

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

**WILLIAMS DISTRIBUTING CO,  
Plaintiff,**

**v.**

**Case No. 15-144867-CB  
Hon. James M. Alexander**

**BROOKLYNN CUSTOM HOMES, LLC and  
KRISTI KALLEN,  
Defendants.**

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**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).

According to its Complaint, Plaintiff claims that it provided goods, labor, and materials to Defendant Brooklynn Custom Homes that Brooklynn used in its business of improving real property. But Plaintiff claims that Brooklynn has failed to pay as agreed and is currently indebted to Plaintiff in the amount of \$21,064.55 as of December 23, 2014, plus a late charge of 1.5% per month, costs actual attorney fees, and late charges. And in its current motion, Plaintiff seeks a judgment against Brooklynn only for this amount.

To its end, Plaintiff now moves for summary disposition under MCR 2.116(C)(9) and (C)(10).<sup>1</sup> 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). MCR 2.116(C)(10) tests the factual support

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<sup>1</sup> Plaintiff also appears to seek summary under (C)(8), but summary under that Court Rule is only appropriate where a claim fails as a matter of law. And it is apparent that Plaintiff does not believe that its own claim fails.

for Plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

In support of its motion, Plaintiff attaches: (1) the Application for Trade Credit; (2) an Affidavit of Open Account/Account Stated; and (3) a copy of the account ledger.<sup>2</sup>

Under the Court's May 15, 2015 Order, Defendant was required to file a response brief by June 24, 2015. Defendant, however, did not file any Response to the motion until July 8, 2015. In this Response, Defendant explains the missed deadline as an oversight and asks the Court to consider the Response.

Generally, it is within a Court's discretion to set deadlines for summary responses or to accept late responses. The Court will exercise its discretion and consider Defendants' response. In said Response, Defendants argue that Defendant Kristi Kallen should not be personally liable on any debt of Brooklynn – which was solely managed by her husband, Craig Kallen. But Defendants apparently misconstrue Plaintiff's motion.

In the present motion, Plaintiff seeks a judgment **only against Brooklynn**, not Mrs. Kallen. And Defendants offer no evidence or argument that the judgment sought solely against Brooklynn is somehow inappropriate. Defendants fail to present any evidence contradicting Plaintiff's claim that \$21,064.55 is owing. While Defendants attach the Affidavit of Mrs. Kallen, it merely claims that she is unaware of the amount owing.

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

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<sup>2</sup> The Court notes that Plaintiff's Affidavit claims an amount owing of \$31,118.45, but its motion seeks only \$21,064.55. It appears that the original indebtedness totaled \$31,118.45, and when partial payments and setoffs are applied, the actual amount owing is \$21,064.55. This amount is supported by the account statement attached to the Affidavit and matches the amount sought in Plaintiff's motion.

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).

The Court finds that Defendants failed to present any evidence contradicting Plaintiff's claim, and as a result, fail to establish a question of fact regarding Plaintiff's entitlement to judgment as a matter of law.

Therefore, the Court GRANTS Plaintiff's motion for summary disposition under (C)(10). Plaintiff is entitled to judgment **against Defendant Brooklynn Custom Homes only** in the amount of \$21,064.55, plus a late charge of 1.5% per month. Plaintiff may present an appropriate judgment for entry.

**IT IS SO ORDERED.**

July 13, 2015  
Date

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