

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

PNC BANK NA,

Plaintiff,

vs.

Case No. 2015-2773-CB

STEMA DEVELOPMENT, LLC,
ALL AMERICAN LAUNDRY, INC.,
JEFFREY STEMA, MICHAEL
STEMA, and PAMELA STEMA,

Defendants.

OPINION AND ORDER

Plaintiff has filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Defendants Stema Development, LLC, All American Laundry, Inc. Jeffrey Stema and Michael Stema (collectively, "Respondents") have filed a response and request that the motion be denied. In addition, Plaintiff has filed a reply brief in support of its motion.

I. Factual and Procedural History

On August 6, 2015, Plaintiff filed its complaint in this matter ("Complaint"). On December 29, 2015, Respondents filed their joint answer to the Complaint ("Answer"). On January 19, 2016, Plaintiff served its "First Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents to [Respondents]" ("Discovery Requests"). On February 16, 2016, Respondents filed their objections to the Discovery Requests ("Objections").

FILED
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CARMELLA SABAUGH
MACOMB COUNTY CLERK
MT. CLEMENS, MICHIGAN

On July 13, 2016, Plaintiff filed its instant motion for summary disposition pursuant to MCR 2.116(C)(10). On August 22, 2016, Respondents filed their response to the motion. On August 29, 2016, Plaintiff filed its reply brief. The Court has taken the matter under advisement, but is now prepared to render its decision.

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 avers that Respondents did not provide answers to the Discovery Requests, and that it is entitled to summary disposition in its favor due to Respondent's failure to provide timely answers. Specifically, Plaintiff relies on MCR 2.312(B), which provides:

(B) Answer; Objection.

(1) Each matter as to which a request is made is deemed admitted unless, within 28 days after service of the request, or within a shorter or longer time as the court may allow, the party to whom the request is directed serves on the party requesting the admission a written answer or objection addressed to the matter. Unless the court orders a shorter time a

defendant may serve an answer or objection within 42 days after being served with the summons and complaint.

(2) The answer must specifically deny the matter or state in detail the reasons why the answering party cannot truthfully admit or deny it. A denial must fairly meet the substance of the request, and when good faith requires that a party qualify an answer or deny only part of the matter of which an admission is requested, the party must specify the parts that are admitted and denied.

(3) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that he or she has made reasonable inquiry and that the information known or readily obtainable is insufficient to enable the party to admit or deny.

(4) If an objection is made, the reasons must be stated. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request. The party may, subject to the provisions of MCR 2.313(C), deny the matter or state reasons why he or she cannot admit or deny it.

In its motion, Plaintiff concedes that Respondents filed objections to its requests to admit. Nevertheless, Plaintiff asserts that the objections "did not address the matter as required by MCR 2.312(B)(1)." (See Plaintiff's Motion, at p.6.) As a preliminary matter, subsection (4), not (1), addresses the requirements of a valid objection to a request to admit. Subsection (4) merely requires the objecting party to state the reason(s) for the objection. In the Objections, Respondents state that they are objecting to the Discovery Requests because they were all filed together rather than by serving the different types of discovery requests separately. Further, Respondents objected that the manner in which Plaintiff complied and served the Discovery Requests was inappropriate because it would force them to divulge personal information in documents that would need to be filed with the Court, thereby making them larger targets for "thieves and online scammers".

While Plaintiff may disagree with Respondent's objections, it may not seek summary disposition based on its belief that Respondent's objections are without merit. Rather, MCR 2.312(C) requires a party who has requested an admission to move the court to determine whether the objection is sufficient. If the Court ultimately determines that the objection is meritless, MCR 2.312(C) instructs the Court to order that the answer be served. If the responding party fails to provide the answer as instructed, the request is deemed admitted and the requesting party could use that admission to seek dispositive relief.

In this case, Plaintiff seeks to bypass the procedure set forth in MCR 2.312(C) and obtain summary disposition in its favor by arguing that its requests are deemed admitted without having to file a motion regarding the merits/sufficiency of Respondent's objections. Such a shortcut is not authorized by the court rules and Plaintiff has not cited to any other authority which would allow it to obtain summary disposition without having to comply with MCR 2.312(C). Consequently, the Court is convinced that Plaintiff's motion must be denied.

Finally, the Court notes that Plaintiff, for the first time in its reply, argues that Respondent's answer to the Complaint does not comply with MCR 2.112(E), and that such a deficiency warrants summary disposition in its favor. However, the Court will not address the merits of Plaintiff's argument as Plaintiff's attempt to raise that argument for the first time in its reply deprives Respondents of an opportunity to respond to Plaintiff's position. Accordingly, the Court is satisfied that Plaintiff's argument is untimely. As a result, Plaintiff argument will not be addressed.

IV. Conclusion

For the reasons set forth above, Plaintiff's motion for summary disposition is DENIED. Pursuant to MCR 2.602(A)(3), this matter remains OPEN.

IT IS SO ORDERED.

Dated: SEP 26 2016

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