

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BIERSDORF & ASSOCIATES, P.C.,	:	
Plaintiff	:	DOCKET NO. 12-00,607
	:	CIVIL ACTION – LAW
vs.	:	
	:	
JAYNE HORNER, EMIL P. HORNER, and	:	
MARY L. HORNER,	:	
Defendants	:	

* * * * *

BIERSDORF & ASSOCIATES, P.C.,	:	
Plaintiff	:	DOCKET NO. 12-00,607
	:	CIVIL ACTION – LAW
vs.	:	
	:	
MARY L. HORNER,	:	
Defendant	:	

ORDER

AND NOW, this 15th day of November, 2012, following oral argument on Defendant Mary Horner's Preliminary Objections, it is hereby ORDERED and DIRECTED as follows:

I. Objection to Inclusion of Deceased Defendants

Upon agreement of the parties, deceased Jayne Horner and Emil P. Horner are hereby DISMISSED as from this action. The caption shall be amended as set forth above.

II. Objection to Legal Insufficiency of Counts I and II

Defendant's request for a demurrer to Count I (Breach of Contract) is SUSTAINED, and Defendant's request for a demurrer to Count II (Quantum Meruit) is OVERRULED. Pa. R.C.P. 1028(a)(4) provides that a party may file an objection if a pleading is legally insufficient, also known as a request for demurrer. If a party cannot recover on one of its claims, the Court should sustain the objection to the claim; however, if doubt exists as to recovery, the Court should

overrule the objection. *Toney v. Chester County Hosp.*, 36 A.2d 83, 99-100 (Pa. 2011); *Bilt-Rite Contractors, Inc. v. Architectural Studio*, 866 A.2d 270, 274 (Pa. 2005). In this instance, Defendant argues that a demurrer must be granted on either Plaintiff's breach of contract or unjust enrichment claim because Plaintiff cannot recover, at trial, under both of these claims. Generally, the Court agrees with Defendant's argument.

It is true that Plaintiff cannot recover under both of these theories at trial; however, it is also true that parties may plead in the alternative, pursuant to Pa. R.C.P. 1020. Yet, in viewing the amended complaint as it stands, the Court finds that the only claim under which Plaintiff may recover in this action is its claim in quantum meruit. *Hiscott and Robinson v. King*, 626 A.2d 1235, 1237 (Pa. Super. Ct. 1993), *appeal denied*, 642 a.2d 487 (Pa. 1994); *Sundheim v. Beaver County Building & Loan Association*, 14 A.2d 349, 351 (Pa Super. Ct. 1940). *See also Francis Gerard Jason, P.C. v. Frost*, 618 A.2d 1003, 1007 n.2 (Pa. Super. Ct. 1993). Within the Commonwealth, it has been long held that "[a] client may terminate his relation with an attorney at any time, notwithstanding a contract for fees, but if he does so, thus making the performance of the contract impossible, the attorney is not deprived of his right to recover on quantum meruit a proper amount for the services which he as rendered." 14 A.2d at 351 (cited by 626 A.2d at 1237). The Amended Complaint avers that Plaintiff received an award from the Board of View for Defendant and that Plaintiff appealed this award to the Court of Common Pleas as directed to do so by Defendant. Then, during the course of this appeal, Defendant fired Plaintiff. Therefore, there is no dispute that Defendant fired Plaintiff at a time when, under the terms of the contingent fee agreement, nothing was due to Plaintiff as compensation. *See* 626 A.2d at 1237. Thus, the Court finds, on the basis of the Amended Complaint, Plaintiff is limited to a quantum meruit-

based recovery, not a recovery based in breach of contract. Therefore, the Court OVERRULES the demurrer request, without prejudice.

III. Objection to Specificity of Complaint

Defendant's request for a more specific complaint is SUSTAINED. Pursuant to Pa. R.C.P. 1019(a) and 1019(f), items of special damages shall be stated with specificity. Additionally, in *Commonwealth v. Shipley Humble Oil Co.*, 370 A.2d 438 (Pa. Cmwlth. Ct. 1977), our Commonwealth Court provided that providing that 1019(a) specificity may be applied to a damages claim. In this instance, the Court believes that Plaintiff shall claim its request for monetary judgment for legal services and costs in the amount of \$104,241.97, with specificity.

Plaintiff shall file a Second Amended Complaint within twenty (20) days, in conformity with this Order.

BY THE COURT,

Date

Richard A. Gray, J.

RAG/abn

cc: Dan Biersdorf, Esq.
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John R. Bonner, Esq.
Prothonotary
Gary L. Weber, Esq.