

IN THE COUNTY COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR SUMTER COUNTY, FLORIDA

J. CHRISTOPHER CARVER, ESQ. d/b/a
CARVER LAW GROUP
112 N. Jumper Drive
Bushnell, FL 33513,

CASE NO. 2013 CC 000018

Plaintiff,

vs.

OMAH J. KISER
428 San Marino Drive
Lady Lake, Florida 32159,

Defendant.

FINAL JUDGMENT

THIS CAUSE came before the Court for trial on April 30, 2014, on Plaintiff's Statement of Claim, and this Court, having reviewed the pleadings, considered argument of counsel as well as Plaintiff's written response to Defendant's Motion for Involuntary Dismissal, and being otherwise duly advised in the premise, **FINDS:**

A. Plaintiff, J. Christopher Carver, Esq. d/b/a Carver Law Group, filed a single count complaint against Defendant Omah Kiser for breach of a written contract.

B. Plaintiff's Statement of Claim alleged a cause of action based upon a written contract between the parties for the provision of specified legal services in exchange for \$20,000.00.

C. During Plaintiff's case in chief, Plaintiff testified that Plaintiff did not keep a billing ledger of the time Plaintiff spent working on the various matters set forth in the subject contract.

D. Plaintiff testified that Plaintiff did not keep any record of the time Plaintiff spent working on the various matters set forth in the contract because, according to Plaintiff's

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testimony, Plaintiff was entitled to the \$20,000.00 payment regardless of the time that Plaintiff actually expended.

E. In Plaintiff's Statement of Claim and in Plaintiff's testimony, Plaintiff asserted Defendant owes Plaintiff \$9,726.39, which is the unpaid balance of the \$20,000.00 contractual fee.

F. Plaintiff's agreement with Defendant was a fixed fee agreement. See Black's Law Dictionary (9th ed. 2009) ("fee fixed fee. A flat charge for a service; a charge that does not vary with the amount of time or effort required to complete the service").

G. Plaintiff testified that the client terminated Plaintiff's representation before Plaintiff had performed all of the services listed in the contract.

H. At the conclusion of Plaintiff's case in chief, Defendant made an *ore tenus* motion for involuntary dismissal pursuant to Florida Rules of Civil Procedure Rule 1.420 (b). Fla. R. Civ. P. 1.420 (b) (2013) ("After a party seeking affirmative relief in an action tried by the court without a jury has completed the presentation of evidence, any other party may move for a dismissal on the ground that on the facts and the law the party seeking affirmative relief has shown no right to relief, without waiving the right to offer evidence if the motion is not granted").

I. Defendant asserted, in part, that under Rosenberg v. Levin, when an attorney is employed under a fixed fee contract and the attorney is terminated prior to the conclusion of the agreed upon representation, that attorney's recovery of unpaid attorney's fees is restricted to a modified *quantum meruit* action. *Rosenberg v. Levin*, 409 So. 2d 1016, 1021 (Fla. 1982) ("we adopt the modified *quantum meruit* rule which limits recovery to the maximum amount of the contract fee in all premature discharge cases involving both fixed and contingency employment contracts").

J. Pursuant to the modified *quantum meruit* rule, "a lawyer discharged without cause is entitled to the reasonable value of his services on the basis of *quantum meruit*, but recovery is limited to the maximum fee set in the contract entered into for those services." *Rosenberg v.*

Levin, 409 So. 2d 1016, 1017 (Fla. 1982); *Searcy, Denney, Scarola, Barnhart & Shipley, P.A. v. Poletz*, 652 So. 2d 366, 368 (Fla. 1995) (“under such circumstances, the attorney is entitled to the reasonable value of the services rendered on the basis of *quantum meruit*, but recovery is limited to the maximum fee set in the employment contract”).

K. Under Rosenberg, a trial court computing “the reasonable value of the discharged attorney's services...can consider the totality of the circumstances surrounding the professional relationship between the attorney and client. Factors such as time, the recovery sought, the skill demanded, the results obtained, and the attorney-client contract itself will necessarily be relevant considerations.” *Rosenberg v. Levin*, 409 So. 2d 1016, 1022 (Fla. 1982).

L. Defendant asserted that Plaintiff had not pled a cause of action for *quantum meruit*. Defendant further asserted that Plaintiff's damages calculation was, by Plaintiff's own testimony, based on traditional contract principles of obtaining the balance remaining under the agreed upon contract price.

M. At trial, Plaintiff requested additional time to conduct research and properly respond to Defendant's Motion for Involuntary Dismissal. The Court granted Plaintiff an additional nine days to research and respond to Defendant's Motion for Involuntary Dismissal.

N. In Plaintiff's Response to Defendant's Motion for Involuntary Dismissal, Plaintiff asserts that Rosenberg is inapplicable to the present action because Rosenberg is only applicable to contingency fee contracts. Plaintiff cites no other case law or authority to support his argument.

O. Plaintiff's assertion is incorrect. Rosenberg clearly states that the modified *quantum meruit* rule “limits recovery to the maximum amount of the contract fee in all premature discharge cases involving both fixed and contingency employment contracts.” *Rosenberg v. Levin*, 409 So. 2d 1016, 1021 (Fla. 1982) (emphasis added).

P. By Plaintiff's own testimony, Plaintiff's contract with Defendant was for the provision of legal services in exchange for fixed fee compensation, and Plaintiff was terminated before the conclusion of the legal representation set forth in Plaintiff's contract. As such,

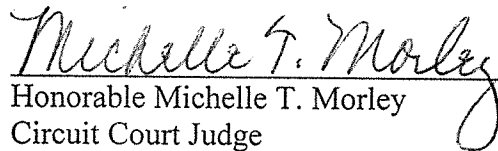
Rosenberg v. Levin is applicable to this action. Plaintiff can only recover under a theory of *quantum meruit*. *Rosenberg v. Levin*, 409 So. 2d 1016, 1019 and 1021 (Fla. 1982).

Q. Although the evidence presented on the work performed by Plaintiff implies that Plaintiff probably earned more than what he charged, he did not plead for *quantum meruit* and therefore did not provide due process to Defendant by giving her notice that he might seek to recover under that equitable theory, nor did he invoke the Court's jurisdiction to hear such a claim.

It is, therefore, **ORDERED AND ADJUDGED** that:

1. Judgment is entered for Defendant.
2. Plaintiff shall take nothing by this action and the parties shall go hence without day.

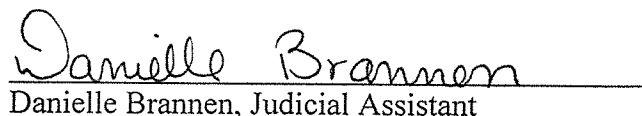
ORDERED AND ADJUDGED in Chambers in Bushnell, Sumter County, Florida this 2nd day of June, 2014.



Honorable Michelle T. Morley
Circuit Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been forwarded by US Mail to Zachary T. Broome, Esq., and Todd J. Mazenko, Esq., Bowen Radson Schroth, P.A., Attorneys for Defendant, 600 Jennings Ave, Eustis, Florida 32726 and to Christopher Carver, Esq., Carver Law Group, Attorney for Plaintiff, 112 N Jumper Drive, Bushnell, Florida 33513, and Anthony Comparetto, Comparetto Law Firm, Attorney for Plaintiff, 5340 Central Ave. St. Petersburg, Florida 33707 this 2d day of June, 2014.



Danielle Brannen, Judicial Assistant