

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

VAN DYKEN MECHANICAL, INC.,

Plaintiff,

Case No. 15-05800-CZB

vs.

HON. CHRISTOPHER P. YATES

HEAT TRANSFER INTERNATIONAL,
LLC,

Defendant.

OPINION AND ORDER GRANTING IN PART, AND DENYING IN PART,
MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10)

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This is a straightforward commercial dispute that the parties have turned into something that Rube Goldberg would admire. At the behest of Defendant Heat Transfer International, LLC (“Heat Transfer”), Plaintiff Van Dyken Mechanical, Inc. (“Van Dyken”) installed steam piping as part of a boiler-installation project at Sietsema Farms. As it turned out, the boiler was installed without the necessary permits, so a state agency issued violation notices that prompted costly remedial measures. When Van Dyken sent invoices to Heat Transfer for that additional work, Heat Transfer balked and this litigation ensued. Through pleadings and discovery, the parties have come to the understanding that Heat Transfer has paid Van Dyken approximately \$91,600, unjustifiably withheld approximately \$12,300 for Van Dyken’s original work on the project, and refused to pay an additional \$38,331 for remediation work. The contest over that \$38,331 bill constitutes the primary source of disagreement. In addition, Heat Transfer has advanced counterclaims for breach of express and implied warranties. The Court can pare down the issues in response to Van Dyken’s summary-disposition motion under MCR 2.116(C)(10), but the parties’ main dispute must be resolved at trial.

“A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint.” Corley v Detroit Bd of Educ, 470 Mich 274, 278 (2004). “In evaluating such a motion, the court considers the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties.” Id. “Summary disposition under MCR 2.116(C)(10) is appropriately granted if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” Rose v National Auction Group, 466 Mich 453, 461 (2002). Such a “genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” See West v General Motors Corp, 469 Mich 177, 183 (2003). With these standards in mind, the Court must address Plaintiff Van Dyken’s summary-disposition motion.

Plaintiff Van Dyken has requested summary disposition with respect to liability and damages in the amount of \$50,609.77 on all three of its claims for breach of contract, unjust enrichment, and account stated. “An account stated ‘is a contract based on assent to an agreed balance, and it is an evidentiary admission by the parties of the facts asserted in the computation and of the promise by the debtor to pay the amount due.’” Fisher Sand and Gravel Co v Neal A Sweebe, Inc, 494 Mich 543, 557 (2013). This case presents the antithesis of a viable account stated because Defendant Heat Transfer vehemently disputes the amount claimed by Van Dyken. Therefore, the Court cannot award summary disposition to Heat Transfer under MCR 2.116(C)(10).¹ Beyond that, Van Dyken’s claims

¹ Plaintiff Van Dyken chastises Defendant Heat Transfer for neglecting to furnish an affidavit contesting the account-stated claim. To be sure, when a plaintiff provides an affidavit in support of an account-stated claim, that affidavit is “deemed prima facie evidence of such indebtedness, unless the defendant with his answer . . . makes an affidavit and serves a copy thereof on the plaintiff or his attorney, denying the same.” See MCL 600.2145. But Heat Transfer’s failure does not mean that Van Dyken automatically wins its account-stated claim; it simply means that Van Dyken enjoys the benefit of a prima facie case on that claim, which Heat Transfer can overcome at trial.

for breach of contract and unjust enrichment are mutually exclusive. See Belle Isle Grill Corp v City of Detroit, 256 Mich App 463, 478 (2003). Nevertheless, Van Dyken can plead those claims in the alternative, see HJ Tucker & Associates, Inc v Allied Chucker and Engineering Co, 234 Mich App 550, 573 (1999), citing MCR 2.111(A)(2), so Van Dyken may proceed on its alternative theories that Heat Transfer either breached a contract or received unjust enrichment in accepting the remediation work without furnishing remuneration to Van Dyken.

As oral argument made clear, Plaintiff Van Dyken is plainly entitled to an award of summary disposition on a portion of its claim for breach of contract. Defendant Heat Transfer has withheld payment of approximately \$12,300 due under the parties' original contract for work that Van Dyken has performed. Whether Heat Transfer chose to withhold that money out of spite or for bargaining leverage, the record leaves no doubt that Heat Transfer owes that sum to Van Dyken as a contractual obligation. Accordingly, the Court shall grant summary disposition to Van Dyken pursuant to MCR 2.116(C)(10) on its breach-of-contract claim for that amount.² But the record gives rise to genuine issues of material fact concerning the balance of Van Dyken's claim for \$38,331 for the remediation work that was not contemplated by the parties' original contract. Van Dyken can pursue that amount at trial on alternative theories of breach of contract and unjust enrichment, but the Court cannot end the parties' disagreement over that amount by awarding summary disposition to either side.

Finally, Plaintiff Van Dyken contends that the Court must award summary disposition in its favor on Defendant Heat Transfer's counterclaims for breach of express and implied warranties. In

² As the Court understands the record, Defendant Heat Transfer owes Plaintiff Van Dyken a grand total of approximately \$12,291 for unpaid obligations under the original contract. The Court shall permit the parties to reconcile the slight difference between their damage figures on this point before delving into the issue by conducting some type of hearing on those damages. It appears that no more than \$15 separates the parties on this issue.

a nutshell, Heat Transfer insists that Van Dyken breached an express contractual warranty when it promised to obtain the necessary permits for the project and then failed to do so, and that Van Dyken breached an implied warranty of fitness for a particular purpose by furnishing Heat Transfer “with goods without the requisite permits and licenses.” See Counterclaim, ¶ 19. Under the contract that bound the two parties, Van Dyken represented that it had a “permit from [the] state of Michigan for steam piping.” See Counterclaim, Exhibit A. Although Van Dyken argues that it procured all of the permits and licenses necessary to perform the piping work, the state agency issued violation notices upon Van Dyken’s completion of the project. Van Dyken blithely dismisses that problem as a result of Heat Transfer’s failure to obtain additional licenses and permits to install the boiler, but the Court concludes that the reference in the contract to the “permit . . . for steam piping” creates an ambiguity that must be resolved by the trier of fact at trial. Klapp v United Ins Group Agency, Inc, 468 Mich 459, 469 (2003). Consequently, the Court must deny Van Dyken’s summary-disposition request as to the counterclaims advanced by Heat Transfer. The Court shall set this matter for a final settlement conference and then a trial.

IT IS SO ORDERED.

Dated: February 25, 2016



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge