

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

XPERT TECHNOLOGIES, INC.,

Plaintiff/Counter-Defendant,

v

Case No. 15-147137-CK

Hon. Wendy Potts

LEGACY GROUP LIGHTING, LLC

d/b/a Creative Lighting Solutions,

Defendant/Counter-Plaintiff.

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OPINION AND ORDER RE: PLAINTIFF/COUNTER-DEFENDANT XP  
TECHNOLOGIES, INC.'S RENEWED MOTION FOR SUMMARY DISPOSITION

At a session of Court  
Held in Pontiac, Michigan

On  
AUG 08 2016

This matter is before the Court on Plaintiff Xpert Technologies, Inc.'s Motion for Summary Disposition pursuant to MCR 2.116(C)(10). By way of background information, Plaintiff Xpert sells computer hardware and software products and a variety of computer related services. Defendant Legacy does business as Creative Lighting Solutions and manufactures and sells various lighting products primarily for the automotive industry. On May 1, 2014, Creative Lighting entered into an Agreement to purchase various computer services from Xpert. Xpert alleges that on April 30, 2015, it received an email from Legacy stating that Legacy was terminating the Agreement effective May 1, 2015. Xpert claims that the monthly services were for an initial term of three years. Legacy contends that once the upgrade operations were

complete, the initial term was over and Legacy's termination of the contract after one year was not a breach of contract.

On March 24, 2016, the court issued an opinion and order on Xpert's previously filed motion for summary disposition. In that opinion and order, the Court found that the Agreement was ambiguous as to whether the contract has a fixed term of one year or three years. In its renewed motion, Xpert now asserts that extrinsic evidence supports its claims that the Agreement had a fixed term of three years.

A motion under MCR 2.116(C)(10) tests the factual support for Plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). 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).

In support of its arguments that the Agreement was for a fixed term of three years, Plaintiff presents the affidavit of Dave Maciejewski, the then President of Legacy, who negotiated the Agreement on behalf of Legacy. Xpert argues that Maciejewski's stated that he knew and agreed that the Agreement had a three year term.

In response to the argument that the Agreement had an initial term of three years, Legacy argues that specific contractual terms govern over general terms. Legacy claims that Maciejewski's testimony that Legacy understood and intended the term of the Agreement to be three years does not resolve the issue before the Court because the Agreement contains an internal ambiguity.

A contract is ambiguous 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). “Further . . . the ultimate objective in interpreting an ambiguous contract is to ascertain the intent of the parties. Therefore, in our judgment, it is only obvious that a method of construing a contract that helps ascertain the intent of the parties should be preferred over one that does not. . . . Extrinsic evidence provides an incomplete guide with which to interpret contractual language. That is, extrinsic evidence is not the best way to determine what the parties intended. Rather, the language of the parties’ contract is the best way to determine what the parties intended. However, where, as in cases such as this one, it is not possible to determine the parties’ intent from the language of their contract, the next best way to determine the parties’ intent is to use relevant extrinsic evidence.” *Klapp v United Ins. Group Agency, Inc.*, 468 Mich 459, 475-476; 663 NW2d 447 (2003) (internal citations and quotations omitted).

The newly presented affidavit from David Maciejewski constitutes extrinsic evidence showing intent. In his affidavit, Maciejewski stated that, on behalf of Legacy, he ran the operations of Creative Lighting Solutions from January 2014 through July 2014. He further stated that on April 9, 2014, he executed the Master Service Agreement between Legacy and Xpert and that the Agreement had an effective date of May 1, 2014. Maciejewski stated that he was fully authorized as president to negotiate and execute the Agreement and that he fully understood and agreed that Xpert was asking for a fixed commitment of three years for the monthly service charge provision. Maciejewski stated that the fixed term of three years was agreed upon in order to obtain pricing concessions from Xpert. The relevant extrinsic evidence shows that Xpert and Legacy intended to enter into a fixed three year term for the provision of the monthly service charge. Legacy breached that Agreement when it sent Xpert an email on

April 30, 2015 stating that it was terminating the Agreement effective May 1, 2015. Thus, the Court grants Xpert's motion for summary disposition pursuant to MCR 2.116(C)(10) of its breach of contract claim.

Xpert next argues that the Court should grant its motion for summary disposition on Legacy's counterclaims. Count I of Legacy's counterclaim asserts a breach of contract for Xpert's failure to perform backup services for Legacy, Xpert's lockout of Legacy from its network, and Xpert's purported improper termination of Legacy's hosted phone service.

In support of its motion, Xpert attaches the affidavit of Fred Sherrerd, Xpert's Vice President of Operations. Legacy had two sets of servers: one that was managed by Xpert and ran Microsoft operating systems and also an IBM server known as AS 400 that ran business and software applications. Sherrerd testified that Xpert performed backup services on the managed Microsoft operating system servers on a daily basis but that Legacy never contracted with Xpert to perform backup on the AS 400. Further, Legacy has not presented evidence that Xpert restricted Legacy from accessing its network or data. Xpert supports its position with the affidavit of Brad Byrnes, wherein he states that Xpert did not, at any time, restrict Creative Lighting's ability to access its property or data. In support of the argument that Legacy's counterclaim for breach of contract regarding telecommunication services fails, Xpert again presents the affidavit of Byrnes, wherein he states that he checked MetaTel's records and confirmed that telephone service to Creative Lighting was not disconnected until after 12:01 a.m. on Friday, May 1, 2015.

In response, Legacy argues that Plaintiff's motion for summary disposition of its counterclaims for breach of contract should be denied. In support thereof, Legacy relies on the affidavit of Daniel Czarnik. Czarnik's affidavit states facts pertaining to the AS/400 server,

which was not part of the parties' agreement for backup services. See Schedule A. Legacy does not address Xpert's other arguments. Legacy has not met its burden of establishing that a genuine issue of disputed fact exists. *Quinto, supra*. Accordingly, Xpert's motion for summary disposition pursuant to MCR 2.116(C)(10) of Legacy's counterclaim for breach of contract is granted and that counterclaim is dismissed.

Xpert next asserts that summary disposition of Legacy's counterclaim for unjust enrichment is appropriate. In the Court's March 24, 2016 Opinion and Order, the Court held that the claims for unjust enrichment prior to the date the contract was entered into are not barred, but also held that the claims for unjust enrichment after May 1, 2014, the date the contract was entered into, fail.

Xpert claims that newly submitted evidence conclusively shows that Legacy's unjust enrichment claim is devoid of factual and legal merit. In support of its motion, Xpert defers to the affidavit of Brad Byrnes and Xpert's invoices for work that was performed. Xpert alleges that there is nothing in the invoices that indicates that any of the work was invoiced improperly or for some phantom third party. Xpert also attached the affidavit of Maciejewski to its motion in support of its claims and claims that Maciejewski, Legacy's President, agreed that Legacy's payment for these services was proper.

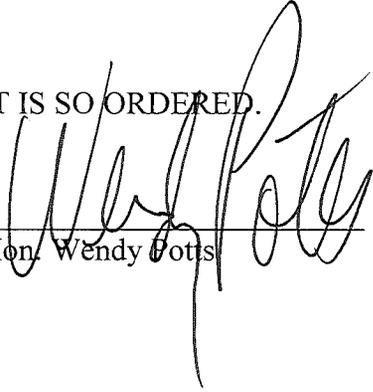
In response, Legacy attaches the affidavit of Daniel Czarnik. Legacy asserts that Czarnik's affidavit supports Legacy's position that the services for which it paid were not provided in full. However, this affidavit does not address the any facts pertaining to the unjust enrichment counterclaim. Czarnik's affidavit only contains facts regarding the backup of the AS/400 server. Legacy has failed to establish the existence of a material factual dispute. Accordingly, Plaintiff Xpert's motion for summary disposition pursuant to MCR 2.116(C)(10) of

Legacy's counterclaim for unjust enrichment is granted and Defendant/Counter-Plaintiff Legacy's unjust enrichment claim is dismissed.

For all of the reasons stated, the Court grants Xpert's motion for summary disposition pursuant to MCR 2.116(C)(10) and will enter a judgment in favor of Xpert in the amount of \$199,680.00. Further, the Court dismisses Legacy Group Lighting, LLC's counterclaim in its entirety. This Order resolves the last pending claim and closes the case.

Dated: **AUG 08 2016**

IT IS SO ORDERED.

  
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Hon. Wendy Gots