STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

MEDICAL REFERRAL NETWORK INTERNATIONAL CO dba ESP PERSONNEL,

Plaintiff,

v

Case No. 21-187962-CB
Hon. Michael Warren

PIONEER HEALTH CARE MANAGEMENT, INC.

Defendant.

OPINION AND ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION & JUDGMENT AGAINST DEFENDANT

At a session of said Court, held in the County of Oakland, State of Michigan February 11, 2022

PRESENT: HON. MICHAEL WARREN

OPINION

I

The present cause of action arises out of a Personnel Services Agreement (the "Agreement") for the delivery of healthcare staffing services. The Plaintiff alleges the Defendant has defaulted on its payment obligations under the Agreement and the amount of $229,788.38, plus contractual interest computed annually from the date of

November 15, 2018 in the amount of $96,643.33, is due and owing. In particular, the Plaintiff alleges Breach of Contract and Account Stated.

Before the Court is Plaintiff's Motion for Summary Disposition & Judgment against Defendant. Oral argument is dispensed as it would not assist the Court in its decision-making process.[1]

At stake in this Motion is whether summary disposition and entry of a judgment is warranted where the Defendant failed to timely answer Plaintiff's request for admission that the entire indebtedness alleged in the Plaintiff's Complaint of $326,431.71 is due and owing to the Plaintiff? Because the Defendant admits that it failed to timely answer the Plaintiff's request for admissions, the Defendant never moved for leave to extend the time for serving answers to the Plaintiff's request for admissions and despite that this Motion alerted the Defendant of its failure, the Defendant still delayed more than two more months to file its answers, the answer is "yes," and the Motion is granted.

[1] MCR 2.119(E)(3) provides courts with discretion to dispense with or limit oral argument and to require briefing. MCR 2.116(G)(1) specifically recognizes application of MCR 2.119(E)(3) to summary disposition motions. Subrule (G)(1) additionally authorizes courts to issue orders establishing times for raising and asserting arguments. This Court's Scheduling Order clearly and unambiguously set the time for asserting and raising arguments, and legal authorities to be in the briefing – not to be raised and argued for the first time at oral argument. Therefore, both parties have been afforded due process as they each had notice of the arguments and an opportunity to be heard by responding and replying in writing, and this Court has considered the submissions to be fully apprised of the parties' positions before ruling. Because due process simply requires parties to have a meaningful opportunity to know and respond to the arguments and submissions which has occurred here, the parties' have received the process due.

II
The Complaint and Request for Admissions

In its Complaint, the Plaintiff alleges, in part, "Defendant has defaulted on payment obligations to the Plaintiff, pursuant to the contract agreement identified in Exhibit 1 and the principal balance owed on these notes is $229,788.38" and "Defendant is justly indebted to Plaintiff in the amount of $229,788.38, (see Exhibit 3) plus continuing contractual interest of 1.14%. [sic] computed annually from the date of November 15, 2018 in the amount of $96,643.33, over and above all legal setoffs and counterclaims."[2]

On July 30, 2021, Plaintiff's Request for Admissions were served. The Plaintiff requested as follows:

> 1. Please admit receipt of the goods; funds; financing and/or services referenced in paragraph 1 and evidenced in the statements and/or invoices attached to Plaintiff's Complaint.
>
> 2. Please admit that the items in Request #1 were not fully paid for.
>
> 3. Please admit owing $326,431.71 to Plaintiff.
>
> 4. Please admit your failure to object to billings representing this balance which were, from time to time, send to you by the Plaintiff.

The Defendant did not serve written answers or objections addressed to the matter within 28 days. Instead, the Defendant served and filed its answers on November 30, 2021, more than two months after this Motion was filed.

[2] Complaint, ¶6 and ¶15.

III
The Arguments

The Plaintiff moves for summary disposition pursuant to MCR 2.116(C)(9). The Plaintiff argues it is entitled by operation of law to an order for summary disposition and judgment against the Defendant because the Defendant failed to respond to the Plaintiff's request for admissions and the Defendant's failure to respond is equal to an admission that the entire indebtedness in the Plaintiff's Complaint is due and owing from the Defendant.

In response[3], the Defendant argues that it has responded, albeit late. The Defendant acknowledges the Plaintiff's request for admissions were not timely answered because defense counsel misfiled the requests in a similar case. The Defendant now requests that the Court allow the late filing of the answers due to "regrettable confusion with the similar sounding case."

IV
Standard of Review

MCR 2.116(C)(9) permits summary disposition when "the opposing party has failed to state a valid defense to the claim against him or her." A motion for summary disposition under MCR 2.116(C)(9) tests the sufficiency of the defendant's pleadings and

[3] The Defendant's Response erroneously states "This is Defendant's Motion for Summary Disposition based upon Plaintiff's late responses to Defendant's Requests for Admissions. Defendant's Requests for Admissions were served on July 30, 2021." The Defendant's Response also references an "Exhibit B" and "Exhibit C," neither of which are attached.

is decided by the pleadings alone. *In re Smith Estate*, 226 Mich App 285, 288 (1997). All well-pled allegations must be accepted as true, and only if the non-moving party's defenses are so clearly untenable as a matter of law that no factual development could possibly deny a plaintiff's right to recovery, should the motion be granted. *Grebner v Clinton Charter Twp*, 216 Mich App 736, 740 (1996).

Summary disposition under MCR 2.116(C)(9) is generally improper where a material allegation of the complaint is categorically denied. *Nasser v Auto Club Ins Ass'n,* 435 Mich 33, 48 (1990); *Fancy v Egrin*, 177 Mich App 714, 724 (1989); *Heligman v Otto*, 161 Mich App 735, 738 (1987) (summary disposition for failure to state a valid defense held improper where defendants categorically denied some of plaintiff's material allegations). Under MCR 2.111(C)(3), a statement that the defendant lacks knowledge or information sufficient to form a belief as to the truth of an allegation has the effect of a denial. MCR 2.111(C)(3). Furthermore, "[t]he fact that the defense ultimately might be unsuccessful in whole or in part does not render it invalid for purposes of MCR 2.116(C)(9), nor does the fact that it ultimately might be found not to create a genuine issue of material fact to be resolved at trial, thus entitling plaintiff to summary disposition." *Nasser,* 435 Mich at 48.

V
Summary Disposition under MCR 2.116(C)(9) is warranted because the Plaintiff's request for admissions is deemed admitted

MCR 2.312(A) permits a party to serve another party with "a written request for the admission of the truth of a matter" relevant to the case, which "relates to statements or opinions of fact or the application of law to fact." Under MCR 2.312(B)(1),

> [e]ach matter as to which a request is made is deemed admitted, unless, within 28 days after service of the request, or within a shorter or longer time as the court may allow, the party to whom the request is directed serves on the party requesting the admission a written answer or objection addressed to the matter.

Requests which are deemed to be admitted under MCR 2.312 are "judicial admissions" which are "conclusive in the case." *Radtke v Miller, Canfield, Paddock & Stone*, 453 Mich 413, 420-421 (1996). Judicial admissions resulting from the failure to answer request for admissions may serve as the basis for summary disposition. *Medbury v Walsh*, 190 Mich App 554, 556 (1991) citing *Janczyk v Davis*, 125 Mich App 683, 690 (1983).

In its Response, counsel asserts a mistaken belief that the Motion would likely be settled based on past practices and confusion about a similar sounding case. However, the Defendant cites no law that confusion or a mistaken belief vacates or excuses the application of MCR 2.312. "Trial Courts are not the research assistants of the litigants; the parties have a duty to fully present legal arguments for its resolution of their dispute." *Walters v Nadell*, 481 Mich 377, 388 (2008). Because the nonmoving party has failed to cite

any authority to support its argument, the argument is deemed abandoned. See, e.g., *Mitcham v City of Detroit,* 355 Mich 182, 203 (1959); *Houghton v Keller,* 256 Mich App 336, 339-340 (2003); *People v Odom*, 327 Mich App 297, 311 (2019) ("As a preliminary matter, defendant has failed to identify any authority that requires a trial court to consider a motion for substitute counsel before it may consider any subsequently filed motion by the attorney who was the subject of the motion for substitution. Accordingly, defendant has abandoned this issue. See *People v Martin*, 271 Mich App 280, 315 (2006)"); MCR 2.119(A)(2) ("A motion or response to a motion that presents an issue of law must be accompanied by a brief citing the authority on which it is based").

Furthermore, analogous jurisprudence in the context of setting aside defaults and default judgments has long held that attorney neglect or mistake generally does not constitute good cause to set aside a default. See, e.g., *White v Sadler,* 350 Mich 511, 522 (1957) (holding that "Defendant next suggests that he should in any case have prevailed because the neglect to plead, if any, was that of his former attorney and not of himself, a proposition the appeal and reasonableness of which he does not mar by the citation of authority. Unfortunately for its success, however, we find that in Michigan the neglect of an attorney is generally regarded as attributable to his client. 14 Mich.L.R. 490; 14 MLP, Judgment, § 49, p. 529; *Petersen v Wayne Circuit Judge,* 243 Mich 600 [1928]. The carelessness or neglect of either the litigant or his attorney is not normally grounds for granting a belated application to set aside a default regularly entered. We are afraid we see no reason why it should be so regarded in this case under the rather broad and vague

allegations of neglect in defendant's motion"); *Walters v Arenac Circuit Judge,* 377 Mich 37, 46 (1966) ("It is well settled in this jurisdiction that the negligence of either the attorney or the litigant is not normally grounds for setting aside a default regularly entered"); *Okros v Myslkowski,* 67 Mich App 397, 400 (1976) ("Defendant suggests that his failure to file an answer can be reasonably excused on the ground that a misunderstanding occurred between his counsel and plaintiff's counsel. Defense counsel initially refused to represent the defendant due to a prior unresolved fee dispute. Defense counsel contacted plaintiff's attorney and explained that until the fee dispute was settled, he would take no action on behalf of the defendant. Plaintiff's counsel informed defendant's attorney that he would allow him a reasonable time to clarify his status as counsel for the defendant. Acting on this representation defense counsel told the defendant that he would have a reasonable time to resolve the fee dispute or obtain another attorney with regard to the 20-day limit for answering the complaint. Defendant's attorney failed to obtain a stipulation from plaintiff's counsel for filing an answer, GCR 1963, 507.9, or an extension from the circuit judge. GCR 1963, 108.7(2). Although defense counsel acted with a good faith belief that there was an understanding to defer entry of default, his neglect or omission is not adequate grounds for setting aside a default judgment"); *Muscio v Muscio,* 62 Mich App 167, 168-169 (1975) (holding that the fact that a litigant was orally given incorrect information by a court clerk regarding the trial date did not excuse her appearance when she failed to verify the information with the judge, her lawyer, and others); *Bandlow v Evenson,* 62 Mich App 750, 754 (1975) (ruling that "[o]ur examination of the pertinent sections of the affidavit does not disclose the existence of anything

approximating the 'good cause' . . . . The defendant basically complains of 'ineffectual representation' by the same attorney who had represented her at the transaction wherein she bought the lounge in that he allegedly did not advise her with respect to the pending action and did not file an answer within the time permitted by the applicable court rule. That the neglect or omission of a defendant's attorney does not constitute adequate grounds for setting aside a default judgment is virtually axiomatic. *White v Sadler,* 350 Mich 511 (1957). To the extent defendant relied on this ground, the affidavit does not state an adequate excuse for her failure to timely interpose an answer"); *Huggins v Bohman,* 228 Mich App 84, 87 (1998) ("Garnishee defendant argues that a reasonable excuse exists for its failure to timely respond to the writ of garnishment. We do not find a good reason for garnishee defendant's negligence in not taking action to timely respond. Merely calling plaintiff's counsel and 'receiving the impression' that an implied extension for an unknown amount of time had been given, and not confirming the extension in writing, is inadequate").

The Defendant's answers to the Plaintiff's request for admissions were admittedly not timely served.[4] As a result of the Defendant's failure to timely serve its answers, the Plaintiff's request for admissions were deemed admitted. The Defendant's admission that it owes $326,431.71 to the Plaintiff warrants summary disposition and entry of a judgment.

[4] "Unfortunately, Defense Counsel misfiled the requests in this case and they were not timely answered." [Response, unnumbered p 4.]

ORDER

Based on the foregoing Opinion, Plaintiff's Motion for Summary Disposition & Judgment Against Defendant is GRANTED.

The Plaintiff shall submit a proposed judgment in compliance with MCR 2.602(B) no later than February 18, 2022.