

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

**FIEGER AND FIEGER, PC,
Plaintiff,**

v.

**Case No. 16-152934-CB
Hon. James M. Alexander**

**CRAIG S ROMANZI, PC,
Defendant.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Plaintiff’s motion for summary disposition. In 2014, Craig Romanzi joined the Plaintiff law firm. When he left around January 2015, the parties disputed how to split fees on cases formerly handled by Plaintiff that left with Defendant law firm. The parties do not dispute that Plaintiff’s attorney fee liens were “initially” decided on a “case-by-case basis.”

But the parties later negotiated on how to resolve issues on remaining cases. Plaintiff claims that, to resolve the dispute, Plaintiff’s counsel and Defendant exchanged May 13, 2015 emails. These emails stated, in full:

From Marc Lipton, Plaintiff’s counsel, to Romanzi:

Craig,

I am confirming our settlement of your fee split with the Fieger firm. I have authority to act on his behalf. Here is our agreement.

In general, with the exception of the Fakouri, Martinez and Nash Thomas cases:

1. All cases (subject to the exceptions above) will be treated the same, regardless of whether they are a personal referral to your or not.

2. If Case Evaluation occurred while at the Fieger office, and you settle before a jury trial starts (defined below), 60% to Fieger/40% to Romanzi
3. If Case Evaluation occurred after the file left the Fieger office and you settle before a jury trial starts, 55% to Fieger/45% to Romanzi
4. For any case that you start a jury trial, 50/50 split on fees.

The Start of a jury trial is after the filing of the Final Pre Trial Order AND the completion of all De Bene Esse Deposition identified by Plaintiff in the FPTO.

For these purposes, an arbitration is not a trial. Any cases that are arbitrated will be treated as either category 2 or 3 above, depending on when Case Evaluation occurred.

For Fakouri, Martinez and Nash Thomas, those three cases will have their fees split on a 50/50 basis.

You agree that all settlement proceeds will be delivered to my office, along with a bill of any incurred costs, and my office will distribute back to you your fee and the client's net proceeds and reimburse your costs.

Please reply with your assent to this proposal, and I will forward it to Geoff Fieger.

A few hours later, Romanzi responded: "That is what we agreed upon."

And the parties apparently honored this agreement for several months. In fact, Plaintiff attaches "Closing Statements" evidencing the honored fee-split agreement. (See Exhibits 9-16 attached to Plaintiff's Reply Brief).

Defendant contends that these emails simply provide a non-binding "framework" for splitting fees on remaining cases. And, Defendant claims, this "framework" could not be a binding contract because there was no consideration supporting the same. As a result, in February 2016, Defendant rejected any further reliance on the purported contract and claimed to revoke his consent to the same.

Plaintiff then filed the present action to enforce purported fee-splitting agreement on (Count I) declaratory relief and (Count II) breach of contract claims. Specifically, Plaintiff seeks

a declaratory ruling establishing the validity of the purported agreement and an award of damages relative to Defendant's alleged breach of the same.

To this end, Plaintiff now moves for summary disposition under MCR 2.116(C)(10), which tests the factual support for a plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). In such a motion, the moving party must specifically identify the issues that he believes present no genuine issue of material fact. *Id.* at 120. The opposing party may not rest on mere allegations or denials in his pleadings, but must, by affidavits or as otherwise provided in the rule, set forth specific facts showing a genuine issue for trial. *Id.* at 120-121. Where the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* at 120.

Regarding Plaintiff's claim for declaratory relief, MCR 2.605(A)(1) provides: "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted."

Generally, 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).

"In Michigan, the essential elements of a valid contract are (1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation." *Thomas v Leja*, 187 Mich App 418, 422; 468 NW2d 58 (1991).

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).

As stated, Plaintiff filed this case seeking a declaration that the May 13, 2015 email exchange created a valid, binding contract.

In response, Defendant claims that Plaintiff’s summary motion should be denied for the following reasons. First, Plaintiff’s allegation that Defendant breached the agreement on the Charleston/Boone case is moot because the parties have reached an agreement on that case. Second, because there are no other pending settlements, Plaintiff’s case is not ripe for a decision. Third, the May 13, 2015 emails are just a “framework” and an unenforceable “agreement to agree.” Fourth, the alleged contract fails for lack of consideration. And fifth, Defendant’s alleged breach is excused by the failure of consideration or Plaintiff’s prior breach.

Despite announcing these arguments, Defendant mostly concentrates on the argument that the Agreement is not a contract. It appears that the bulk of Defendant’s problem with the purported agreement is Defendant’s claim that Plaintiff is inflating his “costs” in an effort to produce more revenue. Defendant also claims that the following terms are missing: (1) whether Romanzi has the authority to resolve cases by any means necessary (including a reduction of fees and costs); (2) how would any such reduction be handled; and (3) does Romanzi have authority to reduce Plaintiff’s “exorbitant” claim for costs.

Plaintiff, on the other hand, claims that “there are no ‘missing’ terms,” and the May 13, 2015 agreement “contains all necessary terms to divide the attorney fee on disputed cases.” The

Court agrees on this point. The May 13, 2015 email exchange constitutes a valid and enforceable contract to split fees on disputed cases. The consideration supporting the same was Plaintiff foregoing its right to dispute its entitlement to fees and costs on cases that left with Defendant. All essential terms are present in the writing, which is the parties' complete agreement.

That said, the Court disagrees with a part of Plaintiff's claimed interpretation of the contract. First, the agreement does not provide Plaintiff any right to dictate Defendant's right to settle the disputed cases. This includes any reduction in attorney fees or Defendant's costs. Defendant, as counsel for said parties, holds sole discretion in how to best represent its clients.

If Defendant wishes to reduce the attorney fee or **his** costs in order to settle a case, he has complete, unfettered ability to do so. The only right that Plaintiff retains is the right to its costs **and a portion of any fees actually received**. As a result, should Defendant settle a case for a smaller **attorney fee** award, then Plaintiff is only entitled to its specified portion of said smaller **fee** award.

But **costs** are not attorneys fees. Defendant, as a former Plaintiff attorney, understood and presumably had access to Plaintiff's claimed costs on each of the disputed cases. As a result, it is too late to dispute the same. Had Defendant wished to negotiate different terms on costs, he was free to do so. But he did not. As a result, Plaintiff remains entitled to actual costs as billed – just as Defendant is.

While Defendant argues that the agreement lacks material terms, the Court disagrees. All material terms are present to create a valid and enforceable contract. And the Court will enforce the same as written and as outlined above.

For all of the foregoing reasons and viewing all evidence in the light most favorable to Defendant, the Court concludes that there are no material questions of fact in dispute and Plaintiff is entitled to judgment matter of law. The Court, therefore, GRANTS Plaintiff's motion with respect to its declaratory relief claim to the extent outlined above. The May 13, 2015 email exchange constitutes a valid and enforceable contract to split fees on the disputed cases, and the parties remain bound by the same.¹

IT IS SO ORDERED.

July 27, 2016
Date

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

¹ Because it appears undisputed that the parties settled their dispute with respect to the Boone/Charleston case, this issue (and Plaintiff's claimed damages resulting from) is moot.