STATE OF MICHIGAN

COURT OF APPEALS

CATHERINE F. LUSADER,

Plaintiff-Appellant,

v

LAW FIRM OF JOHN F. SCHAEFER, P.L.L.C.,

Defendant-Appellee.

UNPUBLISHED
December 21, 2004

No. 249683
Oakland Circuit Court
LC No. 2002-042215-NZ

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition under MCR 2.116(C)(8). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff retained defendant to represent her in child custody and divorce proceedings initiated by her husband. She signed a letter agreeing to a $50,000 "non-refundable engagement fee" and additional hourly charges beyond the engagement fee. Subsequently, plaintiff discharged defendant, retained new counsel, and requested a refund of the $50,000. After defendant refused, plaintiff commenced this action to recover the 50,000, alleging violation of Rule 1.5 the Michigan Rules of Professional Conduct ("MRPC") and breach of contract. Defendant filed a motion for summary disposition pursuant to MCR 6.116(C)(8), which the trial court granted.

This Court reviews de novo a trial court's decision to grant a motion for summary disposition. *Durcon Co v Detroit Edison Co*, 250 Mich App 553, 556; 655 NW2d 304 (2002). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The motion is properly granted when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.

Although plaintiff's complaint alleged that defendant violated MRPC 1.5(a) (a lawyer may not charge or collect a clearly excessive fee), MRPC 1.0(b) states that the MRPC "do not . . . give rise to a cause of action for . . . damages caused by failure to comply with an obligation or prohibition imposed by a rule." Therefore, insofar that plaintiff's complaint alleged a violation of MRPC, it failed to state a cognizable claim for relief. See *Watts v Polaczyk*, 242 Mich App 600, 607 n 1; 619 NW2d 714 (2000).

Plaintiff also failed to state a claim for breach of contract. In order to establish a claim for breach of contract, a plaintiff must prove the existence of a valid contract, breach of that contract, and damages. *Stoken v J E T Electronics & Technology, Inc*, 174 Mich App 457, 463; 436 NW2d 389 (1988). A cause of action for breach of contract accrues when a defendant fails to perform its contractual obligations. See *H J Tucker & Assoc, Inc v Allied Chucker & Engineering Co*, 234 Mich App 550, 562; 595 NW2d 176 (1999). In her complaint, plaintiff relied on her claim that the $50,000 fee was excessive as establishing that she was entitled to a refund "under the principle of Michigan contract law as modified by the Michigan Rules for Professional Conduct." Plaintiff did not allege that defendant failed to perform its contractual obligations. In light of this deficiency, the trial court properly dismissed plaintiff's breach of contract claim.

Furthermore, to the extent that plaintiff argues that she sufficiently alleged a claim for unjust enrichment, it was likewise properly dismissed. The parties entered into an express written agreement, which included a provision for the payment of a $50,000 non-refundable engagement fee. Where a written agreement governs the parties' transaction, a contract will not be implied under the doctrine of unjust enrichment. *King v Ford Motor Credit Co*, 257 Mich App 303, 327-328; 668 NW2d 357 (2003). Therefore, plaintiff cannot rely on the doctrine of unjust enrichment.

We reject plaintiff's claim that, under the parol evidence rule, she is allowed to present her testimony that, pursuant to her conversation with one of defendant's attorneys, she would be allowed to discharge defendant and recoup her retainer under a fixed-fee agreement, see *Plunkett & Cooney, PC v Capitol Bancorp Ltd*, 212 Mich App 325, 331; 536 NW2d 886 (1995), and that the $50,000 fee was "applicable to handling the divorce case to conclusion." In short, plaintiff seeks to demonstrate that the parties' agreement was orally amended. However, the parties' written agreement was plain and unambiguous relative to attorney fees, and plaintiff's proffered testimony is contradictory to the agreement. It is well established that parol evidence of prior or contemporaneous agreements or negotiations that contradict or vary the clear and unambiguous terms of a written agreement is not admissible. See *Salzman v Maldaver*, 315 Mich 403, 412; 24 NW2d 161 (1946); *UAW-GM Human Resource Center v KSL Recreation Corporation*, 228 Mich App 486, 494; 579 NW2d 411 (1998). Therefore, plaintiff is barred from offering parol evidence in an attempt to vary the terms of the parties' agreement.

Affirmed.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens