

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

PML WORLDWIDE, INC. and PML
HOLDINGS GROUP, LLC,

Plaintiffs,

vs.

Case No. 2012-5699-CK

AES EMPLOYER SERVICES, INC.,
AES LEASING SERVICES, INC., and
AES STAFF MANAGEMENT, LLC,

Defendants.

OPINION AND ORDER

Defendants have filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiffs have filed a response to the motion and request that the motions be denied.

Facts and Procedural History

The parties to this matter are current (Defendants) and former (Plaintiffs) Professional Employer Organizations (“PEOs”). PEOs are businesses which provide professional employer services, human resources management, and other services to small and mid-sized employers. In 2008 the parties began negotiations regarding Defendants’ potential purchase of some of Plaintiffs’ accounts. In October 2009 the parties executed six “Agreements for Purchase of Accounts” (the “Agreements”). Pursuant to the Agreements, Defendants were to pay Plaintiffs \$50,000.00 for some of their accounts, as well as pay 45% of their gross profits from the accounts to Plaintiffs for 42 months as consulting fees. Defendants did not assume any of Plaintiffs’ liabilities or purchase any of Plaintiffs’ stock.

On April 15, 2013, Plaintiffs filed their first amended complaint in this matter (the “Complaint”). In the Complaint, Plaintiffs allege that Defendants breached the Agreements by failing to pay the required \$50,000.00 at closing and failing to pay the required consulting fee.

On April 1, 2014, Defendants filed their instant motion for summary disposition. In their motion, Defendants contend that Plaintiffs are the breaching parties. Specifically, Defendants contend that the Agreements provide that the subject matter of the Agreements were free from any liens, taxes encumbrances, etc., but that the IRS and State of Illinois have placed liens on Defendants. As a result, Defendants contend that the consulting fees they have paid have been tendered to one or both of those entities rather than Plaintiffs. Additionally, Defendants contend that their obligation to pay \$50,000.00 was contingent upon Plaintiffs’ satisfaction of every contingency in the Agreements, including discharge of taxes, which is a contingency that has not been satisfied.

On April 28, 2014, Plaintiffs filed their response to the instant motion. In their response, Plaintiffs assert that the tax liens have no bearing on this case, and that genuine issues of material fact exist which preclude summary disposition.

On May 27, 2014, the Court held a hearing in connection with the instant motion. At the hearing, the Court declined to entertain the portion of Defendants’ motion, and Plaintiffs’ response, related to the State of Illinois’ lien(s). The Court took the remainder of the motion under advisement.

Standard of Review

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Graves v Warner Bros*, 253 Mich App 486, 491; 656 NW2d 195 (2002). Under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by

the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. *Id.* However, the nonmoving party must produce evidence showing a material dispute of fact left for trial in order to survive a motion for summary disposition under this rule. MCR 2.116(G)(4); *Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000). Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Wayne County Bd of Com'rs v Wayne County Airport Authority*, 253 Mich App 144, 161; 658 NW2d 804 (2002).

Arguments and Analysis

As a preliminary matter, Defendants repeatedly reference IRS tax levies against Plaintiffs in their motion. However, Defendants' counsel has since conceded that the IRS encumbrances at issue against Plaintiffs are tax liens rather than levies.

In their response, Plaintiffs contend that Defendants have failed to provide any proof that the IRS has sought to hold Defendants liable for Plaintiffs' tax liens. In their motion, Defendants attached 6 notices of federal tax lien against Plaintiff PML Holdings Group, LLC and 9 notices of federal tax lien against Plaintiff PML Worldwide, Inc. However, the notices in and of themselves do not hold Defendants liable for Plaintiffs' tax liabilities and Defendants have failed to provide any other evidence establishing that they were held liable for the outstanding taxes. Moreover, Defendants have not provided any authority providing that the existence of a lien on Plaintiffs' potential recovery in this matter establishes grounds for summary disposition. For these reasons, the portion of Defendants' motion related to the IRS tax liens must be denied.

Conclusion

Based upon the reasons set forth above, Defendants' motion for summary disposition is DENIED, IN PART, and DENIED, WITHOUT PREJUDICE, IN PART. The portion of

Defendants' motion based on the existence of the IRS tax liens is DENIED. The remainder of Defendants' motion is DENIED, WITHOUT PREJUDICE. This *Opinion and Order* does not resolve the last claim and does not close the case. See MCR 2.602(A)(3).

IT IS SO ORDERED.

John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: June 9, 2014

JCF/sr

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