

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

**DETROIT FREE PRESS CO,
Plaintiff,**

v.

**Case No. 15-150226-CB
Hon. James M. Alexander**

**NOVI SPINAL CARE INSTITUTE, PLLC, ET AL,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

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

This is a collection case based on Defendants' alleged failure to pay the Plaintiff's advertising bills. According to its Complaint, on September 12, 2014, Defendants executed written agreements to advertise in Plaintiff's publications. Plaintiff claims that it performed under the agreements by producing the advertisements and publishing them, but Defendants did not fully pay.

Plaintiff now seeks a judgment in the principal amount of \$108,731, plus interest of \$942, court costs of \$214, and \$75 for statutory attorney fees, for a total of \$109,962.

To its end, Plaintiff now moves for summary disposition under MCR 2.116(C)(9). 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).

But, because Plaintiff relies on evidence outside of the pleadings (attached as evidence to its motion), its motion is properly considered under MCR 2.116(C)(10), which 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: (1) copies of the written agreements; and (2) Plaintiff's unanswered First Requests for Admissions. Additionally, attached to Plaintiff's First Amended Complaint is a (1) Sworn Statement of Account, and (2) Defendants' account records with Plaintiff.

Under MCR 2.116(G)(1)(a)(ii), Defendants were required to file and serve their response by September 21, 2016. But Defendants failed to file a response or present any evidence contradicting Plaintiff's claims.

The Michigan Court of Appeals has held that:

A party opposing a motion brought under C(10) may not rest upon the mere allegations or denials in that party's pleadings, but must by affidavit, deposition, admission, or other documentary evidence set forth specific facts showing that there is a genuine issue for trial. . . . [W]here the opposing party fails to come forward with evidence, beyond allegations or denials in the pleadings, to establish the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993) (internal citations omitted).

Plaintiff also claims that Defendants failed to answer its Requests for Admissions. As a result, Plaintiff claims that each request to admit has been deemed admitted under MCR 2.312(B)(1). Based on the same, Plaintiff argues that Defendants have admitted both their liability on, and the amount of, the claimed debt. The Court agrees.

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For the foregoing reasons, the Court concludes that Defendants failed to present any evidence contradicting Plaintiff's claims, and as a result fail to establish a question of fact regarding Plaintiff's entitlement to judgment as a matter of law. The Court, therefore, GRANTS Plaintiff's motion for summary disposition under (C)(10) and enters judgment against Defendants, jointly and severally, in the amount of \$109,962.

This Order is a Final Order that resolves the last pending claim and closes the case.

IT IS SO ORDERED.

September 27, 2016
Date

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