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

**SURINDAR K. JOLLY, ET AL,**
**Plaintiffs,**

**v.** **Case No. 15-145364-CK**
**Hon. James M. Alexander**

**OAKLAND PHYSICIANS MEDICAL CENTER, LLC**
**d/b/a DOCTORS' HOSPITAL OF MICHIGAN,**
**Defendant.**
**_____/**

**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Plaintiff's Motion for Summary Disposition. Plaintiffs brought the present suit on claims that Defendant is in default on its repayment obligations under the terms of certain demand promissory notes. Plaintiffs claim additional amounts owing for loans made without promissory note documentation.

Plaintiff sued on claims of breach of contract (on loans documented by demand notes) and promissory estoppel (for loans without written notes). Plaintiffs seek $2,611,624.13 in principal and interest on the notes (including $85,000 for the undocumented notes) and $13,353.81 in contractual costs and attorney fees; for a total of $2,624,977.94. The Court will note, however, that Plaintiffs submitted an updated accounting with their Reply Brief that included interest through today's date that claims principal and interest at $2,699,806.64 – not including attorney fees and costs.

To their end, Plaintiffs seek summary disposition under MCR 2.116(C)(10), which tests the factual support for Plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817

(1999). In such a motion, "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).

In order to prove breach of contract, a plaintiff must establish: (1) the existence of a contract; (2) a breach of that contract; and (3) damages resulting from that breach. *Stoken v JET Electronics & Technology, Inc*, 174 Mich App 457, 463; 436 NW2d 389 (1988).

Michigan law is well-established that "[a] contract must be interpreted according to its plain and ordinary meaning." *Holmes v Holmes*, 281 Mich App 575, 593; 760 NW2d 300 (2008), citing *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 107; 577 NW2d 188 (1998). "Under ordinary contract principles, if contractual language is clear, construction of the contract is a question of law for the court. If the contract is subject to two reasonable interpretations, factual development is necessary to determine the intent of the parties and summary disposition is therefore inappropriate." *Holmes*, supra at 594; quoting *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997).

Regarding unjust enrichment, our Supreme Court has held: "Even though no contract may exist between two parties, under the equitable doctrine of unjust enrichment, '[a] person who has been unjustly enriched at the expense of another is required to make restitution to the other.'" *Michigan Educ Emples Mut Ins Co v Morris*, 460 Mich 180, 198; 596 NW2d 142 (1999), quoting Restatement Restitution, § 1, p 12.

Michigan courts have established that "The elements of a claim for unjust enrichment are: (1) receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the

plaintiff because of the retention of the benefit by the defendant." *Barber v SMH* (US), 202 Mich App 366, 375; 509 NW2d 791 (1993); citing *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 546; 473 NW2d 652 (1991).

Defendant, in large part, bases its Response on the argument that, despite the "Demand Promissory Note" language, the parties orally agreed that Plaintiffs "would not demand repayment until Doctors' Hospital was financially strong and capable of repaying all investors . . . or until there was a sale of the hospital that might generate cash to pay [investors] back." Defendant also argues that the notes contain no merger or integration clause barring any such oral agreement.

Plaintiff, on the other hand, argues that the Court cannot consider parol evidence if it varies the terms of the parties' written agreements.

Generally, our Supreme Court has reasoned:

> "When two parties have made a contract and have expressed it in writing to which they have both assented as the complete and accurate integration of that contract, evidence, whether parol or otherwise, of antecedent understandings and negotiations will not be admitted for the purpose of varying or contradicting the writing." *Nag Enters v All State Indus*, 407 Mich 407, 409-410; 285 NW2d 770 (1979); quoting *NAG Enterprises, Inc v All State Industries, Inc*, 85 Mich App 194, 198; 270 NW2d 738 (1978); and 3 Corbin on Contracts, § 573.

Both parties cite to *Michigan Nat'l Bank of Detroit v Holland-Dozier-Holland Sound Studios*, 73 Mich App 12; 250 NW2d 532 (1976) in support of their argument.

In *Michigan Nat'l*, the plaintiff bank loaned $75,000 to the defendants in return for a $88,495.20 promissory note and a security agreement on certain collateral. After paying some $19,666 on the note, the defendants stopped paying. The plaintiff bank then sued to recover the balance due.

The defendants defended the lawsuit by arguing that:

> the writings submitted by plaintiff were not the entire agreement between the parties; that the plaintiff and defendants had agreed orally that the instant loan was only an interim one leading eventually to a $ 200,000 commercial mortgage; that the parties engaged in discussions prior to, contemporaneously with, and after the execution of the interim loan, which taken together form the agreement of the parties; and that the parties, failing in their negotiations on the commercial mortgage, orally agreed to a rescheduling of payments under the promissory note. *Id*. at 13-14.

The trial court refused to consider the defendant's alleged oral promises and granted summary disposition in favor of the plaintiff bank – holding that "parol evidence was inadmissible to vary the terms of the parties' written obligations, and that even if it were admissible, defendants could not surmount the statute of frauds." *Id*. at 14.

The Court of Appeals held that the trial court erred in barring evidence of oral modifications, but affirmed the grant of summary judgment. With respect to parol evidence, the Court reasoned that "The real question is whether the proffered parol evidence is inconsistent with the written language. If there is no inconsistency, the parol evidence is admissible." *Id*. at 15-16; quoting *Union Oil of California v Newton*, 397 Mich 486, 488; 245 NW2d 11 (1976). And, the Court concluded, defendants' parol evidence of an alleged future loan "was not inconsistent with, nor did it contradict, the parties' written agreement." *Michigan Nat'l*, 73 Mich App at 16. As a result, said evidence was admissible.

In our case, the promissory notes specifically provide that they payable on a date certain, and no delay in making repayment demand "shall be deemed to constitute a court of conduct inconsistent with the Lender's right at any time." In other words, the maturity date of each note has passed and Plaintiffs have demanded repayment. And the parties specifically agreed that any delay in seeking repayment did not affect Plaintiffs' ability to demand repayment now.

Defendant's argument, that there are oral agreements to delay repayment demands on these notes is wholly inconsistent with the written language in the agreements. As a result, the Court may not consider Defendant's proffered parol evidence of a different understanding.

Further, even if the Court were to consider the alleged oral agreements, Defendant could not overcome the statute of frauds. This is so because MCL 566.1 requires that an agreement to change or modify a contract or obligation such as this needs to be in writing to be enforceable.[1]

This is the reason that the Michigan Nat'l Court affirmed summary judgment in the plaintiff bank's favor. Citing MCL 566.1, the Court held "such a modification to be valid must either be supported by consideration or be in writing."

In this case, Defendant fails to allege that any writing exists. Defendant also fails to identify any consideration supporting the alleged modifications. As a result, the Court rejects Defendant's claim that the purported oral modifications modified the parties' written agreements.

Defendant next argues that the fact that Plaintiffs waited years (in some cases) to enforce their repayment rights on the notes should result in the Court finding that Plaintiffs' claims are subject to equitable estoppel. But, as stated, the parties specifically contracted that any delay in demanding repayment did not affect Plaintiffs' collection rights. As a result, the Court rejects Defendant's estoppel argument.

Finally, Defendant claims that there are some ambiguities with respect to two notes and there is no proof that the undocumented loans were actually loans.[2] But Plaintiffs provide

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[1] MCL 566.1 provides:

> An agreement hereafter made to change or modify, or to discharge in whole or in part, any contract, obligation, or lease, or any mortgage or other security interest in personal or real property, shall not be invalid because of the absence of consideration: Provided, That the agreement changing, modifying, or discharging such contract, obligation, lease, mortgage or security interest 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.

evidence in support of each of the alleged loans, and Defendant only offers argument – not evidence – in response.

For all of the foregoing reasons, the Court finds that there are no material questions of fact in dispute, and Plaintiff is entitled to judgment as a matter of law. Therefore, the Court GRANTS Plaintiffs' motion for summary disposition under (C)(10), and enters judgment against Defendant in the amount of $2,699,806.64, plus $13,353.81 in costs and attorney fees, for a total judgment of $2,713,160.45.

This Order is a Final Order that resolves the last pending claim and closes the case.

**IT IS SO ORDERED.**

June 3, 2015 /s/ James M. Alexander
Date Hon. James M. Alexander, Circuit Court Judge

[2] Plaintiffs offer evidentiary support in the form of affidavits and/or cashed checks to show that Defendant accepted monies on both the documented and undocumented loans. Plaintiffs also provide an accounting to show that Defendant did make partial payments on one loan and that one loan was misdated 2013 (rather than 2014).