2011 IL App (1st) 102122-U

FOURTH DIVISION
August 25, 2011

No. 1-10-2122

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

POMPER & GOODMAN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	09 M1 103053
	)	
PRINN K. STANG, M.D., WANDA STANG,	)	The Honorable
and WAT BUDDHA DHARMA, INC.,	)	Anthony L. Burrell,
	)	Judge Presiding.
Defendants-Appellees.	)	

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Salone concurred in the judgment.

O R D E R

HELD: (1) The circuit court erred in granting the defendants' Section 2-619.1 motion to dismiss the plaintiff law firm's cause of action for breach of contract against the individual vice president defendant where the complaint alleged that he signed a retainer agreement as a promise to pay the retainer and legal fees on behalf of the corporate defendant. (2) The circuit court also erred in dismissing the plaintiff law firm's claim for breach of contract against the corporate defendant because the amended complaint alleged that the corporate defendant orally entered into an agreement for the law firm to perform legal services on its behalf through the implied or

apparent authority of its agents, or ratification by the defendant. (3) The claim for legal fees based on *quantum meruit* in count III was improperly dismissed where the plaintiff law firm could plead its cause of action for its attorney fees in the alternative.

¶1 Plaintiff, Pomper & Goodman filed suit against Wat Buddha Dharma for nonpayment of outstanding fees for legal services in representing Wat Buddha Dharma in a suit against former directors and in another related suit. Pomper & Goodman brought a claim for breach of contract against defendant Wat Buddha Dharma for breach of contract and for legal fees based on *quantum meruit*. Pomper & Goodman also brought a claim against Prinn K. Stang, the vice-president of defendant Wat Buddha Dharma, for breach of contract.[1] Pomper & Goodman appeals the circuit court's order granting with prejudice the defendant Wat Buddha Dharma, Inc.'s (Wat Buddha Dharma) combined section 2-619.1 motion to dismiss (735 ILCS 5/2-619.1 (West 2010)) all counts of the complaint for failure to state a cause of action pursuant to section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)) and for involuntary dismissal based upon defects or defenses under section 2-619(a)(9) (735 ILCS 5/2-619 (West 2010)). Defendant Wat Buddha Dharma argued that a written retainer agreement was signed by only defendant Prinn Stang in his personal capacity, not in his corporate capacity as vice president of Wat Buddha Dharma, and that no contract was entered into by Wat Buddha Dharma or any representative with authority. Wat Buddha Dharma also argued that no claim

[1] Count IV was withdrawn by Pomper & Goodman. Pomper & Goodman included count V in its notice of appeal but make no argument before us regarding the dismissal of count V against Wanda Stang for interference with contractual relations, thereby waiving it. Therefore we need not address the dismissal of Count V. See S. Ct. Rule 341(h)(7) (eff. July 1, 2008); *United Legal Foundation v. Pappas*, 2011 Ill. App. LEXIS 549 at *7-8 (May 31, 2011) (holding points not argued are waived and need not be considered).

based on *quantum meruit* could be maintained where a contract concerning the same subject matter is alleged. The trial court granted the motion to dismiss with prejudice on all counts in favor of all defendants.

¶2 We hold that the circuit court erred in dismissing count I for breach of contract against Prinn Stang, as the complaint sufficiently alleges that Stang signed the retainer agreement in his personal capacity to guarantee payment of the retainer and legal fees on behalf of the temple. We also hold the circuit court erred in dismissing count II for breach of contract against Wat Buddha Dharma because the complaint sufficiently alleges that the temple orally entered into a retainer agreement with the firm, and that both Prinn Stang and Wanda Stang had authority to retain the services of Pomper & Goodman on behalf of the temple, and where the complaint sufficiently alleges that the temple ratified the representation. Finally, the circuit court erred in dismissing count III because Pomper & Goodman is allowed to alternately plead a claim for legal fees based on *quantum meruit*. Therefore, we reverse and vacate the court's order granting dismissal with prejudice as to counts I, II and III of plaintiff's amended complaint and remand for further proceedings.

¶3 FACTUAL BACKGROUND

¶4 Pomper & Goodman is a law firm located at 111 West Washington in the City of Chicago. Wat Buddha Dharma Inc. (Wat Buddha Dharma or, alternatively, the temple) is a Thai temple located at 8910 S. Kingery Highway in Willowbrook, Illinois. It is a religious

organization that is incorporated as a not-for-profit business in the State of Illinois.[2] The temple is a corporation and maintains a board of directors, corporate executives, and corporate officers. The abbot is also the president of the temple. In March 2006, the abbot and president was Phra Worasak Worathomo. Worathomo served as the president of the corporation in name only. Because the abbot is the spiritual leader of the temple, he did not manage the secular and financial aspects of the corporation. Instead, the vice president of the temple managed the secular and financial affairs of the temple. The amended complaint alleges that in March 2006, Mr. Prinn K. Stang, M.D., was vice president of the temple and that Mr. Stang's wife, Wanda Stang, was the president's special representative for litigation.

¶5 Pomper & Goodman alleges that around March 2006, Pomper & Goodman orally agreed with Worathomo, Wanda Stang, and a member of the temple's board of directors that Pomper & Goodman would provide legal representation in a lawsuit against two of its former directors, Sunthorn Plamintr and Suchitra Surapiboonchai, for illegal conversion of temple funds. In consideration for providing their legal services to the temple, it is alleged that the temple orally agreed that Pomper & Goodman were to receive $200 per hour of work done and a $3,000 retainer up-front. Pomper & Goodman alleges in its amended complaint that because of the illegal conversion, the temple was left with limited funds. Pomper & Goodman wanted to make sure that they would be compensated for their work so they required the contract for its legal services to be contingent upon a financially reliable party signing the agreement; namely, Prinn

[2] Since the filing of this lawsuit Wat Buddha Dharma Inc. has changed its name to Wat Buddhadhamma. The temple's address remains at 8910 S. Kingery Highway in Willowbrook, Illinois.

Stang.

¶6 The retainer agreement is dated March 12, 2006. Section 1 describes providing legal services in a "SUIT AGAINST PRIOR DIRECTOR OF THAI TEMPLE." However, the agreement states that it is entered into "between the client _____," and "Pomper and Goodman," thus leaving the name of the client blank. The retainer agreement provided that Pomper & Goodman's fee would be a $3,000 retainer plus costs, and that Pomper & Goodman would charge an hourly rate of $175 per hour beyond the original retainer fee and $200 per hour for any court appearances. The agreement also provided for an increase of fees "[i]f the Law Firm needs to do more work than originally intended as indicated on the original retainer." The retainer was signed, "Prinn K. Stang, M.D." on March 11, 2006. According to the complaint, Prinn Stang paid the $3,000 retainer by check.

¶7 Meanwhile, another lawsuit was pending in DuPage County in which Worathommo and the temple were defendants. The second amended complaint alleges that in December 2007 Wanda Stang discharged the temple's counsel in that suit and hired Pomper & Goodman. Subsequently Prinn Stang and Wanda Stang agreed that Pomper & Goodman would be compensated $200 per hour for services in defending Worathommo and the temple. Pomper & Goodman entered an appearance and represented Worathommo and the temple in the DuPage County litigation. In March 2008, the court allowed Pomper & Goodman to consolidate both lawsuits.

¶8 The second amended complaint alleges that "[t]he services rendered by Pomper & Goodman were in many instances specially requested by Prinn Stang MD and Wanda Stang,"

and that the services "benefited [sic] the client by advancing the cause of the Thai Temple in regaining its rightful possession of its financial assets in various bank accounts." Invoices for the work performed on behalf of the temple in the litigation were submitted as orally requested by Wanda Stang in her capacity as special representative to the president of the temple to Wanda Stang at the medical office of Prinn Stang. The invoices are dated December 16, 2008, October 27, 2008, October 15, 2008, and August 28, 2008, and are for legal services between July 21, 2008 and December 5, 2008.

¶9 In October 2008 a dispute arose regarding who the president and abbot of the temple was. At that point, Pomper & Goodman withdrew from representing Worathommo but continued to represent the temple itself. The firm stopped performing all legal representation for the temple in December 2008 because its work remained uncompensated from October 2008 to December 2008.

¶10 On January 13, 2009, Pomper & Goodman filed suit against Wat Buddha Dharma, Prinn Stang, and Wanda Stang. Pomper & Goodman's first verified complaint at law alleged: (1) a claim for breach of contract against Prinn Stang, vice president of Wat Buddha Dharma, Inc.; (2) a claim for breach of contract against Wat Buddha Dharma, Inc.; (3) a claim in the alternative for legal fees based on *quantum meruit* against Wat Buddha Dharma; (4) a claim for breach of contract against Wanda Stang; and (5) a claim for interference with contractual relations against Wanda Stang.

¶11 In their Section 2-615 motion to strike counts I through IV of the complaint, defendants argued that Pomper & Goodman failed to allege that Prinn Stang and Wanda Stang had actual or

apparent authority to retain the law firm on behalf of Wat Buddha Dharma and its president and failed to allege that the temple directly retained it. Defendants also argued that Pomper & Goodman failed to allege a claim in *quantum meruit* for work done for the temple based on the facts that (a) the invoices were addressed to the attention of Wanda Stang but Pomper & Goodman admitted that it performed no legal work directly on behalf of Wanda Stang herself; (b) the March 2006 retainer agreement does not identify a client; and (c) the March 2006 retainer agreement is signed by Prinn Stang in his personal capacity.

¶12 In its response, Pomper & Goodman withdrew Count IV against Wanda Stang, but maintained that there was a contract between Pomper & Goodman and the temple, and that Prinn Stang had apparent and actual authority to bind the temple because he was the vice president of the temple and the retainer agreement concerned a "suit against prior director of Thai temple." Pomper & Goodman argued that it orally contracted with the temple's president, Wanda Stang and a temple board member to provide legal services in exchange for the $3,000 retainer and hourly fee. Pomper & Goodman also argued that, due to the temple's financial difficulties, it insisted the retainer agreement had to be signed by a party financially able to pay the retainer and legal fees, namely Prinn Stang. On April 17, 2009 the trial court granted defendants' 2-615 motion to strike complaint without prejudice and granted Pomper & Goodman 28 days to file an amended complaint. Plaintiff timely filed an amended complaint on November 12, 2009.

¶13 On February 3, 2010, the temple filed a section 2-619.1 motion to dismiss Pomper & Goodman's amended complaint, based on both section 2-615 for failure to state a cause of action (735 ILCS 5/2-615 (West 2010)) and section 2-619(a)(9) for claims barred by other affirmative

matter defeating the claim (735 ILCS 5/2-619(a)(9) (West 2010)). The temple argued that the retainer agreement, attached as an exhibit to the complaint, defeated Pomper & Goodman's claim of a contract between it and the law firm because the retainer agreement was signed by Prinn Stang in his personal capacity, and not in his corporate capacity, and there is no indication that the temple intended to be bound by the agreement. The temple also argued the complaint was insufficient to allege an attorney-client relationship between it and Pomper & Goodman because Pomper & Goodman failed to set forth any authority given by the temple to any agent to contract with it for legal services, including the fact that no corporate resolutions approving the engagement of the firm were alleged. The temple maintained that any alleged oral agreement was contradicted by the written retainer agreement, which showed that Pomper & Goodman agreed to represent only Prinn Stang as its client. The temple further claimed Pomper & Goodman was not entitled to *quantum meruit* relief because such a quasi-contractual claim cannot be maintained if a contract has been found to exist concerning the same subject matter.

¶14 On March 3, 2010, defendants Prinn Stang and Wanda Stang also filed a motion to dismiss the amended complaint, pursuant to section 2-615. Defendants Prinn and Wanda Stang argued that count I should be dismissed because the retainer agreement does not name a client and was signed by Prinn Stang in his individual capacity, and that defendants were unable to determine from the amended complaint and the attached billings who the client was, the legal services performed, for which lawsuits and for which persons and entities. Defendants Prinn and Wanda Stang also argued that count I should be dismissed because no terms were alleged for the representation that Wanda Stang purportedly engaged Pomper & Goodman.

¶15 Pomper & Goodman argued in response to the temple's motion that an oral contract was created between it and the temple, and that there was an offer and acceptance to engage the firm to represent it in filing the lawsuit against former directors. Also, Wanda Stang was the temple president's special representative for litigation and had the requisite authority to retain Pomper & Goodman in the other suit and bind the temple for payment for legal services performed. Pomper & Goodman further argued the presence of corporate resolutions is not necessary to state a cause of action. Finally, Pomper & Goodman argued they are allowed to plead *quantum meruit* as an alternative cause of action.

¶16 On June 15, 2010, the trial court held a hearing and entered an order granting defendant Wat Buddha Dharma's section 2-619.1 Motion to Dismiss on all counts, with prejudice. The order does not indicate on what grounds the dismissal was based, and there is no written memorandum in the record. Pomper & Goodman timely filed its notice of appeal.

¶17 ANALYSIS

¶18 Pomper & Goodman appeal from the circuit court's dismissal of its verified amended complaint, arguing the court erred for the following reasons: (1) The circuit court erred in granting the defendants' section 2-619.1 motion to dismiss the plaintiff law firm's cause of action for breach of contract against Prinn Stang because the complaint alleged that Stang signed a retainer agreement and agreed to pay the retainer and legal fees for the temple; (2) the court erred in dismissing the claim for breach of contract against the temple because the complaint alleged that the temple orally entered into a retainer agreement for the law firm to perform legal services on its behalf, and that Prinn Stang and Wanda Stang had authority to enter into the

retainer agreement on behalf of the temple; and (3) the claim for legal fees based on *quantum meruit* in count III was improperly dismissed where Pomper & Goodman are allowed to plead its cause of action for its attorney fees in the alternative. For the following reasons, we agree and reverse and vacate the court's dismissal order and remand for further proceedings.

¶19 I. Breach of Contract Claim Against Stang

¶20 First, Pomper & Goodman argues that the court erred in dismissing count I for breach of contract against Prinn Stang. We note that defendants filed a section 2-619.1 motion to dismiss, which is a combined motion to dismiss pursuant to section 2-615 and motion to dismiss pursuant to section 2-619. 735 ILCS 5/2-619.1 (West 2010). Though the temple did not specify which arguments were brought under section 2-615 as opposed to section 2-619, it argued below in its section 2-619.1 motion to dismiss memorandum that the breach of contract claims against Stang and the temple were insufficient as a matter of law, thus implicating section 2-615, and that the *quantum meruit* claim was barred by the existence of a written contract, which implicates section 2-619(a)(9). We first address the breach of contract claim against Stang.

¶21 A section 2-615 motion seeks dismissal of a complaint because substantially insufficient in law. 735 ILCS 5/2-615 (West 2010). A motion to dismiss brought under section 2-615 of the Illinois Code of Civil Procedure tests the legal sufficiency of the complaint. On review, the question is "whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted." *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81 (2004). When ruling on a section 2-615 motion, the court may only consider the facts apparent from the face of the complaint, matters of which the court

may take judicial notice, and judicial admissions in the record. *Storm & Associates, Ltd. v. Cuculich*, 298 Ill. App. 3d 1040, 1046-47 (1998) (citing *Mt. Zion State Bank & Trust v. Consolidated Communications, Inc.*, 169 Ill. 2d 110, 115 (1995)). The standard of review is *de novo*. *Vitro*, 209 Ill. 2d at 81.

¶22 "The interpretation of an ambiguous contract is one of fact which may not be decided on a motion to dismiss under section 2-615." *Monroe Dearborn Ltd. Partnership v. Board of Education*, 271 Ill. App. 3d 457, (1995) (citing *Quake Construction, Inc. v. American Airlines, Inc.*, 141 Ill. 2d 281 (1990)), *appeal denied*, 163 Ill. 2d 562, 462 (1995). See also *Mid-City*, 132 Ill. App. 3d at 481 (holding that "where language in the body of the document conflicts with the apparent representation by the agent's signature *** the document is reasonably susceptible to more than one meaning and therefore extrinsic evidence should be considered in determining the intent of the parties")).

¶23 Here, we find that the complaint on its face satisfies all elements necessary to state a claim for breach of contract against Stang and should not have been dismissed. Moreover, we hold that the capacity in which Stang signed the retainer agreement is ambiguous. Thus, the issue must be tried by a trier of fact. In determining whether it was a party's intention to bind the corporation principal or the purported agent individually, the intention of the parties on this issue is a question of fact. *McCracken & McCracken, P.C. v. Haegele*, 248 Ill. App. 3d 553, 561-62 (1993). Granting a section 2-615 dismissal on the facts as alleged in this case was improper.

¶24 Pomper & Goodman argue that a claim for breach of contract is stated because the complaint alleged that Stang signed the retainer agreement in his personal capacity as a condition

to Pomper & Goodman's representation of the temple and thus entered into a contract for the payment of the retainer and legal fees for legal services for the temple. To sufficiently state a cause of action, a complaint must set forth a legally recognized claim and plead facts in support of each element that brings the claim within the cause of action alleged. *Weidner v. Midcon Corp.*, 328 Ill. App. 3d 1056, 1059 (2002) (citing *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 408 (1996); *Betts v. Crawshaw*, 248 Ill. App. 3d 735, 737 (1993)). "In civil actions brought by attorney-plaintiffs to recover compensation for professional services performed under an alleged contract, the usual rules governing breach of contract actions apply because 'the liability to pay for legal services stands upon the same footing as other agreements.' " *Wildman, Harrold, Allen and Dixon v. Gaylord*, 317 Ill. App. 3d 590, 597 (2000) (quoting *Sokol v. Mortimer*, 81 Ill. App.2d 55, 64 (1967)). The elements for a cause of action for breach of contract are: (1) offer and acceptance; (2) consideration; (3) definite and certain terms; (4) performance by the plaintiff of all required conditions; (5) breach; and (6) damages. *Village of South Elgin v. Waste Management of Illinois, Inc.*, 348 Ill. App. 3d 929, 940 (2004) (citing *Barille v. Sears Roebuck and Co.*, 289 Ill. App. 3d 171, 175 (1997)).

¶25 Here the amended complaint alleges facts satisfying each element. First, the complaint clearly alleges that Stang was approached to sign the retainer agreement and promise to pay the retainer and legal fees for the temple as a financially responsible party, even though the temple originally retained the firm, since the temple's assets had been converted by the prior directors, and that Stang accepted and signed the retainer agreement. The type of contract alleged by Pomper & Goodman against Stang is a promise to pay the debt of another. The phrase "promise

to pay the debt of another" has been defined as an "undertaking by a person not before liable, for the purpose of securing or performing the same duty for which the original debtor continues to be liable." *Greenberger, Krauss & Tenenbaum v. Catalfo*, 293 Ill. App. 3d 88, 94 (1997) (quoting *Hartbarger v. SCA Services, Inc.*, 200 Ill. App. 3d 1000, 1015 (1990)). Thus, the firm can also seek payment from Stang based on his promise to pay the temple's legal fees.

¶26 Second, Stang provided consideration to Pomper & Goodman in promising to pay, and paying, the $3,000 retainer and subsequent legal fees, and received consideration of the benefit to the temple in obtaining representation in the lawsuit to recover its converted assets. The complaint also alleges that invoices for the legal work were submitted as requested by Wanda Stang to the office of Prinn Stang, and these invoices were paid until October 2008. A promise based upon consideration in the form of a benefit to a third party constitutes sufficient consideration for the promise or agreement. *Finn v. Heritage Bank & Trust Co.*, 178 Ill. App. 3d 609, 612 (1989) (citing *Lauer v. Blustein*, 1 Ill. App. 3d 519 (1971)).

¶27 Third, the agreement also specifies definite and certain terms, including that the work was to be performed in litigating for the temple against the prior directors, specified that the retainer amount was $3,000, and specified that Pomper & Goodman's rate would be $200 per hour.

¶28 Fourth, Pomper & Goodman performed the required conditions, which were to institute a lawsuit on behalf of the temple against the prior directors and represent the temple in that litigation.

¶29 Fifth, the amended complaint alleges that Stang stopped paying Pomper & Goodman's

fees and thus breached the retainer agreement.

¶30 Last, the complaint also alleges damages in that Pomper & Goodman remain uncompensated for its outstanding legal fees. The complaint on its face thus satisfies all elements necessary to state a claim for breach of contract against Stang.

¶31 Precedent also supports our determination under the facts of this case. We find *Greenberger, Krauss & Tenenbaum v. Catalfo*, 293 Ill. App. 3d 88 (1997), on point and dispositive of the issue whether the complaint states a breach of contract claim against Stang. In *Catalfo*, the defendant paid retainers to the law firm pursuant to an oral agreement to represent her son in legal proceedings. The defendant failed to pay the attorney fees incurred, and the law firm brought an action against the defendant to recover the fees. *Catalfo*, 293 Ill. App. 3d at 90. The undisputed evidence at trial was that the defendant's son Anthony and the plaintiff attorneys first entered into an agreement for legal representation and payment of fees, but the attorneys almost immediately learned that Anthony could not pay for such representation and told him they could not perform their contractual services unless they were paid. *Catalfo*, 293 Ill. App. 3d at 95. Anthony then referred the attorneys to his mother, Betty, who agreed to pay those expenses, and paid two $10,000 retainer fee checks to the attorneys. *Catalfo*, 293 Ill. App. 3d at 95. Just as alleged in the instant case, in *Catalfo* the evidence showed a refusal by the attorneys to go forward under the agreement with the client, Anthony, without the new agreement with the obligor, Betty, and the payment by her of retainers and her promise to pay future fees. *Catalfo*, 293 Ill. App. 3d at 96. We affirmed the circuit court's denial of defendant's motion for judgment notwithstanding the verdict and held that "the factfinder was entitled to conclude that this

agreement was not Betty's promise to pay the debt of Anthony, but a promise to pay a debt she had then originally incurred." *Catalfo*, 293 Ill. App. 3d at 95. See also *Brown, Udell and Pomerantz, Ltd. v. Ryan*, 369 Ill. App. 3d 821, 826 (2006) (holding the trial court erred when it granted summary judgment in favor of a decedent's estate in a law firm's suit to recover legal expenses based on the decedent's oral agreement to pay the legal expenses of one of the law firm's clients). However, whether a promise is original and independent, as opposed to collateral, is a question for the trier of fact. *Catalfo*, 293 Ill. App. 3d at 95 (quoting *Moshier v. Kitchell & Arnold*, 87 Ill. 18, 21 (1877)).

¶32 In this case, the allegations that Stang agreed to pay the retainer and fees and signed the retainer agreement can establish an original promise to pay the temple's legal fees and thus states a cause of action against Stang for breach of contract. The allegation that Stang also paid the retainer by check further supports a claim for breach of contract against Stang. See *Catalfo*, 293 Ill. App. 3d at 97 (holding that the fact that two separate retainer checks were issued by the defendant to each of the attorneys further manifested a contractual relationship).

¶33 The fact that Stang was the vice president of the temple does not change our determination, as the allegations in the complaint and the face of the retainer agreement itself indicate that Stang signed in his personal capacity, and not in his corporate capacity as an act of the temple. Regarding the capacity in which a party signs a contract, the case at bar is analogous to *Mid-City Industrial Supply Co. v. Horwitz*, 132 Ill. App. 3d 476 (1985). In *Mid-City*, a parts supplier refused to ship any more product to a corporation who was behind in their payments. In *Mid-City*, the parts supplier feared not being paid at all and asked one of the corporation's

executives to sign a contract binding him personally to pay. *Id*. After the executive initially resisted, he made a few changes to the document and eventually signed. *Id*. The Mid-City trial court ruled that because the document itself reflects his signature as that of a corporate executive, the signatory is not personally liable for the debt. *Id*. at 477-78. However, the appellate court, recognizing ambiguity in the contract language, looked beyond the four corners of the document and examined the circumstances surrounding contract formation and the parties' subsequent conduct to determine their intent. *Id*. at 481-82. The appellate court ruled that because of the nonpayment of fees, the bankruptcy of the corporation, the supplier's insistence on payment from the executive personally, the executive's knowledge that he would have to pay out of his own pocket, and the executive's initial reluctance to sign the contract, it can reasonably be inferred that he signed in his personal capacity despite the contract identifying him as part of the now-bankrupt corporation. *Id*.

¶34 The facts in *Mid City* are similar to the facts alleged in the case before us because here Pomper & Goodman state in their amended complaint that providing their legal services was contingent upon the signature of a financially able party, Stang. The complaint alleges that Stang, the temple, and Pomper & Goodman knew that the temple had limited funds due to the former directors' conversion of assets, and that the temple president received a paltry salary. Here, according to the reasonable inferences from the allegations in the amended complaint, Stang knew that the agreement to provide legal services in "a suit against prior director of Thai temple" was contingent upon him signing as a financially able party. Stang signed the retainer and paid $3,000 to Pomper & Goodman. Here, the facts are even stronger than in *Mid-City*,

where in signing the retainer, Stang did not note his capacity as vice president. Although Stang was vice president of the temple, he is a doctor by profession. The signature on the March 2006 retainer agreement attached to the amended complaint is that of "Prinn K. Stang, M.D.," thus appearing as though Stang signed in his personal capacity. Therefore, sufficient facts are alleged that Stang signed the written retainer agreement in his personal capacity, thereby stating a cause of action for breach of contract against Stang.

¶35 Because the capacity in which Stang signed the retainer agreement is ambiguous, the issue must be tried by a trier of fact. At the pleadings stage, we merely determine that the amended complaint sufficiently states a claim for breach of contract against Stang; the ultimate resolution of the issues surrounding the claim must be resolved by the trier of fact. Thus, we reverse the dismissal of count I and remand for further proceedings.

¶36 II. Breach of Contract Claim Against the Temple

¶37 Next, Pomper & Goodman argue that the dismissal of count II against the temple was error because the complaint sufficiently stated a cause of action for breach of contract against the temple and was not affirmatively barred by the written retainer agreement. The temple argued below that the written retainer agreement evidences an attorney/client relationship only between Pomper & Goodman and Stang, and not between Pomper & Goodman and the temple. However, Pomper & Goodman alleged an oral contract for legal services with the temple in their amended complaint, and alleged that the written retainer agreement by Stang was a condition of the oral agreement.

¶38 We initially clarify that a written contract of retainer is not required to state a cause of action against the temple, because the agreement was not for a contingency fee. Rule 1.5(c) of the Illinois Rules of Professional Conduct requires written agreements only for contingency agreements; the only requirement for non-contingency agreements are that the attorney fees and expenses be reasonable. See Ill. S. Ct. Rs. of Prof. Conduct, R. 1.5(c) (eff. Jan. 1, 2010). See also *Lee v. Ingalls Memorial Hospital*, 232 Ill. App. 3d 475, 478 (1992) (holding that oral retainers for legal services are valid and written retainers are not necessary, unless the retainer is for a contingency fee); *Gaylord*, 317 Ill. App. 3d at 594 (holding that a client-attorney relationship was formed in an oral contract after a single meeting in 1991).

¶39 In an action for attorney fees based on a breach of contract or *quantum meruit* theory, the plaintiff-attorney's *prima facie* case includes proof of the following: (1) the existence of an attorney-client relationship, (2) the nature of the services rendered, (3) the amount of time expended, and (4) the result, if any, obtained for the client. *Gaylord*, 317 Ill. App. 3d at 598 (citing *Greenbaum & Browne, Ltd. v. Braun*, 88 Ill. App.3d 210, 213-14 (1980), and *Ross v. Wells*, 6 Ill. App.2d 304, 308 (1955)).

¶40 We first address the key issue whether the amended complaint sufficiently pleads the first element: an attorney-client relationship between Pomper & Goodman and the temple. "[T]he [attorney-client] relationship 'is only created by a retainer or an offer to retain or a fee paid.' " *People v. Simms*, 192 Ill. 2d 348, 382 (2000) (quoting *Corti v. Fleisher*, 93 Ill. App. 3d 517, 521 (1981), citing *DeWolf v. Strader*, 26 Ill. 225 (1861)). "A contract of retainer between attorney and client may be made like any other contract; it may be express or implied, oral or written."

Zych v. Jones, 84 Ill. App. 3d 647, 651 (1980) (citing *Cooper & Moss v. Hamilton*, 52 Ill. 119 (1869); *Leslie v. Fischer*, 62 Ill. 118 (1871); *Johnston v. Brown*, 51 Ill. App. 549 (1893)).

¶41 An attorney-client relationship arises only when both the attorney and the client consent to its formation. *Kensington's Wine Auctioneers and Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 13 (2009), *petition for leave to appeal denied*, 233 Ill. 2d 561 (2009) (citing *Wildey v. Paulsen*, 385 Ill. App. 3d 305, 311 (2008); *Simon v. Wilson*, 291 Ill. App. 3d 495, 509 (1997)). A client must manifest his authorization for an attorney to act on his behalf and the attorney must indicate his acceptance of the authorization to represent the client's interests. *Kehoe v. Saltarelli*, 337 Ill. App. 3d 669, 676 (2003) (citing *Torres v. Divis*, 144 Ill. App. 3d 958, 963 (1986)). An attorney/client relationship can be created at initial interview between prospective client and attorney. *Nuccio v. Chicago Commodities, Inc.*, 628 N.E.2d 1134 (1993).

¶42 Whether or not an attorney-client relationship exists involves principles of contract and agency. *Foley v. Metropolitan Sanitary Dist. of Greater Chicago*, 213 Ill. App. 3d 344, 351 (1991). The attorney-client relationship "cannot be created by the attorney alone or by an attorney and a third party who has no authority to act." *Holstein*, 246 Ill. App. 3d 719, 743 (1993) (citing *Corti*, 93 Ill. App. 3d at 521). A retainer agreement "cannot be created by the attorney alone or by an attorney and a third party who has no authority to act." *People v. Simms*, 192 Ill. 2d 348, 382 (2000) (quoting *Corti v. Fleisher*, 93 Ill. App. 3d 517, 521 (1981)). Conversely, a third party with authority from another can create an attorney-client relationship for the benefit of the other. *Holstein*, 246 Ill. App. 3d at 743 ("Implicit within *Corti* is the principle that a third party with authority from another can create an attorney-client relationship

for the benefit of the other.").

¶43 Apparent or Implied Authority to Bind the Temple is Sufficiently Alleged

¶44 The temple argued below that the complaint fails to state a cause of action against it for breach of contract because it failed to set forth any authority given by the temple to any agent to contract with it for legal services, including the fact that no corporate resolutions approving the engagement of the firm were alleged. However, "[a]n agent's authority may be actual or apparent and, if actual, may be express or implied." *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 56 (2009) (citing *Granite Properties Limited Partnership v. Granite Investment Co.*, 220 Ill. App. 3d 711, 713-14, 581 N.E.2d 90, 163 Ill. Dec. 139 (1991)). The 1983 Business Corporation Act provides:

> "All officers and agents of the corporation, as between themselves and the corporation, shall have such express authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the by-laws, or as may be determined by resolution of the board of directors not inconsistent with by-laws and such implied authority as recognized by the common law from time to time." 805 ILCS 5/8.50 (West 2010).

¶45 Implied authority of an agent is "actual authority circumstantially proved." *Curto v. Illini Manors, Inc.*, 405 Ill. App. 3d 888, 892 (2010) (citing *Buckholtz v. MacNeal Hospital*, 337 Ill. App. 3d 163, 172 (2003)). "It arises when the conduct of the principal, reasonably interpreted, causes the agent to believe that the principal desires him to act on the principal's behalf." *Curto*,

405 Ill. App. 3d at 892 (citing Restatement (Second) of Agency § 26 (1958)). Here, the complaint alleges that Pomper & Goodman engaged in discussions with temple president Worathomo, Wanda Stang, the temple's special agent for litigation, and a member of the temple's board of directors and that they agreed that Pomper & Goodman would provide legal representation in the lawsuit against two of its former directors, and it was agreed that Prinn Stang would sign the retainer and pay, since the temple's assets had been converted. Thus, a fair inference from these well-pled facts is that Prinn Stang and Wanda Stang had actual authority of the temple in retaining Pomper & Goodman for litigation in both underlying cases.

¶46 In the absence of actual authority, a principal can be bound by the acts of a purported agent when that person has apparent authority to act on behalf of the principal, and arises when a principal creates a reasonable impression to a third party that the agent has the authority to perform a given act. *Curto*, 405 Ill. App. 3d at 895. "Apparent authority arises when the principal holds an agent out as possessing the authority to act on its behalf." *Doe v. Brouillette*, 389 Ill. App. 3d 595, 604 (2009) (citing *Letsos v. Century 21-New West Realty*, 285 Ill. App. 3d 1056, 1065 (1996)). "Apparent authority is cognizable when a principal, through words or conduct, creates the reasonable impression in a third party that his agent is authorized to perform a certain act on his behalf." *Gambino*, 398 Ill. App. 3d at 56. To prove the existence of apparent authority, the proponent must show: (1) the principal consented to or knowingly acquiesced in the agent's exercise of authority; (2) the third party had knowledge of the facts and good-faith belief that the agent possessed such authority; and (3) the third party justifiably relied on the agent's apparent authority to his detriment. *Northern Trust Co. v. St. Francis Hospital*, 168 Ill.

App. 3d 270, 278 (1988); *Gambino*, 398 Ill. App. 3d at 56; *Doe v. Brouillette*, 389 Ill. App. 3d 595, 604 (2009). "Where *** a corporation is the alleged principal, it must be remembered that a corporation is a legal entity that acts only through persons – e.g., its officers and directors." *Zahl v. Krupa*, 365 Ill. App. 3d 653, 661 (2006) (citing *American Family Mutual Insurance Co. v. Enright*, 334 Ill. App. 3d 1026, 1036 (2002); *First Chicago v. Industrial Commission*, 294 Ill. App. 3d 685, 691 (1998)).

¶47 Here, the allegations regarding the discussions between Pomper & Goodman and Wanda Stang, the president of the temple, and one of the temple's directors, regarding the agreement to represent the temple and have Stang pay for the services can support a finding that Pomper & Goodman justifiably relied on the each person's apparent authority to bind the temple. The second amended complaint alleges that "[t]he services rendered by Pomper & Goodman were in many instances specially requested by Prinn Stang MD and Wanda Stang," and that the services "benefited [sic] the client by advancing the cause of the Thai Temple in regaining its rightful possession of its financial assets in various bank accounts." Invoices for the work performed on behalf of the temple in the litigation were submitted as requested by Wanda Stang in her capacity as special representative to the president of the temple to Wanda Stang at the medical office of Prinn Stang. Under the facts alleged, Pomper & Goodman have stated the creation of an attorney-client relationship with the temple under the apparent agency of its officers and director. See *Holstein*, 246 Ill. App. 3d at 743-44 (holding that a third party had authority to create an attorney-client relationship for the benefit of another when a family member retained an attorney to pursue a personal injury matter on behalf of another injured family member).

¶48 Despite appearing to be in his personal capacity, Stang's signature on the retainer agreement can also be interpreted as manifesting the temple's authorization for Pomper & Goodman to provide legal services. The signature of a corporate officer may be sufficient to bind the corporation even if the officer fails to indicate his corporate affiliation if it was the intention of the parties to bind the corporation. *McCracken & McCracken, P.C. v. Haegele*, 248 Ill. App. 3d 553, 561-562 (1993).

¶49 Whether the representative nature of a signatory on a contract need be set forth in the contract in order to bind the principal corporation was the issue in *First Chicago*, where a vice president for First Chicago signed an appeal bond, "John A. Bradley," without identifying himself as an officer of First Chicago. *First Chicago*, 294 Ill. App. 3d at 687. The defendant Industrial Commission argued that the bond was insufficient to bind First Chicago because it was not signed by Mr. Bradley as an officer of First Chicago and did not indicate that he was authorized to execute the bond on behalf of the corporation. *Id*. We held that "while the better practice may be for an individual to always identify his or her status as an officer of a corporate respondent when signing an appeal bond on the corporation's behalf, [the Act] does not require that the signing individual identify on the bond his or her office, and we decline to add such a condition." *First Chicago*, 294 Ill. App. 3d at 688–89. Thus, the fact that Stang's signature does not denote his corporate capacity is not dispositive and can support a claim against the temple based on his apparent agency.

¶50 Further, "where an attorney appears of record for a party, the presumption is that his appearance in such a capacity was duly authorized by the person for whom he is appearing."

Meldoc Properties v. Prezell, 158 Ill. App. 3d 212, 217 (1987) (quoting *Gray v. First National Bank*, 388 Ill. 124, 129 (1944)). Here, Pomper & Goodman allege in the amended complaint that they appeared and litigated in the suit filed on behalf of the temple and also in the second suit, thereby sufficiently alleging an additional factual basis for apparent authority for the retainer of the firm by the temple. However, "this presumption is not conclusive but may be rebutted by evidence to the contrary." *Zych*, 84 Ill. App. 3d at 651 (citing *Gray v. First National Bank*, 388 Ill. 124 (1944); *Agorianitis v. Ress*, 55 Ill. App. 3d 325 (1977). The existence and scope of an agency relationship are usually questions of fact to be decided by the trier of fact, unless the parties' relationship is so clear as to be undisputed. *Zahl*, 365 Ill. App. 3d at 661 (citing *Pyskaty v. Oyama*, 266 Ill. App. 3d 801, 826 (1994)).

¶51 Ratification by the Temple is Also Sufficiently Alleged

¶52 Further, even if hiring Pomper & Goodman was not authorized by the temple, Pomper & Goodman have sufficiently alleged facts that could show ratification by the temple. Ratification of an unauthorized act is "tantamount to an original authorization and confirms what was originally unauthorized." *Horwitz v. Holabird & Root*, 212 Ill. 2d 1, 14 (2004) (citing *Jones v. Beker*, 260 Ill. App. 3d 481, 485 (1994)). "The principle behind the doctrine of ratification is that the person ratifying secures a benefit through the actions of another who is acting on his behalf with apparent or implied authority." *Horwitz*, 212 Ill. 2d at 14-15 (citing *Swader v. Golden Rule Insurance Co.*, 203 Ill.App. 3d 697, 704-05 (1990)). If there is no benefit, ratification will not be implied. *Horwitz*, 212 Ill. 2d at 15 (citing *Jones*, 260 Ill. App. 3d at 485).

¶53 The amended complaint alleges that its representation of the temple proceeded for 2

years, with the knowledge and assent of the temple president, vice president, a member of the board of directors, and the president's special representative for litigation. A principal has constructive notice of all material facts known to its agent. *Lombardo v. Reliance Elevator Co.*, 315 Ill. App. 3d 111, 120 (2000) (citing *Protective Insurance Co. v. Coleman*, 144 Ill. App. 3d 682, 694 (1986)). Thus, a fair inference from the well-pled facts is that the temple knew of the actions taken by its agents in retaining Pomper & Goodman and failed to object. Further, the complaint alleges that Pomper & Goodman's services "benefited [sic] the client by advancing the cause of the Thai Temple in regaining its rightful possession of its financial assets in various bank accounts."

¶54 The principles of agency and ratification by a corporation in the context of a retainer by a corporate officer on behalf of a corporation have been recognized by long-standing precedent. In *Union Surety & Guaranty Co. v. Tenney*, 200 Ill. 349 (1902), *aff'd*, 200 Ill. 349 (1902), this court held that where contract of retainer was executed for corporation by president and secretary under corporate seal, and correspondence between the attorneys retained and the company showed that the latter was cognizant of negotiations by its officers, in part conducted by vice president, and that the corporation approved them, the corporation's argument that vice president had no authority to bind company by such contract was rejected. *Tenney*, 200 Ill. at 352-53.

¶55 Thus, under any of the above principles of agency, the amended complaint sufficiently pleads an attorney-client relationship. However, the existence and scope of an agency relationship are usually questions of fact to be decided by the trier of fact, unless the parties' relationship is so clear as to be undisputed. *Zahl*, 365 Ill. App. 3d at 661 (citing *Pyskaty v.*

Oyama, 266 Ill. App. 3d 801, 826 (1994)).

¶56 The amended complaint also sufficiently pleads the remaining elements of a cause of action for breach of a contract for legal services: (2) the nature of the services rendered, (3) the amount of time expended, and (4) the result, if any, obtained for the client. See *Gaylord*, 317 Ill. App. 3d at 598. Here, although the retainer agreement fails to supply any client name in the blanks in its preamble, the purpose of the March 2006 retainer is "a suit against prior director of Thai temple." It is a well-plead fact that Wat Buddha Dharma, Inc. is the Thai temple referred to in the retainer agreement. The complaint alleges that Pomper & Goodman represented the temple from March 2006 until December 2008. The complaint also alleges that the representation resulted in the accounts being returned to the temple. Therefore, we hold the amended complaint states a cause of action for breach of contract for legal services against the temple, and reverse the dismissal of count II.

¶57 III. *Quantum Meruit*

¶58 The temple's section 2-619.1 motion below argued that the *quantum meruit* claim should be dismissed because it was barred by the existence of a written contract, which was pled by Pomper & Goodman and attached to the complaint. A motion for dismissal of the action because "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim" falls within the purview of section 2-619(a)(9). 735 ILCS 5/2-619(a)(9) (West 2010). Our review of a dismissal under section 2-619 of the Code is also *de novo*. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 368 (2003). The difference between a

section 2-615 motion and a section 2-619 motion is that "[a] section 2-615 motion attacks the legal sufficiency of the plaintiff's claims, while a section 2-619 motion admits the legal sufficiency of the claims but raises defects, defenses, or other affirmative matter, appearing on the face of the complaint or established by external submissions, that defeat the action." *Zahl v. Krupa*, 365 Ill. App. 3d 653, 657-58 (2006) (citing *Northern Trust Co. v. County of Lake*, 353 Ill. App. 3d 268, 278 (2004)). In ruling on a motion to dismiss under either section 2-615 or section 2-619 of the Code, the court must accept all well-pled facts in the complaint as true and draw all reasonable inferences from those facts in favor of the plaintiff. *Cuculich*, 298 Ill. App. 3d at 1047.

¶59 Pomper & Goodman argue that the *quantum meruit* count should not have been dismissed because, at the pleading stage, a plaintiff is allowed to plead in the alternative, citing to *Gironda v. Paulsen*, 238 Ill. App. 3d 1081, 1084 (1992) ("a plaintiff may seek alternative relief on contradictory causes of action such as breach of contract or *quantum meruit*"). We agree. The fact that the plaintiff could only recover for *one* cause of action does not require him to make an election, nor does it justify the dismissal of the suit by the trial court.' " (Emphasis added.) *Gironda v. Paulsen*, 238 Ill. App. 3d 1081, 1084 (quoting *Downs v. Exchange National Bank*, 24 Ill. App. 2d 24, 30 (1959)). "In Illinois a plaintiff may recover under *quantum meruit* on a claim made pursuant to an express contract without amendment of the pleadings, where plaintiff fails to establish the express contract but does show in fact that services were rendered." *Greenbaum & Browne, Ltd. v. Braun*, 88 Ill. App. 3d 210, 213 (1980) (citing *Moreen v. Estate of Carlson*, 365 Ill. 482, 493 (1937); *Neville v. Davinroy*, 41 Ill. App. 3d 706, 710 (1976)).

¶60 The elements of a claim for attorney fees based on quantum meruit are the same as the elements of a claim for breach of contract for legal services: (1) the existence of an attorney-client relationship, (2) the nature of the services rendered, (3) the amount of time expended, and (4) the result, if any, obtained for the client. See Gaylord, 317 Ill. App. 3d at 598. We have already discussed these elements and determined that the amended complaint sufficiently alleges each element.

¶61 Of course, Pomper & Goodman cannot ultimately prevail against the temple on both the claim for breach of contract and the claim for fees based on *quantum meruit* since the express contract or contract implied in fact concerns the same subject matter. See *Zadrozny v. City Colleges of Chicago*, 220 Ill. App. 3d 290, 295 (1991), *Industrial Lift Truck Service Corp. v. Mitsubishi Intern. Corp.*, 104 Ill. App. 3d 357, 360 (1982), *Board of Directors of Carriage Way Property Owners Ass'n v. Western Nat. Bank of Cicero*, 139 Ill. App. 3d 542, 547 (1985). However, Pomper & Goodman are allowed to plead in the alternative, and dismissal of count III was in error.

¶62 CONCLUSION

¶63 We reverse the court's order dismissing Pomper & Goodman's amended complaint with prejudice. Under section 2-615 of the Code, a trial court should dismiss a complaint with prejudice only if it is clearly apparent that a plaintiff can prove no set of facts that would entitle it to recover. *Schiller v. Mitchell*, 357 Ill. App. 3d 435, (2005). Dismissal must be vacated if there is any possibility of recovery on the facts alleged. *Anzalone v. Kragness*, 356 Ill. App. 3d 365, 368 (2005) (citing *Empire Home Services, Inc. v. Carpet America, Inc.*, 274 Ill. App. 3d 666, 670

(1995)). Here, Pomper & Goodman have sufficiently alleged breach of contract against Stang based on a promise to pay for the temple's retainer and legal bills. The firm also sufficiently alleged breach of contract for legal services against the temple where the allegations in the complaint can support a finding of implied or apparent authority, or ratification, of the temple's agents' engagement of the firm for legal services. And, finally, Pomper & Goodman have stated a claim for legal fees based on *quantum meruit* and can plead in the alternative. We therefore reverse the dismissal with prejudice and remand for further proceedings.

¶64 Reversed and remanded.