

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

ROBOTIC SOLUTIONS, INC.,

Plaintiff,

vs.

Case No. 2014-3609-CK

GENERAL TEST & AUTOMATION  
GROUP CORPORATION,

Defendant.

\_\_\_\_\_ /

OPINION AND ORDER

Plaintiff has filed a motion for partial summary disposition pursuant to MCR 2.116(C)(10). Defendant has filed a response and requests that the motion be denied. Plaintiff has also filed a reply brief in support of its motion.

*Factual and Procedural History*

In 2011 the parties entered into an oral agreement pursuant to which Plaintiff would act as a sales representative for Defendant (“Agreement”). Under the Agreement Plaintiff was to be paid a commission on gross sales to customers it procured for Defendant. Ultimately Defendant became delinquent on paying the commissions it owed to Plaintiff, which caused Plaintiff to terminate the Agreement on September 9, 2014.

On December 22, 2014, Plaintiff filed its first amended complaint in this matter. Plaintiff’s first amended complaint contains two claims against Defendant: Count I- Breach of Contract and Count II: Unpaid Sales Commissions under the Michigan Sales Representative Commission Act (“SRCA”).

On March 2, 2015, Plaintiff filed its instant motion for partial summary disposition. In particular, Plaintiff's motion seeks summary disposition as to liability under both of its claims. On April 6, 2015, Defendant filed its response to the motion. In its response, Defendant concedes that it breached the Agreement and is therefore liable under Count I. However, Defendant contests whether the SRCA applied to the parties' relationship, and denies that it is liable under Count II. On April 8, 2014, Plaintiff filed its reply brief in support of its motion.

On April 13, 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*

Count II of Plaintiff's amended complaint alleges unpaid commissions based on the SRCA, MCL 600.2961. Plaintiff contends that the Agreement falls within the SRCA, that Defendant has failed to pay the commissions that Plaintiff is owed, and that as a result it is entitled to penalty damages under the SRCA.

In its response, Defendant contends that the SRCA does not apply because Plaintiff was retained to procure customers, not sales, and is therefore not a “sales representative” for the purposes of determining whether the SRCA applies. “Sales Representative” is defined by the SRCA as “a person who contracts with or is employed by a principal for the solicitation of orders or sale of goods and is paid, in whole or in part, by commission.” MCL 600.2961(1)(e).

In its reply, Plaintiff asserts that it was retained by Defendant to procure sales, not customers. In support of its assertion, Plaintiff relies on an October 28, 2011 email from Defendant in which Defendant states that Plaintiff will be paid a 10% commission on sales, that “generation of sales need to happen quickly”, and that Defendant was hoping to “improve sales with our existing customer base.” *See* Exhibit A to Plaintiff’s reply. In addition, Plaintiff relies on the affidavit of its president, Paul J. Loncarevich. Mr. Loncarevich testified that under the Agreement Plaintiff was responsible for soliciting purchase orders. *See* Exhibit B to Plaintiff’s reply, at ¶4. Further, Mr. Loncarevich testified that Plaintiff was extensively involved in the negotiations between Defendant and the potential sales Plaintiff has procured, including the pricing and scope of the sales. *Id.* at ¶8.

In its response, the evidence Defendant relies on in support of its contention that Plaintiff did not solicit sales is its president, Robert Loveland’s, testimony in which he stated that Plaintiff would factor in the commission to be paid to Plaintiff when it quoted jobs. *See* Defendant’s Exhibit B, at pp. 41-42.

After reviewing the record, the Court is convinced that a genuine issue of material fact exists as to the scope of Plaintiff’s activities/responsibilities under the Agreement. Specifically, it is unclear whether Plaintiff actually solicited orders for Defendant, or whether Plaintiff was merely an intermediary whose responsibilities were limited to facilitating Defendant’s contact

with potential customers for the purpose of negotiating actual sales. While Plaintiff's president has testified that Plaintiff was hired to solicit orders and was involved in the negotiating process, Defendant's president has testified that Plaintiff's commission was taken into account when it quoted prices to potential customers. By testifying that Defendant incorporated the commission into the quote(s), Mr. Loveland implied that Defendant was the party acquiring the sales from the customers Plaintiff had found. Moreover, the October 2011 email fails to provide any clarity as to this issue as the email merely states that Plaintiff would be paid a 10% commission without explaining which party would be responsible for actually soliciting the sales from the potential customer(s) Plaintiff had found. Accordingly, the Court is convinced that Plaintiff's motion must be denied based on the outstanding issue as to the scope of Plaintiff's work under the Agreement.

*Conclusion*

For the reasons set forth above, Plaintiff's motion for partial summary disposition is GRANTED, IN PART, and DENIED, IN PART. Plaintiff's request for summary disposition as Count I- Breach of Contract is GRANTED as to liability. The issue of damages remains OPEN.

In addition, Plaintiff's request for summary disposition as to Count II- Unpaid Sales Commissions under the SRCA is DENIED. In compliance with MCR 2.602(A)(3), the Court states that this Opinion and Order neither resolves the last pending claim nor closes the case.

IT IS SO ORDERED.

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

Dated: April 23, 2015

JCF/sr

Cc: *via e-mail only*  
Randall J. Gillary, Attorney at Law, [rgillary@gillarylaw.com](mailto:rgillary@gillarylaw.com)  
Marc D. Kaszubski, Attorney at Law, [mkaszubski@orlaw.com](mailto:mkaszubski@orlaw.com)

