

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
ASSOCIATE CIRCUIT DIVISION
AT KANSAS CITY**

[REDACTED])	
)	
Plaintiff,)	
)	
v.)	Case No. [REDACTED]
)	DIVISION [REDACTED]
[REDACTED])	
)	
Defendant.)	

JUDGMENT

On May 18, 2021 and May 24, 201, this matter came before the Court for trial. Plaintiff appeared in person, and through counsel. Defendant appeared in person, and through counsel. Plaintiff offered evidence and argument in support of its position. Defendant moved for a directed verdict at the conclusion of Plaintiff’s case-in-chief. The Court denied the motion. The Defendant offered evidence and argument in support of his respective position. The Court then took the matter under advisement. Now on this 6th day of August, 2021, after consideration of the evidence and arguments and after being duly advised in the premises, the Court finds it has jurisdiction over the parties and the subject matter. The Court finds in favor of Plaintiff and against Defendant on Count I of the Petition for Damages; and in favor of Defendant and against Plaintiff on Counts II and III of the Petition for Damages.

I. BREACH OF CONTRACT

Plaintiff asserts a breach of contract claim in Count I of its Petition for Damages. Specifically, Plaintiff, [REDACTED] claims that Defendant breached a contract between Plaintiff and Defendant by failing and refusing to pay for the labor, material, supplies, services and incidentals furnished to Defendant under a contract to lay concrete (hereinafter “the job”) for the

principal amount of Twenty-Five Thousand Dollars (\$25,000.00). Plaintiff asserts the bid proposal for \$16,505.00 is a valid contract between Plaintiff and Defendant. *See* Plaintiff's Ex. 1. Plaintiff's witness testified that during the course of the job, Defendant requested changes that increased the cost of the job to complete the job. Plaintiff asserts the work totaled \$25, 918.00 plus a finance charge of \$388.77 for a total amount due of \$26,306.77. *See* Plaintiff's Ex. 2. Plaintiff received a check for payment of \$16,000.00 signed by Defendant listing ██████████ LLC as the payor. *See* Defendant's Ex. 15. Plaintiff did not endorse or cash the check. *Id.* Defendant asserts that there is no binding contract between the parties. Defendant argues that any contract subject to this Petition is between Plaintiff and ██████████ LLC, rather than Defendant individually, as Defendant acted solely in his capacity as the manager or member of the Missouri Limited Liability Company and thus has no individual liability. *See* Defendant's Ex. 6.

The essential elements of a breach of contract action include: "(1) the existence and terms of a contract; (2) the plaintiff performed or tendered performance pursuant to the contract; (3) a breach of the contract by the defendant; and (4) damages suffered by the plaintiff." *Moore v. Armed Forces Bank, N.A.*, 534 S.W.3d 323, 327 (Mo. Ct. App. W.D. 2017) (quoting *Keveney v. Mo. Military Acad.*, 304 S.W.3d 98, 104 (2010)). For the reasons set forth below, the Court finds in favor of Plaintiff of Count I.

(1) Existence and Terms of the Contract

The Statute of Frauds requires the following agreements be in writing and signed by the party against which enforcement is sought: (1) guarantors, (2) marriages, (3) conveyance of real estate by an agent, (4) sale of lands, (5) leases or agreements that cannot be performed within one year from the making of a contract, and (6) the sale of goods for the price of \$500 or more. *See* Mo. Rev. Stat § 432.010; 400.2- 201 (2021). "[T]he possibility that a contract may be performed within one year is sufficient to avoid the statute of frauds." *Want v. Century Supply Co.*, 508

S.W.2d 515, 516 (Mo. Ct. App. 1974). Despite there not being a signed, written instrument between the parties, the agreement between the Plaintiff and Defendant could have been performed within one year and was indeed performed within one year. The Plaintiff commenced work in July 10, 2018, and completed the work on July 21, 2018. Therefore, the statute of frauds is inapplicable to bar enforcement of the verbal contract made between the Plaintiff and the Defendant.

An agent will be personally liable if he manifests becoming a party to a contract. *Ingram v. Lupo*, 726 S.W.2d 791, 795 (Mo. Ct. App. 1987). “An agent incurs personal liability, regardless of disclosure of the principal, where the agent contracts in his own name, rather than on behalf of his principal.” *Arkansas-Missouri Forest Prods., LLC Lerner*, 486 S.W.3d 438, 455 (Mo. Ct. App. 2016) “Where one who is in fact the agent for another makes a contract with the third person without disclosing the fact of agency, or if he discloses such fact without disclosing the identity of his principal, he will be individually bound by the contract and the third party may hold the agent or the undisclosed principal at his election.” *David v. Shippy*, 684 S.W.2d 586, 587-88 (Mo. Ct. App. 1985). A Defendant can be relieved of personal liability if the Defendant’s disclosure embraces the name of the principal through actual knowledge or the equivalent to knowledge to a reasonable person. *Id.* at 588. A Plaintiff’s mere capability of ascertaining the name of the principal entity does not suffice as actual knowledge or knowledge to a reasonable person. *Id.*

While it is uncontroverted that Plaintiff has a prior working history with Defendant, Plaintiff alleges that Defendant never disclosed his role as an agent for an entity. However, Defendant previously issued checks, under various limited liability companies, to Plaintiff in response to Plaintiff’s invoices for work completed. *See* Defendant’s Ex. 1; Defendant’s Ex. 2; Defendant’s Ex. 3; and Defendant’s Ex. 5. Defendant also testified that he notified Plaintiff’s owner, [REDACTED] on March 27, 2018 that he was operating as a limited liability company.

Defendant further relies on a demand letter dated January 4, 2018 and addressed to ██████████ LLC, ██████████, LLC and Defendant. Defendant's Ex. 16.

The Court finds that based on the evidence and testimony adduced, Defendant did not disclose the agency or the identity of the principal, ██████████ LLC. Defendant argues that his prior dealings as an agent of limited liability companies with the Plaintiff and a demand letter listing two different limited liability companies demonstrates Plaintiff's knowledge of the agency. However, Defendant's evidence did not demonstrate Defendant disclosed the agency at the time of the contract. Evidence did not demonstrate Defendant's disclosure, if any, embraced the name of ██████████ LLC. Defendant is not absolved of personal liability under the contract.

(2) Plaintiff's Performance Pursuant to the Contract

Plaintiff performed work pursuant to the contract. Plaintiff asserts that during the course of the job, Defendant requested changes that increased the cost to complete the job. Defendant testified that he visited the work site several times and observed Plaintiff's work. Defendant also offered calendar entries to substantiate his testimony. *See* Defendant's Ex. 8. Further, Defendant testified that the quality of work performed by Plaintiff was substandard thus necessitating the sale of the property for less than the original purchase price. *See* Defendant's Ex. 7, 9, 10, 12. Plaintiff offered evidence and testimony of quality work in compliance with the verbal contract. *See* Plaintiff's Ex. 4-14 and 16-17. After plaintiff completed the job, it billed Defendant \$25, 918.00 plus a finance charge of \$388.77 for a total amount due of \$26, 306.77. The Court finds that based on the evidence and testimony adduced, Plaintiff performed work under the contract.

(3) Defendant's Breach of the Contract

Plaintiff argues that Defendant breached the contract by failing to pay Plaintiff for services rendered. Defendant's justifications for refusing to pay the entire invoice on behalf of ██████, LLC is that the invoice contained charges exceeding the original bid. Defendant relies on a check, signed by Defendant from ██████ LLC, as evidence that Plaintiff was offered some compensation pursuant to the original bid. *See* Defendant's Ex. 15. Plaintiff credibly testified that additional work was completed at Defendant's request thereby increasing the cost in excess of the original bid. Defendant's own testimony and evidence supports Plaintiff's testimony. *See* Defendant's Ex. 8. Defendant frequently visited the work site and had an opportunity to ask Plaintiff to cease performance of any work that Defendant had not verbally agreed for Plaintiff to perform. After considering all of the relevant factors, the Court concludes that the Defendant breached the contract when he failed to perform his only obligation under the contract, by failing to pay for the work that Plaintiff performed. Plaintiff is entitled to recovery for the damages it incurred as a result of the breach.

(4) Damages

“The burden of proving that damages exist, and the amount of those damages, rests with the party claiming breach of contract.” *Curators of the Univ. of Missouri v. Suppes*, 583 S.W.3d 49, 61 (Mo. Ct. App. 2019). Here, Plaintiff “had the burden of presenting a basis for a rational estimate of damages without resorting to speculation.” *Best Buy Builders v. Siegel*, 409 S.W.3d at 562. The amount of damages is a matter for the Court, as the factfinder, to decide. *See id.* “Damages are not recoverable for loss beyond an amount that the evidence establishes with reasonable certainty, but not absolute certainty.” *Id.* (quoting *Harvey v. Timber Resources, Inc.*, 37 S.W.3d 814, 819 (Mo. Ct. App. 2001)).

In this case, Plaintiff performed the work that it agreed to perform under the verbal contract. The Court finds that Plaintiff is entitled to payment of \$25,000.00 for work as billed pursuant to the verbal contract between the parties. *See* Plaintiff's Ex. 2. Defendant argues Plaintiff's recovery, if any, should be reduced by what Defendant considers substandard workmanship. Defendant adduced estimates from another contractor and photos that purport to establish Plaintiff's substandard workmanship. *See* Defendant's Ex. 9, 12, 10, 13. The Court does not find Defendant's evidence credible thus Defendant has not met his burden in proving a reduction in damages. As a result, the Court finds in favor of Plaintiff on Plaintiff's Count I and awards a total of \$25,000.00 in damages to the Plaintiff. Evidence was not adduced to support a contractual interest rate of eighteen percent (18%) as pled by Plaintiff and thus the Court awards interest at the statutory rate of nine (9%) per annum pursuant to Mo. Rev. Statue § 408.020, plus court costs.

CLAIMS IN EQUITY

Plaintiff asserts two additional Counts based in equity in its Petition: Count II is a *quantum meruit* claim and Count III is an unjust enrichment claim. Both of these counts seek damages in the same amount as the breach of contract claim in Count I, and appear to be alternative theories of recovery for the same damages caused by the same injury. However, “[t]he law is clear that a party is not entitled to multiple recoveries for one injury.” *KC Excavating and Grading, Inc. v. Crane Construction Co.*, 141 S.W.3d, 401,408 (Mo. App. W.D. 2004). The Court has already awarded Plaintiff the reasonable value of its services under its breach of contract claim. *Quantum meruit* is a remedy based on a contract implied by law, but it does not apply here. The parties had an express contract covering the work that was performed. “No cause or purpose is served in recognizing a contract implied in law and awarding precisely

the same damages as were awarded to [the Plaintiff] for its breach of contract claim.” *Id.* at 409. Similarly, unjust enrichment does not apply where “the plaintiff has entered into an express contract for the very subject matter for which he seeks recovery. . . for the plaintiff’s rights are limited to the express terms of the contract.” *Howard v. Turnbull*, 316 S.W.3d 431, 436 (Mo. Ct. App. 2010). Here, because the Court has determined that the parties entered into an express contract and has awarded Plaintiff damages that are identical to those sought in these counts, the Court finds in favor of Defendant on Plaintiff’s Count II and Count III.

ATTORNEY FEES

As the prevailing party, the Court finds that the Plaintiff is entitled to its reasonable attorney’s fees. However, the Plaintiff has not provided the Court with evidence of the reasonableness of its attorney’s fees.

JUDGMENT

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED the Court finds in favor of Plaintiff on Count I and awards a total of \$25,000.00 in damages to Plaintiff plus interest at the statutory rate of nine (9%) per annum pursuant to Mo. Rev. Statue § 408.020 and court costs.

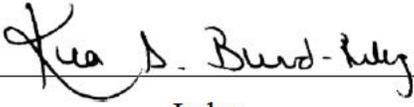
IT IS FURTHER ORDERED, ADJUDGED AND DECRRRED that the Plaintiff shall be awarded reasonable attorney’s fees. Plaintiff shall demonstrate to the Court the reasonableness of its fees within 10 days from the date of this judgment. After which, this matter may be called for hearing on the evidence of attorney’s fees.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court finds in favor of Defendant and against Plaintiff on Count II and Count III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED.

IT IS SO ORDERED.

Dated: August 06, 2021



Judge

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was hand delivered in open court to the parties, and, if a party was not present in Court, a copy was mailed via U.S. First Class mail, postage prepaid, to that party, on August 9, 2021, to:

Attorneys for Plaintiff

Attorneys for Defendant



Judicial Administrative Assistant