

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID HUNT and
CAROL SANTANGELO,

Plaintiffs,

Case Number 14-10713
Honorable David M. Lawson

v.

DONNELLY HADDEN, and
DONNELLY W. HADDEN, P.C.,

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO
DISMISS OR, IN THE ALTERNATIVE, FOR PARTIAL SUMMARY JUDGMENT**

Presently before the Court is the defendants' motion to dismiss or, in the alternative, for partial summary judgment. The Court held a hearing on the defendants' motion on October 8, 2014 and heard argument from both sides. At the conclusion of the hearing, the Court announced its decision from the bench and granted in part and denied in part the defendants' motion.

Additionally, the plaintiffs represented at oral argument that they requested partial summary judgment in their response brief that there is no issue of material fact that the defendants retained fees in excess of the parties' retainer agreement. The applicable electronic filing provision states that "[a] complaint must not be combined with a motion for preliminary relief and a response or reply to a motion must not be combined with a counter-motion." ECF Pol. & Pro. R. 5(e). The Court will deny the plaintiffs' motion because it is in violation of the local rules and not otherwise supported by the record.

Accordingly, it is **ORDERED** that the plaintiffs' motion for partial summary judgment [dkt. #19] is **DENIED**.

It is further **ORDERED** that the defendants' motion to dismiss or, in the alternative, motion for summary judgment [dkt. #15] is **GRANTED IN PART AND DENIED IN PART** for the reasons stated on the record.

It is further **ORDERED** that count V of the amended complaint (unjust enrichment/restitution/forfeiture) is **DISMISSED WITH PREJUDICE**.

It is further **ORDERED** that the defendants' motion to dismiss count VI (constructive trust) is **DENIED**. The Court will treat count VI as a request for equitable relief, not a separate cause of action.

It is further **ORDERED** that the defendants' motion to dismiss counts VII (actual/constructive fraud) and VIII (innocent misrepresentation) is **DENIED**, but the plaintiffs may **ONLY** proceed on their allegations about the distribution of the settlement proceeds.

It is further **ORDERED** that the defendants' motion is **DENIED** in all other respects for the reasons stated on the record.

s/David M. Lawson _____
DAVID M. LAWSON
United States District Judge

Dated: October 9, 2014

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on October 9, 2014.

s/ Marilyn Orem _____
MARILYN OREM