

Court of Appeals, State of Michigan

ORDER

City of Flint v Operation Unification

Docket No. 350506

LC No. 13-101075-CK

Kathleen Jansen
Presiding Judge

Deborah A. Servitto

Colleen A. O'Brien
Judges

The Court orders that the motion for immediate consideration is GRANTED.

Pursuant to MCR 7.205(E)(2), the Court REVERSES IN PART the January 7, 2019 order of the Genesee Circuit Court granting partial summary disposition on defendant's counterclaim of breach of contract only. The party claiming that summary disposition is premature has the burden of identifying a contested issue and providing independent evidence in support. See *Village of Dimondale v Grable*, 240 Mich App 553, 566-567; 618 NW2d 23 (2000). The materials before this Court reflect that defendant, in response to plaintiff's motion, submitted an affidavit where the affiant contested plaintiff's assertions that it paid defendant all money due and that it did not breach the contract. Defendant thus met its burden to provide independent evidence on a material and contested issue. Further, a trial court may not make findings of fact on summary disposition where the parties have submitted evidence that is conflicting. *Patrick v Turkelson*, 322 Mich App 595, 605; 913 NW2d 369 (2018). In light of the parties' dispute regarding material facts, the trial court erred in making factual findings that plaintiff had paid defendant all the money due and that plaintiff had not breached the contract. The matter is REMANDED to the trial court for further proceedings consistent with this order. In all other respects, defendant's delayed application for leave to appeal is DENIED for failure to persuade the Court of the need for immediate appellate review.

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

OCT 16 2019

Date

Chief Clerk