

The Plaintiff in this case is Wallace Bradley. The Defendants are Frank B. Avila, Ivan Tomic, the law firm of Avila, Tomic & Associates, LLC, Adam Loewy, Carl Barry, and Barry & Loewy, LLP.

The Plaintiff claims that he entered into an oral contract with the Defendant Frank Avila in May, 2006. The Plaintiff claims that the contract required him to perform consulting services in connection with a legal action pending in federal court entitled Patterson v. Burge, in which Defendants acted as counsel for Mr. Patterson. Under the Plaintiff's theory all of the other Defendants are also bound, through their actions, by the oral agreement Plaintiff claims he entered into with Mr. Avila. Plaintiff claims that he performed the services required by the agreement but was not paid all of the money due him under the contract for this work.

The Defendants deny that there was such an agreement and deny that they owe Plaintiff any money.

A party may be bound by a contract between other parties if the party ratifies the contract. Ratification by a party means that the party has agreed to be responsible for the obligations of one of the original parties to the contract.

Ratification of a contract may be implied from the acts and conduct of a party. Ratification will not be implied from a party's acts or conduct when the party did not have knowledge of the material facts at the time of such acts or conduct.

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October 21, 2011

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RE: Bradley vs. Avila, et.al.

Gentlemen:

Enclosed herein are copies of the court orders entered on October 20 in the above case.

Very truly yours,



George E. Becker

GEB/ec

@Enclosures



Metropolitan Pier & Exposition Authority, 172 Ill. 2d 243, 256 (Ill. 1996). Proof offered in support of, or in opposition to, summary judgment must be based on personal knowledge and shall not consist of legal conclusions, but of facts admissible in evidence. Ill. S. Ct. Rule 191. Unsupported assertions, opinions, and self-serving or conclusory statements made in deposition fail to meet this test. Davis v. Times Mirror Magazines, Inc., 297 Ill. App. 3d 488, 495 (1st Dist. 1998). The mere suggestion that issues of material fact exist, without supporting evidence, is insufficient to create one. People ex rel the Department of Prof'l Regulation v. Manos, 326 Ill. App. 3d. 313, 328 (2nd Dist. 1999). Mere speculation, conjecture or guess is insufficient to withstand summary judgment. Sorce v. Naperville Jeep Eagle, Inc., 309 Ill. App. 3d. 313, 328 (2nd Dist. 1999).

Defendant argues that he never entered into a binding oral agreement with Plaintiff. Defendant contends that Plaintiff has failed to show that there was a meeting of the minds or essential terms of the alleged oral agreement. Defendant argues the only person who potentially entered into a contract with Plaintiff is Frank Avila and Defendant is not liable for Avila's actions.

Plaintiff argues that Defendant's actions show he was fully aware of the oral agreement between Plaintiff and Avila. Defendant filed an appearance for the Patterson v. Burge litigation, prepared the retainer agreement and received a portion of the settlement agreement. Plaintiff argues that Defendant knew that Plaintiff was assisting with the Patterson v. Burge litigation and by his actions ratified the agreement between Plaintiff and Avila.

In the case at bar, based on arguments in the briefs and additional facts presented at oral argument, the Court *sua sponte*, researched the issue of a limited liability corporation owner's responsibilities upon dissolution. Illinois law states that "[T]he debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company." 805 ILCS 180/10-10. "A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager." 805 ILCS 180/10-10. However, while a dissolved corporation may no longer transact business, dissolution does not abate or suspend any claims which may be brought within five years of the corporation's dissolution. 2-32 Illinois Business Entities 32.18. Investors who receive the dissolved corporation's assets are liable for its debts, to the extent of the distributions they received. Matos v. Richard A. Nellis, Inc., 101 F.3d 1193, 1195 (7th Cir. 1996). For all practical purposes the distributees replace the defunct corporation as the real parties in interest. *Id.*

Plaintiff filed this action on October 9, 2008 against Defendant, Avila, and the Corporation. The Corporation was dissolved in May 2009. The five year period applying to all claims which may be brought against the corporation or its owners, has not yet passed. Per section 805 ILCS 180/1 *et seq* of the Illinois Limited Liability Company Act, the Court finds that a genuine issue of material fact exists as to whether Defendant Tomic, as an owner, investor or distributee, has a continuing duty to Plaintiff after the Corporation was dissolved. Accordingly, Defendant Tomic's 2-1005 Motion for Summary Judgment is denied.

**ORDER**

**WHEREFORE**, for all the reasons stated:

**Defendant Tomic's 2-1005 Motion for Summary Judgment is hereby denied.**

*WJH*

Hon. Allen S. Goldberg

**ENTERED**  
JUDGE ALLEN S. GOLDBERG-1595  
OCT 20 2011  
DORIS M. BROWN  
CLERK OF CIRCUIT COURT  
OF COOK COUNTY, IL  
DEPUTY CLERK