Not Reported in Cal.Rptr.3d, 2006 WL 2407051 (Cal.App. 2 Dist.)
Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
(Cite as: 2006 WL 2407051 (Cal.App. 2 Dist.))

Court of Appeal, Second District, Division 7, California.
David A. CORDIER, Plaintiff and Respondent,
v.
John A. TKACH et al., Defendants and Appellants.

No. B179095.
(Los Angeles County Super. Ct. No. EC033305).
Aug. 22, 2006.

APPEAL from a judgment of the Superior Court of Los Angeles County. Zaven V. Sinanian, Judge. Affirmed in part; reversed in part.
McMillan & Tkach and John A. Tkach in propria persona for Appellants McMillan & Tkach and John A. Tkach.

Dunn **Koes**, Pamela E. Dunn and Daniel J. **Koes** for Appellant R. Wayne McMillan.

David A. Cordier, in propria persona, for Respondent.

Greines, Martin, Stein & Richland and Robert A. Olson for Amicus Curiae Association of Southern California Defense Counsel.

JOHNSON, J.

***1** The law firm of McMillan & Tkach and its two partners, R. Wayne McMillan and John A Tkach, appeal from a judgment in favor of attorney David Cordier for legal fees and costs in representing the firm and its partners in fee litigation with a former client of the partnership. We affirm the judgment as to the law firm and Tkach. We reverse as to McMillan.

FACTS AND PROCEEDINGS BELOW

McMillan and Tkach formed a general partnership in 1988 under the name McMillan and Tkach. (Hereafter McMillan & Tkach or the firm.)

In 1994, while McMillan & Tkach was still a general partnership, James Wasmund retained Tkach to bring an action to recover money and property wrongfully obtained from a corporation in which Wasmund was the major shareholder. Tkach obtained a recovery for Wasmund.

A dispute then arose between Tkach and Wasmund over the amount of fees due Tkach for his legal services.

At about the same time this fee dispute arose McMillan & Tkach converted their general partnership into a limited liability partnership.[FN1] Thereafter Tkach, on behalf of himself and the firm, sued Wasmund for recovery of attorneys fees and Wasmund sued Tkach and the firm for malpractice and breach of fiduciary duty among other things. (We will refer to these suits as the Wasmund litigation.) McMillan was not named as an individual plaintiff or defendant in the Wasmund litigation.[FN2]

FN1. Corporations Code sections 15501, et sequitur.

FN2. We grant McMillan's request for judicial notice of the complaints in the Wasmund litigation. (Evid.Code §§ 452, subd. (d), 459.)

It is undisputed that in August 1998, while the Wasmund litigation was pending, Tkach discharged the attorney who had been representing him and the firm and instead retained Cordier. The Wasmund litigation went to a five day jury trial. Cordier obtained a verdict for Tkach and the firm in a net amount of $226,000 plus costs and prejudgment interest. The jury awarded Wasmund one dollar on his claim for breach of fiduciary duty and cancelled a trust deed securing Tkach's fee. The trial court did

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not award contractual attorneys fees for the litigation to either party because it determined neither party "prevailed."

When the Wasmund litigation concluded, a dispute developed between Tkach and Cordier over the legal fees due Cordier. This dispute led to the present lawsuit in which Cordier sued Tkach, McMillan and the firm for legal fees and costs due him for handling the Wasmund litigation and Tkach cross-complained against Cordier for legal malpractice and fraud. After the trial court granted Cordier's motion for summary adjudication on Tkach's cross-complaint for fraud the matter went to trial on Cordier's claim for attorneys fees based on breach of contract, quantum meruit and defendants' false promise to pay and on Tkach's cross-complaint for malpractice.[FN3]

> FN3. At some point during the trial Tkach withdrew his cross-complaint for malpractice.

At trial Tkach admitted retaining Cordier to represent him and the firm in the Wasmund litigation. Cordier and Tkach disagreed, however, on the terms of their agreement.

Cordier testified he entered into a written retainer agreement signed by Tkach on behalf of himself and the firm. The agreement provided Cordier would be paid $240 per hour plus costs. Cordier claimed he no longer had the original agreement signed by Tkach because it was among the documents in the Wasmund files he returned to Tkach when Tkach discharged him as counsel in the Wasmund litigation. In lieu of the original retainer agreement Cordier introduced a document he testified was an unsigned copy.

*2 Cordier admitted McMillan never signed the retainer agreement. Their only discussion regarding the Wasmund litigation took place in the foyer of the firm's office when Tkach introduced Cordier to McMillan. Cordier testified Tkach told McMillan Cordier "would be the person that would be taking over the handling of the Wasmund matter" and McMillan responded:" 'Do whatever necessary,' or 'Do whatever you need to.' Something to that effect." On cross-examination Cordier conceded he never told McMillan he could be held personally liable on the cross-complaint in the Wasmund litigation nor did he ever tell McMillan his representation of the firm would benefit McMillan in any way.

Tkach denied he ever received or signed any retainer agreement with Cordier. Rather, he testified he and Cordier entered into an oral contract in which Cordier agreed to represent Tkach and the firm in the Wasmund litigation and accept a fee of $150 per hour plus costs contingent on Tkach being awarded attorneys fees in the Wasmund litigation. Because the trial court did not award Tkach attorneys fees in the Wasmund litigation Tkach concluded he did not owe any fees to Cordier. Cordier denied he agreed payment of his fees would be contingent on an award of attorneys fees to Tkach in the Wasmund litigation.

The jury returned special verdicts in Cordier's favor on his causes of action for breach of contract and quantum meruit and found against him on his cause of action for false promise. On the breach of contract cause of action the jury awarded Cordier damages in the amount $132,408 for unpaid legal fees and $6,879.00 for unreimbursed costs. On the cause of action for quantum meruit the jury awarded Cordier damages in the amount of $132, 408 but nothing for unreimbursed costs. The trial court entered a judgment against Tkach, McMillan and McMillan & Tkach, LLP, jointly and severally in the principal sum of $139,287 ($132,408 plus $6879) plus prejudgment interest and court costs. All three defendants filed timely notices of appeal.

DISCUSSION

THE TKACH AND MCMILLAN & TKACH APPEALS

Initially we deny Cordier's motion to dismiss McMillan & Tkach's appeal for failure to file an opening brief and to designate an adequate appel-

late record.

We granted McMillan & Tkach permission to file a late opening brief so that issue is moot.

Cordier contends the firm failed to designate an adequate record because it did not include the closing argument of its counsel whom, Cordier suggests, might have conceded some fact as to which the firm now claims lacks substantial evidence. We need not address Cordier's theory the judicial admission of a fact by counsel is binding on the jury whereas testimony of a fact by a witness is not. Here, Tkach renounces any claim of insufficiency of the evidence. Furthermore, even if Cordier's theory was correct it would not require dismissal of the appeal: only a ruling against the firm on any claim of lack of substantial evidence.[FN4]

> FN4. *Brockey v. Moore* (2003) 107 Cal.App.4th 86, 96 ["Failure to set forth the material evidence on an issue waives a claim of insufficiency of the evidence."]

***3** Tkach and the firm raise the same issues on appeal and we consider them together.[FN5] References to Tkach include McMillan & Tkach unless otherwise stated.

> FN5. In the "conclusion" to Tkach's opening brief he claims for the first time the trial court erred in granting Cordier's motion for summary judgment on Tkach's cross-complaint for fraud. Tkach's failure to provide any cites to the record, reasoned argument or citations to authority waives the claim of error even with respect to a summary judgment where we conduct a de novo review. (*Reyes v.. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.) As a leading treatise on appellate practice points out an appeal "requires more than simply stating a bare assertion that the judgment, or part of it, is erroneous and leaving it to the appellate court to figure out why[.]" (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (2004)[¶] 8:17.1, p. 8-5.)

I. THE JURY'S SPECIAL VERDICT FOR CORDIER BASED ON BREACH OF CONTRACT AND QUANTUM MERUIT DO NOT VOID THE JUDGMENT.

Tkach argues the judgment is void because it is based on an inherently inconsistent special verdict. The jury's special verdict found an express contract between Cordier and Tkach, which Tkach breached, and as a consequence Tkach owed Cordier $132,408 for unpaid legal fees and $6879 for unreimbursed costs. The jury also found Cordier was entitled to the reasonable value of his legal services in the sum of $132,408. As Tkach correctly asserts, there cannot be both an express contract and an implied contract covering the same subject matter-Cordier's compensation. If there is an express contract between the parties governing Cordier's compensation quantum meruit will not lie to alter the terms of such agreement. On the other hand, if there is no express contract between the parties governing Cordier's compensation there is no "meeting of the minds" necessary to form a contract and Cordier's recovery, if any, must be based on the reasonable value of his services.[FN6]

> FN6. See *Hedging Concepts, Inc. v. First Alliance Mortgage Co.* (1996) 41 Cal.App.4th 1410, 1419-1420.

Tkach is correct in viewing the theories of breach of contract and quantum meruit as inconsistent, but this inconsistency does not void the judgment. In *Baird v. Ocequeda.*[FN7] the defendants appealed from a judgment which, they claimed, "permit[ted] the plaintiff to recover on asserted inconsistent theories of express and implied contract." [FN8] The court responded: "Even if this be conceded, it is not fatal to the judgment. Examination of the record discloses that there is evidence to support a recovery on either theory. This being so, the findings on the inconsistent theory may be disregarded as surplusage." [FN9]

> FN7. *Baird v. Ocequeda* (1937) 8 Cal.2d

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700, 703.

FN8. *Baird v. Ocequeda, supra,* 8 Cal.2d at page 703.

FN9. *Baird v. Ocequeda, supra,* 8 Cal.2d at page 703.

In the present case, there is substantial evidence to support recovery against Tkach and the firm under breach of contract and quantum meruit theories. [FN10] Therefore, the alleged conflict in finding the existence of a contract and entitlement to recovery under quantum meruit does not invalidate the judgment. Rather, the quantum meruit finding is surplusage and may be disregarded. Cordier did not receive duplicate judgments awarding damages on two different causes of action. There is only one judgment for one amount and it is supported by substantial evidence.

FN10. See discussion at pages 8-11, *post.*

II. SUBSTANTIAL EVIDENCE SUPPORTS CORDIER'S VERSION OF THE CONTRACT.

The jury obviously accepted Cordier's version of his retainer agreement with Tkach.[FN11] Substantial evidence supports the jury's finding.

FN11. If it had accepted Tkach's version it would not have awarded Cordier damages for breach of contract since it is undisputed the contingency on payment in Tkach's version did not occur. See discussion at page 4, *ante.*

Cordier testified Tkach approached him about the possibility of substituting in as the attorney for Tkach and the firm in the Wasmund litigation. After reviewing the files and documents related to the matter Cordier agreed to the substitution. Cordier prepared a substitution of attorneys form and a retainer agreement which Tkach signed on behalf of himself and the firm. The agreement provided Cordier would be paid $240 per hour plus costs. The parties did not agree Cordier's fee would be contingent on the court awarding attorneys fees to Tkach and the firm in the Wasmund litigation.[FN12]

FN12. On appeal Tkach does not contend he objected to this testimony under Evidence Code section 1523 which sets out rules for the admission of oral testimony as to the contents of a writing, or on any other ground.

***4** Tkach argues the judgment should be reversed on the breach of contract count because the trial court erred in allowing Cordier to introduce a document purporting to be an unsigned copy of the retainer agreement between him and Tkach to prove the contents of the document. Tkach objected to this document based on lack of foundation. Assuming by lack of foundation Tkach meant the document was not authenticated, his objection was properly overruled. Cordier testified the original retainer agreement was prepared by his office and either mailed or personally delivered to Tkach who signed it and returned it to Cordier. The document Cordier was seeking to introduce into evidence was a copy of the retainer agreement taken from Cordier's files. This testimony was sufficient to authenticate the original and the copy.[FN13] Whether the copy was admissible as secondary evidence of the content of the original is a separate question and one not raised by Tkach at trial.[FN14]

FN13. "A writing may be authenticated by anyone who saw the writing made or executed, including a subscribing witness." (Evid.Code § 1413.)

FN14. See Evidence Code section 1521.

III. SUBSTANTIAL EVIDENCE SUPPORTS THE JURY'S AWARD OF DAMAGES FOR BREACH OF CONTRACT.

Tkach argues the trial court erred in refusing to allow him to present evidence and special jury instructions on his affirmative defense of "failure to perform."

Tkach wanted to present expert evidence and

jury instructions to the effect that if Cordier failed to obtain a written fee agreement, failed to send bills on time and failed to give Tkach pre-litigation notice of his right to arbitrate their fee dispute Cordier could not recover on his alleged contract with Tkach. The trial court correctly disallowed the testimony and jury instructions.

In 1998, when Tkach retained Cordier to represent him in the Wasmund litigation, section 6148 of the Business and Professions Code required a non-contingency fee agreement in which the fees could reasonably be expected to exceed $1000 to be in writing [FN15] and upon request by the client the attorney had to provide a bill to the client within 10 days of the request. [FN16] The statute further provided "[f]ailure to comply with any provision of this section renders the agreement void at the option of the client...." [FN17] Section 6201 of the Business and Professions Code required service of the complaint in an action to recover attorneys fees must be accompanied or preceded by written notice of the client's right to request arbitration.[FN18]

FN15. Business and Professions Code section 6148, subdivision (a). (Stats.1996, ch. 1104, § 10.

FN16. Business and Professions Code section 6148, subdivision (b). (Stats.1996, ch. 1104, § 10.

FN17. Business and Professions Code section 6148, subdivision (c). (Stats.1996, ch. 1104, § 10.

FN18. Business and Professions Code section 6201, subdivision (a). (Stats.1966, ch. 1104, § 13.

As a general rule, expert testimony on an issue of law is not admissible. [FN19] "[W]hen an expert's opinion amounts to nothing more than a lecture on the law, it usurps the duty of the trial court to instruct the jury on the law." [FN20] The trial court is required to take judicial notice of the statutory law of California [FN21] and where appropriate the court may instruct the jury on the statute as part of its duty to instruct on the law. [FN22] In the present case, however, there was no factual basis for instructing the jury under the Business and Professions Code. Cordier testified his retainer agreement with Tkach was in writing. Tkach did not dispute this evidence per se. Rather, he testified there never was a retainer agreement like the one described by Cordier whether oral *or* in writing. Similarly, Tkach presented no evidence he requested a bill from Cordier under the retainer agreement. He could not, because he denied any such agreement ever existed. [FN23] But even assuming the jury had found the agreement was oral, the jury believed Cordier's testimony about the *terms* of the agreement over Tkach's testimony. Thus Cordier would have recovered the same amount of fees under the quantum meruit theory.[FN24] Finally, failure to serve a written notice regarding fee arbitration did not void the fee agreement. It only furnished a basis for dismissing the action in the court's discretion [FN25]-clearly not a matter within the province of the jury.

FN19. *Summers v. A.L. Gilbert* (1999) 69 Cal.App.4th 1155, 1160, 1185.

FN20. *People v. Reynolds* (2006) 139 Cal.App.4th 111, 135.

FN21. Evidence Code section 451, subdivision (a).

FN22. Code of Civil Procedure section 608 .

FN23. It is one thing to plead or argue inconsistent theories of law, it is quite another to contend for two diametrically opposed sets of facts.

FN24. Business and Professions Code section 6148, subdivision (c) provides failure to obtain a written fee agreement when one is required renders the agreement voidable at the option of the client "and the attorney

> shall, upon the agreement being voided, be entitled to collect a reasonable fee." The jury found the "reasonable fee" under quantum meruit was the same amount as the fee agreed to in the contract.
>
> FN25. Business and Professions Code section 6201, subdivision (a). (Stats.1966, ch. 1104, § 13

*5 Tkach also complains the trial court refused to permit expert testimony and special instructions on Cordier's failure to competently perform the duties required of him under Tkach's version of their contract, specifically Cordier's failure in the Wasmund litigation to move for a judgment on the pleadings and to perfect Tkach's appeal from the judgment. The record does not support Tkach's claims of error.

Cordier's motion in limine did not prohibit Tkach's expert from testifying as to an attorney's standard of care. In addition, the court permitted testimony on the aborted appeal from the Wasmund judgment. Finally, any errors the trial court may have made in this regard were not prejudicial because Tkach subsequently withdrew his cross-complaint for malpractice and he does not contend the court's alleged errors caused the withdrawal.

IV. TKACH'S REMAINING CLAIMS OF ERROR LACK MERIT.

A. Evidence Relating to Tkach's Representation of Wasmund.

Prior to trial, Tkach brought a motion in limine "[t]o exclude all references to John Tkach's and McMillan & Tkach, LLP's representation of Dodge-Wasmund, Lena Wasmund and James Wasmund." Tkach argued the evidence was irrelevant or, if relevant, should be excluded as unduly prejudicial. [FN26]

> FN26. Evidence Code sections 350, 352.

The trial court properly denied this motion. Evidence of Tkach's representation of Wasmund would have been relevant in the trial of Tkach's legal malpractice claim against Cordier who represented Tkach in his lawsuit seeking legal fees in quantum meruit from Wasmund (the Wasmund litigation). Tkach's representation of Wasmund was also relevant to Cordier's contention his partner, McMillan, was potentially liable for any damages which might have been awarded to Wasmund in the Wasmund litigation. It was not unduly prejudicial for the jury to learn Cordier obtained a quantum meruit recovery for Tkach in the net amount of $226,000 plus costs and prejudgment interest. Cordier, it will be recalled, was seeking attorney fees for representing Tkach under the doctrine of quantum meruit which required the jury to determine a reasonable fee for Cordier's services. The jury needed to know the amount Cordier recovered for Tkach to assist it in determining a reasonable fee for his services.[FN27]

> FN27. Rule 4-200, section (B) of the Rules of Professional Conduct states the factors to be considered in determining the "conscionability," i.e. reasonableness, of a fee include "(1) The amount of the fee in proportion to the value of the services performed" and "(5) The amount involved and the results obtained."

B. Evidence of Tkach's Failure to Pay His Bills.

In support of his cause of action for false promise Cordier sought to introduce evidence Tkach had a history of not paying his bills. Tkach sought an order in limine excluding such evidence on the ground it would be unduly prejudicial evidence of bad character. The trial court denied the requested order. Any error by the trial court is moot because the jury ruled in Tkach's favor on Cordier's false promise cause of action.

THE MCMILLAN APPEAL

V. FACTS PERTINENT TO MCMILLAN'S APPEAL.

We briefly review the specific facts relevant to McMillan's appeal.

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Wasmund retained Tkach and the firm in August 1994 when the firm was a general partnership. Tkach obtained a settlement of the matter in the summer of 1996. In September 1996 the firm converted to a limited liability partnership (LLP). In 1997 Wasmund initiated fee arbitration against Tkach, McMillan and the firm. Not satisfied with the results of the fee arbitration Tkach filed a lawsuit against Wasmund in 1998 and Wasmund filed two lawsuits against Tkach and the firm seeking among other things $400,000 in compensatory damages and $1 million in punitive damages (the Wasmund litigation). McMillan was not named as a plaintiff or defendant in any of these suits.

***6** In August 1998, after the firm had converted from a general partnership to an LLP, Tkach approached Cordier about substituting into the litigation as counsel for him and the firm. Prior to entering into a retainer agreement Cordier visited Tkach at the firm's office where he met McMillan for the first and only time. Tkach introduced Cordier to McMillan and told McMillan that Cordier would be taking over the Wasmund litigation. McMillan shook hands with Cordier and told him to "do whatever was necessary" or words to that effect.

Cordier obtained a net judgment of $226,000 plus costs and prejudgment interest against Wasmund on behalf of Tkach and the firm. Wasmund recovered damages of one dollar against the firm.

In 2001 Cordier filed the present action against Tkach, McMillan and the firm for attorneys fees due him in handling the Wasmund litigation. The jury found in favor of Cordier and against all three defendants.

VI. THE EVIDENCE DOES NOT SUPPORT THE JUDGMENT AGAINST MCMILLAN UNDER THE THEORIES OF BREACH OF CONTRACT OR QUANTUM MERUIT.

A. The Evidence Does Not Support The Judgment Against McMillan On The Theory Of Breach Of Contract.

McMillan was not a party to the retainer agreement and cannot properly be held liable for breach of contract. The jury reached the contrary conclusion based upon the court's erroneous instruction, given at the request of Cordier over McMillan's objection, that "David Cordier may be entitled to damages for breach of contract if he proves that John Tkach and McMillan & Tkach intended for R. Wayne McMillan to benefit from their contract." The trial court thus improperly converted the third-party beneficiary doctrine, which permits *enforcement* of a contract by one for whose benefit an agreement has been made,[FN28] into a rule of vicarious *liability*. Not only is that transformation wholly unsupported by statute, California precedent or principles of common law, but it also directly conflicts in this case with Corporations Code section 16306, subdivision (c), which provides a partner in a registered limited liability partnership "is not liable or accountable, directly or indirectly, ... for debts, obligations, or liabilities of or chargeable to the partnership or another partner in the partnership, whether arising in tort, contract, or otherwise, that are incurred, created, or assumed by the partnership while the partnership is a registered limited liability partnership, by reason of being a partner or acting in the conduct of the business or activities of the partnership." [FN29]

> FN28. Civil Code section 1559 states: "A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it." And see *Schauer v. Mandarin Gems of Cal., Inc.* (2005) 125 Cal.App.4th 949, 957 [even though promisee did not assign or transfer his rights to plaintiff, plaintiff as third party beneficiary has standing to sue for breach of contract in her own right]; Rest.2d Contracts, § 304 ["A promise in a contract creates a duty in the promisor to any intended beneficiary to perform the promise, and the intended beneficiary may enforce the duty."])

> FN29. Under certain limited circumstances, none of which is applicable in this case, a partner in a registered limited liability partnership may be personally liable for a partnership obligation. For example, a partner in a limited liability partnership remains liable to third parties for the partner's own tortious conduct (Corp .Code, § 16306, subd. (e)); and a partner may act as a guarantor or surety for limited liability partnership debts or obligations. (Corp.Code, § 16306, subd. (h).)

There is no dispute in this case that, at the time Cordier entered into the retainer agreement with Tkach and the law firm, the firm was a registered limited liability partnership or that McMillan, as a partner in the firm, was entitled to the protections of Corporations Code section 16306, subdivision (c). (Indeed, the unsigned copy of the retainer agreement Cordier introduced into evidence at trial plainly identifies the law firm as an "LLP.") Whether or not McMillan, who was never named as a party in the litigation with the Wasmunds that Cordier handled, might have had some potential personal exposure in that litigation because Tkach's alleged acts of malpractice occurred in part while the firm was still operating as a general partnership, Cordier's services and the contractual obligation upon which he sued and obtained a judgment were entirely creatures of the period after the law firm's conversion to a limited liability partnership. Because McMillan in his individual capacity was not a party to that contract, Corporations Code section 16306, subdivision (c), insulates him from responsibility for any debts, obligations or liabilities created by that agreement.

B. The Evidence Does Not Support The Judgment Against McMillan On The Theory Of Quantum Meruit.

*7 Cordier maintains the judgment against McMillan can be affirmed under his alternate theory of quantum meruit. That approach suffers from several fatal flaws. First, a single judgment was entered in the case against Tkach, the law firm and McMillan. Included in the total amount awarded was $6,879 in costs from the Wasmund litigation, which Cordier alleged as damages in his breach of contract cause of action but not his quantum meruit claim.[FN30] Also included in the final judgment was an award of $44,106.62 in prejudgment interest, which Cordier sought and recovered by postverdict motion based solely on his success on the breach of contract cause of action. Accordingly, the judgment against McMillan necessarily represents a recovery on the contract claim itself as to all three defendants.

> FN30. The quantum meruit claim requested only the reasonable value of legal services provided by Cordier. In a separate quasi-contract cause of action for unjust enrichment, Cordier sought recovery of the costs he had incurred in the Wasmund litigation. Cordier voluntarily withdrew his unjust enrichment cause of action.

Second, while it may be plausible in the abstract to construe McMillan's comment to Cordier-either "do whatever is necessary" or "do whatever you need to"-as a request by McMillan for personal representation in connection with litigation in which he was not a named party, McMillan's statement must be considered in the context in which it was made. According to Cordier's undisputed testimony, accepted by the jury as the basis for its verdict on the breach of contract claim, he had a written retainer agreement signed only by Tkach on behalf of himself and the law firm that specifically identified his clients as Tkach and the law firm. Against that backdrop, even indulging all "legitimate and reasonable inferences" in support of the jury's verdict [FN31], no reasonable finder of fact could conclude, based on the single remark made when Tkach introduced Cordier to McMillan as the lawyer representing the law firm in the Wasmund litigation, that an additional attorney-client relationship had been formed in which Cordier undertook to represent McMillan's personal interests in the

pending litigation.[FN32]

FN31. See for example *Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429.

FN32. See *Ochs v. PacifiCare of California* (2004) 115 Cal.App.4th 782, 794 ["To recover on a claim for the reasonable value of services under a quantum meruit theory, a plaintiff must establish both that he or he was acting pursuant to either an express or implied request for services from the defendant and that the services rendered were intended to and did benefit the defendant ."]; *Day v. Alta Bates Medical Center* (2002) 98 Cal.App.4th 243, 246 [same].)

Finally, even if this meager evidence could reasonably support the conclusion McMillan made an implied request to Cordier to perform whatever additional legal services might be necessary to protect his personal interests along with the law firm's in the Wasmund litigation, the uncontradicted evidence shows Cordier performed no such services.[FN33] Cordier testified he spent a total of 551.7 hours providing legal services in the Wasmund litigation under the terms of his retainer agreement with Tkach and the law firm, and the jury awarded Cordier his contract damages in full. No additional services were performed beyond the scope of that contract.[FN34] Accordingly, Cordier failed to establish the elements necessary for a quantum meruit recovery against McMillan.

FN33. To the extent Cordier's quantum meruit claim is predicated on the theory McMillan's purported implied request was that Cordier provide legal services to the law firm and not to McMillan individually, Corporations Code section 16306, subdivision (c), shields McMillan for any personal liability for that obligation.

FN34. Compare *Combs v. California Cotton Mills Co.* (1952) 112 Cal.App.2d 781, 786-787 [party to express contract may recover under quantum meruit for reasonable value of services performed that were wholly outside scope of regular employment].

DISPOSITION

The judgment is affirmed as to defendants McMillan & Tkach and John Tkach. The judgment is reversed as to R. Wayne McMillan. Cordier is awarded costs on appeal against McMillan & Tkach and John Tkach. McMillan is awarded costs on appeal against Cordier.

We concur: PERLUSS, P.J., and WOODS, J.

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