

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

RIDGEWAY OFFICE CENTRE, LLC,

Plaintiffs,

v

Case No. 15-147537-CB

Hon. Wendy Potts

PRESTIGE MEDICAL BILLING
SERVICES, INC., and REVAN FRANCIS,

Defendants/Third Party Plaintiffs,

v

CANDICE KAYAL,

Third Party Defendant.

OPINION AND ORDER RE: THIRD PARTY DEFENDANT'S
MOTION FOR SUMMARY DISPOSITION

At a session of Court
Held in Pontiac, Michigan

On

JUL 28 2016

This matter is before the Court Third Party Defendant Candice Kayal's motion for summary disposition. For purposes of background information, Third Party Plaintiff Revan Francis and Third Party Defendant Candice Kayal formed Prestige Medical Billing Services, Inc., a partnership whose purpose was to open, market, and run a medical billing company. The parties executed a partnership agreement in November 2012 memorializing the terms of their agreement. In January 2013, Prestige and Plaintiff Ridgeway Office Centre entered into a lease agreement for commercial office space located in Farmington Hills. Pursuant to the terms of the

lease, Prestige agreed to pay rent to Ridgeway. The lease also contained a personal guaranty from Defendant Revan Francis, who promised to pay all amounts due under the lease.

After the lease was signed and the initial payment was made, Ridgeway prepared the premises for occupancy and Prestige began moving into the premises. Prestige failed to make any subsequent payments due under the terms of the lease. Francis also failed to make any payments due under the terms of the guaranty. Ridgeway pursued a demand for possession and complaint for eviction in the district court. Ultimately the parties entered into a consent judgment wherein Prestige consented to turn over the leased premises, remove its items from the premises, and allowed Ridgeway to change the locks.

On July 13, 2016 the Court heard oral argument on Plaintiff's motion for summary disposition and on third party Defendant Candice Kayal's motion for summary disposition. At that time, the Court granted Plaintiff's motion for summary disposition against Defendants Prestige and Francis. Since no response to Kayal's motion for summary disposition had been filed, the Court also allowed Prestige and Francis seven days to file a written response.

In her motion, Kayal fails to address which provision of MCR 2.116(C) is applicable, but appears to argue that summary disposition is appropriate because Prestige and Francis have no standing to sue Kayal individually. Despite the assertion, Kayal does not brief the issue or provide adequate legal analysis in support of her argument. If a party fails to adequately brief a position, or support a claim with authority, it is abandoned. *MOSES Inc v SEMCOG*, 270 Mich App 401, 417; 716 NW2d 278 (2006). Thus, Kayal's claim that Prestige and Francis do not have standing to sue her is abandoned. *Id.*

In her conclusion, Kayal requests the matter be dismissed pursuant to MCR 2.116(C)(8) or (C)(10). "When reviewing a motion brought under MCR 2.116(C)(8), the court considers

only the pleadings. Moreover, the court must accept all factual allegations in the complaint as true, along with all reasonable inferences or conclusions that can be drawn from them. However, conclusory statements that are unsupported by allegations of fact on which they may be based will not suffice to state a cause of action.” *State ex rel Gurganus v CVS Caremark Corp*, 496 Mich 45, 63; 852 NW2d 103 (2014). Kayal fails to argue how summary disposition pursuant to MCR 2.116(C)(8) of Third Party Plaintiffs’ claim for a breach of the partnership agreement is appropriate. Accordingly, Kayal’s motion for summary disposition pursuant to MCR 2.116(C)(8) is denied.

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).

Kayal has not satisfied the initial burden of supporting her position by affidavits, depositions, admissions, or other documentary evidence. Kayal attaches to her brief a copy of the lease, a copy of the third party complaint, and a schedule of arguments from the Michigan Court of Appeals for April 6, 2016 that purports to show oral argument on a case of *Revan Francis v Candice Kayal*. Kayal fails to argue how those documents show that *Prestige and Francis’* claims are void of factual support. “If the moving party fails to properly support its motion for summary disposition, the nonmoving party has no duty to respond and the trial court should deny the motion.” *Barnard Mfg. Co., Inc. v Gates Performance Engineering, Inc.*, 285

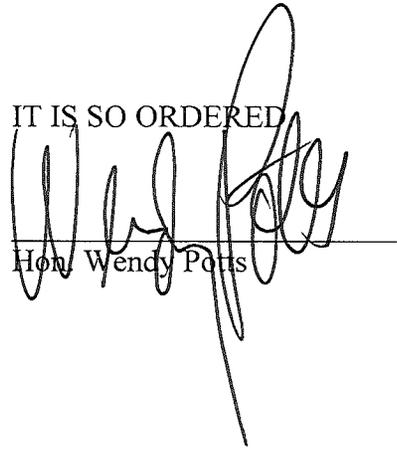
Mich App 362, 370; 775 NW2d 618 (2009). The Court finds that Kayal has failed to properly support her motion for summary disposition and that the nonmoving party had no duty to respond to the motion. *Id.*

Nonetheless, Prestige and Francis filed a Response showing the existence of a genuine issue of material fact. The Partnership Agreement, attached to Third Party Plaintiffs' Response, shows that Revan and Francis each own a 50% share of Prestige. The Agreement also contains provisions governing profits and losses, term/termination, and disputes, all which could support Prestige and Francis' claims when viewed in a light most favorable to Third Party Plaintiffs. For all of the reasons stated above, Third Party Defendant Candice Kayal's motion for summary disposition pursuant to MCR 2.116(C)(10) is denied.

This Opinion and Order does not resolve the last pending claim or close the case.

Dated: JUL 28 2016

IT IS SO ORDERED


Hon. Wendy Potts