

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

**CUMMINGS, McCLOREY, DAVIS & ACHO, PLC,
Plaintiff,**

v.

**Case No. 13-134036-CZ
Hon. James M. Alexander**

**AL LONG FORD, INC and TARIK DAOUD,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant Tarik Daoud's Motion for Summary Disposition. This case arises following Plaintiff's legal representation of Defendant Al Long Ford and non-party Clinton-Tecumseh Ford Lincoln-Mercury in several underlying matters. Mr. Daoud was an owner in Al Long and Clinton-Tecumseh, but those businesses are no longer in operation.

In its Complaint, Plaintiff claims that its representation was also on behalf of Defendant Daoud, and because it has yet to be paid, is suing on claims of (1) Account Stated; (2) Breach of Contract; and (3) Quantum Meruit. Plaintiff seeks a judgment for \$192,610.12, plus costs, interest and attorney fees.

Mr. Daoud argues that the debt was incurred by the businesses alone, and he never agreed to answer for the same. As a result, Mr. Daoud now seeks summary disposition under MCR 2.116(C)(8) and (C)(10). A (C)(8) motion tests the legal sufficiency of the complaint, and a (C)(10) motion tests the factual support for Plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).

In his motion, Mr. Daoud claims that the retainer agreements name only the business entities, and do not personally obligate Mr. Daoud on the debt. In Response, Plaintiff argues that Mr. Daoud should be held personally liable because he verbally promised to pay the legal fees on the underlying litigation.

As Mr. Daoud argues, however, a plaintiff's claim to enforce a promise to answer for the debt of another is barred if it is not in writing under MCL 566.132(1)(b). The cited statute provides:

In the following cases an agreement, contract, or promise is void unless that agreement, contract, or promise, or a note or memorandum of the agreement, contract, or promise is in writing and signed with an authorized signature by the party to be charged with the agreement, contract, or promise:

...

(b) A special promise to answer for the debt, default, or misdoings of another person.

Further, to the extent that Plaintiff claims that its "verbal agreement" with Mr. Daoud was a modification of an existing contract, the same must also have been in writing to be enforceable under MCL 566.1. This statute provides:

An agreement . . . changing, modifying, or discharging [a] contract, [or] obligation . . . shall not be valid or binding unless it shall be in writing and signed by the party against whom it is sought to enforce the change, modification, or discharge.

It is important to note that the Court of Appeals also acknowledged, in the context of personal guarantees on business debts:

As a general rule, "an individual stockholder or officer is not liable for his corporation's engagements unless **he signs** individually, and where individual responsibility is demanded the nearly universal practice is that the officer signs twice--once as an officer and again as an individual." *Livonia Bldg Materials Co v Harrison Constr Co*, 276 Mich App 514, 523-524; 742 NW2d 140 (2007) (emphasis added), quoting *Salzman Sign Co v Beck*, 176 NE2d 74, 76 (NY 1961).

Plaintiff has failed to argue, much less provide any evidence that Mr. Daoud, in writing, agreed to be personally liable on his businesses' debts.

With respect to Plaintiff's quantum meruit claim, it is well settled that, "A contract will be implied **only where no express contract exists**. There cannot be an express and implied contract covering the same subject matter at the same time." *Campbell v Troy*, 42 Mich App 534, 537; 202 NW2d 547 (1972), citing *Superior Ambulance Service v Lincoln Park*, 19 Mich App 655; 173 NW2d 236 (1969).

In this case, there are express contracts with the business entities for Plaintiff's legal services. Because express contracts exist that cover the subject matter of the dispute, Plaintiff's only recourse is against those business entities – and not Mr. Daoud personally. For these reasons, Mr. Daoud is not a proper party to this lawsuit and must be dismissed.

For the foregoing reasons, considering only the pleadings and viewing all well-pled factual allegations in the light most favorable to Plaintiff, this Court concludes that Plaintiff's claims (against only Mr. Daoud) are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. As a result, Defendant's motion for summary disposition under (C)(8) is GRANTED, and Plaintiff's Complaint as to Mr. Daoud only is DISMISSED.

IT IS SO ORDERED

May 29, 2014
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge