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

CREDIT ACCEPTANCE CORPORATION, a Michigan Corporation,
Plaintiff,

v. **Case No. 16-152962-CB**
Hon. James M. Alexander

MICHAEL P. KREIDER, an individual
Defendants.
_____/

OPINION AND ORDER RE: SUMMARY DISPOSITION

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

According to Plaintiff's Complaint, in June 2002, the parties executed an Employment Agreement, which contained non-solicitation and non-competition provisions. Plaintiff claims, in April 2016, Defendant tendered his resignation and accepted a position with Plaintiff's direct competitor. And Plaintiff alleges, by doing so, Defendant violated the non-solicitation and non-competition provisions.

On these general allegations, Plaintiff filed the present Complaint alleging claims of (Court I) breach of contract; (Count II) temporary restraining order and preliminary and permanent injunction.

Plaintiff now moves for summary disposition under MCR 2.116(C)(10). A (C)(10) motion tests the factual support for a plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). In such a motion, the moving party must specifically identify the

issues that he believes present no genuine issue of material fact. *Id.* at 120. The opposing party may not rest on mere allegations or denials in his pleadings, but must, by affidavits or as otherwise provided in the rule, set forth specific facts showing a genuine issue for trial. *Id.* at 120-121. Where the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* at 120.

Defendant claims that this case should be dismissed because the parties entered into a preliminary consent injunction, which settled Plaintiff's claims against Defendant. In other words, Defendant claims that the preliminary consent injunction replaces the Employment Agreement and acts as a final order that bars any further relief.

But Defendant fails to cite any authority supporting this assertion. Michigan law is clear that "A party may not merely announce a position and leave it to [the] Court to discover and rationalize the basis for the claim." *National Waterworks, Inc v International Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007).

Further, the Consent Injunction contains no Final Order language. If the parties intended that the Preliminary Injunction close the case, they could have easily so provided. But they did not.

For the foregoing reasons, the Court finds that Defendant fails to present any authority in showing Defendant's entitlement for judgment based on the preliminary consent injunction. Therefore, summary disposition of this claim under (C)(10) is appropriately DENIED.

Finally, the Court will also note that Plaintiff claims that Defendant's (C)(10) motion is premature because discovery will reveal evidence to substantiate its claims. Indeed, summary disposition under (C)(10) is usually premature if granted before discovery on a disputed issue is complete. *Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000).

Because discovery may reveal evidence to substantiate Plaintiff's claim, the Court finds that summary disposition is also premature.

For all of the foregoing reasons, Defendant's motion under MCR 2.116(C)(10) is DENIED.

IT IS SO ORDERED.

October 25, 2016_____ __/s/ James M. Alexander_____
Date Hon. James M. Alexander, Circuit Court Judge