

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

**KEVIN LEE and  
MERIDIAN BIOTECHNOLOGIES, INC,  
Plaintiffs,**

**v.**

**Case No. 14-139586-CK  
Hon. James M. Alexander**

**JOSEPH C. BIRD,  
Defendant.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Defendant’s motions for summary disposition. Plaintiff Kevin Lee is a doctor and former client of Defendant – who represented Dr. Lee on a variety of legal matters. According to their Complaint, at some point, Dr. Lee and Mr. Bird entered into a business agreement to fund the development of Plaintiff Meridian Biotechnologies – a business involved in developing certain commercial products.

To that end, Plaintiff Kevin Lee and Defendant agreed to form a partnership to invest in Meridian – each contributing capital, labor, and skills to the venture, and “to share equally in the profits and losses of the enterprise.” Among other promises, Plaintiffs allege that Defendant promised to invest 50% of his earnings from legal work on certain cases – including a Qui Tam action currently pending in a Texas Federal Court.

Plaintiffs allege “[a]s consideration and as part of the capital required by their agreement, Plaintiff Lee advanced Defendant substantial sums of money in 2011, 2012 and 2013.” Plaintiff Lee also claims that he “provided Defendant office space in his building.”

As part of this agreement, the parties signed a writing on June 3, 2011, which states in full:

We agree to invest 50% of all earnings from legal work into Meridian Biotechnologies, Inc. including cases involving Juping Chi, Harbor Floors, American Surgical Centers, Allied Home Mortgage (Qui Tam, Class Action, Etc.)

This document is signed by Kevin Lee and Joe Bird.

On October 14, 2013, however, Plaintiffs claim that Defendant, “after collecting substantial sums of money and things of value from Plaintiff, repudiated the agreement, stating, ‘I do not intend to adhere to the note, which is not a contract.’”

Plaintiffs responded by filing the current Complaint on claims titled: (1) breach of contract, (2) repudiation/anticipatory breach of contract, (3) breach of partnership agreement, (4) fraud, silent fraud and fraudulent omission, (5) breach of fiduciary duty, (6) declaratory relief, and (7) promissory estoppel.

Defendant now seeks summary disposition under MCR 2.116(C)(4) and (C)(8). A (C)(4) motion tests whether the Court has subject matter jurisdiction over Plaintiff’s claims, and a (C)(8) motion tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

When analyzing a (C)(8) motion, all well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dept of Corrections*, 439 Mich 158 (1992). A motion under this subrule may be granted only where the claims alleged are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Id.* When deciding such a motion, the court considers only the pleadings.

Defendant claims that he is entitled to summary disposition of Plaintiffs’ Complaint for three reasons. First, Plaintiffs’ claim is not ripe because the Qui Tam action remains pending.

Second, Plaintiff lacks standing. And third, the June 3, 2011 Agreement is an illegal or unenforceable fee-sharing agreement with a non-lawyer.

Defendant first claims that Plaintiffs' claim is not ripe for adjudication because the Qui Tam action remains pending in the Texas Federal Court. Both parties rely on *City of Huntington Woods v City of Detroit*, 279 Mich App 603, 615; 761 NW2d 127 (2008) for the proposition that “[t]he doctrine of ripeness is designed to prevent ‘the adjudication of hypothetical or contingent claims before an actual injury has been sustained.’” *Id.* at 615, quoting *Michigan Chiropractic Council v Comm’r of the Office of Financial and Ins Services*, 475 Mich 363, 371 n 4; 716 NW2d 561 (2006).

Further,

The existence of an actual controversy is a condition precedent to invocation of declaratory relief and this requirement prevents a court from deciding hypothetical issues. However, it is the purpose and intent behind the grant of declaratory relief to provide litigants with court access in order to preliminarily determine their rights. An actual controversy is deemed to exist in circumstances where declaratory relief is necessary in order to guide or direct future conduct. In such situations, courts are not precluded from reaching issues before actual injuries or losses have occurred. *City of Huntington Woods*, 279 Mich App at 616 (internal quotation marks and citation omitted).

In this case, Defendant specifically repudiated any contract in writing to Dr. Lee. Regardless of whether Defendant earns any legal fees following a recovery in the Qui Tam case, the Court finds that Defendant does not intend to honor the promises allegedly made to Dr. Lee. For this reason, the Court finds that this case does not present a hypothetical and the parties would benefit from guidance or direction regarding future conduct. Defendant’s motion on this basis is, therefore, DENIED.

Defendant next concludes that Dr. Lee lacks standing to bring this action because “the real party in interest is Meridian Bio Technologies.”

Defendant’s argument, however, ignores that Meridian is also a named Plaintiff. Defendant’s argument also ignores that Dr. Lee is the party who signed the June 3, 2011 Agreement. As a result, Dr. Lee is a party to the contract that he seeks to enforce.

Additionally, Plaintiffs’ Complaint is packed with allegations that Dr. Lee (himself) advanced Defendant “substantial sums of money” and provided office space in his building. Plaintiffs also claim that Defendant made various misrepresentations to Dr. Lee that form the basis of Plaintiffs’ fraud claim.

In short, Defendant fails to convince the Court of his entitlement to summary disposition on this basis.

Finally, Defendant argues that the June 3, 2011 Agreement is an illegal or unenforceable fee-sharing agreement with a non-lawyer. This argument is easily dispatched.

The June 3, 2011 Agreement is not a fee-sharing agreement. Defendant is not sharing 50% of certain legal fees with Plaintiff – as Defendant suggests. Rather, Defendant agreed to invest 50% of certain legal fees that he “earned” into the business. Defendant apparently did so in exchange for equity in Meridian.

According to Plaintiffs’ Complaint, Defendant received benefit from his investment into Meridian in the form of cash advances and office space, and ultimately a split of Meridian profits. While the June 3, 2011 Agreement may act to set a dollar amount for Defendant’s investment into Meridian, it does not act as a fee-sharing agreement.

Defendant also mistakenly relies on *Morris and Doherty PC v Lockwood*, 259 Mich App 38; 672 N.W.2d 884 (2003) and *Fisher v Carron*, an unpublished opinion per curiam of the

Court of Appeals, issued March 16, 2010 (Docket No. 289687) in support of his argument. Both of these cases, however, involve referral-fee agreements between a lawyer and non-lawyer. These cases have no resemblance to the issue in this case.

For all of the foregoing reasons, Defendant's motion for summary disposition is DENIED in its entirety.

**IT IS SO ORDERED.**

September 10, 2014  
Date

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