

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

**ARGHA SERVICES, INC.,
Plaintiff,**

v.

**Case No. 16-154242-CB
Hon. James M. Alexander**

**SUBHASHINI SOFTWARE SOLUTIONS, INC.,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Plaintiff's Motion for Summary Disposition. According to its Complaint, in July 2014, Plaintiff entered into a Contract to provide Defendant with software engineering services. Plaintiff alleges that Defendant has breached the contract and now owes Plaintiff \$26,000.00 for the software engineers it provided.

On these general allegations, Plaintiff filed the present Complaint alleging claims of (Count I) breach of contract; (Count II) account stated; (Count III) unjust enrichment.

Plaintiff now moves for summary disposition under MCR 2.116(C)(10), which 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.

Plaintiff claims that it is entitled to summary because Defendant breached the contract when it failed to pay Plaintiff \$26,800. In support, Plaintiff cites to the affidavit of Smitha Mandava, Plaintiff's President.

In response to Plaintiff's motion, Defendant claims that Plaintiff first breached the contract when at least one of its employees accepted employment with a job developer in violation of the Agreement. In support, Defendant cites to the affidavit of Sreenivas Oruganti, CEO of Defendant. In other words, Defendant argues that Plaintiff cannot succeed on its claims because it was the first to breach the Agreement.

Indeed, "[t]he rule in Michigan is that one who first breaches a contract cannot maintain an action against the other contracting party for his subsequent breach or failure to perform. However, that rule only applies when the initial breach is substantial." *Michaels v Amway Corp*, 206 Mich App 644, 650; 522 NW2d 703 (1994) (internal quotations and citations omitted).

The will also note that it rejects Plaintiff's Reply Brief argument that it could not have breached the Agreement as long as its employee resigned at any point before accepting employment with a Defendant customer. This argument strains the language of the Agreement beyond its plain meaning.

Because the parties have a material dispute (supported by evidence) about which was the first to breach the Agreement, summary disposition under (C)(10) is inappropriate and DENIED.

Additionally, the Court will note that Defendant claims that Plaintiff'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 stands a fair chance to uncover evidence to support both Plaintiff's claims and Defendant's defenses to the same, the Court finds that summary on this claim is also premature. Therefore, assuming that there was no material factual dispute over which party was the first to breach the Agreement, the Court would find that summary disposition would be also be premature.

To summarize, Plaintiff's motion for summary disposition is DENIED in its entirety.

IT IS SO ORDERED.

October 19, 2016
Date

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