

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

**THE HUNTINGTON NATIONAL BANK,  
Plaintiff,**

v.

**Case No. 16-151307-CB  
Hon. James M. Alexander**

**SPECIALIZED VEHICLES, INC, 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. The Court dispenses with oral argument pursuant to MCR 2.119(E)(3).

Under the terms of an August 29, 2006 Note, Plaintiff loaned Defendants Specialized Vehicles and 2468 Associates \$879,800. To secure repayment, individual Defendants Michael and Paula Koran each executed an Unconditional Guarantee. As additional security, Defendants also executed (1) a Mortgage relating to certain real property, and (2) a Commercial Security Agreement pledging Defendant's personal property assets.

Plaintiff claims that Defendants defaulted on their repayment obligations by failing to make certain payments as agreed in the Note. Plaintiff then foreclosed on the mortgage and, pursuant to a February 17, 2016 Stipulated Order, sold the pledged personal property. Plaintiff then applied the proceeds of these sales to the outstanding balance. After doing so, Plaintiff claims an outstanding balance of \$145,399.76, plus accruing costs, attorney fees, interest, and late charges. Plaintiff now seeks a judgment for this amount.

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

(C)(10). 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 for Plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

In support of its motion, Plaintiff attaches: (1) the Note; (2) the Unconditional Guarantee; and (3) the Affidavit of Plaintiff's vice president, Anna Westerlund.

Under the Court's July 19, 2016 Order, Defendants were required to file a response brief by August 17, 2016. Defendants, however, failed to file a response or present any evidence contradicting Plaintiff's claims.<sup>1</sup>

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).

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<sup>1</sup> The Court notes that Defendant filed an untimely response on August 25, 2016. This Response was not only untimely under the Court Order entered under MCR 2.116(G), it was also untimely had the Court not entered any such scheduling order under MCR 2.116(G)(1)(a)(ii), which requires any response to be filed at least 7 days prior to the hearing. Because the Response is late, it will not be considered. Additionally, assuming arguendo that the same was filed on time, Defendants' response simply challenges the sale price for the real property (arguing the same could have been sold for more – thereby, reducing the judgment amount). But Defendant's specifically waived their right to challenge the sale under the terms of their Unconditional Guarantee. (Unconditional Guarantee, at sections 6.C.3), 7), and 8)). As a result, even if the Court considered Defendants' response, the result would be the same.

As a result, the Court concludes that Defendants fail 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 \$145,399.76.

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

**IT IS SO ORDERED.**

August 29, 2016  
Date

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