

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

WARREN INDUSTRIES, INC.,

Plaintiff,

vs.

Case No. 2015-1929-CB

MAGNESIUM ALUMINUM MICHIGAN
CORP., MAGNESIUM ALUMINUM CORP.,
COMPASS AUTOMOTIVE GROUP, LLC,
COMPASS AUTOMOTIVE GROUP,
COMPASS AUTOMOTIVE and MICHAEL
CARR,

Defendants.

OPINION AND ORDER

Defendants Compass Automotive Group, LLC, Compass Automotive Group, and Compass Automotive (collectively, "CAG Defendants") have filed a joint motion for summary disposition pursuant to MCR 2.116(C)(8) and (10).

I. Factual and Procedural History

Plaintiff is a company engaged in providing CNC machining and sub-assembly services to manufacturers in the automotive industry. On June 4, 2015, Plaintiff filed its complaint in this matter ("Complaint"). The Complaint contains claims for: Account Stated (Count I), Breach of Contract (Count II), Unjust Enrichment (Count III), Breach of Promissory Note (Count IV), "Personal Liability on Michael Carr" (Count V), "Subsidiary Liability" (Count VI), Fraudulent Conveyance (Count VII), and Violation of the Uniform Fraudulent Transfer Act (Count VIII).

On July 31, 2015, the CAG Defendants filed their instant motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). Plaintiff has since filed its response and requests that the motion be denied. On August 31, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Standard of Review

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party has failed to state a claim upon which relief may be granted. *Radtke v Everett*, 442 Mich 368, 373-374; 501 NW2d 155 (1993). A motion under MCR 2.116(C)(9) tests the sufficiency of a defendant's pleadings by accepting all well-pleaded allegations as true. *Id.* If the defenses are so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery, then summary disposition under this rule is proper. *Id.* Further, a court may look only to the parties' pleadings in deciding a motion under MCR 2.116(C)(9). *Id.*

A motion under MCR 2.116(C)(10), on the other hand, tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

III. Arguments and Analysis

Plaintiff's account stated (Count I) and breach of contract (Count II) claims against the CAG Defendants are based on an October 28, 2013 purchase order sent to "Magnesium Aluminum Michigan Corp d/b/a Compass Automotive." (See Exhibit A to the Complaint.) While Defendant Compass Automotive Group, LLC is the former holder of all of Defendant Magnesium Aluminum Michigan Corporation's ("MAMC") stock, MAMC is a separate legal entity that has been registered as a corporation with the State of Michigan since February 23, 2009.

It is a well-established principle that courts will respect separate corporate entities. *Wells v. Firestone Tire & Rubber Co.*, 421 Mich 641, 650, 364 NW2d 670 (1984). "Michigan law presumes that, absent some abuse of corporate form, parent and subsidiary corporations are separate and distinct entities." *Seasword v. Hilti, Inc.*, 449 Mich 542, 547, 537 NW2d 221 (1995). This presumption of separate corporate existence, referred to as the "corporate veil," will only be disregarded if a parent company used the separate corporate existence of a subsidiary to subvert justice or to achieve a result that contravenes public policy. *Wells*, 421 Mich at 650, 364 NW2d 670.

In this case, MAMC is a separate legal entity from the CAG Defendants and Plaintiff has failed to present any argument or evidence with respect to piercing the parent/subsidiary corporate veil. Consequently, the Court is convinced that Plaintiff's account stated and breach of contract claim against the CAG Defendants must be granted.

With respect to Count III, "[t]he elements of a claim for unjust enrichment are (1) receipt of a benefit by the defendant from the plaintiff, and (2) an inequity resulting to

plaintiff from defendant's retention of the benefit." *Bellevue Ventures, Inc. v Morang-Kelly Investment, Inc.*, 302 Mich App 59, 64; 836 NW2d 898 (2013). While the CAG Defendants contend that they have not received any benefit from Plaintiff, they have failed to present any evidence in support of their position. A party may not merely state a position and then leave it to the Court to rationalize and discover the basis for the claim, nor may he leave it to the Court to search for authority to sustain or reject his position. *People v Mackle*, 241 Mich App 583, 604 n 4; 617 NW2d 339 (2000). Based on the CAG Defendants' failure to present any evidence with respect to the elements of Plaintiff's unjust enrichment claim, the portion of their motion seeking summary disposition of Plaintiff's unjust enrichment claim must be denied.

Count IV of the Complaint is based on a February 23, 2015 "Settlement Agreement" between Plaintiff and MAMC. (See Exhibit D to Complaint.) The CAG Defendants are not a party to the Settlement Agreement. Consequently, the CAG Defendants' motion for summary disposition of Count IV of the Complaint must be granted.

Counts VII (Fraudulent Conveyance) and VIII (Violation of the Uniform Fraudulent Transfer Act) are based on Plaintiff's allegation that one or more of the CAG Defendants were required to provide it with notice that it was transferring its ownership interest in MAMC to another entity or individual. While the CAG Defendants concede that Defendant Compass Automotive Group, LLC previously owned all of MAMC's stock, and that it sold its stock in MAMC on December 23, 2013 to Talon Holding Company, LLC ("Talon"), Plaintiff has failed to provide any authority whatsoever that an entity is required to give notice to a creditor of the company it holds stock in prior to

selling the stock. Based on Plaintiff's failure to support its fraudulent conveyance and fraudulent transfer claims in any way, the Court is convinced that the CAG Defendants are entitled to summary disposition of those claims.

IV. Conclusion

For the reasons set forth above, Defendants Compass Automotive Group, LLC, Compass Automotive Group, and Compass Automotive's motion for summary disposition is GRANTED, IN PART, and DENIED, IN PART. Specifically, Defendants Compass Automotive Group, LLC, Compass Automotive Group, and Compass Automotive's motion for summary disposition of Plaintiff's unjust enrichment claim is DENIED. Defendants Compass Automotive Group, LLC, Compass Automotive Group, and Compass Automotive's motion for summary disposition of Plaintiff's remaining claims is GRANTED. Pursuant to MCR 2.602(A)(3), this Opinion and Order neither resolves the last pending claim nor does it close the case.

IT IS SO ORDERED.

Date: NOV 19 2015

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge