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STATE OF MICHIGAN

COURT OF APPEALS

In re ESTATE OF ARETHA FRANKLIN.

GREGORY J. REED & ASSOCIATES, PC,

Plaintiff-Appellant,

v

REGINALD TURNER, Personal Representative of the ESTATE OF ARETHA FRANKLIN,

Defendant-Appellee.

UNPUBLISHED
April 18, 2024

No. 364036
Oakland Probate Court
LC No. 2020-396699-CZ

Before: CAVANAGH, P.J., and K. F. KELLY and RICK, JJ.

PER CURIAM.

This case pertains to the estate of Motown legend and Queen of Soul, Aretha Franklin. It involves a series of disputes between plaintiff, Gregory J. Reed & Associates, PC, and defendant, Reginald Turner, as the personal representative of the estate of Aretha Franklin. Plaintiff claims his firm is owed money for legal services purportedly rendered on behalf of Ms. Franklin, who passed on August 16, 2018. Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(7) (claim barred by operation of law) and (C)(10) (no genuine issue of material fact). We affirm.

I. FACTUAL BACKGROUND

Gregory J. Reed & Associates, PC, is a professional corporation engaged in providing legal services, and Gregory Reed is its principal attorney.[1] Plaintiff's complaint asserted three counts

[1] Because Reed is the principal owner and only person who has acted on behalf of the law firm, we will refer to Reed as "plaintiff" in this opinion.

against defendant: a breach of contract related to a recording contract, a quantum meruit claim related to postal award services, and a claim of conversion of money.

Count I asserted a claim for breach of contract. Plaintiff averred that Ms. Franklin failed to pay his firm an agreed-upon attorney fee in relation to plaintiff's negotiation of a recording contract. In 2012, plaintiff represented Franklin in negotiations for a recording contract with RCA Records/Sony Music. On February 6, 2012, Franklin wrote plaintiff to inform him that she typically pays her attorneys an hourly rate instead of working on a percentage basis. Franklin continued:

> If this does not meet with your approval then you should immediately disengage yourself from any further talks with Mr. Davis or any of his representatives. Of course, a bonus for a successful closing would be appropriate. If you are amendable [sic] to continuing on this basis you must state your hourly fee for my approval.
>
> Attorney Reed, you were hired to discuss and close at the terms given to you per Mr. [Clive] Davis' proposal to me, all subject to final approval. You have no authority to close, or expedite or accept any figures that do not meet my approval.
>
> Your check for previous work has been authorized and will be sent by overnight courier.

The following day, plaintiff responded in a letter that stated:

> Please be advised you have requested our office to negotiate your Sony Music contract. We have agreed to proceed and accept your arrangement of February 6, 2012. We shall negotiate your Sony Music recording contract on an hourly basis of $375 and a payable bonus percent increase on the recording advance in excess of $150,000 no less than the fixed 8% and 10% maximum. Per your letter the bonus is due, based on a successful closing outcome with the record company. We shall have a lien on the record company advance closing proceeds payable to you.
>
> You expressed our concerns and reservations about signing the proposed contract with Sony Music. Sony Music offered you a $150,000 signing advance which is low for a legendary artist and the company has remained firm in its recording offer. You are interested in signing with Sony Music, provided that the initial offer is doubled to $300,000.
>
> We will do our best to get you what you have requested and more if possible. Our advance percentage will be greater than 8% of any excess over your requested $300,000 but not more than 10% at our election on the increase. *All payment for our services rendered shall be paid timely upon receipt of our invoice within 7 days*, if not the amount due is subjected to 1.5% per month. [Emphasis added.]

By March 16, 2012, RCA increased its offer on the advance from $150,000 to $500,000, with $300,000 payable upon execution of the contract and $200,000 payable upon delivery of the album. The RCA contract attached to plaintiff's complaint states that the agreement was "made as of June 14, 2012," but no signature page was included. Plaintiff later provided a different version of the contract that stated it was "made as of January 16, 2013." Despite this assertion, it appears that Franklin, on behalf of her company, Crown Productions, Inc., signed the document on April 18, 2013. In Count I of the complaint, plaintiff alleged that Franklin owed him $35,000 (calculated by taking 10% of the difference between $500,000 and $150,000) for his work on the contract negotiation. Plaintiff also averred that Franklin owed him $26,690 for work conducted on other matters.

Count II concerned what appears to be unauthorized work that plaintiff engaged in regarding an attempt to get the United States Postal Service (USPS) to put Franklin's image on a postage stamp. According to communications between plaintiff and the USPS, some type of "agreement" was entered into in March 2012 to have Franklin's image put on a stamp in 2013. In 2018, plaintiff sent some e-mails to the USPS, attempting to get the postage stamp project moving again. In response to one of plaintiff's e-mails, Sabrina Owens, who was the personal representative of Franklin's estate at the time, stated, "Please let this be your last request in this matter. They're obviously not interested." Plaintiff alleged that he was owed $7,000 for the time he spent on this work.

Finally, in Count III of the complaint, plaintiff alleged that Franklin's retention of the entirety of the RCA contract proceeds, without paying him his $35,000 fee, constituted conversion under MCL 600.2919a, which entitled him to treble damages.

Plaintiff initially filed suit against defendant on February 19, 2019, in LC No. 2019-387449-CZ. In February 2020, the trial court granted summary disposition in favor of defendant, but dismissed the case without prejudice. The court's order states:

> Plaintiff stated in paragraph 31 of his complaint "that the amount due was assigned to a third party assignee on May 1, 201."[2] Further, he does not state to whom the assignment was made and, while providing a partial date of when the assignment was made, it does not state a decipherable year. Therefore, based on MCR 2.201(B) this action cannot be prosecuted by the Plaintiff as he is not the real party in interest. Summary disposition in favor of Defendant is GRANTED.
>
> The action is dismissed without prejudice. This resolves all pending matters before this court and the case shall be closed.

Plaintiff filed the instant action on October 13, 2020, alleging the three counts described above. Although the complaint was filed under a new docket number, LC No. 2020-396699-CZ, plaintiff titled the complaint an "amended" complaint. During the proceedings below, defendant moved for summary disposition under MCR 2.116(C)(7), (8), and (10). Defendant argued that the claims for legal fees under Count I and Count II were time-barred. Defendant averred that both

[2] The typographical error present in this quotation is a verbatim recitation of plaintiff's complaint.

counts related to services rendered and fees charged in 2012, which made the 2020 complaint untimely because it was filed beyond the applicable six-year limitations period. With respect to Count II, defendant alternately argued that the claim should be dismissed under MCR 2.116(C)(10) because the document on which plaintiff relied to show the existence of a contract between him and the estate clearly showed that there was no such engagement. With respect to the conversion claim in Count III, defendant argued that it should be dismissed because it was derivative of the other counts. Defendant further argued that summary disposition was warranted under MCR 2.116(C)(8) because plaintiff failed to allege any facts to support his claim of conversion.

Plaintiff responded and also sought summary disposition under MCR 2.116(C)(10). Plaintiff argued that the claim in Count I was not time-barred because the contract was not successfully closed until Franklin delivered the album and RCA released it, which happened in October 2014. Plaintiff noted that Franklin did not receive the final payment on her advance until October 29, 2014. Plaintiff therefore averred that the October 13, 2020 complaint was timely.[3] With regard to Count II, plaintiff argued that he had rendered 17 hours of services on behalf of the estate from September 12, 2018, through October 17, 2018. Plaintiff stated that he was not seeking recovery under a contract theory, but was instead relying on the equitable doctrine of quantum meruit. And regarding the conversion claim in Count III, plaintiff argued that the claim was not time-barred because conversion falls under Michigan's catchall statute of limitations, which provides for a six-year limitations period. Plaintiff maintained that the conversion occurred when Franklin received her final advanced payment on October 29, 2014. Plaintiff also attached an affidavit to his response to defendant's motion for summary disposition, which was signed by him, but not notarized.

Defendant filed a reply brief, reiterating his same positions and stressing that there was no evidence that plaintiff's claims accrued on the date Franklin received her final payment from RCA. Defendant also argued that it is now settled law that the applicable limitations period for conversion is three years, not six years.

Plaintiff thereafter filed a supplemental response in which he asserted that the RCA contract was signed by Franklin on April 18, 2013. Plaintiff also submitted a new affidavit that was signed and notarized. Plaintiff further argued that the limitations period was tolled for three months during 2020 on account of orders issued by the Michigan Supreme Court and the Governor related to the COVID-19 health crisis.

At the motion hearing, defendant argued that the initial affidavit was invalid because it was not notarized. Defendant further argued that the supplemental response, which included the notarized affidavit, was not permitted under the court rules and should not be considered. The trial court issued an opinion and order granting defendant's motion for summary disposition. It did not address defendant's requests to strike plaintiff's unnotarized affidavit and supplemental response, but also did not cite or reference the supplemental response or any materials submitted with it.

[3] Plaintiff also cursorily asserted, with no legal analysis, that the October filing "relates back to the original claim under MCR 2.118(D)."

Regarding Count I, the trial court noted that both parties agreed that a six-year limitations period applied, but disagreed about when the claim accrued. The court recognized that defendant argued that the claim accrued on June 14, 2012, the date of the agreement, and that plaintiff argued that the claim accrued on October 29, 2014, the date Franklin was paid the final payment from RCA. The court then reasoned:

> Plaintiff's own affidavit provides that the contract was successfully closed on 10/29/2014, when the final profit advancement was delivered. He further argues that the handwritten document presented to the court as a will dated 3/14/2014 shows that he was owed $25,000 at that time. Taken together, it seems clear that by any of these dates – the statute of limitations had run prior to the filing of this complaint. Therefore, Count 1 is dismissed with prejudice.

The trial court likewise dismissed Count II, which it treated as a breach-of-contract claim, on the basis that it was time-barred. The court noted that the relied-upon e-mail chain reflected that any work done by plaintiff occurred in 2012, so the 2020 complaint was untimely. The court further ruled that the submitted documentation did not support the existence of a contract between plaintiff and Owens, which also supported summary disposition of that claim under MCR 2.116(C)(10).

Lastly, the court dismissed the conversion claim in Count III on statute-of-limitation grounds, noting that MCL 600.5805 provides for a three-year limitations period, and finding that because the alleged conversion occurred in 2014, the 2020 filing was untimely.

Plaintiff moved for reconsideration, arguing that his claim related to Count I accrued on November 10, 2014, the date he sent Franklin a letter requesting the $35,000. That letter, which was attached to the motion, also referenced an additional unpaid balance of $26,690. Plaintiff further argued that even though the October 2020 complaint was timely, it should be considered as relating back to the date of the earlier February 2019 complaint. With regard to Count II, plaintiff characterized the services he provided to personal representative Owens as being under "a separate contract."

The trial court denied plaintiff's motion for reconsideration. The court noted that plaintiff did not previously raise the argument that the 2020 complaint related back to the date the 2019 complaint was filed, but in any event MCR 2.118(A)(2) only allows amended pleadings by leave of the court and no such request for leave to amend was made. The court also found no palpable error by failing to recognize that there was a separate contract between plaintiff and Owens. This appeal followed.

II. ANALYSIS

A. STANDARD OF REVIEW

Whether an amendment relates back to the original complaint presents an issue of law that this Court reviews de novo. *Yudashkin v Holden*, 247 Mich App 642, 648; 637 NW2d 257 (2001). Questions of statutory interpretation and a trial court's decision to grant or deny a motion for

summary disposition are also reviewed de novo. *PNC Nat'l Bank Ass'n v Dep't of Treasury*, 285 Mich App 504, 505; 778 NW2d 282 (2009).

As to the substance of plaintiff's action, the trial court dismissed plaintiff's claims under MCR 2.116(C)(7) and (C)(10). "Summary disposition under MCR 2.116(C)(7) is appropriate when the undisputed facts establish that the plaintiff's claim is barred under the applicable statute of limitations." *Kincaid v Cardwell*, 300 Mich App 513, 522; 834 NW2d 122 (2013). Under MCR 2.116(C)(10), "[s]ummary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

B. EFFECTIVE DATE OF COMPLAINT

We must first determine whether, as plaintiff asserts, the filing of his 2020 complaint relates back to the date his earlier complaint was filed in February 2019.[4]

MCR 2.118 governs the amendment of pleadings. It provides, in pertinent part:

> (A) Amendments.
>
> (1) A party may amend a pleading once as a matter of course within 14 days after being served with a responsive pleading by an adverse party, or within 14 days after serving the pleading if it does not require a responsive pleading.
>
> (2) Except as provided in subrule (A)(1), a party may amend a pleading only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires.
>
> * * *
>
> (D) Relation Back of Amendments. An amendment that adds a claim or a defense relates back to the date of the original pleading if the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading.

Plaintiff asserts that his October 2020 complaint was an amendment to the February 2019 complaint because it complied with MCR 2.118(A)(1). Plaintiff maintains that because defendant

[4] Contrary to the trial court's ruling, plaintiff previously asserted in his response to defendant's motion for summary disposition that the October 2020 complaint related back to the February 2019 complaint. Although plaintiff's cursory presentation of this issue could be considered insufficient to properly preserve the issue for appellate review, see *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003), we exercise our discretion to address the issue because a ruling on this matter may be crucial for determining whether plaintiff's claims were timely filed. Moreover, the issue is one of law, and all the facts necessary for its resolution have been presented. See *McNeil v Charlevoix Co*, 484 Mich 69, 81; 772 NW2d 18 (2009).

never filed a responsive pleading to the February 2019 complaint, he could amend it without leave of the court. Plaintiff's argument is unavailing. First, plaintiff ignores that the 2019 complaint was dismissed and the prior case was "closed." Plaintiff tacitly acknowledged this when he filed the October 2020 complaint as a new action, rather than under the previous case number. Plaintiff provides no authority, and we have found none, for the proposition that a complaint filed in one case can relate back to a complaint filed in a completely separate case that was dismissed and closed. Plaintiff never moved to reopen the prior case. Plaintiff has not offered any factual support for his contention that defendant failed to file a responsive pleading in the 2019 case. Indeed, that is a patent misrepresentation of the record. Our review of the publicly available register of actions in LC No. 2019-387449-CZ indicates that defendant answered plaintiff's complaint on March 6, 2019. An answer is a responsive pleading. MCR 2.110(A) and (B). Plaintiff acknowledges he failed to move for leave to amend his complaint. Accordingly, there is no merit to plaintiff's contention that the October 2020 complaint in this case relates back to the date of the February 2019 complaint in LC No. 2019-387449-CZ.

C. DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

1. COUNT I

Plaintiff argues that the trial court erred when it dismissed Count I of his complaint on statute-of-limitation grounds. We disagree.

Initially, contrary to plaintiff's argument on appeal, defendant was not obligated to submit any documentary evidence in support of his motion for summary disposition under MCR 2.116(C)(7). As explained in *Fisher Sand & Gravel Co v Neal A Sweebe, Inc*, 494 Mich 543, 553; 837 NW2d 244 (2013):

> MCR 2.116(C)(7) allows a party to file a motion for summary disposition on the ground that a claim is barred because of the expiration of the applicable period of limitations. A movant under MCR 2.116(C)(7) is not required to file supportive material, and the opposing party need not reply with supportive material. Moreover, the contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant.

In reviewing this issue, we must initially determine which materials are properly considered in reviewing defendant's motion for summary disposition. The first document in question is the affidavit attached to plaintiff's March 11, 2021 response to defendant's motion for summary disposition. That affidavit was not notarized. "[A] document that is not notarized is not a 'valid affidavit.' " *Detroit Leasing Co v Detroit*, 269 Mich App 233, 236; 713 NW2d 269 (2005). Consequently, that document may not be considered in relation to defendant's motion for summary disposition. The other document in question is plaintiff's May 25, 2021 supplemental response to defendant's motion for summary disposition. The court rules permit a party to respond to a motion for summary disposition, after which the movant can file a reply. MCR 2.116(G)(1)(a)(i)-(iii). But "no additional or supplemental briefs may be filed without leave of the court." MCR 2.116(G)(1)(a)(iv). Plaintiff never sought or obtained leave of the trial court to file the supplemental materials. Accordingly, the entire May 25, 2021 supplemental response could not be considered with respect to defendant's motion for summary disposition.

Turning to the merits of the trial court's ruling, defendant argued below that any claim for payment in relation to the negotiation of the RCA contract was time-barred because plaintiff's services were rendered in 2012, and the statute of limitations expired before the filing of either the 2019 or the 2020 complaint. The court observed that defendant's position was that the limitations period began to run when the contract was executed on June 14, 2012, the date the RCA contract was apparently executed, whereas plaintiff argued that the contract "was successfully closed on 10/29/2014, when the final profit advancement was delivered."

For plaintiff to succeed here, he must establish that the October 29, 2014 date is the proper accrual date for the claim. The parties do not dispute that under MCL 600.5807(9), the applicable limitations period is six years, which starts to run after the claim accrues, MCL 600.5827. A breach-of-contract claim accrues "when the breach occurs, i.e., when the promisor fails to perform under the contract." *Blazer Foods, Inc v Restaurant Props, Inc*, 259 Mich App 241, 245-246; 673 NW2d 805 (2003); see also *AFSCME v Highland Park Bd of Ed*, 214 Mich App 182, 188; 542 NW2d 333 (1995), aff'd 457 Mich 74; 577 NW2d 79 (1998).

This count generally pertains to the $35,000 that plaintiff claimed he was owed for increasing Franklin's advancement from $150,000 to $500,000, but Count I of plaintiff's complaint also included allegations that a separate $26,690 was owed for other legal services rendered. In support of this claim, plaintiff attached to his complaint a 2012 handwritten note from Franklin, in which he claims Franklin acknowledged the separate debt. However, accepting plaintiff's own allegations as true, the $26,690 was due in 2012. Therefore, Franklin was in breach of any repayment obligation for that amount in 2012, which renders the 2020 complaint untimely for this portion of plaintiff's claim.

Regarding the portion of plaintiff's claim for $35,000, plaintiff attached to his complaint a contract between RCA Records and Franklin's company, Crown Productions, Inc., stating that the agreement between RCA and Crown Productions was "made as of June 14, 2012[.]" Also attached to the complaint was a 2012 letter written by Franklin, in which she stated that she does not work on a percentage basis with attorneys and instead only works on hourly rates. Defendant claimed that the contract indicated that the agreement was completed as of June 14, 2012, per the RCA contract. In responding to defendant's motion for summary disposition, plaintiff asserted that the claim accrued on October 29, 2014, the date on which Franklin received her final advanced payment from RCA, and submitted other communications between himself and Franklin that purported to show the terms of the contract. In a 2012 letter plaintiff wrote to Franklin, he stated, in pertinent part:

> We have agreed to proceed and accept your arrangement of February 6, 2012. We shall negotiate your Sony Music recording contract on an hourly basis of $375 and a payable bonus percent increase on the recording advance in excess of $150,000 no less than the fixed 8% and 10% maximum. Per your letter the bonus is due, based on a successful closing outcome with the record company.
>
> * * *
>
> Our advance percentage will be greater than 8% of any excess over your requested $300,000 but not more than 10% at our election on the increase. All

> payment for our services rendered shall be paid timely upon receipt of our invoice within 7 days.

This letter is rife with issues. First, it is signed by plaintiff, not Franklin. Thus there is no indication that she acceded to its terms. Second, the letter only states that payment for services rendered shall be paid within seven days of receipt of an invoice from plaintiff.

"Generally, the burden is on the defendant who relies on a statute of limitations defense to prove facts that bring the case within the statute." *Kincaid*, 300 Mich App at 522. Additionally, while plaintiff had no obligation to present evidence in response to the (C)(7) motion, he did do so, and thus we must consider it to the extent that it contradicts the contents of his complaint. See *Fisher Sand & Gravel Co*, 494 Mich at 553. Here, plaintiff claimed in his complaint that the breach occurred in 2014, but in support of this claim, he presented a series of letters from February 2012, and a contract, also from 2012.[5] None of these documents provide proof that the alleged breach of contract occurred in 2014. Further, although the February 2012 letter plaintiff wrote to Franklin indicates that his payment would be due within seven days of receipt of an invoice, plaintiff never presented evidence that any invoices were sent to Franklin. At best, plaintiff averred in an affidavit attached to his improperly submitted supplemental filing that "Franklin failed to pay [plaintiff] after repeated demands." The only other document plaintiff presented to support the claim that a breach occurred in 2014 was a printout of an AOL search indicating that Franklin's album was released on October 17, 2014. Had plaintiff attached evidence of unfulfilled invoices sent to Franklin in 2014, or some other evidence suggesting that the breach occurred in 2014, there may have been enough evidence to preclude summary disposition under MCR 2.116(C)(7). Instead, plaintiff presented a plethora of evidence showing that 2012 was the operative year for the breach-of-contract claim, thus contradicting his claim in the complaint that the breach occurred in 2014. Viewing the evidence in the light most favorable to the nonmoving party, we conclude that plaintiff has presented no evidence to support the contention that a genuine issue of material fact exists regarding the date on which the statute of limitations began to run. Accordingly, the trial court did not err by granting summary disposition to defendant on statute-of-limitations grounds.

Plaintiff further argues that the trial court erred by failing to consider Franklin's purported holographic will, which he attached to his complaint. In the complaint, plaintiff alleged that "[o]n March 31, 2014, Franklin being of sound mind and conscientious of her obligation to pay Plaintiff's office, Franklin recorded $25,000 as the outstanding balance owed in her *holographic Last Will and Testament*. Franklin's obligation to pay Plaintiff's bonus, was due when the album was successfully released." The purported will is difficult to decipher. However, it is unnecessary to determine what the purported will says and whether it is valid. When responding to defendant's motion for summary disposition, plaintiff stressed that the $25,000 purportedly mentioned in the will was *in addition* to the $35,000 that he was owed from the 10% commission. Thus, the will is

[5] We recognize that plaintiff presented a separate copy of the RCA contract below, and that the second copy indicated that it was "made as of January 16, 2013." However, even if January 16, 2013 is the correct date on which the breach occurred, the 2013 contract is still insufficient to show that plaintiff filed his 2020 complaint within the six-year limitations period, MCL 600.5807(9).

irrelevant to the matter of determining whether plaintiff's claim regarding the RCA contract is barred by the statute of limitations, even assuming that it acknowledges a debt of $25,000. Through plaintiff's own concession, that $25,000 debt was for legal services *not related to the RCA contract negotiation*. Plaintiff appears to be arguing that he was simply owed $25,000 for some unrelated services. Because the holographic will does not pertain to any of plaintiff's claims, it is irrelevant to the matter at hand. Therefore, the trial court did not err by failing to address it.

2. COUNT II

Plaintiff next argues that the trial court erred by granting defendant's motion for summary disposition related to Count II. Although we agree that summary disposition was not warranted under MCR 2.116(C)(7), the trial court properly dismissed this count under MCR 2.116(C)(10).

In support of Count II, plaintiff alleged:

> 17. In August 2018 to October 31, 2018, Franklin's Personal Representative Sabrina Owens engaged Plaintiff to continue its services regarding Franklin's First Living America Award from U.S. Postal Stamp Office similar to what Plaintiff did for Rosa Parks (Exhibit F)[.]
>
> 18. The Personal Representative incurred Attorney fees of $7,000 on behalf of Franklin's estate in regards to the U.S. Postal Stamp Award which Plaintiff had negotiated (Exhibit F)[.]

Defendant moved for summary disposition under both MCR 2.116(C)(7) and (10), arguing that the only relied-upon document, a series of e-mails attached as Exhibit F to the complaint, demonstrated that any work done by plaintiff occurred in 2012, which made the 2020 complaint untimely. Defendant further argued that Exhibit F demonstrated that Owens did not "engage" plaintiff for any services. The trial court agreed with defendant and granted his motion on both grounds.

Although plaintiff repeatedly alleges that Owens had "engaged" or "authorized" him to perform legal services, he asserts in other filings that this Count II is a claim for quantum meruit. "The theory underlying quantum meruit recovery is that the law will imply a contract in order to prevent unjust enrichment. As such, claims for unjust enrichment and quantum meruit have historically been treated in a similar manner." *NL Ventures VI Farmington, LLC v City of Livonia*, 314 Mich App 222, 241; 886 NW2d 772 (2015) (quotation marks, citations, and ellipsis omitted). Thus, the elements to establish a claim of unjust enrichment are the same as the elements needed to establish a claim of quantum meruit. *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 195; 729 NW2d 898 (2006). But the "gravamen of an action is determined by reading the complaint as a whole, and by looking beyond mere procedural labels to determine the exact nature of the claim." *Adams v Adams (On Reconsideration)*, 276 Mich App 704, 710-711; 742 NW2d 399 (2007). Looking at the substance of the complaint, plaintiff alleged a claim for breach of contract. The claim was premised on Owens having "engaged Plaintiff to continue its services," and to "engage" means "to arrange to obtain the use or services of." *Merriam-Webster's Collegiate Dictionary* (11th ed). Quantum meruit does not apply if there is an express contract. *Able Demolition v Pontiac*, 275 Mich App 577, 586 n 4; 739 NW2d 696 (2007). Regardless, the

limitations period for both a contract claim and a claim for quantum meruit is six years. See *Huhtala v Travelers Ins Co*, 401 Mich 118, 126; 257 NW2d 640 (1977) (stating that because equitable claims "depend on the existence of contract or contract principles," they are governed by the six-year contract limitations period).

The complaint alleged that Owens had engaged plaintiff in August to October 2018 to perform legal services in connection with the U.S. stamp award. However, plaintiff also alleged that the $7,000 sought had been incurred "in regards to the U.S. Postal Stamp Award which Plaintiff had negotiated." While this latter allegation suggests that the $7,000 was incurred from the initial contract negotiation with the USPS, in response to defendant's motion for summary disposition, plaintiff clarified that the $7,000 was for 17 hours of work performed between September 12, 2018, and October 17, 2018, which related to the prior subject matter. This position arguably is not inconsistent with the complaint's allegations because plaintiff had alleged that the $7,000 was incurred "in regards" to the prior work; thus, the more recent work simply could be in addition and related to the prior work. As noted, Exhibit F, attached to plaintiff's complaint, is a series of e-mails from October 2018, referencing very recent communications plaintiff had with the USPS. Thus, they tend to show that plaintiff had done some work in 2018. Given that the alleged work forming the basis of the claim occurred in 2018, and the complaint was filed only two years later, the trial court erred by dismissing the claim on statute-of-limitations grounds under MCR 2.116(C)(7).

With regard to MCR 2.116(C)(10), the trial court dismissed the claim because there was no genuine issue of fact that Owens had not engaged plaintiff to perform any services. Defendant and the trial court appeared to properly treat the claim as one for breach of contract. The court ruled that because there was no evidence that Owens had agreed to engage, authorize, or hire plaintiff to do the work in question, the claim failed as a matter of law. While responding to defendant's motion for summary disposition, plaintiff again averred that Owens had "authorized" him to follow up with the USPS. In support, he solely relied on the same e-mail chain from October 2018. There is nothing in the e-mail chain to show that Owens authorized plaintiff to perform any services. The oldest e-mail in the chain is from Wednesday, October 17, 2018, in which plaintiff thanked someone from the USPS for the prompt reply on "Tuesday," presumably the previous day. Plaintiff then added that he has "not been in contact with anyone nor receive [sic] any status update of the matter that was signed in 2012." The next e-mail in the chain is Owens telling plaintiff, "Please let this be your last request in this matter. They're obviously not interested."

This e-mail chain, including Owens's statement, does not show that Owens hired or otherwise authorized plaintiff to perform any work. The evidence only shows that plaintiff had contacted the USPS leading up to October 17, 2018, without showing that Owens had authorized or requested such action. Accordingly, with no evidence of an agreement or "engagement" between plaintiff and Owens, the claim for breach of contract necessarily fails under MCR 2.116(C)(10), as no genuine issue of material fact has been presented to show that a contractual relationship existed.

Plaintiff also complains on appeal that the trial court stayed discovery prematurely. We infer that plaintiff's position is that it was premature to grant summary disposition under MCR 2.116(C)(10) before discovery had started, yet alone concluded. It is generally understood that a motion under MCR 2.116(C)(10) may be premature if discovery has not yet been conducted.

See *St Clair Med, PC v Borgiel*, 270 Mich App 260, 271; 715 NW2d 914 (2006) ("A motion for summary disposition under MCR 2.116(C)(10) is premature if discovery has not closed, unless there is no fair likelihood that further discovery would yield support for the nonmoving party's position."); *Colista v Thomas*, 241 Mich App 529, 537; 616 NW2d 249 (2000) ("Generally, a motion for summary disposition under MCR 2.116(C)(10) is premature when discovery on a disputed issue has not been completed."). However, in the trial court, plaintiff never relied on the lack of discovery to oppose defendant's motion for summary disposition. Because plaintiff never argued that summary disposition was premature, he has not preserved any such argument for appeal, and the issue is waived. See *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, ___ Mich App ___, ___; ___ NW3d ___ (2023) (Docket No. 359090); slip op at 4-5. Additionally, plaintiff not only failed to oppose defendant's motion on that ground, but moved for summary disposition himself under that same (C)(10) subrule, claiming that there was no genuine question of fact. Plaintiff's implicit position in the trial court was that the lack of discovery was not a bar to summary disposition under MCR 2.116(C)(10). "A party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken in the trial court." *Living Alternatives for Developmentally Disabled, Inc v Dep't of Mental Health*, 207 Mich App 482, 484; 525 NW2d 466 (1994).

Finally, summary disposition is not premature if there is no fair likelihood that further discovery would yield support for the nonmoving party's position. *Colista*, 241 Mich App at 537. Plaintiff has put forth no argument explaining how further discovery would support his position. Presumably, plaintiff's personal knowledge of the specific acts Owens took to authorize the 2018 work could have been presented in a valid affidavit, or plaintiff may have possessed documents detailing Owens's authorizations, which should have been presented to the trial court in the first instance. Because further discovery appears futile and would not yield support for plaintiff's position, the lack of discovery is not a bar to granting defendant's motion for summary disposition on Count II.

3. COUNT III

Plaintiff finally argues that the trial court erred when it determined that his conversion claim was time-barred. We disagree.

The parties dispute the applicable limitations period for a conversion claim. Defendant argues that the trial court properly applied MCL 600.5805, which provides that "the period of limitations is 3 years after the time of the death or injury for all actions to recover damages for the death of a person or for injury to a person or property." Plaintiff, on the other hand, argues that the catchall provision of MCL 600.5813 controls, which states that "[a]ll other personal actions shall be commenced within the period of 6 years after the claims accrue."

This Court has already addressed this precise question, holding that "conversion is a wrongful act of dominion over another person's property . . . and as such it constitutes an injury to property governed by the three-year limitations period." *Tillman v Great Lakes Truck Ctr*, 277 Mich App 47, 49; 742 NW2d 622 (2007). In so concluding, the Court acknowledged that it "has not consistently resolved this issue." *Id.* at 48. The Court explained:

> In *Davidson v Bugbee*, 227 Mich App 264, 269; 575 NW2d 574 (1997), this Court stated that the six-year period applied, but without explaining its basis for that conclusion; it appears that neither party in that case attempted to argue that a different period might apply. More recently, this Court has explained in more detail that conversion is a wrongful act of dominion over another person's property . . . and as such it constitutes an injury to property governed by the three-year limitations period. *Brennan v Edward D Jones & Co*, 245 Mich App 156, 158; 626 NW2d 917 (2001). Two earlier cases from this Court indicated, again without explanation, that the six-year limitations period applied. *Miller v Green*, 37 Mich App 132, 138; 194 NW2d 491 (1971); *Drapefair, Inc v Beitner*, 89 Mich App 531, 545 n 3; 280 NW2d 585 (1979). Another earlier case from this Court reached the opposite result, explaining that conversion is controlled by the three-year limitations period applicable to injuries to property even though the injury in conversion is generally not tangible. *Continental Cas Co v Huron Valley Nat'l Bank*, 85 Mich App 319, 323-324; 271 NW2d 218 (1978). These three latter cases are not binding under MCR 7.215(J)(1). [*Tillman*, 277 Mich App at 48-49.]

Nevertheless, this Court ultimately concluded that *Brennan* and *Continental Cas Co* were correctly decided because only those decisions were consistent with the binding precedent of *Janiszewski v Behrmann*, 345 Mich 8, 32; 75 NW2d 77 (1956), which held that actions for conversion of personal property were barred by the statute of limitations for injury to a person or property. *Tillman*, 277 Mich App at 49.

Plaintiff does not address *Tillman* or *Janiszewski* and offers no contrary analysis except to simply cite *Thoma* and *Davidson*. As *Tillman* explained, although *Thoma* involved a claim for conversion, it never addressed a limitations period, see *Thoma*, 360 Mich at 437-439 (analyzing whether the plaintiffs proved a prima facie case of conversion). Likewise, *Davidson* never explained how it determined that the six-year limitations period applied, see *Davidson*, 227 Mich App at 269. Therefore, it is clear that under binding authority, conversion is an injury to property, subject to the three-year limitations period in MCL 600.5805(2). Consequently, plaintiff's claim of conversion, which is premised on Franklin's retention of funds from 2014, is time-barred, and the trial court did not err by dismissing the claim on that ground.[6]

Affirmed. Defendant, as the prevailing party, may tax costs. MCR 7.219(A).

/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly
/s/ Michelle M. Rick

[6] Because we conclude that all three of plaintiff's claims were properly dismissed by the trial court, we decline to address whether the court should have instead granted plaintiff's motion for summary disposition under MCR 2.116(C)(10).