

STATE OF MICHIGAN
COURT OF APPEALS

SCHNEIDER FABRICATION, INC.,
Plaintiff-Appellee,

UNPUBLISHED
October 11, 2012

v

B R R, INC. d/b/a CAPTAIN ROD'S,
Defendant-Appellant.

No. 305818
Clinton Circuit Court
LC No. 10-010670-CK

Before: RONAYNE KRAUSE, P.J., AND BORRELLO, AND RIORDAN, JJ.

PER CURIAM.

Defendant, BRR Inc., appeals as of right the trial court's order granting summary disposition in favor of plaintiff, Schneider Fabrication Inc. We affirm.

I. FACTUAL BACKGROUND

Plaintiff is a manufacturer of docks, boatlifts, and related parts and products. In the course of this business, defendant ordered and received goods from plaintiff amounting to \$39,502. Defendant never paid for the goods it received. Hence, plaintiff initiated this instant litigation, raising three claims of account stated, breach of contract, and unjust enrichment.

Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(10), based on its breach of contract and unjust enrichment claims. Defendant asserted that plaintiff historically did not require payment of the invoices within 30 days, defendant was forced to internalize partial costs of the goods by performing warranty work on plaintiff's products, and plaintiff breached an oral contract by selling products under defendant's "Captain's Choice" name.

The trial court granted plaintiff's motion for summary disposition and entered a money judgment in favor of plaintiff for \$41,058.07, which accounted for interest. The trial court found that defendant did not plead a set off claim, the parties may have ignored the warranty contract during their course of dealings but that did not invalidate the contract, and that the only available remedy for wrongful use of a trade name was injunctive relief. Defendant now appeals.

II. SUMMARY DISPOSITION

A. Preservation & Standard of Review

Defendant first argues that the trial court erred in failing to rule on count I of the complaint. This issue is unpreserved for appellate review because it was not raised before, addressed by, or decided by the lower court. *People v Metamora Water Service, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007). An unpreserved claim is reviewed only for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 764-765; 597 NW2d 130 (1999).

Generally, a grant or denial of a motion for summary disposition under MCR 2.116(C)(10) is reviewed de novo. *MEEMIC Ins Co v DTE Energy Co*, 292 Mich App 278, 280; 807 NW2d 407 (2011). The motion for summary disposition “tests the factual support for a claim and should be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Id.* “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). In reviewing a motion for summary disposition under MCR 2.116(C)(10), a court considers “affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion.” *Greene v A P Prods, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006) (internal quotations and citations omitted).

B. Analysis

Defendant contends that the trial court failed to address the account stated claim of the complaint, which defendant disputed with the course of dealings evidence. Yet, defendant does not deny that the trial court addressed count II and III of the complaint for breach of contract and unjust enrichment and based its judgment on those claims. Defendant fails to clarify or cite legal support for why the trial court was obligated to address count I of the complaint when relief was based on alternate claims. As we have repeatedly recognized, it is not enough for a party to “simply announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Defendant has failed to establish any basis for relief based on this argument.

Defendant also contends that summary disposition is improper because plaintiff breached the contract when using the trade name “Captain’s Choice” and failing to compensate defendant for warranty work that defendant performed. This claim is specious. Defendant presented no evidence in the lower court that the parties agreed, either explicitly or implicitly, that plaintiff would refrain from using the name “Captain’s Choice.” Defendant also failed to present any evidence that the parties agreed defendant could perform warranty work as a set off. The warranty agreement specifically states that defendant must first send the allegedly defective merchandise to plaintiff, and the express terms of an agreement control over inconsistent course of performance and dealing evidence. MCL 440.2208(2). Thus, defendant failed to raise a genuine issue of material fact and merely alleged conjecture and speculation, which is

insufficient to establish a genuine issue of material fact. *Bennett v Det Police Chief*, 274 Mich App 307, 319; 732 NW2d 164 (2006).¹

III. CONCLUSION

Summary disposition is proper because the trial court was permitted to grant relief on plaintiff's alternate claims of breach of contract or unjust enrichment. Additionally, defendant failed to raise a genuine issue of material fact regarding the use of an alleged trade name or warranty work. We affirm.

/s/ Amy Ronayne Krause

/s/ Stephen L. Borrello

/s/ Michael J. Riordan

¹ This also is true for defendant's unfounded statements regarding the date on the warranty agreement, as defendant failed to present any arguments or evidence in the lower court suggesting that there was no warranty agreement.