

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

COMERICA BANK,

Plaintiff,

vs.

Case No. 2015-247-CB

JAB PROPERTIES, LLC,

Defendant.

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OPINION AND ORDER

Plaintiff has filed a motion for summary disposition. Defendant has filed a response and request that the Court deny Plaintiff's motion.

I. Factual and Procedural History

On August 29, 2011, the parties execute a note ("Original Note") in the original amount of \$586,616.11. The Original Note was secured by a January 7, 1999 mortgage as to property commonly known as 4320 12 Mile Rd., Warren, MI ("Subject Property").

On November 29, 2012 Defendant executed an amended promissory note in favor of Plaintiff in the amount of \$586,616.11 ("Amended Note").

On January 27, 2015, Plaintiff filed its complaint in this matter asserting a claim for breach of the Original Note. In addition, Plaintiff also requested the appointment of a receiver to manage, market, operate and ultimately liquidate the Subject Property.

On August 14, 2015, Plaintiff filed its instant motion for summary disposition. On August 31, 2015, Defendant filed its response and requests that the motion be denied.

On September 8, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

## II. Standard of Review

A motion under MCR 2.116(C)(10) 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

In its motion, Plaintiff contends that the Amended Note matured as of November 1, 2014, that Defendant has failed to make the required payments under the Note, and that as result Defendant has breached the terms of the Amended Note. Pursuant to the Amended Note, its maturity date was November 1, 2014. (See Plaintiff's Exhibit 1.) Defendant does not dispute that the Amended Note matured in November 2014, that it has failed to make the required payments, or that it is liable for the principal and interest owed under the Amended Note. However, Defendant does dispute Plaintiff's request for late fees, appraisal costs, environmental damages, legal fees, and costs (collectively, "Disputed Damages").

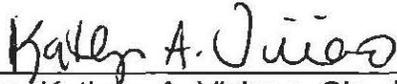
In its motion, Plaintiff requests, *inter alia*, \$2,140.00 for appraisal, \$2,400.00 for late fees, \$2,000.06 for environmental, \$75,990.00 in attorney fees, and \$2,373.14 in costs. (See Plaintiff's Exhibit 5, affidavit of Rona R. Khan.) However, Plaintiff has failed to provide any authority that would entitle it to such fees and costs. 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). While Plaintiff contends generally that the Note provides for the recovery of its attorney fees and costs, it fails to identify any provision(s) authorizing such recovery. Plaintiff further fails to identify any provision(s) of the Amended Note. Based on Plaintiff's failure to adequately support its request, the Court is convinced that Plaintiff's request for the Disputed Damages must be denied.

#### IV. Conclusion

Based upon the reasons set forth above, Plaintiff's motion for summary disposition is GRANTED as to the liability for principal and interest owed under the Amended Note. Further, Plaintiff's motion for summary disposition for late fees, appraisal costs, environmental damages, legal fees, and costs is DENIED. Pursuant to MCR 2.604(A), this Opinion and Order neither resolves the last remaining issue nor closes this case.

IT IS SO ORDERED.

Date: OCT 21 2015

  
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Hon. Kathryn A. Viviano, Circuit Court Judge