

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

WILLIAM C. GOULECHE, INC, d/b/a  
Academy Utility Consultants,

Plaintiff,

vs.

Case No. 2014-3808-CK

STERLING CAR CARE BY THE BAY, INC.,  
STERLING CAR CARE, INC., and SLEEP  
SOLUTIONS, INC.,

Defendants.

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OPINION AND ORDER

Defendants have filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). Plaintiff has filed a response and requests that the motion be denied.

*Factual and Procedural History*

Plaintiff's complaint contains a single breach of contract claim against the Defendants. Plaintiff is a corporation that examines its client's natural gas usage and then offers to source each client's natural gas supplier with a provider offering the best terms.

On October 25, 2010, Defendants allegedly each executed a separate "Academy Utility Consultants Natural Gas Consulting Term Agreement" with Plaintiff (collectively, the "Agreements"). Pursuant to the Agreements, Defendants allegedly committed to utilize Plaintiff's services for a one year term. Moreover, the Agreements each contain a liquidated damages provision in the event that one or more of the Defendants terminated their respective Agreement prior to the end of the term.

In its complaint, Plaintiff alleges that Defendants breached the Agreements by cancelling prior to the end of the one year term. As a result, Plaintiff seeks damages arising from the alleged breach, as well as additional damages pursuant to the liquidated damages provision.

On December 19, 2014, Defendants filed their instant motion for summary disposition. On February 2, 2015, Plaintiff filed its response requesting that the motion be denied. On February 9, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

#### *Standard of Review*

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party has failed to state a claim upon which relief may be granted. *Radtke v Everett*, 442 Mich 368, 373-374; 501 NW2d 155 (1993). A motion under MCR 2.116(C) (10), on the other hand, 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*

In their motion, Defendants contend that Plaintiff's claim fails because there was no contract formed.

“The essential elements of a valid contract are the following: (1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation.” *Hess v Cannon Twp*, 265 Mich App 582, 592; 696 NW2d 742 (2005). Moreover, “[i]t is hornbook law that a valid contract requires a ‘meeting of the minds’ on all essential terms.” *Kamalnath v Mercy Hosp*, 194 Mich App 543, 548; 487 NW2d 400 (1992).

“A meeting of the minds is judged by an objective standard, looking to the express words of the parties and their visible acts, not their subjective states of mind.” *Stanton v Dacheille*, 186 Mich App 247, 256; 463 Nw2d 479 (1990). The price of performance is an essential term. *Zurcher v Herveat*, 238 Mich App 267, 282; 605 NW2d 329 (1999). In this case, the Agreements do not address the price Defendants agreed to pay for Plaintiff’s services. Moreover, the Agreements do not provide what services Plaintiff would be providing in exchange for Defendants’ payment. Accordingly, not only do the Agreements fail to address price, an essential term, they also fail to set forth the obligations each party was agreeing to undertake and satisfy, thereby failing to satisfy the mutuality of obligation requirement. Consequently, the Court is convinced that the Agreements do not amount to a valid and binding contract. Accordingly, Defendants’ motion for summary disposition must be granted.

*Conclusion*

For the reasons set forth above, Defendants’ motion for summary disposition is GRANTED. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order resolves the last claim and CLOSES the case.

IT IS SO ORDERED.

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

Dated: February 23, 2015

JCF/sr

Cc: *via e-mail only*

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