

[Cite as *Shearer v. Creekview Village of Broadview Hts. Homeowners' Assn., Inc.*, 2010-Ohio-5786.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94549

MARK S. SHEARER

PLAINTIFF-APPELLANT

vs.

**CREEKVIEW VILLAGE OF
BROADVIEW HEIGHTS HOMEOWNERS'
ASSOCIATION, INC.**

DEFENDANT-APPELLEE

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Parma Municipal Court
Case No. 09CVF03362

BEFORE: Stewart, J., Rocco, P.J., and Sweeney, J.*

RELEASED AND JOURNALIZED: November 24, 2010

ATTORNEY FOR APPELLANT

Mark S. Shearer
8193 Avery Road, Suite 201
Broadview Heights, OH 44147

APPELLEE

Creekview Village of Broadview Heights
Homeowners' Association, Inc.
376 Village Drive
Broadview Heights, OH 44147

MELODY J. STEWART, J.:

{¶ 1} Plaintiff-appellant, Mark S. Shearer, appeals the judgment of the Parma Municipal Court denying his motion for default judgment against defendant-appellee, Creekview Village of Broadview Heights Homeowners' Association, Inc. ("Association"), and dismissing his complaint. Finding merit to the appeal, we reverse and remand.

{¶ 2} Appellant, a licensed attorney, filed a complaint against the Association on August 17, 2009 for payment of legal services he provided to the Association. Appellant's complaint alleged claims of breach of contract, quantum meruit, promissory estoppel/detrimental reliance, and unjust

enrichment, and sought money damages in the amount of \$5,348 for legal services provided from September 2003 to June 2009. Appellant attached a copy of the pages from his client ledger describing the services provided and showing the date the services were provided, the payments received from the Association, and the amount remaining due and owing.

{¶ 3} The complaint was served through the Ohio Secretary of State pursuant to the provisions of R.C. 1702.06(H). The court's docket reflects that service was perfected on August 19, 2009 and that the Association's answer was due by September 16, 2009. The Association did not file an answer.¹

{¶ 4} Appellant filed a motion for default judgment on October 30, 2009. Attached to the motion was appellant's affidavit swearing to the fact that he was the attorney for the Association and had provided legal services to the Association, including representing the Association in litigation. The trial court set the matter for an evidentiary hearing on December 1, 2009. Notice of the hearing was sent to the Association. Appellant appeared at the hearing with counsel and testified as to the services performed and the amount due for those services as listed in the client ledger. The Association did not appear at the hearing.

¹Nor has the Association filed a responsive brief in this appeal.

{¶ 5} By entry dated December 2, 2009, the trial court dismissed the complaint at appellant's cost upon a finding that he "failed to present sufficient evidence of the existence of a debt, and further produced no evidence of a contract or agreement between the parties." It is from this judgment that appellant appeals assigning two errors for our review. As these assignments of error have a common basis in law and fact, they will be addressed together.

{¶ 6} "I. The trial court erred in requiring evidence of a contract.

{¶ 7} "II. The trial court erred in failing to find for plaintiff in quantum meruit."

{¶ 8} Appellant argues that the trial court abused its discretion by failing to grant him judgment after the Association defaulted. He further argues that the court erred in requiring evidence of a contract and failing to award adequate compensation for services rendered upon his quantum meruit or unjust enrichment claims.

{¶ 9} A trial court's decision to grant or deny a motion for default judgment is reviewed for an abuse of discretion. *Goodyear v. Waco Holdings, Inc.*, 8th Dist. No. 91432, 2009-Ohio-619, citing *Jones v. Dillard*, 8th Dist. No. 87733, 2006-Ohio-6417. The term "abuse of discretion" implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

{¶ 10} Civ.R. 55(A) provides in pertinent part:

{¶ 11} “(A) Entry of judgment. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, the party entitled to a judgment by default shall apply in writing * * * to the court * * *. * * * If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall when applicable accord a right of trial by jury to the parties.”

{¶ 12} In *Ohio Valley Radiology Assoc., Inc. v. Ohio Valley Hosp. Assn.* (1986), 28 Ohio St.3d 118, 502 N.E.2d 599, the Ohio Supreme Court explained the concept of default. “Default, under both pre-Civil Rule decisions and under Civ.R. 55(A), is a clearly defined concept. A default judgment is a judgment entered against a defendant who has failed to timely plead in response to an affirmative pleading. *McCabe v. Tom* (1929), 35 Ohio App. 73, 171 N.E. 868. As stated by the court in *Reese v. Proppe* (1981), 3 Ohio App.3d 103, 105, 443 N.E.2d 992 [a] default by a defendant * * * arises only when the defendant has failed to contest the allegations raised in the complaint and it is thus proper to render a default judgment against the

defendant as liability has been admitted or ‘confessed’ by the omission of statements refuting the plaintiff’s claims * * *.” Id. at 121.

{¶ 13} “Furthermore, under Civ.R. 8(D), allegations in a complaint to which a responsive pleading is required are admitted when not denied in the responsive pleading.” *Fitworks Holding, L.L.C. v. Sciranko*, 8th Dist. No. 90593, 2008-Ohio-4861, at ¶7. “In other words, if a party fails to deny the specific allegations of a complaint against it, those allegations are considered admitted by the party.” Id., quoting *Burdge v. On Guard Sec. Servs., Inc.*, Hamilton App. No. C-050522, 2006-Ohio-2092. “According to the law of pleading, an admission in a pleading dispenses with proof and is equivalent to proof of the fact.” *J. Miller Express, Inc. v. Pentz* (1995), 107 Ohio App.3d 44, 48, 667 N.E.2d 1018, citing *Rhoden v. Akron* (1988), 61 Ohio App.3d 725, 727, 573 N.E.2d 1131. Thus, when a defendant fails to contest the allegations raised in the complaint, it is proper to render a default judgment against the defendant as liability has been admitted or confessed. *Ohio Valley Radiology Assoc., Inc.; Sciranko*.

{¶ 14} “Compensation for services rendered by an attorney is generally fixed by contract prior to employment and the formation of the fiduciary relationship between attorney and client.” *Climaco, Seminatore, Delligatti & Hollenbaugh v. Carter* (1995), 100 Ohio App.3d 313, 653 N.E.2d 1245. In the absence of an express contract, an attorney can recover the reasonable value

of services rendered on the basis of quantum meruit. *Baer v. Woodruff* (1996), 111 Ohio App.3d 617, 676 N.E.2d 1195.

{¶ 15} In his complaint, appellant alleged the existence of an agreement for the provision of legal services. Appellant also alleged that he was entitled to recovery for legal services under quantum meruit. He alleged that the Association owed him \$5,348 for legal services provided. He submitted evidence that he had provided legal services to the Association in the form of preparing documents, providing legal advice to its president, and representing it in litigation. In addition to his testimony, appellant provided a ledger showing the amount billed to the Association for those services and the amount received in payment. The Association failed to timely plead in response to appellant's complaint or to otherwise defend against the allegations made in that complaint. Therefore, the trial court, under Civ.R. 8, should have construed those allegations as admitted. *Sciranko* at ¶8. Accordingly, the trial court's dismissal for lack of evidence of a contract was in error.

{¶ 16} Additionally, by not answering, the Association admitted that it owed appellant \$5,348. Therefore, the trial court should have rendered default judgment against it for that amount. Appellant's assignments of error are sustained. We reverse the judgment of the trial court and remand for entry of judgment in favor of appellant.

{¶ 17} This cause is reversed and remanded for proceedings consistent with this opinion.

It is ordered that appellant recover of appellee his costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Parma Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MELODY J. STEWART, JUDGE

KENNETH A. ROCCO, P.J., and
JAMES D. SWEENEY, J.,* CONCUR

(*Sitting by assignment: Retired Judge of the Eighth District Court of Appeals)