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| **DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO** | DATE FILED: July 5, 2016 2:32 PMFILING ID: FBAF22B4496FD CASE NUMBER: 2015CV31709 |
| **Denver County District Court Denver City & County Bldg. 1437 Bannock Street, Room 256****Denver, Colorado 80202** | ▲**COURT USE ONLY**▲ |
| **Plaintiffs: ROBERT ABRAMS and ABRAMS & ASSOCIATES, LLC, a Colorado limited liability company** | **Case Number: 2015CV31709**Ctrm.: 409 |
| **v.** |  |
| **Defendant: SHAWN BEESON** |  |
| Wadi Muhaisen, 34470 Muhaisen & Muhaisen, LLC 1435 Larimer Street Ste 203Denver, Colorado 80202Phone Number: 303-872-0084Fax Number: 303-309-3995 wadi@muhaisenlaw.com |  |
| **DEFENDANT’S RESPONSE TO PLAINTIFFS PARTIAL MOTION FOR SUMMARY JUDGMENT** |

COMES NOW, the Plaintiff above named (“Shawn Beeson ” or “Defendant”), by and through counsel, Muhaisen & Muhaisen, LLC, and files this Response to Plaintiffs’ Partial Motion for Summary Judgment on Defendant’s counter-claims for breach of contract and civil theft, and as grounds therefore, states the following:

# INTRODUCTION AND UNDISPUTED FACTS.

This matter arises over an attorney client relationship between Plaintiffs and Defendant that lead to a physical altercation between the parties. The procedural background of this matter is chaotic at best. Current Defense Counsel inherited this case on May 15, 2016.

Plaintiff, Robert Abrams (“Abrams”) filed an initial complaint for a protection order, subsequently, Abrams filed a second amended complaint alleging (1) False Reporting (2) Battery

(3) Extreme and Outrageous Conduct against Defendant. In turn, Defendant filed his Answer to Plaintiff’s Second Amended Complaint and joined Abrams and Associates, LLC as an Additional Defendant, and plead counterclaims for (1) Battery (2) Theft and (3) Breach of Contract. *See Defendant’s Second Amended Answer attached as Exhibit 1.*

Thereafter, Abrams filed a Third Amended Complaint. *See Third Amended Complaint Attached as Exhibit 2*. Additionally, Abrams filed for Leave to File Third Amended Complaint and Join Additional Party. *See Leave Motion attached as Exhibit 3.*

Abrams specifically plead:

In his Counterclaims, Defendant asserts a breach of contract claim against Plaintiff. **In order for Abrams to properly defend against the same, he must be allowed to amend his complaint and add his law firm**, Abrams and Associates, LLC, as plaintiff in order to assert his own claim for breach of contract against Defendant. See Ex. 3 ¶4, emphasis added.

Abrams’ Third Amended Complaint Abrams designated himself as “Abrams” or “**Plaintiff**” and defined Abrams and Associates, LLC as “Firm.” *See Ex. 2 ¶¶ 1, 2.* Abrams then plead that “**[t]he parties** hereto entered into a Contract for Legal Services (Contingent Fee Agreement) (hereinafter as “Contract”) on or about May 27, 2011.” *Id at ¶34*, *emphasis added*. The breach of contract claim continues that “**Plaintiff** performed fully under the contract” and

“Defendant terminated **Plaintiff**” and that “Defendant failed to pay **Plaintiff**” -- as clearly shown Plaintiffs always refers to Abrams individually and not Abrams and Associates, LLC, he even requested relieve as an individual. *See Ex. 2 ¶¶ 35, 36, 37, 39, 40 and 41, emphasis added*. This is a clear demonstration that Abrams associated Abrams and Associates, LLC and himself as one in the same. Additionally, at the time Defendant contracted with Abrams, Abrams was a sole practitioner.

Admittedly, Defendant’s previous counsel filed its Third Answer and Counterclaim full of clericals errors. *See Defendant’s Third Answer and Counterclaims*.

Plaintiffs has now filed a motion for partial summary judgment on Defendant’s breach of contract claim and civil theft claim. Plaintiffs’ motion should be denied for the reasons the follow, and simultaneously, Defendant requests leave to amend its counterclaims for the sole purpose of clarifying its relief.

# RULE 56 STANDARDS.

Summary Judgment is a “drastic remedy” to be granted only on a clear showing that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *KN Energy, Inc. v. Great Western Sugar Co.*, 698 P.2d 769, 776 (Colo. 1985). The movant has the burden of establishing the absence of triable issues of fact, *Churchey v. Adolph Coors Co.*, 759 P.2d 1336, 1340 (Colo. 1988), and the non-movant “must receive the benefit of all favorable inferences that may be reasonably drawn from the undisputed facts,” *Mancuso v. united Bank of Pueblo*, 818 P.2d 732, 736 (Colo. 1991). An order granting summary judgment is reviewed *de novo*. *Aspen Wilderness Workshop, Inc. v. Colorado Water Conservation Bd.*, 901 P.2d 1251, 1256 (Colo. 1995). An order denying summary judgment is interlocutory in nature

and not subject to review. *Manuel v. Fort Collins Newspapers, Inc.*, 631 P.2d 1114, 1116-17 (Colo. 1981).

# LEGAL ARGUMENT AND AUTHORITIES.

* 1. **DEFENDANT’S CLAIM FOR BREACH OF CONTRACT SHOULD NOT BE DISMISSED BECAUSE OF CLERICAL ERRORS**

Defendant does not intend his breach of contract claim to be enforced against Robert Abrams personally, and Mr. Abrams knows that the claim is against his firm as he pleaded that he needed to join his firm to defend the breach of contract claim. *Ex. 3.*

It was established in *Bessemer Irrigating Company v. West Pueblo Ditch and Reservoir Company,* 65 Colo. 258, 176 P. 302 (1918), that the rule of law allowing correction of clerical errors encompasses:

"not only errors made by the clerk in entering the judgment, **but also those mistakes apparent on the face of the record, whether made by the court or counsel during the progress of the case**, which cannot reasonably be attributed to the exercise of judicial consideration or discretion." 65 Colo. at 259, 176 P. at

303. Emphasis added.

Defendant’s intent is clear because in his initial counterclaim for breach of contract, he added Abrams and Associates, LLC. Admittedly, previous counsel for Defendant did a poor job pleading and adding Abrams and Associates, LLC, nevertheless, Defendant’s intent is, and has always been, to bring his breach of contract claim against Abrams and Associates, LLC, f.n.a Abrams Law, LLC.

Another reason the claim should not be dismissed is the fact that Abrams has poorly plead just as previous counsel for Defendant has. Mr. Abrams, personally, alleges that he suffered damages from breach of contract and that “Plaintiff” defined as “Robert Abrams”, “is

entitled to recover the unpaid sums.” *Ex. 2 ¶ 41*.

While Plaintiffs may allege that Abrams and Associates, LLC did not have notice of the claim, this is clearly false considering one of the reasons Abrams wanted join his firm was to defend against this exact claim. *See Ex. 3 ¶4*.

Based on the foregoing, Defendant’s breach of contract claim should not be dismissed because there are obvious mistakes on the face of the record of this entire case. Defendant further requests leave to amend its counterclaims to remedy these mistakes.

#  DEFENDANT’S CIVIL THEFT CLAIM SHOULD NOT BE DISMISSED BECAUSE IT HAS NOT BEEN PROVEN OR DISPROVEN THAT ABRAMS TOOK DEFENDANT’S PORTION OF THE SETTLEMENT AGREEMENT

First, this issue needs context, Plaintiffs and Defendant were in an attorney client relationship regarding a personal injury matter. A settlement was reached and Plaintiffs filed a Notice of Settlement and Notice to Vacate Trial on November 1, 2012. *See Notice of Settlement attached as Exhibit 5*. Plaintiffs allege a month after the Notice of Settlement that Defendant fired Plaintiffs, on or about December 7, 2012.

However, on December 21, 2012 Plaintiffs, on behalf of Mr. Beeson, filed a Stipulation for Dismissal with Prejudice. *See joint Stipulation attached as Exhibit 6*.

On January 17, 2013, over a month after Plaintiffs were allegedly terminated, Plaintiffs allege that they sent Defendant his cut of the settlement proceeds and that Defendant did not cash the check. *See Plaintiffs Partial Motion for Summary Judgment attached as Exhibit 7.* On October 6, 2015, almost **three years** from the time Plaintiffs were allegedly fired, Plaintiffs brought a breach of contract claim on the theory that they are entitled to the ENTIRE settlement amount. *Ex. 2.*

There is no true dispute to the funds, Plaintiffs alleged they sent the settlement amount to Defendant and simultaneously allege they are entitled to the same. Clearly, if Defendant received said amounts this matter would not be before the Court.

Plaintiffs allege that Defendant did not request the sum, Defendant adamantly denies this, and is shown in his email on February 11, 2013. *See February 11, 2013 email attached as Exhibit 8.*

To succeed on his civil theft claim, Defendant has to establish that (1) Abrams knowingly obtained control over his property without authorization and (2) Abrams did so with the specific intent to permanently deprive him of the benefit of the property. [*Itin v. Ungar,* 17 P.3d 129, 134](https://scholar.google.com/scholar_case?case=12387802565107699365&amp;q=%22Civil%2BTheft%22%2Belements&amp;hl=en&amp;as_sdt=4%2C6) [(Colo.2000)](https://scholar.google.com/scholar_case?case=12387802565107699365&amp;q=%22Civil%2BTheft%22%2Belements&amp;hl=en&amp;as_sdt=4%2C6); *see* § 18-4-401(1), C.R.S.2008.

These elements are clearly met when viewed in light most favorable to Mr. Beeson, (1) Plaintiffs allege they were terminated but still took the settlement amount, they did not have authorization to do so, and (2) the only reasonable explanation why Plaintiffs would do this is that they intended to wrongfully take the entire settlement amount for themselves and not pay Defendant. It is Defendant’s belief that Mr. Abrams directed this malfeasance.

Abrams’ initial disclosures has only shown that he entered Defendant’s settlement funds into his firm’s trust account, he has not shown that it has remained in the trust account. Defense counsel has requested a full accounting of Plaintiffs’ trust account, something that should have been disclosed in Plaintiffs initial disclosures.

For the foregoing reasons, Defendant’s civil claim should not be dismissed.

# CONCLUSION.

Shawn Beeson respectfully requests that Plaintiff’s partial motion for summary judgment be denied.

**DATED** this \_5th\_ day of July , 2016.

Respectfully Submitted, Muhaisen & Muhaisen, LLC

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\* *The "S/" is a symbol representing the signature of the person whose name follows the "S/" on the electronically or otherwise signed form of the E-Filed or E-Served document pursuant to C.R.C.P. 121 lr 1-26(1)(f). A printed or printable copy of an E-Filed or E-Served document with original or scanned signatures is maintained by the filing party and is available for inspection by other parties or the court upon request pursuant to C.R.C.P. 121 lr 1-26(7).*

# CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing “Defendant’s Response to Plaintiffs’ Partial Motion for Summary Judgement was E-Served by the Court-authorized E-

System provider, to the following on this

5th

day of \_July\_ 2016:

\*S/

*Yvette Garcia*

Legal Assistant Muhaisen & Muhaisen, LLC