

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

**GALASSO, PC, and  
GALASSO & ASSOCIATES, CPA, PLC,  
Plaintiffs,**

**v.**

**Case No. 15-144936-CK  
Hon. James M. Alexander**

**JAMES GRUDA, ET AL,  
Defendants.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Plaintiffs' motion for summary disposition. Plaintiffs formerly provided legal, tax, and accounting services to the Defendants for many years.

Plaintiffs allege that, by January 2004, Defendants owed more than \$80,000 in past due fees. As a result, on January 2, 2004, Defendants Michelle and James Gruda (individually) executed a Promissory Note Line of Credit in the principal sum of \$80,000 – payable to Plaintiffs and Joseph Galasso, Jr. (individually). Contemporaneous with the Note, the Gruda Defendants also executed a Real Estate Mortgage based on the same.

A large part of this suit involves a dispute over the validity and enforceability of this Note and Mortgage. In any event, the present case was initially filed as two separate actions, which were then consolidated. In January 2015, Plaintiffs filed the present collection action, seeking some \$114,621.55 owed for professional service fees from Defendants.

Defendants then filed a Counterclaim – alleging that Plaintiffs fraudulently filed UCC

Financing Statements indicating that Defendant businesses were debtors to Plaintiffs, which damaged the Defendant businesses because it made it impossible for them to obtain financing.

On March 6, 2015, individual Defendants James and Michelle Gruda (the Gruda Defendants) then separately filed a **Second** Amended Complaint (Case No. 15-145644-CZ) against Plaintiffs and Joseph Galasso, Jr., individually, on claims titled: (Count I) a declaration that the Note is unenforceable; (Count II) a discharge of mortgage and quiet title; (Count III) violation of the Michigan Rules of Professional Conduct; (Count IV) intentional fraud; (Count V) innocent misrepresentation; and (Count VI) waiver.

As stated, it appears that the Gruda Defendants filed and served their **Second** Amended Complaint on March 6, 2015. But on April 10, 2015, Plaintiffs filed an Answer to the Gruda Defendants' **First** Amended Complaint. There appears to be no Answer to the Gruda Defendants' **Second** Amended Complaint. The difference between the two is that the **Second** Amended Complaint added and changed some claims.<sup>1</sup>

In addition to not answering the **Second** Amended Complaint, it appears that Plaintiffs' present motion only seeks dismissal of the claims alleged in the Gruda Defendants' **First** Amended Complaint. Plaintiffs do not address the Gruda Defendants' **Second** Amended Complaint claims for: (Count IV) intentional fraud; (Count V) innocent misrepresentation; and (Count VI) waiver.

In any event, Plaintiffs now move for summary disposition of the Gruda Defendants' claims: (1) seeking a declaration that the Note is unenforceable; (2) for a discharge of mortgage and quiet title; and (3) based on a violation of the Michigan Rules of Professional Conduct. And Plaintiffs seek the same under MCR 2.116(C)(8) and (C)(10).

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<sup>1</sup> The First Amended Complaint, filed on February 26, 2015, alleged claims titled: (Count I) a declaration that the Note is unenforceable; (Count II) discharge of mortgage and quiet title; (Count III) failure to provide invoices upon

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. 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. *Wade v Dept of Corrections*, 439 Mich 158; 483 NW2d 26 (1992).

A motion under (C)(10) tests the factual support for a plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Under (C)(10), "In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), citing *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

**1. A Declaration that the Note is Unenforceable and Mortgage Void Claims.**

Plaintiffs first seek dismissal of the Gruda Defendants' claims seeking a declaration that the Note and Mortgage are Unenforceable. The Gruda Defendants base this claim on the argument that the Note was not supported by any consideration. And because the Note is invalid, the Gruda Defendants argue that the Mortgage based on the same is void.

In support of their argument that there was valid consideration for the Note, Plaintiffs argue that "pre-existing debt is actually valuable consideration that can support the execution of a negotiable instrument such as a promissory note," citing *Ann Arbor Constr Co v Glime Constr Co*, 369 Mich 669, 675; 120 NW2d 747 (1963) (reasoning "pre-existing debt is sufficient consideration

moving to the accommodated party to support the signature of an accommodating party whether the note replaces the original debt or is given as collateral security.”).

Plaintiffs further argue that the existence of the note itself is evidence of consideration. Indeed, “[e]very negotiable instrument is deemed prima facie to have been issued for valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.” *In re Booth's Estate*, 326 Mich 337, 343; 40 NW2d 176 (1949) (quotation and citation omitted).

“To have consideration there must be a bargained-for exchange.” *Gen Motors Corp v Dep’t of Treasury, Revenue Div*, 466 Mich 231, 238; 644 NW2d 734 (2002). And “Courts do not generally inquire into the sufficiency of consideration.” *Id.* at 239.

Indeed the Note states, in relevant part (emphasis in original):

FOR VALUE RECEIVED, on 2<sup>nd</sup> day of January 2004, the undersigned, Michelle Gruda and James B. Gruda, jointly and severally . . . promises to pay to the order of Galasso & Associates, CPA, PLC, Joseph P. Galasso, Jr., Attorney at Law, P.C. and Joseph P. Galasso, Jr. . . . the principal sum of EIGHTY THOUSAND DOLLARS (\$80,000), plus such other monies advanced directly or indirectly, plus interest at a rate of 5 percent (5%) as hereinafter provided.

By its own terms, the Note acknowledges that it was supported by consideration by declaring “for value received.” Plaintiffs also attach the Affidavit of Joseph Galasso, Jr. and the relevant account records dating back to 1994. This evidence also supports the argument that the Gruda Defendants owed monies prior to the January 2004 Note and Mortgage.

In response to Plaintiffs’ motion, the Gruda Defendants argue that there was no consideration to support the Note and Mortgage because they, individually, had no pre-existing debt to Plaintiffs. The Gruda Defendants also argue that any invoices sent to the Gruda business entities were paid in

full by January 2004.

But it is well-established that “[s]ummary disposition cannot be avoided by conclusory assertions that are at odds either with prior sworn testimony of a party or, as here, actual historical conduct of a party.” *Aetna Casualty & Sur Co v Ralph Wilson Plastics Co*, 202 Mich App 540, 548; 509 N.W.2d 520 (1993); citing *Gamet v Jenks*, 38 Mich App 719, 726; 197 NW2d 160 (1972).

The Court finds that this is precisely the case here. The Gruda Defendants executed the Note and Mortgage – specifically acknowledging that that they owed a debt to Plaintiffs and valuable consideration supported the Note. To now argue (via conclusory assertions contained in their Affidavits) that there was no consideration is at odds with their prior actions and may not serve as a basis to avoid summary disposition.

For all of the foregoing reasons, the Court concludes that viewing all evidence in the light most favorable to Defendants, there are no material questions of fact in dispute, and Plaintiffs are entitled to judgment as a matter of law. As a result, the Court GRANTS Plaintiff’s motion for summary disposition and DISMISSES the Gruda Defendants’ (Count I) seeking a declaration that the Note is unenforceable; and (Count II) discharge of mortgage and quiet title.

## **2. Violation of MRPC Claim.**

Plaintiffs next seek dismissal of the Gruda Defendants’ claim for violation of the Michigan Rules of Professional Conduct. Plaintiffs argue that they are entitled to dismissal of said claim because violations of the professional conduct rules do not give rise to a private cause of action. In support, Plaintiffs cite MRPC 1.0(b), which provides (emphasis added):

Failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. **The rules do not, however, give rise to a cause**

**of action for enforcement of a rule or for damages caused by failure to comply with an obligation or prohibition imposed by a rule.** In a civil or criminal action, the admissibility of the Rules of Professional Conduct is governed by the Michigan Rules of Evidence and other provisions of law.

See also *Watts v Polaczyk*, 242 Mich App 600, 607 note 1; 619 NW2d 714 (2000) (noting “though failure to comply with the requirements of [a Rule of Professional Conduct] may provide a basis for invoking the disciplinary process, such failure does not give rise to a cause of action for enforcement of the rule or for damages caused by failure to comply with the rule. MRPC 1.0(b).”).

In response to Plaintiffs’ motion, the Gruda Defendants argue that, even if the alleged violation of the professional conduct rules cannot give rise to a private cause of action, the same remains admissible as evidence in defense of a claim for attorney fees, citing *Evans & Luptak, PLC v Lizza*, 251 Mich App 187, 193; 650 NW2d 364 (2002). The Court agrees.

Indeed, *Evans* does stand for such a proposition, which Plaintiffs concede in their Reply Brief. But this does not affect the current motion for summary disposition. Simply, there is no right to a private cause of action for violations of Michigan’s Rules of Professional Conduct, and as a result, the Gruda Defendants’ claim for the same must be DISMISSED.

**IT IS SO ORDERED.**

October 7, 2015  
Date

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