

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

NAISHAD SHAH,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. N11C-07-196 JRJ
)	
AMERICAN SOLUTIONS, INC.,)	
a Delaware Corporation,)	
and AMSOL, INC., a New Jersey)	
Corporation,)	
)	
Defendants.)	

OPINION

Date Submitted: January 19, 2012

Date Decided: March 8, 2012

Upon Defendants' Motion to Dismiss: DENIED as to American Solutions, Inc.
and **GRANTED** as to Amsol, Inc.

Edward T. Ciconte, Esq. and Daniel C. Kerrick, Esq. (argued), Ciconte Wasserman & Kerrick, LLC, 1300 King Street, Wilmington, DE 19801, Attorneys for the Plaintiff.

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Jurden, J.

I. INTRODUCTION

This motion to dismiss arises out of claims for breach of contract and *quantum meruit*. Naishad Shah (“Plaintiff”) alleges that American Solutions, Inc. (“American Solutions”) and Amsol, Inc. (“Amsol”)¹ breached an oral contract with Plaintiff by failing to pay him for services he rendered to American Solutions. American Solutions and Amsol have collectively filed a Motion to Dismiss Plaintiff’s Amended Complaint (hereinafter “complaint”) under Superior Court Rule 12(b)(6).² For the reasons that follow, Defendants’ Motion is **DENIED** as to American Solutions and **GRANTED** as to Amsol.

II. FACTS

On December 1, 2007, Plaintiff and American Solutions entered into a written agreement that expired in March 2008.³ The agreement required Plaintiff to provide consulting services to American Solutions in exchange for \$5,000.00 per month.⁴ Plaintiff alleges that when the contract expired, the CEO of American Solutions, Raju Indukuri, orally agreed with Plaintiff to extend the agreement

¹ American Solutions and Amsol will be referred to collectively as “Defendants” where appropriate.

² Included in Defendants’ Motion to Dismiss is an alternative motion seeking a more definitive statement pursuant to Superior Court Civil Rule 8. Defendants submitted their motion on September 19, 2011. The Court held oral argument on January 9, 2012 and at the hearing ordered Plaintiff to amend his complaint within five days so as to comply with the rules of the Court. *See* Superior Court Proceeding Worksheet (Trans. ID. No. 41784302). Plaintiff filed his amended complaint on January 13, 2012. Aside from filing an answer to Plaintiff’s amended complaint, Defendants have not filed any other motions with the Court.

³ Plaintiff’s First Amended Complaint (“Pl.’s Am. Comp.”) (Trans. ID No. 41874367) at ¶¶4, 5.

⁴ *See id.*

under the same terms and instructed Plaintiff to submit his future invoices to Amsol rather than American Solutions.⁵

From March 2008 to September 2009, American Solutions continued to pay Plaintiff his monthly fee of \$5,000.00.⁶ Beginning in September 2009, however, and continuing through March 2010, American Solutions paid only \$2,500.00 per month to Plaintiff.⁷ Although Plaintiff allegedly received only half the payments he was entitled to during this period, he nevertheless continued providing services to American Solutions.⁸ Starting in April 2010, and continuing through May 2011, American Solutions stopped paying Plaintiff all together.⁹ Plaintiff demanded payment from American Solutions on numerous occasions for the outstanding half paid and unpaid invoices. Plaintiff claims that American Solutions advised Plaintiff he would be paid, but to date, no payments have been made towards any of the outstanding invoices.¹⁰

III. PARTIES' CONTENTIONS

As a result of alleged breach of contract by Defendants, Plaintiff demands \$87,550.00, plus interest, for the services he rendered between September 2009

⁵ *Id.* at ¶6.

⁶ *Id.* at ¶7. In July 2009, American Solutions sent a check to Plaintiff for \$6,000.00. Plaintiff's bank notified Plaintiff that the bank returned the check for insufficient funds. Neither the Amended Complaint nor Defendants' Motion to Dismiss establish why Defendant sent a check to Plaintiff for \$6,000.00 as opposed to the allegedly orally agreed upon amount of \$5,000.00.

⁷ *Id.* at ¶¶10, 12. Plaintiff claims American Solutions owes him \$17,500.00 for this time period (September 2009 – March 2010).

⁸ *Id.* at ¶14.

⁹ *Id.* Plaintiff claims American Solutions owes him \$70,000.00 for this time period (April 2010 – May 2011).

¹⁰ *Id.* at ¶16.

and May 2011.¹¹ With respect to Plaintiff's *quantum meruit* claim, he demands the reasonable value of his professional services for that same time period.¹²

Defendants move to dismiss Plaintiff's complaint for failure to state a claim upon which relief can be granted.¹³ American Solutions argues that it paid Plaintiff for the services it contracted for under the original agreement that expired in March 2008¹⁴ and allege Defendants that nothing in Plaintiff's complaint establishes further written agreements were entered into between the parties.¹⁵

A more specific argument applies to Amsol. Amsol points out that while Plaintiff's complaint alleges Amsol received invoices for services rendered by Plaintiff to American Solutions,¹⁶ Amsol is not a party to, or named in, the contract between Plaintiff and American Solutions, and Plaintiff's complaint does not allege that Plaintiff ever contracted to provide services to Amsol.¹⁷ Amsol maintains that the complaint is devoid of any theory that would render Amsol liable for an expired contract that American Solutions allegedly executed.¹⁸ These facts, Defendants argue, warrant dismissal of Plaintiff's claims against Amsol.

¹¹ *Id.* at ¶16. Plaintiff also demands \$50.00 for the returned check.

¹² *Id.* at ¶20.

¹³ Defendants' Motion to Dismiss ("Mtn. to Dismiss") (Trans. ID. No. 39892682). *See also* Sup. Ct. Civ. R. 12(b)(6). Defendants' motion mainly consists of arguments that were applicable to Plaintiff's original complaint. Now that Plaintiff has filed an Amended Complaint, Defendants' arguments supporting dismissal are somewhat limited.

¹⁴ Mtn. to Dismiss at ¶3.

¹⁵ *See id.*

¹⁶ *Id.* at ¶6.

¹⁷ *Id.*

¹⁸ *Id.*

IV. STANDARD OF REVIEW

The Court assumes that all well pled facts in a complaint are true when considering a Motion to Dismiss under Superior Court Rule 12(b)(6).¹⁹ As such, the Court will not dismiss a complaint “unless the plaintiff would not be entitled to recover under any reasonable set of circumstances susceptible of proof.”²⁰ Although the pleading threshold in Delaware is low, conclusory allegations that lack a factual basis will not survive a motion to dismiss.²¹

V. DISCUSSION

A. American Solutions

Assuming the well pleaded facts are true, Plaintiff’s complaint establishes potentially viable causes of action against American Solutions for breach of contract and *quantum meruit*. To survive a motion to dismiss for failure to state a breach of contract the plaintiff must show: (1) the existence of an express or implied contract; (2) a party breached the obligation imposed by the contract; and (3) any damages that the plaintiff incurred as a result of the breach.²² Moreover, to recover damages, a plaintiff alleging a breach of contract must demonstrate that he substantially complied with all provisions of the contract.²³ Plaintiff alleges that he entered into a contract with American Solutions to provide consulting services

¹⁹ *Brevet Capital Special Opportunities Fund, LP v. Fourth Third, LLC*, 2011 WL 3452821, at *6 (Del. Super.) (citing *Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del. 1998)).

²⁰ *Id.* (citing *Nix v. Sawyer*, 466 A.2d 407, 410 (Del. Super. 1983)).

²¹ *Id.* (citations omitted); *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005).

²² *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003).

²³ *Emmett S. Hickman Co. v. Emilio Capaldi Developer, Inc.*, 251 A.2d 571, 573 (Del. Super. 1969).

from December 1, 2007 through March 2008. At the conclusion of that contract, Plaintiff alleges American Solutions not only orally agreed to continue paying for his services on a monthly basis, but ratified the agreement by actually paying. Then, without warning, despite Plaintiff upholding his part of the agreement, American Solutions began paying for only half of Plaintiff's services, and eventually stopped paying Plaintiff altogether. At this stage in the proceedings, Plaintiff has pled sufficient facts to support a claim for breach of contract against American Solutions.

Plaintiff's complaint also adequately alleges a claim for *quantum meruit* against American Solutions. A claim for *quantum meruit* requires Plaintiff to show that he "performed services with an expectation that the defendant would pay for them, and that the services were performed under circumstances which should have put the defendant on notice that the performing party expected to be paid by the defendant."²⁴ Plaintiff alleges that he performed services for American Solutions with the expectation of being paid, and that American Solutions was on notice of Plaintiff's expectation. Plaintiff alleges that he and Mr. Indukuri previously orally agreed to continue their arrangement. Additionally, Plaintiff claims that American Solutions failed to pay for portions or all of Plaintiff's

²⁴ *State ex. rel. Structa-bond, Inc. v. Mumford & Miller Concrete, Inc.*, 2002 WL 31101938, at *3 (Del. Super.) (citing *Construction Systems Group, Inc. v. The Council of Sea Colony*, 1995 WL 622421 (Del. 1995)).

invoices.²⁵ Consequently, Defendant's Motion to Dismiss is **DENIED** with respect to American Solutions.

B. Amsol

Unlike his claims against American Solutions, Plaintiff has not pled sufficient facts that establish claims against Amsol for breach of contract or *quantum meruit*. Plaintiff's complaint only establishes that Mr. Indukuri directed Plaintiff to send future invoices to Amsol. Amsol was not a party to Plaintiff's contract with American Solutions, and Plaintiff does not allege that he contracted with Amsol or that he performed services for Amsol. Plaintiff's only allegation against Amsol is that he expected Amsol to pay him for services he provided to American Solutions because he sent his invoices to Amsol.²⁶ Assuming, *arguendo*, that Plaintiff justifiably expected payment by Amsol based solely on sending Amsol invoices, Plaintiff has failed to allege that he ever performed services for Amsol – a necessary element of a claim for *quantum meruit*. Therefore, Defendant's Motion to Dismiss, as it applies to Amsol, is **GRANTED**.

VI. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss is **DENIED** as to American Solutions and **GRANTED** as to Amsol.

²⁵ Pl.'s Am. Comp. at ¶20.

²⁶ *Id.*

IT IS SO ORDERED.

Jan R. Jurden, Judge