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| DISTRICT COURT, DENVER COUNTY, COLORADO |  |
| DATECourt Address: Denver County Court FILIN1437 Bannock St., Room 256 CASEDenver, CO 80202(720) 865-8301 | FILED: January 18, 2016 11:46 AM G ID: B42D9D0844D42NUMBER: 2015CV31709 |
| Plaintiffs: ROBERT ABRAMS and ABRAMS & ASSOCIATES, LLC, a Colorado limited liability company; |  |
| v. |  |
| Defendants: SHAWN BEESON, an individual; and CALIFORNIA STREET PARKING GARAGE, LLLP, aColorado limited liability limited partnership. | **COURT USE ONLY** |
| Attorneys for Plaintiff: | Case Number: 2015CV31709 |
| ELKUS SISSON & ROSENSTEIN, P.C.Steven T. Mandelaris, #37964 501 S. Cherry Street, Suite 920Denver, CO 80246Phone #: (303) 567-7981Fax #: (303) 431-3753E-mail: smandelaris@elkusandsisson.com | Division: 409 |
| ABRAMS & ASSOCIATES, LLCRobert Abrams700 17th St., Suite 650Denver, CO 80202Phone #: (303) 322-4115Fax #: (303) 333-0708E-mail: Robert@AbramsLaw.net Atty. Reg. #: 37950 |  |
| **PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE ISSUE OF BREACH OF CONTRACT AGAINST DEFENDANT SHAWN BEESON** |

COMES NOW, Plaintiff Robert Abrams, through his attorneys at Elkus Sisson and Rosenstein, P.C. and Abrams & Associates, LLC, and hereby files his Response to Defendant’s Motion for Attorney Fees (“Motion”). In support thereof, Plaintiff state and allege as follows:

C.R.C.P. 121 § 1-15, ¶8 Certification: Plaintiff contacted defense counsel in good faith regarding this Motion. Defendant opposes the relief requested herein.

1. From the pleadings, Affidavits and matters of record, no genuine issue of material fact exist; therefore, Plaintiff’s Motion must be granted.
2. A Memorandum Brief setting forth Plaintiff’s position with particularity is set forth herein in support of its Motion for Partial Summary Judgment.

# ISSUE PRESENTED AGAINST DEFENDANT SHAWN BEESON

**I. DEFENDANT TERMINATED PLAINTIFF’S LAW FIRM AND FAILED TO PAY REMAINING SUMS DUE THEREUNDER WITHIN THE PARTIES’ CONTRACT; THEREFORE, SUMMARY JUDGMENT IS APPROPRIATE UNDER C.R.C.P. 56.**

**STATEMENT OF THE CASE**

1. On October 1, 2015 plaintiff filed his Third Amended Complaint and sued defendant in this matter for claims of Breach of Contract, Battery, and Extreme and Outrageous Conduct.
2. In Plaintiff’s Third Amended Complaint, against defendant Beeson, plaintiff pled:
	1. On or about May 27, 2011, parties Abrams and Beeson individually, entered into a Contract for Legal Services on a contingent fee basis.
	2. Therein the Contract, Defendant Beeson agreed that should client terminate the Contract for any reason, the firm would deemed to have been working on a *quantum meruit* basis.
	3. Defendant terminated Plaintiff and failed to pay Abrams for his attorney’s fees on a *quantum meruit* basis.
3. Defendant, in his counterclaim to plaintiff’s Third Amended Complaint, makes a claim for breach of contract. Defendant admits, at para. 93-95 of his Answer, the parties had a contract, and he is not paid thereunder.
4. So, the only issue for the court to decide is, was defendant owed any money under the parties’ contact after defendant terminated plaintiff.
5. On or about May 27, 2011, Plaintiff Abrams & Associates, LLC (f.k.a. Abrams Law, LLC hereinafter the “Firm”) and Defendant Beeson (hereinafter “defendant”) entered into a Contract for Legal Services on a contingent fee basis to represent him in Denver District Court case number 2012CV79. *Exhibit 1.*
6. Therein the Contract, Defendant agreed that should client terminate the Contract, the Firm would have been working on a *quantum meruit* basis. *Exhibit 1, ¶ 7.*
7. On or about December 7, 2012 defendant terminated Plaintiff. *Exhibit 2.*
8. Upon termination, defendant failed to pay plaintiff for his attorney’s fees on a

*quantum meruit* basis.

1. The Firm filed an attorney’s lien in Denver District Court Case number 2012CV79 for failure to pay attorney fees per the parties’ contract in the amount of $37,851.96. *Exhibit 3.*
2. To date, defendant’s outstanding balance at the Firm is $20,930.46 plus interest, of attorney’s fees owed to the Firm by Defendant, which he failed to pay.
3. Plaintiff performed fully under the contract and all conditions precedent occurred. Defendant terminated Plaintiff on or about December 7, 2012.
4. The parties’ Contract contains the following clause at para. 7:

In the event of termination of this contract by the Client, the Firm shall be deemed to have been working on a *quantum meruit* basis, presumed to be equal to the prevailing hourly rate of the Firm at the time of termination. Or, the applicable percentage of the highest settlement offer offered to the Client immediately prior to termination, whichever amount is greater.

1. Upon termination, Defendant became liable for attorney’s fees under the *quantum meruit* terms of the contract. Defendant failed to pay Plaintiff the amounts due and owing to him under the parties’ Contract. By terminating Plaintiff and failing to pay him the sums due as stated in his Contract upon termination, Defendant materially breached the contract.
2. As a direct and proximate result of Defendant’s breach of contract, by failing to pay complete earned and vested compensation to Plaintiff, Plaintiff suffered damages. Plaintiff is entitled to recover the unpaid sums under the parties’ Contract plus interest.

# STATEMENT OF UNDISPUTED FACTS

1. On or about May 27, 2011, the Firm and Defendant entered into a Contract for Legal Services on a contingent fee basis to represent him in Denver District Court case number 2012CV79. *Exhibit 1.*
2. Therein the Contract, Defendant agreed that should client terminate the Contract the Firm would have been working on a *quantum meruit* basis. *Exhibit 1, ¶ 7.*

In the event of termination of this contract by the Client, the Firm shall be deemed to have been working on a *quantum meruit* basis, presumed to be equal to the prevailing hourly rate of the Firm at the time of termination.

Or, the applicable percentage of the highest settlement offer offered to the Client immediately prior to termination, whichever amount is greater.

1. On or about December 7, 2012, Defendant terminated Plaintiff. *Exhibit 2.*
2. Upon termination, defendant failed to pay plaintiff for his attorney’s fees on a

*quantum meruit* basis.

1. The Firm filed an attorney’s lien in Denver District Court Case number 2012CV79 for failure to pay attorney fees per the parties’ contract in the amount of $37,851.96. *Exhibit 3.*
2. To date, defendant’s outstanding balance at the Firm is $20,930.46 plus interest, of attorney’s fees owed to the Firm by Defendant, which he failed to pay. *Exhibit 4.*

**LEGAL AUTHORITY**

1. Summary judgment is proper only when the pleadings, affidavits, depositions, or admissions establish that “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” C.R.C.P. 56(c); *see also Huydts v. Dixon*, 606 P.2d 1303, 1306 (1980). “A material fact is a fact that affects the outcome of a case.” *Trigg v. State Farm Mut. Auto. Ins. Co.*, 129 P.3d 1099, 1101 (Colo. App. 2005). “A court must afford all favorable inferences that may be drawn from the undisputed facts to the nonmoving party, and must resolve all doubts as to the existence of a triable issue of fact against the moving party.” *Cotter Corp. v. American Empire Surplus Lines Ins. Co.*, 90 P.3d 814, 819 (Colo. 2004). The moving party has the burden of establishing the nonexistence of a genuine issue of material fact*. Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986); *Urban v. Beloit Corp.*, 711 P.2d 685, 687 (Colo.1985). “This burden has two components: an initial burden of production on the moving party, which burden when satisfied then shifts to the nonmoving party, and an ultimate burden of persuasion, which always remains on the moving party.” *Continental Air Lines, Inc. v. Keenan*, 731 P.2d 708, 712 (Colo. 1987). “Once the moving party has met this initial burden of production, the burden shifts to the nonmoving party to establish that there is a triable issue of fact.” *Continental*, 731 P.2d at 713. If the nonmoving party cannot produce sufficient evidence to make out a triable issue of fact, “a trial would be useless and the moving party is entitled to summary judgment as a matter of law.” *Id*. On summary judgment, the court’s “role is simply to determine whether the evidence proffered by plaintiff would be sufficient, if believed by the ultimate factfinder, to sustain [a] claim.” *Jones v. Barnhart*, 349 F.3d 1260, 1265-66 (10th Cir. 2003).

# ARGUMENT

**I. DEFENDANT TERMINATED PLAINTIFF’S LAW FIRM AND FAILED TO PAY REMAINING SUMS DUE THEREUNDER WITHIN THE PARTIES’ CONTRACT; THEREFORE, SUMMARY JUDGMENT IS APPROPRIATE UNDER C.R.C.P. 56.**

1. Plaintiff must meet the following burden to prevail on its breach of contract claim:
2. The parties entered a contract; 2. The contract had consideration; 3. Defendant terminated plaintiff thereby causing damages. For an enforceable contract to exist there must be mutual

assent to an exchange between competent parties, legal consideration and sufficient certainty with respect to the subject matter and essential terms of the agreement. *Denver Truck Exch. v. Perryman,* 134 Colo. 586, 307 P.2d 805 (1957); *Industrial Prods. Intl, Inc. v. Emo Trans, Inc*.,

962 P.2d 983 (Colo.App.1997).

* 1. The parties entered into a contract for fees for legal services. The contract contained a clause at para. 7, contemplating this termination circumstance. The parties agreed to the contract and executed same. The contract is supported by the consideration of money for attorney services.
	2. Defendant terminated plaintiff on December 7, 2012. Plaintiff notified him at that time that he worked on a *quantum meruit* basis*. Exhibit 2, Dec. 7 e-mail at 11.32 a.m.* [1](#_bookmark0)
	3. Defendant claims in his counterclaim, plaintiff owes him unpaid money. The only issue therefore, before the court is, what amount of money would defendant be owed by plaintiff, under defendant’s claim. Plaintiff affirms by affidavit, *Exhibit 4,* after receiving some money from defendant, under defendant’s settlement agreement, post termination by defendant, plaintiff proves the Firm is owed $20,930.46 plus interest, after paying all subrogated claims and costs owed by defendant. *Id. ¶8.* Therefore, unless defendant can prove he is owed money in excess of plaintiff’s affidavit of attorney fees, the court must grant summary judgment on this issue.
	4. Plaintiff in his Third Amended Complaint pled the facts and circumstances described herein this Motion. Because no genuine issue of fact exists as to the circumstances and events described herein, plaintiff is owed his *quantum meruit* damages per the parties’ contract. All matters in the Complaint must be accepted as true viewing the allegations in the light most favorable to the Plaintiff. *Yadon v. Lowry,* 126 P.3d 332, (Colo. App. 2005).
	5. By way of proof of damages, plaintiff offers his attorney fee affidavit in the amount of $20,930.46 in this matter. *Exhibit 4.* Because no genuine issue of material fact exists between the parties, plaintiffs’ motion for partial summary judgment must be granted.

# CONCLUSION

Plaintiff properly pled in his Third Amended Complaint, three claims against Defendant: Breach of Contract, Battery, and Extreme and Outrageous Conduct. Defendant terminated plaintiff’s Firm and became liable for the damages stated within the parties’ contract. Under the *quantum meruit* clause in the contract, defendant Beeson became liable for attorney fees owed in that matter of $37,851.96, less amounts paid thereunder. To date, defendant’s outstanding balance at the Firm is $20,930.46, plus interest from the date of the breach. No genuine issue of material fact exists pertaining to the termination. All matters in the Complaint must be accepted as true viewing the allegations in the light most favorable to the Plaintiff. *Yadon v. Lowry,* 126 P.3d 332, (Colo. App. 2005). The parties have no factual disputes about the claim of breach of contract asserted herein. Thus, applying the standard for resolving motions for summary judgment, plaintiff’s Motion for Partial Summary Judgment must be granted.

1 *Please note, plaintiff’s responses are written directly into defendant’s original e-mail.*

WHEREFORE, Plaintiff Abrams & Associates, LLC, respectfully requests this Court enter judgment against Defendant Shawn Beeson in the amount of $20,930.46, pre- and post- judgment interest as allowed by law; and, for such other and further relief as this Court deems just and appropriate under the circumstances.

RESPECTFULLY SUBMITTED this 18th day of January, 2016.

ELKUS SISSON & ROSENSTEIN, P.C.

*/s/ Steven T. Mandelaris* Steven T. Mandelaris, Attorney at Law *(Original signature on file at Elkus Sisson & Rosenstein, pursuant to C.R.C.P. 121 § 1-26)*

# CERTIFICATE OF SERVICE

I HEREBY CERTIFY I have this 18th day of January, 2016, via ICCES, served a true and correct and correct copy of the foregoing PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE ISSUE OF BREACH OF CONTRACT AGAINST DEFENDANT SHAWN BEESON upon:

Michael P. Boyce

Law Office of Michael P. Boyce, PC

3773 Cherry Creek Drive North, Suite 575 Denver, CO 80209 mike@boycelawoffice.com

*Attorney for Defendant*

*/s/ Audrey Ramsden*

Audrey Ramsden, Paralegal

*(Original signature on file at Abrams & Assoc. LLC pursuant to C.R.C.P. 121 § 1-26)*