2012 IL App (1st) 11-2642U

THIRD DIVISION
November 30, 2012

No. 1-11-2642

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FRIEDMAN & FRIEDMAN, LTD., an Illinois corporation Plaintiff-Appellee, Cross-Appellant v. JOHN N. BASIC, SR. an individual, and BASIC INTERNATIONAL, INC., an Illinois corporation Defendant-Appellant, Cross-Appellee	)	Appeal from the Circuit Court of Cook County No. 08 L 7831 Honorable Susan F. Zwick, Judge Presiding.

ORDER

PRESIDING JUSTICE SALONE delivered the judgment of the court.
Justice Neville and Justice Steele concurred in the judgment.

HELD: The trial court erred in granting summary judgment in favor of defendants on plaintiff's breach of contract and equitable estoppel claims where material issues of fact existed as to the existence of the contract.

¶ 1 Plaintiff Friedman & Friedman, Ltd., a law firm, filed suit against John Basic, Sr. (Basic) and Basic International, Inc. (Basic International) for recovery of legal fees for services rendered. Plaintiff pleaded four alternate causes of action: breach of contract (count I), promissory estoppel (count II), equitable estoppel (count III) and *quantum meruit* (count IV). The defendants argued that they had no contract with plaintiff and that the legal work performed for which plaintiff sought payment was on behalf of Worldwide Patent Licensing Company (WPL). The defendants sought summary judgment on all counts. The trial court granted summary judgment in favor of defendants on counts I and III. After hearing evidence presented by plaintiff, the trial court, sitting as the trier of fact, granted directed verdict[1] in favor the defendants on count II. After a full trial, plaintiff was granted judgment on count IV and awarded $196,332.16, which represented the full amount sought in its complaint. Defendants appealed the court's order and judgment with respect to count IV. The plaintiff filed a cross-appeal, alleging that the trial court erred in dismissing counts I, II and III. For the following reasons, the trial court's order is affirmed in part and reversed in part.

¶ 2 A. BACKGROUND

¶ 3 Plaintiff is a law firm specializing in patent law. In 1979, the defendants employed plaintiff to file certain patent applications. From 1979 to 1997, plaintiff filed seven patents both domestically and internationally on behalf of the defendants. All patents were filed in Basic's name. Although the parties did not execute a written contract, they do not dispute that an attorney-client relationship existed between plaintiff and defendants during this time. Eugene Friedman (Mr. Friedman), one

[1]After the plaintiff presented its evidence, the defendants moved for a directed verdict. The court granted this motion in its order dated December 2, 2010. As we discuss below, the proper avenue for relief was a motion pursuant to section 2-1110 of the Code of Civil Procedure.

of the attorneys employed by plaintiff who primarily worked with the defendants, testified in his deposition that defendants understood they were to be billed at Mr. Friedman's hourly rate.

¶ 4 The parties disagree on what relationship existed between them, if any, after 1997. Defendants alleged that in August 1997, Basic transferred all of his rights, title and interest in all existing and future patents in his name to Worldwide Patent Licensing Company (WPL)[2] as part of his consulting agreement (Employment Agreement) with the company. Defendants alleged that plaintiff was informed of the assignment by phone call and sent a letter (the assignment letter) memorializing that conversation two days later. Defendants further alleged that they instructed plaintiff to bill WPL for all work done after August 6, 1997. Defendants argued that any right of recovery plaintiff had was therefore against WPL only. Plaintiff disputed ever receiving a phone call to discuss the assignment of the patents. Plaintiff alleged it only received a draft version of the assignment letter and was never informed when or if the assignment was completed. Plaintiff did concede it received instructions to send bills to WPL but notes that the bills were sent to the attention of Basic at WPL's address. What is not in dispute is that from August 1997 to 2006, Basic continued to contact plaintiff to request new patent filings. Plaintiff filed three patents during this time period, all in Basic's name. Plaintiff also continued to take all action necessary to maintain the existing patents filed before 1997. The parties also agree that during this time, plaintiff never had any contact with any employee of WPL and that all communication was with Basic.

[2]The United States Patent and Trademark Office records indicate that a number of patents were transferred to a company named North American Licensing Company (NAL). Defendants claim in their brief that the patents were assigned to both NAL and WPL, and there are documents in the record to support this contention. The identity of the assignee of the patents is irrelevant to our discussion here, and plaintiff does not dispute the defendants' contention. All references to the assignment of the patents to WPL can be assumed to include NAL also.

¶ 5 After August 6, 1997, plaintiff received over $200,000 in satisfaction of outstanding bills. All payments received were from WPL. The last payment was received in 2003. In September 2005, Basic's administrative assistant sent an email informing plaintiff that a payment was being arranged; it does not appear that any such payment was ever sent or received. In 2006, plaintiff ceased all work. This lawsuit was filed on July 18, 2008.

¶ 6 Defendants filed a motion for summary judgment on all counts, alleging that with respect to each cause of action, plaintiff failed to establish the necessary elements. Defendants further alleged that pursuant to section 13-205 of the Code of Civil Procedure, all bills incurred five years before the filing of the lawsuit were barred by the statute of limitations.

¶ 7 The trial court granted summary judgment on the breach of contract and equitable estoppel claims. The court found that plaintiff had not provided any evidence of the existence of a new contract, nor any evidence that the oral contract entered into in 1979 was continued after 1997. The court also found the plaintiff had not established facts proving each of the elements of an equitable estoppel claim, namely, that defendants knew they would not pay plaintiff's legal fees, and that plaintiff relied on defendants' promises to pay. The court, however, found genuine issues of material fact on the promissory estoppel and *quantum meruit* claims, and defendants' motion for summary judgment on those counts was denied.

¶ 8 After plaintiff presented its evidence on the promissory estoppel claim, defendants moved for directed verdict, which the court granted. A full trial was held on the remaining *quantum meruit* claim. Plaintiff prevailed. The court found that defendants received a benefit from the work performed by plaintiff. Furthermore, the court reasoned that though there was evidence that Basic

assigned his interest in the patents, there was no evidence that Basic assigned his corresponding obligations and liabilities with respect to the patents. The court did not find the claims to be time barred. It deemed Mr. Friedman's hourly rate a reasonable assessment of the value of the work done, and entered a judgment against the defendants for $196,332.16.

¶ 9 Defendants filed this timely appeal. They argue that the trial court's ruling on the *quantum meruit* claim was erroneous. First they argue that the judgment of liability under *quantum meruit* was inconsistent with the court's earlier finding that no attorney-client relationship existed between the parties. Defendants also maintain their argument that they received no benefit from plaintiff's work. Finally, they argue that the court erred in not applying the five-year statute of limitations which, they contend, barred recovery on any fees incurred before July 18, 2003. Plaintiff filed a cross-appeal. It argued that summary judgment on counts I and III was improper because genuine issues of material fact remained on each. Plaintiff also argued that the court erred in granting a directed verdict on count II because it had established a *prima facie* case of each element of promissory estoppel.

¶ 10 B. ANALYSIS

¶ 11 In Illinois, a plaintiff may plead alternate theories of recovery, even if those theories are inconsistent. *Guinn v. Hoskins Chevrolet*, 361 Ill. App. 3d 575, 604 (2005). Plaintiffs are also allowed to plead alternate theories of recovery even when those theories rest on inconsistent facts. *Heastie v. Roberts*, 226 Ill. 2d 515, 557-58 (2007). Determining which theory of recovery is meritorious, if any, is a question for the trier of fact. *Id.* at 558. Because we must address whether there was any merit to any of plaintiff's other claims before we can determine the propriety of the

court's ruling on *quantum meruit*, we will first address the claims raised by plaintiff on cross-appeal.

¶ 12 Section 2-1005 of the Code of Civil Procedure allows for summary judgment when the pleadings, depositions and admissions on file, together with any affidavits, show there is no genuine issue as to any material fact such that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2010). See also *Forsythe v. Clark USA, Inc.*, 224 Ill. 2d 274, 280 (2007). The purpose of summary judgment is not to try a question of fact, but to determine whether a genuine question of material fact exists. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 335 (2002). Although summary judgment is encouraged to aid the expeditious disposition of a lawsuit, it is a drastic means of disposing of litigation. *Espinoza v. Elgin, Joliet and Eastern Ry. Co.*, 165 Ill. 2d 107, 113-14 (1995). Where the material facts are disputed, or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts, summary judgment should be denied. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 162-63 (2007).

¶ 13 We review grants of summary judgment *de novo*. *Forsythe*, 224 Ill. 2d at 280. In our review, this court will construe the record strictly against the moving party and liberally against the nonmoving party. *Id*. Summary judgment should only be granted where the movant's right to relief is clear and free from doubt. *Id*.

¶ 14 1. Breach of Contract

¶ 15 Citing *Zirp-Burnham, LLC v. E. Terrell Associates, Inc.*, 356 Ill. App. 3d 590 (2005), the trial court below outlined the following elements required to prove breach of contract: (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) breach of the contract by defendants and (4) resultant injury to plaintiff. The trial court further held that to establish proof of

a valid contract, the plaintiff was required to show offer, acceptance, consideration and definite and certain terms of the contract. In granting summary judgment to the defendants on counts I and III, the court found that plaintiff had not provided any evidence of the terms of the contract, noting that there was no evidence as to the scope of the representation, the cost or the duration of the alleged relationship. The court also found that the plaintiff had not provided any evidence that the oral contract entered into in 1979 continued through 2006.

¶ 16 While the elements the court identified are generally recognized for proving breach of a written contract, oral contracts are not easily applied to a succinct formula. Whether an oral contract exists, its terms and conditions, and the intent of the parties are by nature questions of fact. See, e.g., *Anderson v. Kohler*, 397 Ill. App. 3d 773, 785 (2009); *Hartbarger v. SCA Services, Inc.*, 200 Ill. App. 3d 1000, 1013 (1990). A prior course of dealing may be considered in determining the terms of an oral contract. *H & H Press, Inc. v. Axelrod*, 265 Ill. App. 3d 670, 677 (1994).

¶ 17 Summary judgment is particularly inappropriate where the parties seek to draw inferences on questions of intent. *Cohn v. Checker Motors Corp.*, 233 Ill. App. 3d 839, 841 (1992). Here, the parties disagree as to whether an oral contract was made, the terms of any such agreement, and the intent of the parties in their dealings with one another after 1997. Evidence was provided that tended to show the parties understood the terms of the alleged oral contract after 1997 were to be the same as those established in 1979. But for the address that billing statements were sent to, there appears to be very little difference in the nature of the parties' relationship after 1997. Evidence was also presented that the defendants informed plaintiff that WPL would be the client going forward.

¶ 18 It is undisputed that the parties had an agreement until August 1997. It is further undisputed

that after that time, Basic continued to request services from plaintiff. Who those services were for, the similarity – or continuity – between the parties' pre-1997 and post-1997 dealings, if any, and the understanding of the parties were all material questions of fact. We therefore find that the trial court erred in granting summary judgment on plaintiff's breach of contract claim.

¶ 19 2. Equitable Estoppel

¶ 20 We review next plaintiff's claim of equitable estoppel, which was also dismissed at the summary judgment stage. Again, our review is *de novo*.

¶ 21 Equitable estoppel is traditionally raised as a defense to prevent the other party from asserting rights it may otherwise have against the party who raises the defense. See, e.g., *Falcon Funding, LLC v. City of Elgin*, 399 Ill. App. 3d 142, 157-60 (2010); *Trossman v. Philipsborn*, 373 Ill. App. 3d 1020, 1038-42 (2007); *State National Bank of Evanston v. Northwest Dodge, Inc.*, 86 Ill. App. 3d 90, 93 (1980). However, this court has also held that equitable estoppel can be an independent cause of action, under the same theory as promissory estoppel. *Gold v. Dubish*, 193 Ill. App. 3d 339, 350-51 (1989).

¶ 22 Under equitable estoppel, where a person, by his or her statements or conduct, leads a party to do something that said party would not have done but for such statements or conduct, that person will not be allowed to deny his or her words or actions to the detriment of the other party. *Geddes v. Mill Creek Country Club, Inc.*, 196 Ill. 2d 302, 313 (2001). To establish equitable estoppel, a party must demonstrate the following elements: (1) the other party misrepresented or concealed material facts; (2) the other party knew at the time he or she made those representations that they were untrue; (3) the party claiming estoppel did not know the representations were untrue when they

were made and when they were acted on; (4) the other party intended or reasonably expected that the party claiming estoppel would act upon the representations; (5) the party claiming estoppel relied on those representations in good faith to his or her detriment; and (6) the party claiming estoppel would be prejudiced by his or her reliance if the other party were permitted to deny the truth thereof. *Id.* at 313-14. In ruling in favor of defendants on summary judgment, the trial court found that plaintiff had not addressed each of the elements of the claim.

¶ 23 The trial court found plaintiff did not allege that defendants made statements (promises to pay) that they knew were untrue when made. Basic alleged that he never agreed to pay for the work done after 1997. Mr. Friedman testified in his deposition that Basic made numerous promises at annual holiday parties held by Basic's family. Which statements were credible was an issue for the trier of fact. The trial court also found that plaintiff did not provide any evidence that defendants knew they would never pay the legal fees. Yet the plaintiff provided evidence of a letter dated November 2005 in which Basic stated that there were no funds to pay the patent attorneys at that time, and that he (Basic) would have to draft another "creative" letter to his patent attorneys. Finally, the trial court found that plaintiffs did not rely on any promises by defendants. The fact of their continued work, and that they continued to bill for their services, indicates that they provided services in reliance upon the expectation of payment.

¶ 24 To withstand a motion for summary judgment, the nonmoving party need not prove his case at this stage, but need only present some factual basis that would support his claim. *Schrager v. North Community Bank*, 328 Ill. App. 3d 696, 708 (2002). Plaintiff provided evidence with respect to each of the elements of equitable estoppel against Basic. We therefore find the trial court erred

in granting summary judgment in favor of Basic.

¶ 25 With respect to the equitable estoppel claim against Basic International, the case is not so obvious. Plaintiff does not allege any conduct or statements by Basic International that served to misrepresent its intentions to plaintiff. Nor does plaintiff provide any evidence that Basic International intended for plaintiff to rely upon its misrepresentations. Even taking the evidence in the light most favorable to plaintiff as the nonmoving party, we find plaintiff did not allege sufficient facts to make a claim of equitable estoppel against Basic International. The trial court's grant of summary judgment in favor of Basic International on the equitable estoppel claim is affirmed.

¶ 26 3. Promissory Estoppel

¶ 27 Plaintiff's last claim on cross-appeal is that the trial court erred in granting a directed verdict in favor of the defendants on plaintiff's promissory estoppel claim.

¶ 28 First we note that the proper ruling was one pursuant to section 2-1110 of the Code of Civil Procedure, not a directed verdict. *Barnes v. Michalski*, 399 Ill. App. 3d 254, 262 (2010). A directed verdict is impossible where the trial is a bench trial rather than a jury trial. *Id.* The distinction is important, because those motions raise different issues on review. *Id.* In a bench trial, the court may grant a section 2-1110 motion for one of two reasons: (1) the plaintiff failed to present at least some evidence on each element of the *prima facie* case or (2) the plaintiff failed to carry the ultimate burden of proof. *Id.* at 263. In the first instance, the court makes a determination as a matter of law, in which case our review is *de novo*. *Id.* In the second instance, the court has reviewed the facts presented and determined the credibility of the evidence, in which case we ask whether the ruling is against the manifest weight of the evidence. *Id.* at 264.

¶ 29 The court's order does not explain its reasons for its ruling. The order merely states that the court granted the motion for directed verdict having heard testimony and considered all the evidence. This leads us to infer that the court's ruling was based on the second phase of a 2-1110 motion: that plaintiff failed to carry its burden of proof. Plaintiff has made no argument that the ruling was against the manifest weight of the evidence, but has simply restated the arguments made to the trial court. However, even if the court's ruling was based on the first prong, and our review were *de novo*, we would find that the court's ruling must stand. A court's factual findings and its basis for its legal conclusions cannot be reviewed absent a report or record of the proceeding. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). No such record was presented here. Without an adequate record, the reviewing court must presume that the lower court had a sufficient factual basis for its holding and that its ruling conforms with the law. *Id.* at 157. We therefore have no choice but to uphold the trial court's ruling with respect to plaintiff's promissory estoppel claim.

¶ 30 4. *Quantum Meruit*

¶ 31 Finally, we turn to defendants' claim on appeal – that the trial court erred in entering judgment in favor of plaintiff under a theory of *quantum meruit*. *Quantum meruit* is an equitable theory by which a party can obtain restitution for the unjust enrichment of another party. *Weydert Homes, Inc. v. Kammes*, 395 Ill. App. 3d 512, 522 (2009). *Quantum meruit*, which means "as much as he deserves," allows for recovery for the reasonable value of services not performed gratuitously, but where no contract exists to dictate payment. *Bernstein and Grazian, P.C. v. Grazian & Volpe, P.C.*, 402 Ill. App. 3d 961, 978-79 (2010). This court reviews the trial court's award of fees under *quantum meruit* for an abuse of discretion. *Anderson v. Anchor Organization for Health*

Maintenance, 274 Ill. App. 3d 1001, 1007 (1995).

¶ 32 Defendants first argue that recovery is not available under *quantum meruit* unless an attorney-client relationship exists. To support this argument they point to *In re Chicago Flood Litigation*, 289 Ill. App. 3d 937 (1997). But that case and the cases it relied on are inapplicable here. In *Chicago Flood*, the issue before the court was whether class counsel could recover fees from plaintiffs who opted out of the class. The opt-out plaintiffs retained their own counsel soon after the flood occurred, and their counsel participated in the early stages of the litigation. *Chicago Flood*, 289 Ill. App. 3d at 945. While the court recognized that some of the work done by class counsel may have benefitted the opt-out plaintiffs, that alone did not entitle the class counsel to recover fees. *Id.* Notably, class counsel did not argue that they did work solely for the benefit of the opt-out plaintiffs; in other words, all services performed by the class counsel would have been performed regardless of whether the opt-out plaintiffs had remained in the class.

¶ 33 The holding in *Chicago Flood* rested in part on the theory that no attorney-client relationship existed between the class counsel and the opt-out plaintiffs. *Id.* at 944-46. Defendants then go on to cite language that an attorney-client relationship requires the consent of both the attorney and the client; it cannot be created by an 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) (citing *Corti v. Fleisher*, 93 Ill. App. 3d 517, 521 (1981)). Rather, it can only be created by a retainer, an offer to retain, or a fee paid. *Id.* Defendants argue that under this rule, no attorney-client relationship could have existed because there is no evidence that Basic consented to the creation of an attorney-client relationship after August 1997. This is factually not true. Here, of course, there is absolutely no dispute that Basic

specifically continued to request services after August 1997. Nor is there any dispute that plaintiff would not have performed the work in question but for Basic's requests or in furtherance of maintaining patent applications which Basic requested prior to August 1997.

¶ 34 Defendants also point to *Wildman, Harrold, Allen and Dixon v. Gaylord*, 317 Ill. App. 3d 590 (2000) as an example of the court denying recovery under *quantum meruit* to an attorney seeking to collect fees. *Wildman*, like *Chicago Flood*, is factually distinguishable from the case at bar. In that case, the client requested services relating to revision of his will. He also mentioned to his attorneys that certain actions were being taken against a corporation of which he was part owner. The attorneys performed and billed the client for services on both the revision of the will and litigation related to the corporation. The court determined that there was no meeting of the minds between the parties as to the corporation litigation, and struck the portion of the attorneys' bills related solely to that litigation. *Wildman*, 317 Ill. App. 3d at 605-06. The issue was whether the actions taken by the attorneys were authorized. Here, again, there is no dispute that the work plaintiff performed was at the request of the defendants.

¶ 35 Defendants' contention that they were not clients of plaintiff after August 1997 rests largely on the billing procedures after that time. Since plaintiff was directed to send bills to WPL and not to defendants, they argue this serves to show that the attorney-client relationship terminated in August 1997. This argument would maintain that without regard for whom legal services are performed, the attorney-client relationship is defined by who pays the attorney's fees. Defendants cite no authority for this proposition, and we see absolutely no reason to infringe upon the right of a person to privately agree with a third party to satisfy his debts. As the trial court stated, the request

for attorney's bills to be forwarded to WPL represents the agreement between WPL and defendants, but does not exonerate defendants from the obligation to pay those bills. The manner and history of billing may be instructive as to whether or not defendants were the clients of plaintiff, but it is by no means dispositive.

¶ 36 Defendants next argue the trial court erred because the defendants received no benefit from plaintiff's work since they did not own the patents. To prove a claim under *quantum meruit*, plaintiff must show that (1) he performed a service to the benefit of the defendant, (2) he did not perform that service gratuitously, (3) the defendant accepted the service and (4) no contract existed to prescribe payment. *Bernstein & Grazian*, 402 Ill. App. 3d at 978-79 (2010). The defendants point to a provision of the Employment Agreement in which Basic assigns certain patents to WPL. On this basis they argue that because WPL was the owner of the patents, WPL was therefore the client of plaintiff. It is important to note that not all of Basic's patents were assigned; only those developed for use with certain inventions described therein. From the facts presented, the trial court could have determined that the relevant patents were owned by the defendants. Furthermore, the trial court found that the assignment provision in the Employment Agreement assigned only Basic's rights with respect to the patents; he did not assign his obligations and liabilities with respect to those patents. Those obligations remained, as they did before 1997, with the defendants.

¶ 37 By Basic's own admission, under the Employment Agreement his income was in part contingent upon revenue generated by licensing the patents in question. He cannot argue that he received no benefit from services he requested, the results of which in turn affected his compensation.

¶ 38 Defendants finally argue that Basic is not an officer or director of WPL and has no authority to bind or obligate the company. Whether or not Basic had the authority to bind WPL is only relevant to the extent WPL is liable for plaintiffs bills. This argument is wholly without merit, and we note further that defendants are essentially claiming that they should not be liable for services Basic had no right to, but did, request. We cannot say the trial court abused its discretion in finding that plaintiffs successfully proved the elements of a *quantum meruit* claim.

¶ 39 Finally, defendants argue that the court erred in awarding damages for all services performed after 1997. They argue that at least part of plaintiff's claim is barred by the statute of limitations, which is five years for a claim under *quantum meruit.* 735 ILCS 5/13-205 (West 2010); *see also Rohter v. Passarella*, 246 Ill. App. 3d 860, 868-69 (1993). Thus, they argue, all bills incurred prior to July 18, 2003 should be barred. The applicability of a statute of limitations is a purely legal question of statutory interpretation, which we review *de novo*. *American Airlines, Inc. v. Department of Revenue*, 402 Ill. App. 3d 579, 589 (2009).

¶ 40 The purpose of statutes of limitation is to discourage the presentation of stale claims and to encourage diligence in the bringing of actions. *Sundance Homes, Inc. v. County of DuPage*, 195 Ill. 2d 257, 265-66 (2001). Statutes of limitation represent our society's recognition that predictability and finality are indispensable elements of the orderly administration of justice that must be balanced against the right of every citizen to seek redress for a legally recognized wrong. *Id*. at 266.

¶ 41 Defendants direct our attention to *Rohter*. In *Rohter*, a tax accountant sued his former client for recovery of fees. The plaintiff filed individual tax returns for the defendants from 1980 to 1986, but was never paid. Plaintiff filed suit in 1990 for recovery under *quantum meruit*, and the

defendants claimed that all bills before 1985 were barred under section 13-205. Plaintiff claimed an ongoing relationship with the defendants, such that it was not clear when one year's services ended and the next began. On appeal of the trial court's ruling, this court held the statute of limitations began to run when the plaintiff billed (or could have billed) the defendants for services. *Rohter* at 869. But that ruling was dependent on the fact that the court found plaintiff's contention that his work was ongoing without merit. *Id.* Here the court found that the nature of plaintiffs services were ongoing, noting that patent filings often require continual monitoring, and steps must be taken to maintain the viability of patents once filed. Defendants make no argument to the contrary, nor do we disagree with that finding. As such, *Rohter* is inapplicable to this case.

¶ 42 The statute of limitation at issue here begins to run when the party to be barred has the right to invoke the aid of the court to enforce his or her remedy. *Berg and Associates, Inc. v. Nelsen Steel & Wire Co.*, 221 Ill. App. 3d 526, 532 (1991). Defendants argue that at any time since 1997, plaintiff was free to stop working and seek its rights through the courts. As a general rule, statutes of limitation continue to run unless tolling is authorized by the statute. *Illinois Bell Telephone Co. v. Allphin*, 60 Ill. 2d 350, 356 (1975); *American Airlines*, 402 Ill. App. 3d at 605. However, this court has carved out an exception. Where a partial payment in satisfaction of debts has been made, such partial payment tolls the statute of limitations such that it runs from the date of the last payment. *St. Francis Medical Center v. Vernon*, 217 Ill. App. 3d 287, 289 (1991). The last payment to plaintiff was made on November 17, 2003. Plaintiff filed suit within five years of that date, on July 18, 2008. The court did not err in finding plaintiff's suit timely.

¶ 43 C. CONCLUSION

¶ 44 For the foregoing reasons, we reverse the grant of summary judgment to defendants on plaintiff's breach of contract claim and on plaintiff's equitable estoppel claim with respect to defendant Basic. We affirm the trial court's judgment on the promissory estoppel claim and on the equitable estoppel claim with respect to defendant Basic International. Because breach of contract and equitable estoppel were pled in the alternative to *quantum meruit*, we must necessarily vacate the court's order and judgment on the *quantum meruit* claim. We remand this cause to the trial court for further proceedings not inconsistent with this order.

¶ 45 Affirmed in part, reversed in part; cause remanded.