DOCKET NO. HHD-CV20-6126348-S	:	SUPERIOR COURT
JUSTIN FREEMAN	:	JUDICIAL DISTRICT OF HARTFORD
V.	:	AT HARTFORD
LAW OFFICE OF J. XAVIER PRYOR, L.L.C., ET AL.	:	MAY 20, 2024

MEMORANDUM OF DECISION AFTER TRIAL

This case involves a dispute between two law firms over how to divide attorney's fees resulting from the settlement of a personal injury case. At trial, plaintiff Justin Freeman ("Freeman") testified that the parties had an oral contract to split the fee 50/50 only if the case went to trial and that they further agreed to negotiate a reasonable fee if the case settled before trial. Defendant J. Xavier Pryor ("Pryor") testified that the parties agreed to split the fees equally, whether realized through settlement or judgment after trial.

The dispute is purely factual. The court must determine which party's testimony to credit regarding the terms of their oral agreement. For the following reasons, the court credits Pryor's testimony.

I

FINDINGS OF FACT

The parties tried this case to the court on November 8-9, 2023. Post-trial briefing was completed on January 22, 2024. The court finds the following facts by a preponderance of the evidence.

The plaintiffs are Freeman individually and the Law Office of Justin C. Freeman, L.L.C. Freeman dissolved his former law office on January 11, 2019, by filing a certificate of

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dissolution with the Secretary of State. The law firm is a plaintiff here solely for the purpose of winding up its affairs pursuant to General Statutes § 34-267a.[1]

The defendants are Pryor and the Law Office of J. Xavier Pryor, L.L.C. The plaintiffs allege that Pryor is the alter ego of his law office. The plaintiffs have not proved that allegation. Accordingly, the present dispute is between the Law Office of Justin C. Freeman and the Law Office of J. Xavier Pryor.

Freeman and Pryor met while they were temporary assistant clerks in Hartford Superior Court. Over the years, Freeman occasionally referred cases to Pryor solely for trial purposes. When a case was referred to Pryor solely for trial, the parties had a history of agreeing to split the attorney's fees 50/50.

In March 2014, Pryor left the firm for which he was working and became an associate of the Law Office of Justin C. Freeman ("LOJF").

On or about January 20, 2015, LOJF retained Chanda Gonzalez as a client in a pending motor vehicle accident case, *Chanda Gonzalez v. Martin Edwards* et al., Docket No. NNH-CV13-6039770-S (the "Gonzalez case"). Freeman assigned primary responsibility for the case file to Pryor. Pryor worked on the file with his long-time legal assistant, Johanna Carlucci ("Carlucci").

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[1] The court allowed Freeman to amend his complaint after trial to add the Law Office of Justin C. Freeman, L.L.C. as a plaintiff. Pryor had argued on multiple occasions that Freeman lacked standing in his individual capacity to assert any claims against him. The court, Sheridan, J., previously denied Pryor's motion to dismiss on this ground and suggested that any issues could easily be cured by allowing Freeman to amend his complaint. Order (#128.86). Notably, in a separate case between the parties in which Pryor and his law firm are plaintiffs, Pryor has sued the Law Office of Justin C. Freeman, L.L.C. and Freeman personally. Law Office of J. Xavier Pryor, L.L.C. v. Law Office of Justin C. Freeman, L.L.C. and Justin C. Freeman, Docket No. HHD-CV21-6143158-S. Pryor's arguments that Freeman's former law firm lacks standing to sue because it filed a certificate of dissolution ring hollow given Pryor's own lawsuit against that very entity.

On or about March 25, 2016, Pryor terminated his employment with LOJF and started his own law practice. Initially, he leased office space from LOJF. Later, he leased office space elsewhere. At Freeman's request, Pryor and Carlucci continued to work on the Gonzalez case after they left LOJF. Thus, the Gonzalez case was different from past cases in which Freeman only referred a case to Pryor solely for trial.

In June 2016, the parties learned that the Gonzalez case was likely to go to trial. Pryor entered his own "in addition to" appearance in the case on June 6, 2016. Around that time, Freeman, on behalf of LOJF, made a verbal offer to Pryor to divide their fees in the Gonzalez case equally. No conditions or limitations were attached to the offer. Pryor accepted the offer on behalf of his law firm.

The Gonzalez case was scheduled for trial on September 23, 2016. Pryor spent approximately 100 hours preparing for the trial.

Following a Trial Management Conference on September 16, 2016, the court continued the trial to January 13, 2017, to permit the parties to mediate. The mediation was scheduled for October 17, 2016. Pryor represented Gonzalez at the mediation, which lasted approximately three hours. Freeman did not attend. The parties settled the case for $750,000.

Immediately after the mediation, Pryor went to his car and called Freeman at his office to tell him about the settlement. Freeman congratulated Pryor and then asked, "What are you looking for [in terms of attorney's fees]?" Pryor responded, "What do you mean?" Pryor stated that he and Freeman had agreed to split their fees 50/50. Freeman said, "Why would I agree to a 50/50 split if you didn't actually try the case?" Pryor responded, "If we had an agreement that wasn't 50/50 if the case settled, I would have kept time records." The parties did not resolve their disagreement during this phone call.

The settlement proceeds were disbursed to Pryor. Pursuant to the terms of the retention agreement between Freeman and Gonzalez, total legal fees of $205,000 were due based on the $750,000 settlement. Of the $205,000, $40,000 was paid to Gonzalez's prior counsel. That left $165,000 to be divided between the parties.

After receiving the proceedings, Pryor kept $82,500 for himself. He presented a check in the amount of $82,500, i.e., one-half of $165,000, to Freeman at his office. Pryor placed the check on Freeman's desk in Freeman's presence. Freeman said, "I'm not cashing it." Pryor responded, "How is that my problem?" Pryor left the check with Freeman. It remained with Freeman, uncashed, for two years, at which point Pryor put a stop-payment order on the check. Freeman did not cash the check because he wanted to avoid a "full accord and satisfaction" claim or defense.

In January 2019, Freeman filed documents with the Secretary of State to dissolve his former law firm. Six or seven months after the dissolution, Pryor took the remaining balance of the $165,000 for himself. He did not tell Freeman.

Additional findings are set forth below where necessary or appropriate.

II

DISCUSSION

A

Breach of Contract Claims

The First, Second, Thirteenth and Fourteenth counts of the Third Amended Complaint assert breach of contract claims by each plaintiff against each defendant.[2] In all four counts, the

[2] Each substantive legal claim at issue, e.g., breach of contract, unjust enrichment, quantum meruit, etc., is asserted separately by both plaintiffs against both defendants. Because the plaintiffs did not prove that Pryor is the alter ego of his law firm, the court shall enter judgment against the plaintiffs

plaintiffs allege that they had an oral contract with Pryor to split the attorney's fees in the Gonzalez case equally only if the case went to trial and resulted in a plaintiff's verdict, and that they agreed to negotiate a reasonable fee for Pryor if the case settled before trial.

The court has found that the express terms of Freeman's attorney's fee sharing offer, which Pryor accepted, required the parties to split the attorney's fees equally, without any condition or limitation. Further discussion concerning this finding is warranted.

The court finds that when Freeman made his verbal offer to Pryor, he (Freeman) had an unexpressed intention that the attorney's fees would be divided equally only if Pryor tried the case to a plaintiff's verdict. However, "[m]utual assent is to be judged only by overt acts and words rather than by the hidden, subjective or secret intention of the parties. ... see *Ravenswood Construction, LLC v. F.L. Merritt, Inc.*, 105 Conn. App. 7, 12, 936 A.2d 679 (2007) ("[i]n the formation of contracts ... it was long ago settled that secret, subjective intent is immaterial, so that mutual assent is to be judged only by overt acts and words rather than by the hidden, subjective or secret intention of the parties"; see also *Connecticut Light & Power Co. v. Proctor,* 324 Conn. 245, 267–68, 152 A.3d 470 (2016) ("We have recognized, consistent with the objective theory of contracts, that [t]he making of a contract does not depend upon the secret intention of a party but upon the intention manifested by his words or acts, and on these the other party has a right to proceed. ... Although [t]he phrase meeting of the minds is ... commonly used by the courts to determine whether there has been mutual assent, it has been described as a misnomer because the minds of the parties to a contract need not, in fact, subjectively meet;

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on all claims asserted against Pryor personally. Although Judge Sheridan previously determined that Freeman had standing to sue on behalf of his former law firm for the purpose of winding up its affairs, because his former law firm is a named plaintiff, any judgment to which Freeman would have been entitled will enter in favor of his former firm, not Freeman personally.

rather … objective assent is all that is required.") (Citations omitted; internal quotation marks omitted.) *Kinity* v. *US Bancorp*, 212 Conn. App. 791, 825–26, 277 A.3d 200 (2022).[3]

The court's findings concerning the terms of the parties' oral contract give rise to a minor quirk. On the one hand, the findings are contrary to the contract terms that the plaintiffs alleged in their complaint. This suggests that the plaintiffs have failed to prove the specific breach of contract claims they actually asserted. On the other hand, the court has found that a contract existed. Under the contract terms as found, the defendant is entitled to $82,500 in attorney's fees.

The court concludes that the appropriate relief in this situation is to render judgment for the Law Office of Justin C. Freeman, L.L.C. on its breach of contract claim and award damages of $82,500. The defendants can hardly complain since the relief granted is consistent with Pryor's understanding of the contract terms.

B

Conversion Claims

The Third, Fourth, Fifteenth and Sixteenth counts of the Third Amended Complaint assert claims for civil conversion against Pryor's law office and Pryor personally. The plaintiffs assert that Pryor unlawfully converted the Gonzalez case settlement funds by failing to hold them in escrow until the parties reached an agreement concerning their disposition.

"The tort of [c]onversion occurs when one, without authorization, assumes and exercises ownership over property belonging to another, to the exclusion of the owner's rights." (Internal quotation marks omitted.) *Deming v. Nationwide Mutual Ins. Co.,* 279 Conn. 745, 770, 905 A.2d

[3] A past history or course of dealing between parties concerning fee sharing arrangements could be evidence that one party knows and accepts the other party's unexpressed intentions. But the court has found that the Gonzalez case was different from past cases that Freeman had referred to Pryor and that Pryor did not accept Freeman's express 50/50 fee splitting offer with an understanding that the offer only applied if the case went to trial.

623 (2006). "To establish a prima facie case of conversion, the plaintiff had to demonstrate that (1) the material at issue belonged to the plaintiff, (2) that [the defendant] deprived the plaintiff of that material for an indefinite period of time, (3) that [the defendant's] conduct was unauthorized and (4) that [the defendant's] conduct harmed the plaintiff." *News America Marketing In–Store, Inc.* v. *Marquis,* 86 Conn. App. 527, 545, 862 A.2d 837 (2004), aff'd, 276 Conn. 310, 885 A.2d 758 (2005).

In their post-trial briefs, the parties agree that a tort claim for conversion must fail where a party has a contract remedy for a debt. Because the court has determined that the plaintiffs have a contract remedy, the conversion claims are without merit.

C

Unjust Enrichment Claims

The Fifth, Sixth, Seventeenth and Eighteenth counts asserts claims for unjust enrichment based on Pryor's retention of the full amount of the attorney's fees in the Gonzalez case, i.e., $165,000.

"Unjust enrichment applies wherever justice requires compensation to be given for property or services rendered under a contract, *and no remedy is available by an action on the contract.* . . . A right of recovery under the doctrine of unjust enrichment is essentially equitable, its basis being that in a given situation it is contrary to equity and good conscience for one to retain a benefit which has come to him at the expense of another." (Emphasis added.) *Vertex, Inc.* v. *City of Waterbury*, 278 Conn. 557, 573, 898 A.2d 178 (2006). A claim for unjust enrichment is a claim based on a contract that is implied in law, not implied in fact. Id.

Here, the court has already found an express contract existed. Because a remedy based on the parties' express contract is available, the unjust enrichment claims fail.

D

Quantum Meruit Claims

The Seventh, Eighth, Nineteenth and Twentieth counts assert claims for quantum meruit. "Quantum meruit is a theory of contract recovery that does not depend upon the existence of a contract, either express or implied in fact. *Gustave Fischer Co.* v. *Morrison,* 137 Conn. 399, 403, 78 A.2d 242 (1951). Rather, quantum meruit arises out of the need to avoid unjust enrichment to a party, even in the absence of an actual agreement. *Fischer* v. *Kennedy,* 106 Conn. 484, 492, 138 A. 503 (1927); see also *Sidney v. DeVries,* 215 Conn. 350, 351–52 n. 1, 575 A.2d 228 (1990) (quantum meruit and unjust enrichment are common-law principles of restitution; both are noncontractual means of recovery without valid contract).

"Quantum meruit literally means 'as much as he has deserved' Black's Law Dictionary (7th Ed.1999). Centered on the prevention of injustice, quantum meruit strikes the appropriate balance by evaluating the equities and guaranteeing that the party who has rendered services receives a reasonable sum for those services. Unjust enrichment applies whenever "justice requires compensation to be given for property or services rendered under a contract, and no remedy is available by an action on the contract...." 12 S. Williston, Contracts (3d Ed.1970) § 1479, p. 272. Indeed, lack of a remedy under the contract is a precondition for recovery based upon unjust enrichment. Not unlike quantum meruit, it is a doctrine based on the postulate that it is contrary to equity and fairness for a defendant to retain a benefit at the expense of the plaintiff. See *National CSS, Inc.* v. *Stamford,* 195 Conn. 587, 597, 489 A.2d 1034 (1985)." *Gagne* v. *Vaccaro*, 255 Conn. 390, 401, 766 A.2d 416 (2001).

The legal distinction between quantum meruit and unjust enrichment is ephemeral. What matters for the purpose of this decision is that neither remedy is available if a contract-based remedy is available. It is. Accordingly, the quantum meruit claims must fail.

E

Breach of Fiduciary Duty Claims

The Eleventh, Twelfth, Twenty-Third and Twenty-Fourth counts allege that the plaintiffs and defendants stood in a fiduciary relationship to each other and that the defendants breached that duty by failing to safeguard and/or escrow the $165,000 in legal fees until their dispute over how to divide those fees was resolved.

Neither party has provided the court with Connecticut legal authority that lawyers in a co-counsel relationship stand in a fiduciary duty to each other. The court shall rule against the plaintiffs on their fiduciary duty claims.

F

Claims for an Accounting

The Nineth, Tenth, Twenty-First and Twenty-Second counts seek an accounting of the defendants' client's funds accounts, pursuant to General Statutes § 52-401. "The basis for a right to an accounting is supported by an allegation that a fiduciary relationship exists." *Zuch* v. *Connecticut Bank & Tr. Co.*, 5 Conn. App. 457, 460, 500 A.2d 565 (1985).

The plaintiffs have failed to prove, factually or legally, that they stood in a fiduciary relationship with the defendants. Accordingly, the claim for an accounting is without merit.

G

The Special Defenses

The defendants assert five special defenses. The First Special Defense alleges that Freeman cannot obtain equitable relief because he acted unethically or in bad faith. Because the court does not grant Freeman equitable relief, this defense is moot.

The Second Special Defense alleges that Freeman cannot enforce any contract with the defendants because he breached the contract. The court finds that the plaintiffs did not breach the contract with the defendants and, thus, rejects this defense.

The Third Special Defense alleges that the plaintiffs are not entitled to extra-contractual remedies if contract remedies are available. The court has determined that such remedies are available and has denied the plaintiffs extra-contractual relief.

The Fourth Special Defense alleges that the plaintiffs failed to state a claim upon which relief can be granted. As a matter of law, this defense is without merit.

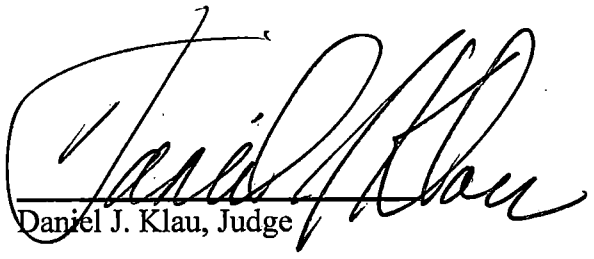
The Fifth Special Defense alleges that no privity of contract exists between the parties. This defense is merely another form of the defendants' argument that Freeman lacked standing to sue for debts owed to his former law firm. The court has previously addressed, and rejected, this argument.

IV

CONCLUSION

For the foregoing reasons, judgment shall enter for the Law Office of Justin C. Freeman, L.L.C. on the Thirteenth Count of the Third Amended Complaint in the principal amount of $82,500. The plaintiffs' request for pre-judgment interest is denied. The court awards post-judgment interest at the maximum statutory rate of ten percent.

Judgment shall enter for the defendants on all remaining counts of the Third Amended Complaint.



Daniel J. Klau, Judge

Checklist for Clerk

Docket Number: HHD-CV20-6126348-S

Case Name: Justin Freeman v. Law Office of J. Xavier Pryor, L.L.C., Et Al.

Memorandum of Decision dated: 5/20/24

File Sealed: **Yes** **No** X

Memo Sealed: **Yes** **No** X

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HHD-CV20-6126348-S **FREEMAN, JUSTIN v. LAW OFFICE OF J. XAVIER PRYOR, L.L.C. Et Al**

Prefix: HD3 **Case Type:** C90 **File Date:** 03/30/2020 **Return Date:** 04/07/2020

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Information Updated as of: 05/20/2024

Case Information

Case Type: C90 - Contracts - All other
Court Location: HARTFORD JD
List Type: No List Type
Trial List Claim:
Last Action Date: 01/23/2024 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date:
Disposition:
Judge or Magistrate:

Party & Appearance Information

Party		No Fee Party	Category
P-01	**JUSTIN FREEMAN** **Attorney:** THE FREEMAN LAW FIRM LLC (433833) File Date: 03/30/2020 90 BRAINARD ROAD SUITE 201 HARTFORD , CT 06114		Plaintiff
D-01	**LAW OFFICE OF J. XAVIER PRYOR, L.L.C.** **Attorney:** J XAVIER PRYOR (419834) File Date: 08/10/2021 525 WINDSOR AVENUE SUITE 1 WINDSOR , CT 06095		Defendant
D-02	**J. XAVIER PRYOR** **Attorney:** J XAVIER PRYOR (419834) File Date: 08/10/2021 525 WINDSOR AVENUE SUITE 1 WINDSOR , CT 06095		Defendant
L-01	**APPELLATE COURT DOCKET #45787; DISMISSED** ***REMOVED***		For Notice Only or Proposed Intervenor

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