

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

WIRELESS BUYBACKS, LLC,

Plaintiff,

vs.

Case No. 2013-4732-CK

WIRELESS POINTE WHOLESALE, LLC, and
MARY HANNA, a/k/a MARY YOUNAN
HANNA, and RONALDO YOUNAN.

Defendants.

OPINION AND ORDER

Plaintiff has filed a motion for summary disposition. Defendant Mary Hanna has filed a response and requests that the motion be denied.

Facts and Procedural History

Over the course of about two years, Plaintiff purchased numerous communications devices from Defendant Wireless Pointe Wholesale, LLC (“Wireless Pointe”). Defendant Mary Hanna (“Defendant Hanna”) was the sole and managing member of Wireless Pointe. Defendant Ronaldo Younan (“Defendant Younan”) is Defendant Hanna’s brother and handled the day-to-day operations of Wireless Pointe. Between March 11, 2013 and March 28, 2013 Plaintiff allegedly placed three orders with Wireless Pointe (“Orders”). While it is undisputed that Plaintiff provided the necessary funds, Plaintiff alleges that it did not receive the goods it ordered.

On March 30, 2013, Defendant Mary Hanna (“Defendant Hanna”), as the sole and managing member, filed a certificate of dissolution for Wireless Pointe.

On July 3, 2014, Plaintiff filed its amended complaint in this matter asserting claims for: Count I- breach of contract against Defendant Wireless Pointe Wholesale, LLC (“Wireless Pointe”); Count II- Unjust Enrichment against Wireless Pointe; Count III- Fraud against all defendants; and Count IV- Conversion against all defendants, unjust enrichment, fraud and conversion.

On December 30, 2014, Plaintiff filed its instant motion for summary disposition. On January 16, 2015, Defendant Hanna filed her response to the instant motion. On January 20, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

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.

Arguments and Analysis

As a preliminary matter, Wireless Pointe has not filed an answer or affirmative defenses to Plaintiff’s amended complaint, and has not filed a response to the instant motion. While Plaintiff has not sought or obtained a default judgment in this matter, the portion of Plaintiff’s motion related to its breach of contract and unjust enrichment claim is unopposed. In support of

its motion, Plaintiff has provided evidence that it paid for the three orders in question, as well as an affidavit in which one of Plaintiff's employees testified that Plaintiff did not receive some of the items ordered. (*See* Plaintiff's Exhibit 1-4.) Based on the evidence presented by Plaintiff, as well as the fact that Wireless Pointe has not opposed the instant motion, the Court is convinced the portion of Plaintiff's motion seeking summary disposition of Counts I- Breach of Contract and Count II-Unjust Enrichment must be granted.

The remainder of Plaintiff's motion relates to its fraud (Count III) and conversion (Count IV) claims. With respect to Plaintiff's fraud claim against Defendant Hanna and Defendant Youman, Plaintiff alleges that Defendants represented to Plaintiff that they were capable of providing specific used cell phones, that the phones were of a certain quantity, and that they promised they could satisfy the sales orders by accepting payment Plaintiff placed. *See* Plaintiff's Amended Complaint, at ¶ 41-43. Further, Plaintiff alleges that Defendants knew, at the time they made the promises, that they would not and/or could not satisfy the orders, that they made the promises intending Plaintiff to rely on them, that Plaintiff did in fact rely on them, and that it has been damaged by Defendants' failure/refusal to perform. *See* Plaintiff's First Amended Complaint, at ¶ 44-49.

While Plaintiff has arguably stated a viable fraud claim, it has failed to provide sufficient evidence in support of its instant motion. The only evidence Plaintiff has presented in connection with its motion are three wire transfer notices evidencing that it in fact paid for the orders it placed with Wireless Pointe (Plaintiff's Exhibits A-C), and a portion of Defendant Younan's deposition that was presented to the Court at the time of oral argument.

As a preliminary matter, none of the evidence presented by Plaintiff indicates that Defendant Hanna had any direct involvement with the orders that form the basis for Plaintiff's

claims. Consequently, Plaintiff's motion for summary disposition of its fraud claim must be denied.

With regards to Defendant Younan, he testified that he had his sister establish Wireless Pointe under her name so that his mother's disability would not be affected. (*See* Defendant Younan Deposition Transcript, at 9.) Defendant Younan also testified that Wireless Pointe closed because he was starting his own business despite the fact that Wireless Pointe was profitable. (*Id.* at 12.) With respect to the money received from Plaintiff in connection with the orders, Defendant Younan testified that the money was used to pay numerous wholesalers. (*Id.* at 28.)

A claim of fraud may not be based on a promise of future conduct, unless the promise is made in bad faith with no intention of performing. *Derderian v Genesys Health Sys*, 263 Mich App 364, 378 ; 693 NW2d 825 (2005). While Plaintiff asserts that Defendant Younan did not have any intention of satisfying the Orders at the time they were placed, it has failed to provide the Court with any evidence in support of its position. "Fraud will not be presumed; it must be proven by 'clear, satisfactory and convincing evidence.'" *Johnson v Wausau Ins Co*, 283 Mich App 636, 643; 769 NW2d 755 (2009) citing *Hi-way Motor Co, supra* at 336. Given Plaintiff's failure to support his position, the Court is convinced that Plaintiff has failed to meet its burden. Consequently, Plaintiff's motion for summary disposition of its fraud claim must be denied.

The remainder of Plaintiff's motion relates to its conversion claim. The common law tort of conversion is defined as "any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein." *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 111; 593 NW2d 595 (1999), quoting *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992). While Plaintiff's amended complaint

states a claim for conversion, Plaintiff has failed to specifically address those allegations, or provide specific proof as to its conversion claim. Consequently, the Court is convinced that Plaintiff has failed to satisfy its burden with respect to its conversion claim. Accordingly, Plaintiff's motion for summary disposition of its conversion claim must be denied.

Conclusion

Based upon the reasons set forth above, Plaintiff Wireless Buybacks, LLC's motion for summary disposition is DENIED. 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.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: February 10, 2015

JCF/sr

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