

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

**RAPID CAPITAL FUNDING, INC.,  
A Limited Liability Company  
Plaintiff,**

**v.**

**Case No. 16-152006-CB  
Hon. James M. Alexander**

**MAYAR FRUITS MARKET, LLC., a MI Limited  
Liability Company, dba ZAM ZAM MARKET; and  
DALIA ATIBA, Guarantor, jointly & severally  
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).

Plaintiff brought this action to collect on a debt on an open account. On June 21, 2016, the Court entered a Default Judgment in Plaintiff's favor against the corporate Defendant. Plaintiff now seeks judgment against the individual Defendant, Dalia Atiba, who guaranteed the business's debt.

According to the Complaint, on December 5, 2014, Defendant executed a written guaranty of payment to Plaintiff for credit sales of merchandise to be made to Mayar Fruits Market, LLC. Plaintiff claims that it performed under the agreement by selling merchandise on credit to Defendants.

Plaintiff now seeks a judgment in the principal amount of \$53,277.21, plus interest of \$11,313.74, and attorney fees of \$10,750 – for a total of \$75,340.95.

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 recover. *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 references 2 exhibits that were not attached: (1) Request for Admission to Defendant Dalia Atiba; and (2) A letter from Plaintiff directed to the Defendant requesting compliance. But the Request for Admissions was filed on June 9, 2016. Additionally, attached to Plaintiff's Complaint is (1) the Guaranty; (2) Affidavit of Torleidy Reyes Garcia, Plaintiff's Collections Specialist, with knowledge of the debt owed by Defendant; and (3) the Account Agreement.

Under the Court's August 16, 2016 Order, Defendant was required to file and serve a response by October 5, 2016. But Defendant 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 Defendant failed to answer the Request 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 Defendant has admitted both his liability on, and the amount of, the claimed debt. The Court agrees.

For the foregoing reasons, the Court concludes that Defendant has failed 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. The Court, therefore, GRANTS Plaintiff's motion for summary disposition under (C)(10) and enters judgment against Defendant Dalia Atiba, in the amount of \$75,340.95.

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

**IT IS SO ORDERED.**

October 25, 2016  
Date

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