**IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI**

Town & Country Masonry, Plaintiff, vs. Bas Payroll Defendant.	Cause No. 09SL-CC03330-01 Division 19

ORDER AND JUDGMENT

The trial of this matter having concluded before the court on February 27, 2014, the court having considered the testimony, the evidence, the record, and being fully advised in the premises makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. That Plaintiff Town and Country Masonry is an LLC., is a business entity duly organized and located in the State of Missouri, at 2346 Palm Street, St. Louis, MO 63107.

2. That Defendant BAS Payroll is a business entity, duly organized and located in the State of Missouri at 5200 Westwood Drive, St. Charles, Missouri 63304.

3. That on or about on or about April 18, 2005, Plaintiff and Defendant entered into a

contractual agreement, and pursuant to said agreement Defendant was to provide payroll services to Plaintiff.

4. Both parties testified at trial that the services were to include preparation of payroll checks and payment of payroll taxes. Evidence a trial further revealed that the contract called for the quarterly payment of the payroll taxes.

5. The parties also testified at trial that the agreement gave the Defendant the aut5hroity to withdraw funds from Plaintiff's bank accounts to effectuate the contract.

6. Plaintiff testified and alleged that Defendant failed to make the quarterly tax payments in 2007 and 2008 in a timely manner and as a result is causing him to pay penalties to the IRS in the sum of $36,873.80.

7. Plaintiff further testified and alleged that Defendant although authorized, over drew from Plaintiff's account the sums needed to satisfy his tax obligations in 2007 and 2008 in the amounts of $131.70 and $13, 535.86 respectively and continues to hold these sums.

8. Evidence at trial revealed that from the beginning of the contract in 2005 up to and including 2008, Plaintiff had significant cash flow problems.

9. Defendant testified that on numerous occasions BAS Payroll would attempt to withdraw the necessary funds from Plaintiff's bank account to pay Plaintiff's quarterly taxes, and Plaintiff's bank account would lack the funds to pay Plaintiff's taxes.

10. Bank records produced at trial revealed numerous insufficient funds entries .

11. The credible evidence adduced at trial revealed that in 2007 Plaintiff's cash flow problems were significant, wherein due to the large number of returns for insufficient funds the court finds that Defendant was unable to collect the funds from Plaintiff's account in a timely manner to pay Plaintiff's payroll taxes.

12. Defendant testified at trial that prior to the 4th quarter in 2007 he advised Plaintiff that he would no longer pay Plaintiff's payroll taxes due to Plaintiff's continued cash flow problems and the large number of returns for insufficient funds.

13. Defendant provided and Plaintiff admitted to receiving the quarterly returns from Defendant, from the fourth (4th) quarter of 2007 to the third (3rd) quarter in 2008.

14. Plaintiff, Jeff White testified that he received the quarterly reports from Defendant, and that the reports included information on how to pay his payroll taxes. Each quarterly report contained a letter of instruction stating that quarterly taxes are due. " Please follow the instruction below to keep in compliance with state and federal laws. remember to sign and date each form".

15. Plaintiff Jeff White admitted that on Dec. 26, 2007 he made the quarterly pay payment directly to the Internal Revenue Service (hereinafter IRS) in the amount of $17,169.67, having obtained the payment amount from the quarterly reports provided to him from the Defendant.

16. Evidence at trial revealed that on October 25, 2007 Plaintiff Jeff White entered into agreement with ADP, another payroll service to perform the same functions as

Defendant BAS Payroll, and according to bank records utilized the services of ADP for at least one transaction.

17. The court finds based upon the credible evidence and both parties testified that Defendant Scott Bryan continued to prepare Plaintiff's payroll and file quarterly tax returns for Plaintiff on more than one occasion in 2008 at Plaintiff's request.

18. Earl Blanche Jr., Plaintiff's expert, testified at trial that he was Plaintiff's oldest brother, a CPA and had retired from the IRS after 36 years of service. Mr. Blanche testified that he prepared the Plaintiff's corporate tax returns, and did so on an annual basis.

19. Earl Blanche testified that he informed Plaintiff Jeff White that he needed to pay his taxes on a semi-weekly rather than on a monthly basis as Plaintiff's payroll was now over $50,000.00, and as a result penalties were assessed.

20. Both Jeff White and Earl Blanche, Jr. testified that they contacted the BAS Payroll office and spoke with office personnel about when BAS should the pay taxes.

21. Based on the credible evidence adduced at trial the court finds that neither Jeff White nor Earl Blanche, Jr. ever provided Defendant Scott Bryan written notice, or a written request concerning any change as to when to pay the required taxes, or that the taxes should be paid semi-weekly rather than on a monthly basis as per the contract.

22. Defendant Scott Bryan testified that due to constant cash flow problems of Plaintiff his employees would pay Plaintiff's taxes with company funds. Thereafter, would try to

recoup the company money from Plaintiffs account when Plaintiff's checks finally cleared and the funds were available. He further testified that as a result of those actions, he had to fire an employee.

23. Witness Earl Blanche testified that he was able to get some of the penalties owed by Plaintiff to the IRS abated.

24. The court finds that based on the credible evidence that the late tax payments to the IRS were the result of the Plaintiff's continuing and significant cash flow problems and not due solely to the actions of Defendant's employee(s), who according to Plaintiff only tried to assist him, when he contacted the office. As a result, the court does not find the Defendant responsible for the late tax payments.

25. The court does find based upon the credible evidence that the Defendant, though authorized, did overdraw Plaintiff's account the amount of $131.70 in 2007 and $13,535.86 in 2008 needed to satisfy Plaintiff's tax obligations for those years.

26. Plaintiff's counsel has requested attorney's fees. Contract does not provide for attorney's fees. Under Missouri law the request for Attorney's is denied.

CONCLUSIONS OF LAW

The court hereby Orders and enters Judgment in favor of Plaintiff and against Defendant in the sum of $13,667.56 which represents $131.70 and $13,535.86 collectively. The court assesses interest on the judgment at the rate of 9% per annum. Each party to pay their own attorney's fees. Costs are taxed against the Defendant.