

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

FRIENDS OF CHRISTINE O'DONNELL,)
CHRISTINEPAC, and CHRISTINE)
O'DONNELL,)

Plaintiffs,)

v.)

C.A. No. CPU4-11-005735

JONATHON A. MOSELEY,)

Defendant.)

DECISION AFTER TRIAL

Submitted: May 22, 2012

Decided: June 5, 2012

Richard L. Abbott, Esquire, Hockessin, Delaware, for Plaintiffs

Jonathon A. Moseley, Reston, Virginia, Defendant

ROCANELLI, J.

Defendant Jonathon A. Moseley filed a lawsuit in the Alexandria Circuit Court in the Commonwealth of Virginia on or about September 27, 2011 (“Virginia Lawsuit”) against Friends of Christine O’Donnell, ChristinePAC, and Foley & Lardner.

Plaintiffs, Friends of Christine O’Donnell, ChristinePAC, and Christine O’Donnell (collectively, “O’Donnell”), filed this action seeking declaratory judgment pursuant to 10 *Del. C.* § 6501 and CCP Civil Rule 57 on October 13, 2011 (“Delaware Lawsuit”). Moseley filed an Answer and Counterclaim on November 8, 2011 and thereafter filed an Amended Counterclaim on February 3, 2012.

O’Donnell seeks a declaratory judgment that there are no financial obligations owed by O’Donnell to Moseley. On the other hand, Moseley seeks recovery for amounts

he claims are due for services rendered and expenses incurred in May 2008 under a theory of breach of contract. Moseley also seeks recovery for amounts he claims are due for services rendered in 2011 under alternative legal theories of breach of contract or *quantum meruit*.

By Order dated December 16, 2011, this Court stayed the Delaware Lawsuit. Thereafter, on January 11, 2012, the Virginia court entered an order staying the Virginia Lawsuit pending the outcome of the Delaware Lawsuit. The parties agreed that this Court should exercise its discretion to lift the stay in the Delaware Lawsuit. By Order dated February 6, 2012, this Court lifted the stay and the Delaware Lawsuit proceeded to a non-jury trial on the merits on May 21 and 22, 2012.

ANALYSIS

It is the duty of the Court to weigh the evidence that is presented.¹ O'Donnell bears the burden of proof on the request for a declaratory judgment.² Moseley also bears a burden of proof to establish his claims by a preponderance of the evidence.³ The side on which the greater weight of the evidence is found is the side on which the preponderance of the evidence exists.⁴

¹ Three witnesses testified at trial: Jonathon Moseley, Matthew Moran, and Christine O'Donnell (individually, "Christine O'Donnell"). O'Donnell's Exhibits 1 through 17 were admitted in evidence. Moseley's Exhibits 2, 3, 4, 5, 7, 12, 13, 17, 19, 24, 25, 29, 30, 33, 37, 99, 122, 123, 128, 129, 130, 131, 133, and 133A were admitted in evidence.

² *Rhone-Poulenc v. GAF Chemicals*, 1993 WL 125512, at *3 (Del. Ch.).

³ *Reynolds v. Reynolds*, 237 A.2d 708, 711 (Del. 1967).

⁴ *Id.*

In a non-jury trial, the judge, acting as the sole trier of fact, determines the credibility of witnesses and resolves conflicting testimony.⁵ Assessing the credibility of witnesses is a matter of judicial discretion, and this Court does not abuse that discretion by choosing to give greater weight to the testimony of one witness over the opposing witness.⁶

1. May 2008 Services Rendered/Condition Precedent

Moseley provided certain consulting services to Christine O'Donnell's 2008 Senate campaign ("2008 Campaign"). Moseley claims that he is owed up to \$3,256.00 for services performed in May 2008. O'Donnell claims that payment by O'Donnell to Moseley for services rendered in May 2008 was conditional upon the 2008 Campaign raising adequate funds for payment.

Under Delaware law, a condition precedent is "[a]n act or event, other than a large lapse of time, that must ... occur before a duty to perform something promised arises. If the condition does not occur and is not excused, the promised performance need not be rendered."⁷ According to O'Donnell, no money is owed to Moseley by O'Donnell for services rendered by Moseley in May 2008 because a condition precedent was not fulfilled.

Moseley conceded at trial that there was a condition precedent which must have been fulfilled before he was entitled to be paid. Moseley testified that he only expected to be paid for his services by O'Donnell if the campaign raised enough money to pay

⁵ *Jamison v. State*, 1995 WL 716806, at *2 (Del. Super.).

⁶ *Romain v. State Farm Mut. Auto Ins. Co.*, 1999 WL 1427801, at *2-3 (Del. Super.).

⁷ *Pouls v. Windmill Estates, LLC.*, 2010 WL 2348648, at *4 (Del. Super.) (citing *Black's Law Dictionary*, 289 (7th ed. 1999)).

him. Moseley also admitted that he was the author of the following statement regarding the 2008 Campaign which appeared on the internet: “But Christine’s campaign never owed me for my work, because I was never supposed to be paid if funds were not abundant.”⁸ Therefore, there was no dispute – payment to Moseley was conditioned upon the 2008 Campaign raising adequate funds to pay him.

The record evidence at trial established that the 2008 Campaign concluded with debts owed to several vendors, including Moseley. The Court finds that the condition precedent was not fulfilled because the 2008 Campaign did not have enough money to compensate Moseley for services rendered in May 2008. Accordingly, Moseley is not entitled to any payment for services rendered in May 2008. Having reached this conclusion, the Court need not address whether Moseley’s claim is barred by a three-year statute of limitations.

Therefore, with respect to the claims addressed to whether Moseley is owed money for services rendered in May 2008, the Court finds O’Donnell has established by a preponderance of the evidence that O’Donnell owes no financial obligation to Moseley. Conversely, the Court finds that Moseley did not establish by a preponderance of the evidence that he is owed money by O’Donnell for services in May 2008.

2. May 2008 Expenses/Accord and Satisfaction

The record evidence established at trial that O’Donnell agreed to reimburse Moseley for his reasonable expenses incurred in connection with the 2008 Campaign. According to O’Donnell, the doctrine of accord and satisfaction bars Moseley from claiming he is owed funds for May 2008 expenses.

⁸ O’Donnell’s Exhibit 4.

Under Delaware law, parties to an original contract “may agree that a mere subsequent contract to perform some specified act will be accepted in full performance and satisfaction of the pre-existing duty.”⁹ Three elements are necessary to prove a common law accord and satisfaction: (1) the asserting party must establish that a *bona fide* dispute existed as to the amount owed and that the dispute was based on mutual good faith; (2) the party must show that the debtor tendered an amount to the creditor with the intent that payment would be in total satisfaction of the debt; and (3) the debtor must establish that the creditor agreed to accept the payment in full satisfaction of the debt.¹⁰ The party asserting a claim of accord and satisfaction carries the burden to prove all the elements necessary to establish that it took place.¹¹ Therefore, it is O’Donnell’s burden of proof to establish accord and satisfaction by a preponderance of the evidence.

The Court finds there was a *bona fide* dispute based on mutual good faith regarding the amount owed to Moseley by O’Donnell for May 2008 expenses. Moseley claimed he was owed \$1,808.20. O’Donnell claimed that Moseley was only owed \$1,300.00.

By letter dated June 29, 2010, O’Donnell proposed to pay Moseley \$700.00 if he would agree to accept it as payment in full for the amount he claimed to be owed for May 2008 expenses.¹² Moseley cashed the check for \$700.00 which was sent to him with the

⁹ *Citisteel USA, Inc. v. Connell Ltd. P’ship*, 758 A.2d 928, 930-31 (Del. 2000) (citing *Empire Box Corp. v. Jefferson Island Salt Mining*, 36 A.2d 40, 43 (1944)).

¹⁰ *Acierno v. Worth Bros.*, 693 A.2d 1066, 1069 (Del. 1997). *See also, Wilkinson Construction v. Brice Builders*, 2005 WL 958131, at *2 (Del. Com. Pl.).

¹¹ *Id.*

¹² O’Donnell’s Exhibit 3.

letter.¹³ Moseley was a sophisticated party. Indeed, the parties agree that Moseley is a lawyer admitted to the Bar of the Commonwealth of Virginia. The legal effect of Moseley cashing the check he received with the June 29, 2010 letter is that he accepted the terms proposed by O'Donnell, *i.e.* that he would not be owed any additional money for claimed expenses in connection with the 2008 Campaign.

Moreover, although Moseley now claims that he is owed additional money for 2008 expenses, Moseley posted comments on the internet that suggested otherwise. Moseley admitted that he was the author of the following statements regarding the 2008 Campaign which appeared on the internet: "All expenses I submitted have now been completely retired. The campaign no longer owes anything on those expenses."¹⁴ Therefore, Moseley's own statements support O'Donnell's claim of accord and satisfaction.

Accordingly, the Court finds that O'Donnell established an accord and satisfaction with respect to Moseley's claim for May 2008 expenses. Moseley is therefore not entitled to be paid any additional monies by O'Donnell for expenses Moseley may have incurred in connection with the 2008 Campaign. Having met their burden of proof, O'Donnell is entitled to a declaratory judgment that no financial obligation is owed by O'Donnell to Moseley for May 2008 expenses. Moseley's claim for breach of contract fails with respect to his claimed 2008 expenses.

¹³ *Id.*

¹⁴ O'Donnell's Exhibit 4.

3. Claim for 2011 Services/Breach of Contract

Moseley reconnected with O'Donnell on or about November 22, 2010, after Christine O'Donnell lost the November 2010 Senate election ("2010 Campaign"). Moseley had no relationship – paid, volunteer or otherwise – with the 2010 Campaign until that election had been lost by Christine O'Donnell. Even though the 2010 Campaign was concluded, Moseley agreed to work as a volunteer after the election to assist with winding down matters related to the 2010 Campaign.

Thereafter, a new agreement was reached that Moseley would be compensated by the 2010 Campaign for Moseley's services rendered and expenses incurred by Moseley in connection with winding down the 2010 Campaign ("2011 Services"). Specifically, in or about mid-January 2011, Moseley, Christine O'Donnell and Moran met in Alexandria, Virginia and agreed that Moseley's role would change and that he would be compensated, at least in part, for his work.¹⁵ Moseley was paid \$17,500.00 on or about February 3, 2011 for his 2011 Services.

O'Donnell seeks a declaratory judgment that O'Donnell owes no financial obligations to Moseley for his 2011 Services. O'Donnell bears the burden of proof by a preponderance of the evidence for the declaratory judgment sought.¹⁶ On the other hand, Moseley claims that O'Donnell breached the contract to pay him more for his 2011 Services than the payment of \$17,500.00 he received in early February 2011. Moseley carries the burden of proof to establish breach of contract.

¹⁵ The parties stipulated and agreed that the business relationship between the parties ended no later than June 1, 2011. No claims are made by O'Donnell against Moseley or by Moseley against O'Donnell for any services performed by Moseley for O'Donnell after May 31, 2011.

¹⁶ *Rhone-Poulenc*, 1993 WL 125512 at *3.

To recover on his claim for breach of contract for 2011 Services, Moseley must establish three elements by a preponderance of the evidence. First, Moseley must prove that a contract existed. Second, Moseley must establish that O'Donnell breached an obligation imposed by the contract. Finally, Moseley must show that he incurred damages as a result of the breach.¹⁷

Based on the evidence presented, the Court finds there was a valid contract. While there is no dispute that Moseley was paid \$17,500.00 on or about February 3, 2011, there is a disagreement as to what the payment was meant to cover. Moseley concedes that the details of the business relationship between himself and O'Donnell were unclear. Moseley testified that "there was a lot of misunderstanding" and "there was not a lot of time to consult on the details."

O'Donnell claims that the payment of \$17,500.00 was a retainer to compensate Moseley for his 2011 Services. O'Donnell further claims that Moseley is not entitled to any additional payment. Moseley claims he is owed more money for his 2011 Services than the payment of \$17,500.00 which he received.

As support for Moseley's claims that he was owed additional money for 2011 Services, Moseley points to several invoices that he claims to have submitted for payment. No credible evidence was presented by Moseley as to when these invoices were prepared or when they were submitted. The invoices purportedly seek payment at a rate of \$2,500.00 for the month of October 2010 and at a rate of \$5,000.00 per month for the months of November 2010 through April 2011.¹⁸ However, the invoices are

¹⁷ *VLIW Tech., LLC v. Hewlett-Packard, Co.*, 840 A.2d 606, 612 (Del. 2003).

¹⁸ Moseley's Exhibit 5 and O'Donnell's Exhibit 11.

inconsistent with Moseley's sworn testimony. In addition, the invoices are inconsistent with a spreadsheet prepared by Moseley accounting for \$17,500.00 for 2011 Services.¹⁹ Accordingly, the Court rejects the invoices as unreliable evidence.

The spreadsheet prepared by Moseley directly contradicts his claim that he is owed more money for his 2011 Services because the spreadsheet accounts for almost exactly \$17,500.00 through May 31, 2011.²⁰ In the spreadsheet, Moseley (i) acknowledges receipt of \$17,500.00; (ii) accounts for \$9,292.41 in expenses incurred from November 21, 2010 through May 31, 2011; and (iii) accounts for payments of "Attorney" fees for "legal work, research and public relations" in the amount of \$8,500.00, which was drawn down in six undated installments of "\$4,000, \$1,000, \$1,000, \$1,000, \$1,000 and \$500." The spreadsheet also identifies "UNSPENT FUNDS – CARRIED FORWARD to later Activities, later invoices" of "\$7.59." This spreadsheet, authored by Moseley, supports O'Donnell's claim that the payment of \$17,500.00 fully compensated Moseley for his 2011 Services.

Moseley also claims that two e-mail messages dated January 29, 2011 from Moran and Christine O'Donnell provide support for Moseley's claim that he was owed additional money for 2011 Services.²¹ By e-mail dated January 29, 2011, Christine O'Donnell instructed Moseley to submit invoices for "Oct, Nov and Dec 2010 at the agreed amount of \$5K a month, thus total \$15,000."²² By e-mail also dated January 29,

¹⁹ O'Donnell's Exhibit 14.

²⁰ *Id.*

²¹ Moseley's Exhibits 2 and 3, respectively.

²² Moseley's Exhibit 2.

2011, Moran instructed Moseley to submit invoices “billing 5K for work in October, November, December and January.”²³ However, Moseley stipulated that he was not owed money for October 2010 through February 2011. Moseley also testified that he did not perform any work – even as a volunteer – to assist with winding down the 2010 Campaign until November 22, 2010. Accordingly, the Court finds the two January 29, 2011 e-mail messages to be unreliable evidence of the terms of the contract.

Furthermore, Christine O’Donnell and Moran offered an alternative explanation for the January 29, 2011 e-mail messages. Specifically, they claimed that the e-mail messages to Moseley on January 29, 2011 were based on their misunderstanding that they could report Moseley’s paid work in the 2010 FEC Report filed by the 201 Campaign. Both Christine O’Donnell and Moran testified that, although their original plan was to file a report with the FEC stating that the payment to Moseley was for work performed in 2010, the 2010 Campaign was thereafter advised that it would be improper to file such a report and they did not do so. No record evidence was presented which contradicted this testimony and the Court finds it to be credible. Moreover, the 2010 Campaign’s FEC Report identifies the \$17,500.00 payment to Moseley as a 2011 expense.²⁴

The Court finds that the payment to Moseley by O’Donnell of \$17,500.00 reflected payment in full for 2011 Services. The Court finds that Moseley has not met his burden of proof to establish by a preponderance of the evidence that O’Donnell breached the contract to pay Moseley for his 2011 Services. Conversely, the Court finds that O’Donnell established by a preponderance of the evidence that O’Donnell owes no

²³ Moseley’s Exhibit 3.

²⁴ O’Donnell’s Exhibit 7.

financial obligation to Moseley for 2011 Services. The Court finds that O'Donnell was not obligated to pay Moseley any more than the payment of \$17,500.00 that he received on or about February 3, 2011.

4. Claim for 2011 Services /*Quantum Meruit*

Quantum Meruit is a Latin term that means for “what one has earned.” It is a quasi-contractual remedy that allows a party, in the absence of an express agreement, to recover the reasonable value of his or her materials or services.²⁵ If there is an enforceable contract between the parties, then *quantum meruit* recovery is inapplicable.²⁶ Because the Court finds that a valid contract existed for payment of \$17,500.00 for services rendered and expenses incurred through May 31, 2011, *quantum meruit* recovery is inapplicable.

CONCLUSION

The Court heard the testimony of three witnesses at trial and has examined all documents admitted in evidence. Having assessed the credibility of the witnesses and weighed all evidence, the Court finds, by a preponderance of the evidence, as follows:

1. With respect to O'Donnell's request for declaratory judgment, there are no financial obligations owed by O'Donnell to Moseley.
2. With respect to Moseley's counterclaims:
 - a. for expenses he claims to have incurred in May 2008, the Court finds accord and satisfaction has been established and therefore Moseley has been paid in full;

²⁵ *C & C Drywall Contractor, Inc. v. Milford Lodging, LLC*, 2010 WL 1178233, at *3 (Del. Super.).

²⁶ *Id.*

b. for services he claims to have rendered in May 2008, the Court finds the condition precedent was not met and therefore Moseley is not entitled to additional payment; and

c. for services he claims to have rendered and expenses he claims to have incurred from November 22, 2010 through May 31, 2011, the Court finds Moseley has not established breach of contract.

ORDER OF JUDGMENT

NOW, THEREFORE, THE COURT HEREBY DECLARES, pursuant to 10 Del. C. § 6501 and CCP Civil Rule 57, Friends of Christine O'Donnell, ChristinePAC, and Christine O'Donnell owe no financial obligations to Jonathon A. Moseley.

NOW, THEREFORE, JUDGMENT IS HEREBY ENTERED in favor of Friends of Christine O'Donnell, ChristinePAC, and Christine O'Donnell and against Jonathon A. Moseley on Jonathon A. Moseley's counterclaims.

Each party shall bear its own costs.

IT IS SO ORDERED this 5th day of JUNE, 2012.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli