

**IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI  
ASSOCIATE DIVISION**

JESSICA WHELAN,	)	
Plaintiff,	)	
	)	Cause No. 15SL-AC30854
vs.	)	
	)	Division No. 34
MEDICAL ADMINISTRATIVE	)	
SERVICES.	)	
	)	
	)	
Defendant.	)	

**FILED**

**APR 18 2018**

**JOAN M. GILMER  
CIRCUIT CLERK, ST. LOUIS COUNTY**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter is before the Court after a bench trial on April 4, 2018. At trial, Plaintiff Jessica Whelan (hereinafter referred to as Whelan) appeared in person and by counsel, David Page. Defendant, Medical Administrative Services (hereinafter referred to as M.A.S.) appeared by its attorney Haig Apoian. Whelan filed a four (4) count petition alleging breach of contract, quantum meruit, promissory estoppel, and unjust enrichment. Whelan alleges that she is entitled to \$12,707.29, attorney's fees and court costs. M.A.S. filed no answer, counterclaim and no affirmative defenses.

The Court having considered the evidence presented, the credibility of the witnesses, the arguments of counsel at trial and having taken judicial notice of the Court's own file, hereby makes the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

Whelan and Defendant, M.A.S. began an "office sharing and management agreement" in July 2013 that ended in September 2014. As a part of their relationship Whelan, a licensed Psychiatric Mental Health Practitioner was to provide mental health treatment and counseling to

patients. M.A.S. was to provide services to Whelan and others, including, but, not limited to billing and collecting payments and fees from patients and insurance companies. Thereafter, M.A.S. was to pay Whelan seventy (70%) of the amounts collected from the patients and insurance companies representing patients seen by Whelan. The only credible evidence presented at trial was that Whelan and M.A.S. entered into a written contract that outlined the duties and rights of Whelan and the duties and rights of M.A.S.

The court finds Whelan's testimony credible that she witnessed M.A.S. sign the contract. Also, the court finds Whelan's testimony credible that she requested a signed copy of the contract, but, never received it. The court finds Whelan's testimony credible that the terms of the agreement with M.A.S. were fully outlined in the contract admitted into evidence and marked as Plaintiff's exhibit number one. Whelan's testimony that she received an accounting summary from M.A.S. that illustrated payments received and owed to her in the amount of \$12,707.29 was credible and uncontroverted by evidence of M.A.S.

### **CONCLUSIONS OF LAW**

In order for a Plaintiff to be successful in a breach of contract case, he must show (1) the existence and terms of an agreement; (2) that the plaintiff performed pursuant to the agreement; (3) that the defendant breached the agreement; and (4) that the plaintiff suffered damages as a result. *Keveney v. Mo. Military Academy*, 304 S.W.3d 98, 104 (Mo. banc 2010). In the instant case, Whelan showed the existence and terms of the contract with her testimony and with production of the contract. The uncontroverted evidence was that Whelan saw patients and performed nursing services, that M.A.S. failed to pay Whelan any funds after September 2014 and that Whelan is owed \$12,707.29 for the payments received by M.A.S. from patients or their insurance companies seen by Whelan.

Further, the court concludes that Whelan proved a claim for unjust enrichment. The elements necessary to prove unjust enrichment are (1) a benefit conferred by a plaintiff on a defendant; (2) the defendant's appreciation of the fact of the benefit; and (3) the acceptance and retention of the benefit by the defendant under circumstances in which retention without payment would be inequitable. *Hertz Corporation v. RAKS Hospitality, Inc.*, 196 S.W.3d 536, 543 (Mo. App. E. D. 2006). In the case at bar, Whelan enriched M.A.S. and conferred a benefit on M.A.S. by providing nursing services to patients who paid M.A.S. M.A.S. appreciated, accepted and retained the benefit by collecting the payments from the patients or their insurance companies, but, failed to pay Whelan for her services. In an unjust enrichment case, a plaintiff can receive the value of the benefit received by the defendant. *Patrick v. Koepke Construction, Inc. v. Woodsage Construction Co.*, 844 S.W.2d 508, 515 (Mo. App. E. D. 1992). Here, the only credible evidence presented at trial of the value owed to Plaintiff and received by the defendant was the amount of \$12,707.29.

The American Rule provides that each party is to bear the expense of his own attorney's fees. *City of Cottleville v. St. Charles County*, 91 S. W. 3d 148, 150 (Mo. App. E.D. 2002). The exception to the American Rule permits a successful litigant to recover attorney's fees when a contract provides for recovery. *McClain v. Papka*, 108 S. W.3d 48, 54 (Mo. App. E. D. 2003). "If a contract provides for the payment of attorney's fees in the enforcement of a contract provision, the trial court must award them to the prevailing party." *White v. Marshall*, 83 S. W. 3d 57, 63 (Mo. App. W. D. 2002) citing *Howe v. ALD Servs., Inc.*, 941 S.W.2d 645, 652 (Mo. App. E. D. 1997). The prevailing party is the party that "obtains a judgment from the court, regardless of the amount of damages." *Brooke Drywall of Columbia, Inc. v. Building Constr.*

Enters., Inc., 361 S. W. 3d 22, 27 (Mo. App. W. D. 2011). The parties contract provides as follows:

**ATTORNEYS FEES** : In the event a suit or action is brought by either party under this Agreement to enforce any of its terms, or in any appeal therefrom, it is agreed that the prevailing party shall be entitled to reasonable attorneys fees to be fixed by the trial court, and/or appellate court.

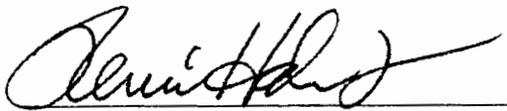
**ORDER AND JUDGMENT**

The Court finds the issues in favor of Plaintiff Jessica Whelan and against Defendant Medical Administrative Services on Count I of Plaintiff's petition. The court need not rule on Counts II, III or V of Plaintiff's petition as the alternative counts are moot.

**WHEREFORE, IT IS ORDERED, JUDGED AND DECREED** that Plaintiff Jessica Whelan have and recover from Defendant Medical Administrative Services the sum of \$12,707.29 and attorney's fees in the amount of \$1,906.09 for a total judgment of \$14,613.38.

Court costs to be taxed against the Defendant.

SO ORDERED:



Renee D. Hardin-Tammons, Judge, Div.34

04-16-18

Date