

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

**ISHBIA & GAGLEARD, PC,
Plaintiff,**

v.

**Case No. 16-153016-CB
Hon. James M. Alexander**

**CRAIG ARNOLD and MARIA ARNOLD,
Defendants.**

OPINION AND ORDER RE: MOTION FOR SUMMARY DISPOSITION

This matter is before the Court on Defendant Maria Arnold's motion for summary disposition. According to its First Amended Complaint, Plaintiff law firm claims that it provided legal services to Defendants between December 2012 and April 2013. And, Plaintiff claims, it is still owed \$60,735 for said services.

On these general allegations, Plaintiff filed the present Complaint alleging claims of (Count I) breach of contract; (Count II) account stated; (Count III) quantum meruit; and (Count IV) unjust enrichment.

Mrs. Arnold now moves for summary disposition under MCR 2.116(C)(8) and (C)(10). A (C)(8) motion tests the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Such a motion 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, 163; 483 NW2d 26 (1992). When considering such a motion, all well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade*, 439 Mich at 162-163. Additionally, when

considering such motions, the court considers only the pleadings. MCR 2.116(G)(5).

A (C)(10) motion 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.

Mrs. Arnold claims that she is entitled to summary because she, individually, never received legal services from Plaintiff and never agreed to pay Plaintiff for any such services. In support, Defendant cites to the affidavits of Maria Arnold and Craig Arnold.

Plaintiff, on the other hand, claims that it provided legal services to Mr. and Mrs. Arnold since 1997. In support, Plaintiff cites to the affidavit of one of its shareholders, Jeffery A. Ishbia and other documentary evidence.

In other words, the parties have a material dispute (supported by evidence) that is relevant to each of Plaintiff's claims.

Generally, Mrs. Arnold fails to distinguish her legal argument between each claim. Instead, Mrs. Arnold's generally argues that: (1) she never retained Plaintiff as her attorney; (2) Plaintiff never provided any legal services directly to her; and (3) she never agreed to pay Plaintiff for those services. These general arguments, Mrs. Arnold claims, defeat each of Plaintiff's claims.

I. Breach of Contract (Count I)

Mrs. Arnold first argues that Plaintiff's breach of contract claim fails. 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).

"The essential elements of a valid contract are the following: '(1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation.'" *Hess v Cannon Twp*, 265 Mich App 582, 592; 696 NW2d 742 (2005); quoting *Thomas v Leja*, 187 Mich App 418, 422; 468 N.2d 58 (1991).

It is also well settled that unless a statute of frauds applies, an oral contract is enforceable. *GRP, Ltd v United States Aviation Underwriters, Inc*, 402 Mich 107, 113; 261 NW2d 707 (1978); and *Rood v Gen Dynamics Corp*, 444 Mich 107; 507 NW2d 591 (1993).

With respect to Mrs. Arnold's (C)(8) motion, Plaintiff alleges that it provided legal services to both Defendants. In return, the Defendants promised to pay for said services, forming a valid contract. Despite the agreement, Plaintiff alleges that Defendants have yet to pay.

For the foregoing reasons, considering only the pleadings, and accepting all well-pled factual allegations as true, the Court finds that Plaintiffs have sufficiently pled their breach of contract claim such that the Court cannot conclude that the same is so clearly unenforceable as a matter of law that no factual development could justify a right of recovery. As a result, the Defendants' motion for summary disposition of Plaintiff's breach of contract claim under (C)(8) is DENIED.

With respect to Mrs. Arnold's (C)(10) motion, both parties submit evidence in support of their respective claims that Plaintiff provided legal services to Mrs. Arnold, and she agreed to

pay for the same.

As a result and viewing all evidence in light most favorable to Plaintiff, the Court concludes that there are material questions of facts in dispute whereby Mrs. Arnold is not entitled to summary disposition of this claim as a matter of law. As a result, her motion on this claim is DENIED.

II. Account Stated (Count II)

Mrs. Arnold argues that Plaintiff's account stated claim fails as a matter of law. The Court of Appeals has reasoned:

an account stated [is] "a balance struck between the parties on a settlement" "Where a plaintiff is able to show that the mutual dealings which have occurred between two parties have been adjusted, settled, and a balance struck, the law implies a promise to pay that balance." *Keywell & Rosenfeld v Bithell*, 254 Mich App 300, 331; 657 NW2d 759 (2002); quoting *Watkins v Ford*, 69 Mich 357, 361; 37 NW 300 (1888).

In order to establish an account stated, a plaintiff must prove that the defendant "either expressly accepted the bills by paying them or failed to object to them within a reasonable time." *Keywell*, 254 Mich App at 331. Further, "[p]roving an account stated 'must depend upon the facts. That it has taken place, may appear by evidence of an express understanding, or of words and acts, and the necessary and proper inferences from them.'" *Id.* at 331; quoting *Kaunitz v Wheeler*, 344 Mich 181, 185; 73 NW2d 263 (1955).

With respect to Mrs. Arnold's (C)(8) motion, Plaintiff alleges that it provided legal services to Defendants on an open account. Plaintiff also claims that both Defendants had an express understanding that Defendants would timely pay for these legal services.

Plaintiff claims that Defendants were regularly provided with invoices and account

statements identifying the legal services and the cost of the same. Plaintiff claims that Defendants have an outstanding balance of \$60,735, with interest accumulating on the open account.

Based on these allegations, the Court finds that Plaintiff has sufficiently pled its account stated claim such that summary under (C)(8) is inappropriate and DENIED.

For similar reasons, with respect to her (C)(10) motion, the Court finds that each party has presented evidence in support of its claim that Plaintiff provided legal services directly to Mrs. Arnold on an open account such that summary disposition of this claim under (C)(10) is appropriately DENIED.

III. Quantum Meruit/Unjust Enrichment (Counts III and IV)

Finally, Mrs. Arnold argues that Plaintiff's quantum meruit or unjust enrichment claims fail as a matter of law. Generally, "in order to sustain a claim of quantum meruit or unjust enrichment, a plaintiff must establish (1) the 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." *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 195; 729 NW2d 898 (2006); citing *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993).

With respect to Mrs. Arnold's (C)(8) motion, Plaintiff alleges that it has expended a considerable amount of time, money, and effort in meeting its responsibilities and duties pursuant to the attorney/client relationship with both Defendants. And, Plaintiff claims, each Defendant received a benefit from Plaintiff's legal services in the amount of \$60,735.

Accepting these allegations as true, the Court finds that Plaintiffs have sufficiently pled their quantum meruit and unjust enrichment claims such that summary under (C)(8) is

inappropriate and DENIED.

With respect to Mrs. Arnold's (C)(10) motion, the Court finds that each party has presented evidence in support of its claim that Plaintiff provided legal services directly to Mrs. Arnold such that summary of Plaintiff's quantum meruit and unjust enrichment claims under (C)(10) is also inappropriate and DENIED.

IV. Summary/Conclusion

To summarize, Mrs. Arnold's motion for summary disposition is DENIED in its entirety.

IT IS SO ORDERED.

September 28, 2016
Date

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