

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

GREEN FOODS CORPORATION,

Plaintiff,

Case No. 2019-178283-CB

v.

Hon. Martha D. Anderson

H&H WHOLESALE NUTRITION AND  
SUPPLEMENTS, LLC,  
H&H WHOLESALE SERVICES, INC. d/b/a  
CHIROPRACTORS BUYING GROUP (CBG) and  
CHIROPRACTOR'S BUYING GROUP INTERNATIONAL,

Defendants.

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OPINION AND ORDER GRANTING PLAINTIFF'S  
MOTION FOR [PARTIAL] SUMMARY DISPOSITION UNDER MCR 2.116(C)(9) AND (10)

This matter is before the Court on Plaintiff's Motion for [Partial] Summary Disposition under MCR 2.116(C)(9) and (10). Pursuant to MCR 2.119(E)(3), there will be no oral argument.

I.

Plaintiff filed the instant litigation against Defendants alleging that, in 2019, Plaintiff sold and delivered to Defendants certain goods on open account and on Defendants' promise to pay for them; however, Defendants have allegedly failed to make payment as promised. Consequently, Plaintiff filed a two-count Complaint against Defendants alleging breach of contract and account stated seeking to collect the \$135,423.51 due and owing from Defendants for these goods, plus costs, interest and attorney fees. Plaintiff attached to its Complaint an Affidavit of Account, pursuant to MCL 600.2145. Defendants answered Plaintiff's Complaint, but failed to answer any of the allegations relative to Count II (account stated) or attach a counter-affidavit relative thereto. Thus, Plaintiff's affidavit is deemed prima facie evidence of Defendants' indebtedness to Plaintiff in the amount of \$135,423.51, pursuant to MCL 600.2145.<sup>1</sup>

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<sup>1</sup> "In all actions brought in any of the courts of this state, to recover the amount due on an open account or upon an account stated, if the plaintiff or someone in his behalf makes an affidavit of the amount due, as near as he can estimate the same, over and above all legal counterclaims and

Plaintiff now brings the pending Motion for [Partial] Summary Disposition as to Count II of its Complaint for account stated, pursuant to MCR 2.116(C)(9) and (10), arguing Defendants failed to state a valid defense and that no genuine issue of material fact exists that Defendants are liable for the amount owed on the account, compelling summary disposition in Plaintiff's favor. In support of its motion, Plaintiff attached a copy of: (1) invoices for the goods delivered to Defendants (2) Plaintiff's Complaint and attached affidavit; and (3) Defendants' Answer and Affirmative Defenses to Plaintiff's Complaint.

In response, Defendants argue that summary disposition is inappropriate as only one Defendant had a contract with Plaintiff (Defendant Chiropractors Buying Group (CBG)) and, thus, no liability exists relative to the other Defendants. Defendants take this position yet fail to attach any evidence in support thereof.

Defendants also argue that summary disposition is inappropriate because the parties are attempting to resolve this matter and further discovery is necessary to resolve all the factual questions that exist in this matter. The mere fact, however, that the discovery period remains open does not automatically mean a trial court's decision to grant summary disposition is untimely or otherwise inappropriate. *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 292; 769 NW2d 234 (2009). Rather, the question is whether further discovery stands a fair chance of uncovering factual support for the position of the opposing party. *Id.* Nevertheless, a party opposing summary disposition cannot simply state that it is premature to make such a decision without *first* identifying: (1) a disputed issue; and (2) independent evidence supporting that disputed issue. *id.* Specifically, the court rules require the party opposing summary disposition to offer the required MCR 2.116(H) affidavits, with the probable testimony to support its contentions. *Id* at 292-93. Here, Defendants have presented no affidavits or evidence to support its contentions.

## II.

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annexes thereto a copy of said account, and cause a copy of said affidavit and account to be served upon the defendant, with a copy of the complaint filed in the cause or with the process by which such action is commenced, such affidavit shall be deemed prima facie evidence of such indebtedness, unless the defendant with his answer, by himself or agent, makes an affidavit and serves a copy thereof on the plaintiff or his attorney, denying the same . . . ." MCL 600.2145 (underline added).

A motion under MCR 2.116(C)(9) tests whether a party has stated a valid defense, which the Court shall determine solely by reference to the parties' pleadings. *Nasser v Auto Club Ins Assoc*, 435 Mich 33, 46-47; 457 NW2d 637 (1990). When a material allegation of the complaint is categorically denied, summary disposition under MCR 2.116(C)(9) is improper. *Nasser, supra* at 47.

A motion under MCR 2.116(C)(10) tests the factual basis of a plaintiff's complaint and shall be granted if no genuine issue of material fact exists (except as to damages). A court must examine the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party, granting the benefit of any reasonable doubt to the opposing party. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). Initially, the moving party retains the burden of supporting its position by the above evidentiary proofs, but the burden then shifts to the opposing party to establish a genuine issue of material fact. *Id* at 455. Summary disposition shall be granted if the opposing party fails to present documentary evidence to establish the existence of a genuine issue of material fact. *Id.*

### III.

The Court, having reviewed the parties' respective motion, response, reply, briefs in support, supporting documentation as well as the pleadings in this matter, finds that Defendants failed to state a valid defense as to Count II of Plaintiff's Complaint for account stated and, furthermore, failed to meet their burden of evidencing a genuine issue of material fact relative to their indebtedness to Plaintiff in the amount of \$135,423.51 as set forth under Count II of Plaintiff's Complaint for account stated. *Id.* Thus, summary disposition is appropriate in Plaintiff's favor under MCR 2.116(C)(9) and (10).

**THEREFORE, IT IS HEREBY ORDERED** that Plaintiff's Motion for [Partial] Summary Disposition as to Count II (account stated) of Plaintiff's Complaint is **GRANTED**, pursuant to MCR 2.116(C)(9) and (10).

**IT IS SO ORDERED.**

**This Order does NOT resolve the last pending matter and does NOT close the case.**

Dated: 8/25/2020.

/s/ Martha Anderson

HON. MARTHA D. ANDERSON  
CIRCUIT COURT JUDGE