kayayan, and was discharged in bankruptcy in 2011.”<sup>3</sup> Yet, no evidence has been presented to this Court to confirm the prior or present existence of any entity known as “Prlanta Fine Jewelry & Timepieces, Inc.”

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<sup>2</sup> See Plaintiff's Exhibit Two.

<sup>3</sup> See Page Two of Defendant's Brief in Support of Motion for Summary Disposition.

With respect to the addition of “Inc.” to the name Prlanta Fine Jewelry & Timepieces within the promissory note, Plaintiff asserts that there was a misnomer<sup>4</sup> on the note as to the identity of the borrower to support its contention that the contract in fact intended Prlanta of Michigan, Inc., through its d/b/a, to be a party to the note.<sup>5</sup> Plaintiff maintains that Prlanta of Michigan, Inc. and its d/b/a Prlanta Fine Jewelry & Timepieces are the same business entity and would be bound by the same contractual obligations.

In consideration of the exhibits, the Court observes from the Chapter 11 Voluntary Petition that Prlanta Fine Jewelry is listed as the d/b/a for Prlanta of Michigan, Inc. See Plaintiff’s Exhibit I. Prlanta Fine Jewelry also conducts business at 888 W. Big Beaver Road, Ste. 115, Troy, Michigan, which is the same business address as Prlanta of Michigan, Inc. See Plaintiff’s Exhibit E and F. Moreover, Masis Kayayan signed the note as President of Prlanta Fine Jewelry on May 12, 2008 when he was simultaneously listed as President of Prlanta of Michigan, Inc., as evidenced by the May 15, 2008 Michigan Department of Labor & Economic Growth Profit Corporation Information Update document. See Plaintiff’s Exhibits A and C.

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<sup>4</sup> “It is an old rule, and a sensible one, that the misnomer of a person or corporation in a written instrument will not defeat a recovery thereon, if the identity sufficiently appears from the name employed in the writing or is satisfactorily established by proof.” *Bil-Gel Co. v Thoma*, 345 Mich. 698, 705; 77 NW2d 89 (1956).

<sup>5</sup> MCL 450.1217(1) provides that “[a] domestic or foreign corporation may transact business under any assumed name or names other than its corporate name, if not precluded from use by section 212, by filing a certificate stating the true name of the corporation and the assumed name under which the business is to be transacted.” In relation to this statute, the Court of Appeals has held “that the purpose of M.C.L. § 450.1217; M.S.A. § 21.200(217) is to place the public on notice regarding corporations that are doing business under an assumed name. A corporation that has complied with this statute has notified the public constructively regarding its assumed name.” *Penton Pub., Inc. v Markey*, 212 Mich App 624, 627; 538 NW2d 104 (1995). By placing the public on notice that the corporation is transacting business under the assumed name or d/b/a, the statute and case law presuppose that the corporation and the assumed name or d/b/a are one and the same. Assuming the evidence at trial convinces this Court that the “Borrower” in the promissory note is the d/b/a, Prlanta Fine Jewelry, then Plaintiff arguably has a compelling claim that Prlanta of Michigan, Inc. would be responsible for the obligations set forth under the contract that was executed by its president and under its assumed name or d/b/a.

The parties' opposing interpretations of the language within the promissory note leads the Court to question the identity of the borrower or in other words, the business entity intended to execute the promissory note. "A contract is ambiguous only if its language is reasonably susceptible to more than one interpretation." *Cole v Ladbroke Racing Michigan, Inc.*, 241 Mich App 1, 13, 614 NW2d 169 (2000). The interpretation of an ambiguous contract is a question for the trier of fact. *Klapp v. United Ins. Group Agency, Inc.*, 468 Mich 459, 469; 663 NW2d 447 (2003). Since the identity of the borrower is not clear from the language of the note, the contract is ambiguous. In fact, Defendants' statement within their brief – "Prlanta Fine Jewelry & Timepieces, Inc. was apparently a trade name" - contributes to the ambiguity of the promissory note.

Due to the ambiguity within the subject Promissory Note and Guaranty, the Court finds that there are genuine issues of material fact as to which entity is liable under the note and as a consequence, further factual development is necessary.

Next, the Court shall address Defendants' argument that the claim against Prlanta of Michigan, Inc. under the promissory note was previously discharged in bankruptcy and is subsequently barred under the theory of res judicata. The Court observes from the exhibits<sup>6</sup> that the only individual who obtained a discharge through the Chapter 7 bankruptcy was the late Masis Kayayan. The Court notes that corporations and partnerships do not obtain discharges in bankruptcy under Chapter 7. See 11 U.S.C. § 727(a)(1). Consequently, Prlanta of Michigan, Inc. has not been discharged in bankruptcy. While Prlanta of Michigan, Inc. had filed a Chapter 11 petition in 2011, it moved to voluntarily dismiss the bankruptcy case on August 19, 2011. See

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<sup>6</sup> See Defendants' Exhibits Three, Four, and Five and Plaintiff's Exhibits J and K.

Plaintiff's Exhibit H. Thus, the Court finds that the claim under the promissory note has been discharged only as to Masis Kayayan and not to any Defendants herein.

Thus, the Court cannot grant Defendants' summary disposition motion with regard to Prlanta of Michigan, Inc. under either MCR 2.116(C)(8) or (C)(10).

With respect to Marie Kayayan, the Court observes from her Affidavit<sup>7</sup> that she has never seen the subject promissory note, she never signed the promissory note, that Maida Kayayan is not her name, but a past nickname, and that the signature appearing on the signature line below the name "Maida Kayayan" on the guarantee is not her signature. Conversely, Plaintiff presents as Exhibit L the Schedule H – Codebtors document of the bankruptcy petition wherein Masis Kayayan listed Marie Kayayan as a codebtor. Plaintiff's Exhibit N also demonstrates that Marie Kayayan utilized the name of Maida Kayayan in her May 8, 2008 Mortgage with her husband, Masis Kayayan.

Based upon the evidence presented, it appears to the Court that Marie Kayayan used the name Maida Kayayan for various purposes during the time frame in which the promissory note was executed. To the extent that Plaintiff's claim for breach of guaranty is asserted against Marie Kayayan, the Court finds that there is a factual dispute regarding whether or not Marie Kayayan – as Maida Kayayan – was intended as a personal guarantor of the promissory note at issue in this case. The Affidavit of Marie Kayayan certainly presents a genuine issue of material fact as to the authenticity of the signature. Further factual development would be necessary to resolve the issues as they relate to Marie Kayayan and therefore, Defendants are not entitled to summary disposition under either MCR 2.116(C)(8) or (C)(10) with regard to Marie Kayayan.

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<sup>7</sup> See Defendants' Exhibit 6.

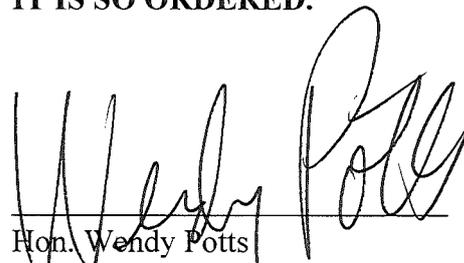
Parenthetically, it is not clear to this Court why Plaintiff neglected to name Marie Kayayan, aka Maida Kayayan, as a defendant in this lawsuit. Should Defendants seek leave to amend the Complaint to include Marie Kayayan, aka Maida Kayayan, as a defendant pursuant to MCR 2.118(A)(2), the Court will consider that request.

For the reasons stated herein, the Court finds that Defendants are not entitled to summary disposition with regard to their motion under either MCR 2.116(C)(8) or (C)(10).

It is hereby ordered that Defendants' Motion for Summary Disposition is denied.

**IT IS SO ORDERED.**

Dated: FEB 11 2016

  
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Hon. Wendy Potts  
Circuit Court Judge