

STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

GIARMARCO, MULLINS & HORTON, P.C.,

Plaintiff,

vs.

Case No. 2016-1080-CB

SPE UTILITY CONTRACTORS, LLC and
DAVID POSTILL,

Defendants.

FILED
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CLERK OF COURT

OPINION AND ORDER

Plaintiff has filed a motion for summary disposition pursuant to MCR 2.116(C)(9) and (10). Defendants have filed a joint response in which they request that the motion be denied. In addition, Plaintiff has filed a reply brief in support of its motion.

Facts and Procedural History

Plaintiff's claims in this case are based on its allegation that it provided legal representation to Defendants in connection with several matters, and that it has not been paid for those services. In September 2010 Plaintiff and Defendant SPE Utility Contractors, LLC ("Defendant SPE") entered into a contract for legal services for the "Moriarty Litigation". (See Plaintiff's Exhibit A.) In addition, Plaintiff provided legal services for Defendant David Postill ("Defendant Postill") individually in two other lawsuit, and for other entities owned and/or controlled by Defendant Postill. Further, Plaintiff allegedly provided Defendants non-litigation legal services in conjunction with other entities Defendant Postill owned and/or controlled.

On April 1, 2016, Plaintiff filed its complaint in this matter ("Complaint"). The Complaint contains claims for breach of contract (Count I) and unjust enrichment (Count II). On

November 14, 2016, Plaintiff filed its instant motion for summary disposition. On December 7, 2016, Defendants filed their response to the motion and request that it be denied. In addition, Plaintiff has filed a reply brief in support of its motion. On December 19, 2016, the Court held a hearing in connection with the motion and took the matter under advisement.

Standards of Review

A motion under MCR 2.116(C)(9) tests the sufficiency of a defendant's pleadings by accepting all well-pleaded allegations as true. *Id.* If the defenses are so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery, then summary disposition under this rule is proper. *Id.* Further, a court may look only to the parties' pleadings in deciding a motion under MCR 2.116(C)(9). *Id.*

A motion under MCR 2.116(C)(10), on the other hand, tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

Arguments and Analysis

In its motion, Plaintiff argues that Defendants hired it to provide legal services for Defendant Postill personally and for the benefit of some non-party entities that he owned and/or controlled. Further, Plaintiff contends that it entered into an oral contract with Defendants

pursuant to which they agreed to pay for the services Plaintiff provided in connection with those matters. In support of their position, Plaintiff relies on the affidavit of one of its shareholders, Andrew T. Baran. (See Exhibit 1 to Plaintiff's Reply Brief.)

In his affidavit, Mr. Baran testified, *inter alia*, that he was the attorney primarily for the legal work provide to Defendants and the non-parties owned and/controlled by Defendant Postill. (Id. at ¶1.) Mr. Baran also testified that Defendant Postill and/or the resident agent of all of the entities at issue, Cheryl Cameron, asked Plaintiff to provide the legal services at issue in this case. (Id. at ¶5.) Further, Mr. Baran testified that throughout the parties' relationship Defendants were responsible for the payment for all of the services Plaintiff provided to the non-party entities and to Defendant Postill individually, and that Defendant SPE made some payments in connection with all of the matters at issue in this case

In addition to Mr. Baran's affidavit, Plaintiff also relies on its billing records that indicate that the services for all of the matters at issue were all sent to Defendants. (See Exhibit 1(B) to Plaintiff's Reply Brief.) Finally, Plaintiff relies on three checks, totaling \$80,000.00 that Defendant SPE paid to Plaintiff between July 12th and October 11th 2011. (See Exhibit 1(C) to Plaintiff's Reply Brief.)


In response, Defendants do not challenge that the services in question were provided or that the amount billed for the services was appropriate. Rather, Defendants argue that summary disposition should be denied because many of the services in question ultimately benefited non-parties, not Defendants. However, Plaintiff alleges in this case that while some of the services were provided in connection with non-parties, the services were provided at the request of Defendants and that the agreement was that Defendants would be responsible for paying for the services. Defendants have provided no evidence whatsoever to contradict Mr. Baran's testimony

or the other evidence Plaintiff has submitted. The Court is convinced that based on Mr. Baran's testimony, the fact that all of the bills were sent to Defendants, and the fact that Defendant SPE has paid for a portion of the services at issue, there is no question of fact that Defendants contractually agreed to be liable for payment for the services Plaintiff provided that are at issue in this case. As a result, the Court is satisfied that Plaintiff's motion for summary disposition must be granted.

Conclusion

For the reasons set forth above, Plaintiff's motion for summary disposition is GRANTED. Plaintiff is hereby awarded a judgment against Defendants in the amount of \$57,779.06. Pursuant to MCR 2.602(A)(3), this Opinion and Order resolves the last pending claim and CLOSES this case.

IT IS SO ORDERED.



RICHARD L. CARETTI
Circuit Court Judge

Dated: February 2, 2017

cc: Jeffrey J. Fleury, Attorney for Plaintiff
Cheryl L. Cameron, Attorney for Defendants