

STATE OF MAINE  
SAGADAHOC, ss.

BUSINESS AND CONSUMER DOCKET  
Location: West Bath  
Docket No. BCD-WB-CV-10-45

Preti Flaherty Beliveau & Pachios  
Chartered, LLP,

Plaintiff

v.

**DECISION AND ORDER**  
(Motion to Dismiss)

Loring Bioenergy, LLC,

Defendant

This matter is before the Court on Defendant's Motion to Dismiss.<sup>1</sup> Through its motion, which was filed pursuant to M.R. Civ. P. 12(b)(6), Defendant seeks the dismissal of Counts II and III of Plaintiff's Complaint.

Factual Background

In this action, Plaintiff contends that Defendant failed to compensate Plaintiff fully for legal services that Plaintiff provided to Defendant from August 2002 to April 2009 in connection with a project that included the development of a gas-powered cogeneration facility. According to Plaintiff's Complaint, the parties entered into an agreement by which agreement Defendant would defer payment of a portion of Plaintiff's fees until the financing of the first phase of the project was in place. Plaintiff asserts that before the closing of the financing transaction, Defendant ceased its relationship with Plaintiff, and retained another law firm to complete the legal work on the project. In Counts II and III of its Complaint, Plaintiff seeks to recover the deferred compensation.<sup>2</sup>

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<sup>1</sup> As part of its motion, Defendant also seeks a reduction of the amount of the attachment ordered by the Court on May 20, 2010. Defendant's request is directly related to its motion to dismiss. That is, because the amount of the attachment is in part based upon the amount that Plaintiff seeks in Counts II and III, if Defendant prevails on its motion to dismiss, the amount of the attachment would necessarily be reduced by the amount of the damages that Plaintiff claims in Counts II & III.

<sup>2</sup> In Count II of its Complaint, Plaintiff asserts claims of unjust enrichment and quantum meruit. In Count III, Plaintiff seeks a declaratory judgment that Defendant is obligated to pay the deferred compensation.

In response to Plaintiff's Complaint, Defendant filed a motion to dismiss Counts II and III. Through its motion, Defendant maintains that because the parties' relationship is governed by an unambiguous written agreement, Plaintiff cannot recover on theories of unjust enrichment or quantum meruit. In addition, Defendant argues that Plaintiff's declaratory judgment action should be dismissed because Plaintiff has not alleged an actual controversy that is appropriate for a judicial determination.

### Discussion

#### **I. Standard of Review**

A motion to dismiss pursuant to M.R. Civ. P. 12(b)(6) "tests the legal sufficiency of the complaint and, on such a challenge, 'the material allegations of the complaint must be taken as admitted.'" *Shaw v. Southern Aroostook Comm. Sch. Dist.*, 683 A.2d 502, 503 (Me. 1996) (quoting *McAfee v. Cole*, 637 A.2d 463, 465 (Me.1994)). When reviewing a motion to dismiss, the Court examines "the complaint in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory." *Id.* A dismissal under M.R. Civ. P. 12(b)(6) will be granted only "when it appears beyond a doubt that the plaintiff is entitled to no relief under any set of facts that he might prove in support of his claim." *Id.* (quoting *Hall v. Bd. of Env'tl. Prot.*, 498 A.2d 260, 266 (Me. 1985)). "The legal sufficiency of a complaint challenged pursuant to M.R. Civ. P. 12(b)(6) is a question of law." *Bean v. Cummings*, 2008 ME 18, ¶ 7, 2008 ME 18, 939 A.2d 676, 679 (citations and internal quotation marks omitted).

#### **II. Count II: Unjust enrichment/quantum meruit.**

In essence, Defendant contends that the existence of an unambiguous written agreement precludes recovery on theories that are not based upon the terms of the agreement. In support of its motion, Defendant cites *Nadeau v. Pitman*, 1999 ME 104 ¶ 14, 731 A.2d 863, 864, wherein the Law Court explained that "[t]he existence of a contractual relationship 'precludes recovery on a theory of

unjust enrichment.’ (quoting, *June Roberts Agency, Inc. v. Venture Properties, Inc.*, 676 A.2d 46, 49 n.1 (Me. 1996)).

Here, although Plaintiff alleges that the parties entered into a written agreement, Plaintiff also alleges that Defendant terminated the agreement. Consistent with *Nadeau*, in the absence of a binding, enforceable written agreement, a party could recover under a theory of unjust enrichment. In this case, Plaintiff has merely asserted an alternative theory of recovery – that without an enforceable contract, Plaintiff is entitled to recover under the theory of unjust enrichment. Whether Plaintiff will ultimately prevail under such a theory is immaterial at this stage of the proceedings.

Plaintiff has also alleged a quantum meruit or an implied contract theory of recovery. To prevail on a claim for quantum meruit, a plaintiff must demonstrate “that (1) services were rendered to the defendant by the plaintiff; (2) with the knowledge and consent of the defendant; and (3) under circumstances that make it reasonable for the plaintiff to expect payment.” *Paffhausen v. Balano*, 1998 ME 47 ¶ 8, 708 A.2d 269, 271 (citations omitted). In its Complaint, Plaintiff has alleged the elements of a claim for quantum meruit. While the Court should be reluctant to imply a contract where the parties have entered into a written agreement,<sup>3</sup> the existence of a written contract does not necessarily preclude a quantum meruit claim. That is, the same parties could have both a written agreement, and an implied agreement. Simply stated, the Court cannot determine, at this stage of the proceedings, whether the parties’ written agreement forecloses Plaintiff’s ability to prevail on a quantum meruit claim.

### **III. Count III: Declaratory judgment.**

Defendant argues that the Court should dismiss Plaintiff’s declaratory judgment action because Plaintiff has failed to allege a justiciable controversy. At least in part, Plaintiff alleges a dispute as to certain terms of the parties’ written agreement. *See Complaint*, ¶ 45, 46. In Count III, Plaintiff asks the Court to determine its right to compensation under the terms of the parties’

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<sup>3</sup> *Aroostook Valley R. Co. v. Bangor & Aroostook R. Co.*, 455 A.2d 431, 433 (Me. 1983).

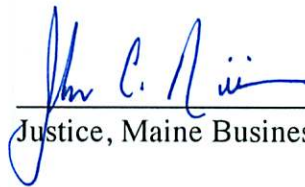
agreement. In other words, Plaintiff asks the Court to interpret the parties' agreement, and to declare their respective rights regarding the payment of and entitlement to additional compensation. At this stage of the proceedings, the Court need not consider the merits of Plaintiff's assertions, nor whether Plaintiff is in fact seeking a declaration of the parties' "hypothetical or future rights" as Defendant maintains.<sup>4</sup> Indeed, because Plaintiff has alleged a dispute for which declaratory relief could be available, it would be improper for the Court, based on the current pleadings, to determine whether an actual controversy exists for which declaratory relief is appropriate.

Conclusion

Based on the foregoing analysis, the Court denies Defendant's Motion to Dismiss. The Court also denies Defendant's request to reduce the amount of the attachment.

Pursuant to M.R. Civ. P. 79(a), the Clerk shall incorporate this Decision and Order into the docket by reference.

Date: 8/12/10



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<sup>4</sup> Defendant's Motion to Dismiss, p. 13.