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

JPMORGAN CHASE BANK, NA,
Plaintiff,

v. **Case No. 16-151083-CB**
Hon. James M. Alexander

TRI COUNTY DISASTER RESTORATION, LLC, ET AL,
Defendants.
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OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Plaintiff's Motion for Summary Disposition. Under the terms of September 3, 2010, Promissory Note, Plaintiff loaned Defendant Tri County Disaster Restoration $100,000. On October 20, 2011, Plaintiff and Tri County renewed the Promissory Note and increased the loan amount to $250,000. Then on December 7, 2012, Plaintiff and Tri County executed another Promissory Note, under which, Plaintiff loaned Tri County another $150,000.

To secure repayment of each of these notes, Defendants Kenneth and Mary Brown each individually executed a September 7, 2010 "Continuing Unlimited Guaranty."

Plaintiff claims that Defendants are in default on their repayment obligations when Plaintiff failed to receive payments when due on the Notes. Plaintiff then notified Defendants of the default and accelerated the balances due. Plaintiff claims, however, that Defendants failed to cure the defaults.

As a result, Plaintiff filed the present action seeking: (1) on the 2010/11 Note, the principal indebtedness of $230,030.10, plus interest of $12,073.77, and late fees and costs of $404.87, for a

total of $242,508.74; and (2) on the 2012 Note, the principal indebtedness of $46,293.55, plus interest of $2,295.10, and late fees and costs of $537.88, for a total of $49,126.53.

To its end, Plaintiff now moves for summary disposition 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).[1]

In support of its motion, Plaintiff attaches: (1) each of the original Notes; (2) Continuing Unlimited Guaranty; (3) Defendants' Account Transaction History for each loan; and (4) the affidavit of Barbra Lopez, a Plaintiff Associate.

Pursuant to the Court's July 6, 2016 Order re: Plaintiff's Motion for Summary Disposition, Defendants were required to file a response to Plaintiff's motion by August 3, 2016. But Defendants failed to file a response or present any other 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).

As a result, the Court concludes that Defendants fail to present any evidence contradicting Plaintiff's claims, and as a result fails to establish a question of fact regarding Plaintiff's entitlement to judgment as a matter of law.

Therefore, the Court shall GRANT Plaintiff's motion for summary disposition under (C)(10)

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1 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

and enter a judgment against Defendants in the amount of $291,635.27 (representing the principal indebtedness of $230,030.10 on the 2010/11 Note, plus interest of $12,073.77, and late fees and costs of $404.87; plus the principal indebtedness of $46,293.55 on the 2012 Note, plus interest of $2,295.10, and late fees and costs of $537.88).

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

IT IS SO ORDERED.

August 17, 2016 /s/ James M. Alexander
Date Hon. James M. Alexander, Circuit Court Judge

335 (1994).