

STATE OF MICHIGAN
COURT OF APPEALS

REGINA ANDERSON, on behalf of LAKE
LAND INVESTMENTS, L.L.C.,

UNPUBLISHED
December 14, 2004

Plaintiff/Counterdefendant-
Appellant,

v

RAYMOND & PROKOP, P.C. and R. PETER
PROKOP,

No. 249684
Oakland Circuit Court
LC No. 2002-041475-CH

Defendants/Counterplaintiffs/Third-
Party Plaintiffs-Appellees,

and

DALE ANDERSON, JUDY ANDERSON, DAVID
ANDERSON, DENNIS ANDERSON, BAY
FINANCIAL, L.L.C., and BOAT SALES, INC.,

Third-Party Defendants-Appellants.

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

PER CURIAM.

Plaintiff/counter-defendant and third-party defendants, collectively “the Andersons,” appeal as of right, challenging the circuit court’s order granting Raymond & Prokop summary disposition with respect to its claims for unpaid legal fees within its countercomplaint and third-party complaint. The court awarded Raymond & Prokop judgment in the amount of \$147,003.22, plus statutory interest. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo a circuit court’s summary disposition ruling. *Maskery v Univ of Michigan Bd of Regents*, 468 Mich 609, 613; 664 NW2d 165 (2003). In reviewing a motion under MCR 2.116(C)(10), which tests the factual support of a plaintiff’s claim, this Court considers de novo, and in the light most favorable to the nonmoving party, all pleadings, admissions, affidavits, and other relevant documentary evidence of record to determine whether any genuine issue of material fact exists to warrant a trial. MCR 2.116(G)(5); *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

The Andersons contest the circuit court's reliance on their failure to respond to requests for admission filed by Raymond & Prokop. A party served with requests to admit the truth of relevant "statements or opinions of fact or the application of law to fact," must respond within "28 days after service of the request, or within a shorter or longer time as the court may allow." MCR 2.312(A) and (B)(1). A failure to answer or object to the requests deems each matter therein admitted. MCR 2.312(B)(1). Subrule (D) further provides that "[a] matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of an admission."

The parties did not dispute that the Andersons received the requests for admission in July and August 2002, or that the Andersons failed to respond to the requests within twenty-eight days. To the extent the Andersons suggest that the parties' agreement lengthened the response deadline through December 2002, the court rules plainly contemplate only a court-ordered extension, which does not exist in this case. MCR 2.312(B); MCR 2.302(F).

Because the Andersons did not timely respond to the requests for admission, the circuit court correctly found that the substance of the requests were conclusively established. *Radtke v Miller, Canfield, Paddock & Stone*, 453 Mich 413, 420-421; 551 NW2d 698 (1996). The admitted requests establish that (1) "the Anderson Entities and/or the Andersons individually owe Raymond & Prokop for the past performance of legal services pursuant to a retention agreement between the parties"; (2) "the January 30, 1996 Promissory Note executed by Dale Anderson to R&P for \$142,357.00 is valid and binding"; and (3) "as a result of administrative costs, collection efforts and interest, the amount owed by Dale Anderson and/or the Anderson Entities to Raymond & Prokop is \$147,003.22." In light of these conclusive admissions by the Andersons regarding their unpaid debt for legal services, the central facts underlying the breach of contract and unjust enrichment claims within Raymond & Prokop's countercomplaint and third-party complaint, the court properly granted Raymond & Prokop summary disposition of these counts and entered judgment for the unpaid fees plus statutory interest.

The Andersons offer no authority in support of the proposition that their proffered affidavits can contradict conclusively established admissions, and thus create a genuine issue of fact precluding summary disposition. *Bloomfield Charter Twp v Oakland Co Clerk*, 253 Mich App 1, 34; 654 NW2d 610 (2002). A party who makes a judicial admission under MCR 2.312 conclusively admits the relevant facts, which are not subject to explanation or contradiction. *Radtke, supra* at 420-421. Furthermore, a party may not create a genuine issue of fact and avoid summary disposition by submitting an affidavit that contradicts either prior actions or testimony by the party. *Aetna Casualty & Surety Co v Ralph Wilson Plastics Co*, 202 Mich App 540, 548; 509 NW2d 520 (1993).

The admissions plainly applied to all the Anderson defendants involved in this case, given the all-encompassing definition of "Anderson Entities" set forth at the outset of Raymond & Prokop's discovery requests. The fact that other Anderson corporate entities not involved in this case may no longer exist has no bearing on the instant Andersons' liability.

Affirmed.

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