

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Edgardo Javier Martinez
Indianapolis, Indiana

ATTORNEY FOR APPELLEE

Brian R. DeHem
DeHem Law, LLC
Noblesville, Indiana

IN THE COURT OF APPEALS OF INDIANA

Edgardo Martinez and the Law
Office of Edgardo Martinez,
Appellants-Defendants,

v.

The Amicus Legal Group, The
Law Office of Ruth M. Rivera,
LLC, and Ruth Rivera,
Appellees-Plaintiffs

December 14, 2023

Court of Appeals Case No.
23A-PL-1194

Appeal from the Marion Superior
Court

The Honorable Heather A. Welch,
Judge

Trial Court Cause No.
49D01-2205-PL-18002

Memorandum Decision by Judge Weissmann
Chief Judge Altice and Judge Kenworthy concur.

Weissmann, Judge.

- [1] Ruth Rivera obtained a \$158,302.31 summary judgment against Edgardo Martinez (Edgardo) and The Law Office of Edgardo Martinez (the Law Office) for their failure to pay Rivera under an oral contract for her legal and paralegal services.¹ Edgardo and the Law Office (collectively, the Martinezes) appeal, claiming there were genuine issues of material fact as to the amount of Rivera’s damages. We find that Rivera’s own designated evidence presented conflicting facts as to the frequency with which the Martinezes were required to pay her, the period in which they allegedly failed to pay, and the amount of interest, if any, they accrued during their period of nonpayment. We therefore reverse the trial court’s damages award and remand for further proceedings.

Facts

- [2] In early 2019, the Martinezes and Rivera entered into an oral contract under which Rivera agreed to perform legal and paralegal services in various immigration “matters” the Martinezes would assign to her. App. Vol. II, p. 41. The Martinezes agreed to pay Rivera “flat fees” of \$3,500 and \$800 for her respective services and to reimburse Rivera for the expenses she incurred. *Id.* at 16-17, 40-41.

¹ The Amicus Legal Group and The Law Office of Ruth M. Rivera, LLC were co-contractors with Rivera and are also plaintiffs/appellees in this lawsuit. For simplicity, we refer to all three collectively as “Rivera.” We similarly refer to Edgardo and the Law Office collectively as the “Martinezes”; however, it is not clear from the record that they are separate entities.

[3] The parties' contractual relationship lasted 2½ years. In July 2021, the Martinezes notified Rivera that they were terminating their contract for business reasons. Rivera then "surprised" the Martinezes with a sizeable invoice for services rendered, expenses incurred, and interest accrued during the year 2020. *Id.* at 49. When the Martinezes refused to pay the invoice, Rivera sued them for breach of contract, unpaid account, and unjust enrichment.

I. Rivera's Motion for Summary Judgment

[4] Rivera eventually moved for summary judgment on her claims and filed a separate "Designation of Evidence" in support thereof. *Id.* at 37. Among other evidence, Rivera's designation broadly listed the following: "Final Invoice"; "Affidavit of Ruth Rivera"; "Plaintiffs' First Set of Discovery Requests to Edgardo"; "Plaintiffs' First Set of Discovery Requests to the Law Office"; "Defendant's Responses to Discovery"; and "Payment Records." *Id.*

Final Invoice

[5] The Final Invoice was the invoice Rivera sent to the Martinezes after they terminated their contract. The invoice did not provide any details regarding the services Rivera performed or the expenses she incurred in 2020. It simply indicated that the Martinezes owed Rivera a balance of \$153,658.00, broken down as follows:

Description	Quantity	Rate	Amount
Legal services from Jan. 1, 2020 - Dec. 31. 2020	26	\$3,500.00	\$91,000.00
Paralegal services from Jan. 1, 2020 - Dec. 31. 2020	26	\$800.00	\$20,800.00
Incidental Expenses	1	\$1,183.80	\$1,183.80
Accrued Interest (1.5% x 24 months = 36%)	1	\$40,674.20	\$40,674.20

Id. at 72.

Affidavit of Ruth Rivera

[6] In the Affidavit of Ruth Rivera, Rivera swore that the Martinezes owed her the amount asserted in the Final Invoice plus additional accrued interest for a total of \$158,302.31. *Id.* at 43. The affidavit also revealed the following facts regarding Rivera and the Martinezes’ contractual dealings:

- Their flat fee arrangement called for the Martinezes to make “two monthly payments of \$3500” for Rivera’s legal services and “two monthly payments of \$800” for her paralegal services. *Id.* at 40-41.
- The Martinezes agreed to pay compounding interest on all unpaid fees and expenses at a rate of 1.5% per month. *Id.* at 41.
- “[F]rom December 2019 through September 2020,” the Martinezes did not make any payments to Rivera under the contract. *Id.*
- “[The Martinezes] failed to pay the 26 payments related to legal matters assigned to [Rivera], including unpaid legal services, paralegal services, expenses, and interest.” *Id.*

Plaintiffs’ First Sets of Discovery Requests

[7] The First Set of Discovery Requests to Edgardo and the First Set of Discovery Requests to the Law Office consisted of identical interrogatories, requests for

admission, and requests for production of documents. The only difference was that one set was directed at Edgardo, and the other was directed at the Law Office. Though both were served on Edgardo, individually, he only responded to the latter. *Id.* at 93, 111. Notably, the requests for admission asked Edgardo and the Law Office each to admit they “owe[d] a total amount outstanding of \$153,658 plus interest to the Plaintiffs.” *Id.* at 91, 109.

Defendant’s Discovery Responses

[8] Defendant’s Discovery Responses consisted of Edgardo’s responses to the First Set of Discovery Requests to the Law Office. In them, Edgardo denied Rivera’s request that the Law Office admit to owing “\$153,658 plus interest” on the contract. *Id.* at 61. Defendant’s Discovery Responses also revealed the following facts regarding Rivera and the Martinezes’ contractual dealings:

- For “each file or matter assigned,” the Martinezes agreed to pay Rivera flat fees of \$3,500 for her legal services and \$800 for her paralegal services *Id.* at 60, 61.
- The Martinezes did not agree to pay 1.5% monthly interest on all unpaid fees and expenses. *Id.* at 61.
- Rivera was required to send the Martinezes bi-weekly invoices that “provide[d] details of the work performed during the invoiced period.” *Id.* at 49, 50.
- The Martinezes “promptly and fully paid” all invoices that Rivera timely provided. *Id.* at 49.
- From December 2019 to October 2020, Rivera did not send the Martinezes a single invoice. *Id.* at 50.

- During the COVID-19 pandemic, “Immigration Courts were closed”; there were “no remote hearings”; “[t]here was hardly any legal work to do”; and the services Rivera had to perform were “greatly diminished.” *Id.* at 50.

Payment Records

[9] According to Rivera, the Payment Records were produced by the Law Office during discovery and showed that the Martinezes did not make any payments to Rivera from December 2019 through September 2020. The Payment Records also indicated that:

- Between February 15 and October 15, 2019, Rivera sent the Martinezes “Bills” at intervals ranging from 1 to 7 weeks. *Id.* at 66-67.
- Rivera’s “Bills” sought payment for amounts ranging from \$2,000 to \$4,000. *Id.*
- The Martinezes promptly issued “Bill Payments” to Rivera for the full amount of each of her “Bills.” *Id.*
- From December 2019 to October 2020, Rivera did not send the Martinezes any “Bills.” *Id.* at 66.

II. The Martinezes’ Response in Opposition

[10] In response to Rivera’s motion for summary judgment, the Martinezes submitted three unauthenticated exhibits and a memorandum of law containing numerous unsworn factual assertions about his and Rivera’s contractual

dealings.² Rivera moved to strike these exhibits and assertions as inadmissible evidence, and the trial court eventually granted Rivera’s motion. Thus, Rivera’s designation provided the only evidence on which the trial court could make its summary judgment ruling.

III. Summary Judgment Hearing

- [11] At a hearing on Rivera’s summary judgment motion, Rivera argued that her affidavit established that the Martinezes had breached their oral contract by failing to make 26 semi-monthly payments for Rivera’s legal and paralegal services, plus expenses and interest, and that her damages were \$158,302.31. In response, the Martinezes echoed the facts revealed in Defendant’s Discovery Responses, arguing that their contract with Rivera “never contemplated” that they would pay her regardless of the work services performed. Tr. Vol. II, p. 14.
- [12] Rivera claimed the Martinezes’ argument was without an evidentiary basis. But she alternatively argued that her damages were conclusively established as to Edgardo because he failed to respond to Plaintiffs’ First Set of Discovery Requests to Edgardo, individually, including the request that he admit to owing “\$153,658 plus interest” on the contract. App. Vol. II, p. 109. *See generally City of Muncie v. Peters*, 709 N.E.2d 50, 54 (Ind. Ct. App. 1999) (“Under [Indiana] Trial Rule 36, the failure to respond in a timely manner to a request for

² The Martinezes’ exhibits purported to be: (1) an internet news article regarding the COVID-19 pandemic’s effect on U.S. immigration courts; (2) an email Rivera sent to Edgardo regarding a postponed immigration court hearing in April 2020; and (3) an unsigned settlement agreement that Rivera tendered to the Martinezes in an effort to resolve his alleged \$153,658.00 balance on their contract.

admissions causes those matters to be admitted and conclusively established by operation of law.”).

[13] Though Edgardo had denied the same request for admission when he responded to the Plaintiffs’ First Set of Discovery Requests to the Law Office, Rivera asserted that Edgardo and the Law Office were “separate entities” and required separate responses. *Id.* at 6. Edgardo denied this assertion. *Id.* at 9 (“[I]t’s not like I have . . . a corporation or an LLC or anything like that.”). And after the summary judgment hearing, he filed a motion to withdraw his purportedly deemed admissions to the requests for admission in Plaintiffs’ First Set of Discovery Requests to Edgardo.

IV. Trial Court Orders

[14] The trial court never ruled on Edgardo’s motion to withdraw his deemed admissions, and the court seems to have decided Rivera’s motion for summary judgment without considering them. Relying primarily on the Affidavit of Ruth Rivera and Defendant’s Discovery Responses, the court found no genuine issue of material fact that the Martinezes breached their oral contract with Rivera. The court therefore entered summary judgment as to the Martinezes’ liability on Rivera’s breach of contract claim, dismissed as moot Rivera’s claims for unpaid account and unjust enrichment, and set a hearing on the issue of Rivera’s damages.

[15] Rivera quickly moved the trial court to vacate the damages hearing and enter summary judgment on the issue of her damages. Citing her affidavit, Rivera asserted: “[T]here is absolutely no designated evidence disputing [Rivera’s] designation that the amount owed by [the Martinezes] is \$158,302.31.” *Id.* at 159. The trial court agreed and amended its summary judgment order to award Rivera \$158,302.31. The Martinezes appeal the amount of damages awarded.

Discussion and Decision

[16] “When reviewing a grant or denial of a motion for summary judgment our standard of review is the same as it is for the trial court.” *Reed v. Reid*, 980 N.E.2d 277, 285 (Ind. 2012). The moving party “bears the initial burden of making a prima facie showing that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law.” *Gill v. Evansville Sheet Metal Works, Inc.*, 970 N.E.2d 633, 637 (Ind. 2012). If the movant fails to carry its burden, summary judgment is improper. *Id.* But if the movant succeeds, “the nonmoving party must come forward with evidence establishing the existence of a genuine issue of material fact.” *Id.*

[17] “Summary judgment shall not be granted as of course because the opposing party fails to offer opposing affidavits or evidence, but the court shall make its determination from the evidentiary matter designated to the court.” Ind. Trial Rule 56(C). “All facts established by the designated evidence, and all reasonable inferences from them, are to be construed in favor of the nonmoving party.” *Herron v. Anigbo*, 897 N.E.2d 444, 448 (Ind. 2008).

- [18] The Martinezes claim there were genuine issues of material fact as to the amount of Rivera’s damages, and we agree.
- [19] Rivera essentially claimed the Martinezes were required to pay her a flat, semi-monthly fee of \$4,300 (\$3,500 for legal services plus \$800 for paralegal services). But when viewed in the light most favorable to the Martinezes, the designated evidence indicates that they were required to pay Rivera no more than \$4,300 for each immigration matter they assigned. And to receive payment, Rivera was required to provide the Martinezes with invoices detailing the services she performed and the expenses she incurred. Rivera, however, did not send the Martinezes a single invoice during their alleged period of nonpayment. She also has never provided the Martinezes with an invoice detailing the work she allegedly performed.³ There is also evidence to suggest that Rivera performed “greatly diminished” services during at least a portion of the alleged nonpayment period because of the COVID-19 pandemic. App. Vol. II, p. 50.
- [20] When viewed in the light most favorable to the Martinezes, the designated evidence also shows that they did not agree to pay compounding interest on all

³ Rivera also claims the Martinezes failed to make 26 payments. But the time period covered by the final invoice (January 1 through December 31, 2020) could give rise to no more than 24 semi-monthly payments, and, when limited to the year 2020, the period of nonpayment alleged in Rivera’s affidavit (December 2019 through September 2020) could give rise to no more than 18. Additionally, the designated evidence indicates that, prior to the Martinezes’ alleged period of nonpayment, Rivera’s invoices never sought semi-monthly payments of \$4,300. Rather, Rivera invoiced the Martinezes at intervals ranging from 1 to 7 weeks and for amounts ranging from \$2,000 to \$4,000.

unpaid fees and expenses at a rate of 1.5% per month. But even if they did, Rivera does not appear to have used the correct formula for calculating compounding monthly interest. Rather, she inexplicably multiplied the alleged 1.5% monthly interest rate by 24 months and applied the resulting 36% to the entirety of the Martinezes' alleged principal balance. *Id.* at 72. In doing so, Rivera nearly quadrupled the amount of compounding interest that would have actually accrued under the alleged rate during the 12-month invoice period.⁴

[21] As for Rivera's claim that Edgardo's damages were conclusively established by his failure to respond to the requests for admission in Plaintiffs' First Set of Discovery Requests to Edgardo, a decision on Edgardo's motion to withdraw those deemed admissions is needed. It is not clear from the record that Edgardo and the Law Office are separate entities, and Edgardo affirmatively denied Rivera's request that the Law Office admit to owing "\$153,658 plus interest" on the contract in Defendant's Discovery Responses. *Id.* at 61.

⁴ As best we can tell, the Martinezes' total indebtedness under Rivera's alleged facts would be properly calculated as the future value of an ordinary annuity: $FV = PMT \frac{(1+i)^n - 1}{i}$. That, however, is just another issue for the parties to litigate on remand. *See generally Calculating Present and Future Value Annuities*, Investopedia, <https://www.investopedia.com/retirement/calculating-present-and-future-value-of-annuities/> (last visited Dec. 5, 2023).

Conclusion

[22] For the foregoing reasons, we reverse the trial court's entry of summary judgment as to Rivera's damages and remand for further proceedings.

Altice, C.J., and Kenworthy, J., concur.