IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PARAM TECHNOLOGIES, INC.,	:	CIVIL ACTION
	:	
Plaintiff	:	No. 04-1348
	:	
v.	:	
	:	
INTELLIGENT HOME SOLUTIONS, INC., SUSAN EVANS, and STEVEN MARKS,	:	
	:	
Defendants.	:	

DECISION

JOYNER, J. **August 25, 2005**

This breach of contract action was tried before the undersigned on August 9, 2005. The parties have submitted their exhibits and the matter is now ripe for disposition. Accordingly, the Court now makes the following:

FINDINGS OF FACT

1. Plaintiff, Param Technologies, Inc., ("Param") is a Delaware corporation whose primary place of business is 8600 West Chester Pike, Suite 308, Upper Darby, Pennsylvania. Param is an integrated technology services provider that develops software and system integration solutions, particularly in the field of home technology. The President of Param is Arjun "Jay" Ram.

2. Defendant Intelligent Home Solutions, Inc. ("IHS") is an inactive Florida corporation whose primary place of business is 9225 SE Cove Point St., Tequestra, Florida.

3. Defendant Susan Evans is a resident of Connecticut with an address at 7 Bobwhite Drive, Westport, Connecticut. At all times relevant to this cause of action, Ms. Evans was the Chief Executive Officer of IHS.

4. Defendant Steven Marks is resident of the state of Florida with an address at 9225 SE Cove Point St., Tequestra, Florida. At all times relevant to this cause of action, Mr. Marks was the President of IHS.

5. In or around July of 2003, Defendants contacted Param to request its services in developing a software monitoring and security system for elder care communities, and integrating this system with Veo camera hardware. (Complaint, ¶ 6; Def. Exh. A).

6. Mr. Ram agreed to perform services for IHS based in part on Ms. Evans' and Mr. Marks' assurances that the finished product would be marketed to numerous elder care communities, and Mr. Ram's own expectations as to the potential for significant profits and royalties.

6. In a July 10, 2003 letter to Ms. Evans of IHS, Mr. Ram, on behalf of Param, itemized the costs of the project they had discussed in their initial conversation. Param first agreed to develop a Veo driver for "a cost not to exceed $1,400 without prior written authorization." Param also agreed to develop a custom user interface, and requested approval for 40 hours of work on the interface at $40 per hour, concluding, "Any time

spent over 24 hours [on the interface] will be prorated, not to exceed $1,600." (Def. Exh. A). Param initially estimated that these tasks would take two weeks to complete.

7. On July 23, 2003, Mr. Ram, on behalf of Param, sent a letter to Ms. Evans of IHS "to detail the work items on your project and to estimate the expenses now that we have a more detailed understanding of your needs." In addition to developing a Veo driver and custom user interface, additional areas of work included linking the user interface to a Premise server, and developing a database for the user interface system. Mr. Ram wrote, "During one of our conversations last week, you had asked me to bill you for additional work. I have written this letter documenting the scope of the work, the changes up to this point, and the estimated costs to avoid any misunderstanding in the future." The original estimate of $1,400 for the Veo camera driver remained the same. With respect to the user interface, Mr. Ram estimated that $1,680 had been spent to date, and noted that future interface design expenses would be billed at $35 per hour "due to the uncertainty in the amount of work needed to get the interface just right." The estimated cost of initial database development was $960, and the estimated cost of linking the interface with the server was $1,600. Mr. Ram also estimated his own consulting costs of $13,950, which he agreed not to bill IHS for in light of the "potential long-term relationship"

between the companies. (Pl. Exh. 1; Def. Exh. B).

8. Between July of 2003 and October of 2003, the scope of the project expanded significantly. Discussions between Param and IHS were ongoing, and Ms. Evans and Mr. Marks, on behalf of IHS, substantially modified the specifications of the product Param had initially agreed to develop. (Def. Exh. C, D).

9. Between July of 2003 and October of 2003, Param had four programmers working full-time on the IHS project and incorporating the changes requested by IHS. The programmers, some of who were based in India, were managed by Param employee Ganu Hegde. Mr. Ram spent a significant amount of hands-on management time communicating with IHS's representatives, Ms. Evans and Mr. Marks, regarding the ongoing changes to IHS' needs with respect to the product Param was developing.

10. By letter dated October 3, 2003, Mr. Ram, on behalf of Param, noted that the "product that we have developed has changed substantially compared to the initial template document that you sent us," and further noted that Param had received no financial compensation from IHS for the three months of work already completed. Mr. Ram proposed that Param be compensated on the basis of the number of copies of the software ultimately installed. (Def. Exh. C).

11. IHS had informed Param that numerous builders of elder care communities had expressed interest in the product, and

assured Param that thousands of copies would ultimately be installed. In light of these assurances, Mr. Ram of Param expressed his willingness to accept a lower up-front payment than was otherwise his custom, and recoup his remaining costs and additional profits by way of royalties on future sales.

12. Negotiations between Param and IHS concerning Param's compensation continued throughout October and into November of 2003. (Def. Exh. D, D(1), E, E(1), F, G; Pl. Exh. 2, 3, 4).

13. On October 13, 2003, IHS offered to compensate Param $15,000 for the first 400 installed copies, and $10 per copy beyond the initial 400. IHS agreed to pre-pay $5,000 upon delivery of installable source code and documentation, and pay the $10,000 balance thirty days after installation. (Def. Exh. E.)

14. On October 27, 2003, IHS offered "guaranteed" compensation of $17,500 for the first 450 installed copies, as well as $10 per copy beyond the initial 450. IHS agreed to pre-pay $5,000 upon delivery of installable source code and documentation, with the balance of $12,500 to be paid within 6 months of the prepayment or 30 days after installations are under contract. (Pl. Exh. 2; Def. Exh. G). By letter dated November 10, 2003, IHS again offered $17,500 "guaranteed," with no additional royalties for installation beyond the initial 450 copies. (Def. Exh. H).

15. While Mr. Ram, on behalf of Param, agreed by e-mail dated October 15, 2003 to accept a $5,000 prepayment on delivery of installable source code, no final agreement was ever reached with respect to the timing or amount of the remaining compensation. (Def. Exh. F). Furthermore, no agreement was reached as to the definition of "installable source code" or the extent of Param's involvement after delivery thereof. Mr. Ram believed that Param would be entitled to the $5,000 prepayment upon delivery of basically functional and installable software, and would have no responsibility for ongoing support after that time. (Def. Exh. G). Mr. Ram noted that Ms. Evans' "lack of understanding of software and technology" had caused misunderstandings about delivery expectations in the past, and expressed concern that Param would "be dragged into making additional modifications just to get the $5000." (Def. Exh. G).

15. The source code provided to Mr. Marks during the week of October 13, 2005 required changes to the configuration of Mr. Marks' computer before it could be installed. Param employees assisted Mr. Marks in resolving these configuration issues, and on October 27, 2003, Mr. Marks wrote in an e-mail to Mr. Ram that Mr. Hegde had been "terrific in assisting me with implementation and debugging." Mr. Marks noted, "Param ... has delivered a product that functions as designed." (Pl. Exh. 3).

16. As of the week of October 27, 2003, Param had received

no compensation for its work. In e-mail correspondence with Mr. Marks, Mr. Ram inquired as to when payment would be forthcoming, given the resolution of major installation issues. Mr. Marks responded, on October 27, 2003, “I would have expected Susan to pay the deposit after last weeks accomplishments which showed the product functionality was working with minor adjustments needed.” (Pl. Exh. 3). The following day, Mr. Marks wrote, “It is beyond me why she is so adamant about paying the small down payment on a product that has received a lot of interest. I will try to make her understand the principle of giving you the payment.” (Pl. Exh. 4).

17. As of November 6, 2003, the product Param had provided to IHS was substantially complete in form and function, requiring only final beta testing to resolve any incidental issues. (Pl. Exh. 5). On that date, Mr. Ram informed Mr. Marks that Param was considering taking legal action against IHS and Ms. Evans “just to protect our investment in the project,” and asked Mr. Marks for his plans moving forward. Mr. Marks responded, “I have already spoken to a couple of associates and it looks good. I’ll have a more detailed plan tomorrow. You will not have to take legal action, I will take on the responsibility of payment for your services.” (Pl. Exh. 5). Mr. Marks did not consider this statement to be an assumption of personal liability.

18. Negotiations between Param and IHS ended shortly after

November 6, 2003.

19. IHS never marketed, installed, or sold the software product developed by Param. IHS dissolved as of October 2004, and no other business was created as its successor.

20. To date, Param has received no compensation for its services. The cost to Param of developing the IHS product totaled $75,715.00. (Pl. Exh. 6)

21. Plaintiff Param filed the instant action against Defendants IHS, Ms. Evans, and Mr. Marks on March 29, 2004.

22. On August 27, 2004, default was entered against Defendant IHS for failure to appear, plead, or otherwise defend the action. Default judgment was entered against IHS on March 31, 2005, with damages to be assessed at a later date.

DISCUSSION

Via the instant action, Plaintiff Param seeks quantum meruit recovery, or, alternatively, compensation for time and materials expended during the course of its work for Defendant IHS. Plaintiff contends that Defendants received a substantial benefit from Param's services, have made no payment on these services, and have been unjustly enriched thereby. Plaintiff further contends that Defendants Ms. Evans and Mr. Marks personally guaranteed payment for Param's services.

I. Quantum Meruit Recovery on a Quasi-Contract

In order for an enforceable contract to exist under Pennsylvania law, there must be a "meeting of the minds," typically evidenced by an offer and its acceptance, whereby both parties mutually assent to the same thing. Refuse Mgmt. Sys. v. Consolidated Recycling & Transfer Sys., 671 A.2d 1140, 1146 (Pa. Super. Ct. 1996) (citing Hahnemann Medical College & Hospital of Phila. v. Hubbard, 406 A.2d 1120 (1979)). Stated otherwise, a contract is enforceable when the parties manifest a mutual intent to be bound, exchange consideration, and have set forth the terms of their bargain with sufficient definiteness to be specifically enforced. Atacs Corp. v. Trans World Communs., 155 F.3d 659, 666 (3rd Cir. 1998); Johnston the Florist, Inc. v. Tedco Constr. Corp., 657 A.2d 511, 516 (Pa. Super. Ct. 1995).

If the parties themselves cannot agree upon the material and necessary details of the bargain, there can be no enforceable contract. Lombardo v. Gasparini Excavating Co. 123 A.2d 663, 666 (Pa. 1956). For example, no contract is formed where the parties engage in a series of offers and counter-offers but come to no agreement as to the terms of their respective obligations. Hahnemann Medical College, 406 A.2d at 1122. Likewise, if the rate of compensation is not clearly established, a court may find that no binding contract exists. Kassab v. Ragnar Benson, Inc. 254 F.Supp. 830, 832 (W.D. Pa. 1966).

When there has been no meeting of the minds between the

parties, equitable relief under a theory of quasi-contract in quantum meruit, a form of rescission, may be available. Quantum meruit is an implied contract remedy based on payment for services rendered and on prevention of unjust enrichment. Allegheny Gen. Hosp. v. Phillip Morris, Inc, 116 F. Supp. 2d 610, 622-23 (W.D. Pa. 1999); Martin v. Little, Brown and Co., 450 A.2d 984, 988 (Pa. Super Ct. 1981). In service contracts, for example, recovery under quasi-contract may be available where the parties have not fixed the value of the service to be provided, but it would be unjust to allow the beneficiary to retain a benefit for which there was an implied promise to pay. Allegheny Gen. Hosp., 116 F. Supp. 2d at 622-23. To recover under a theory of quasi-contract and/or quantum meruit, the moving party must demonstrate that the other party has been unjustly enriched by wrongfully securing or passively receiving a benefit that would be unconscionable to retain. Hershey Foods Corp. v. Ralph Chapek, Inc., 828 F.2d 989, 999 (3rd Cir. 1987); J. F. Walker Co. Inc. v. Excalibur Oil Group, Inc., 792 A.2d 1269, 1273 (Pa. Super. Ct. 2002) (citing Mitchell v. Moore, 729 A.2d 1200, 1203 (Pa. Super. Ct. 1999))

In application of all of the foregoing to this case, it is clear that, although both Param and IHS expressed their intent to enter into a mutually acceptable agreement, there was never a "meeting of the minds" with respect to the value or scope of the

services to be provided by Param, and, accordingly, no enforceable contract.

First, and most obviously, the parties never came to an agreement as to how much Param would be paid for its services. Mr. Ram, Mr. Marks, and Ms. Evans' communications between July and October of 2003 were essentially a series of offers and counteroffers relating to compensation, each proposal being countered by a second proposal incorporating additional terms. Although Param and IHS never came to an agreement as to mutually acceptable terms of compensation, these ongoing negotiations (and, in particular, IHS' offers of compensation exceeding $17,500) indicate that IHS was willing pay for Param's services and fully expected to do so. Param had the same expectation; there can be no question that the negotiations between the parties demonstrated an implied, if not express, promise on IHS' part to pay some compensation for the benefit of Param's work.

It is equally clear that there was never a meeting of the minds between Param and IHS as to the scope of the project to be completed. Param entered into the collaboration on July 10, 2003 with the expectation that it would be required to complete two relatively simple tasks, development of a Veo camera driver and a custom user interface. However, as evidenced by the parties' ongoing communications, IHS' expectations far exceeded those expressed to Param in their initial conversation. While Param's

conduct thereafter indicated a willingness to perform additional work and take the project to some degree of completion, there was no mutual agreement as to how much additional work would be required or when the project would be complete. Param believed its work would be complete and it would be entitled to payment upon delivery of workable source code that satisfied IHS' basic needs. IHS, instead, considered Param obligated to continue modifying the workable source code and incorporating additional changes upon IHS' request. This is why, when Mr. Marks admitted on October 27, 2003 that Param's product functioned as designed and required only "minor adjustments," Mr. Ram believed he was entitled to compensation.

Although there was never an enforceable contract between Param and IHS, neither party believed that Param would be working on a volunteer basis. Param dedicated four full-time employees to the IHS project for nearly four months, and provided IHS with a functioning product designed to IHS' specifications. Regardless of whether the product incorporated every change that might later be proposed by IHS or was completely free of bugs, IHS received a product that, in Mr. Marks' words, showed working functionality and "function[ed] as designed." (Pl. Exh. 3). In accepting this substantial benefit without making any payment therefor, IHS was enriched unjustly and at Param's expense. Accordingly, and in light of IHS' default, Param is entitled to quantum meruit

payment for its services.

Param has submitted an itemized task list setting forth the time and expenses spent on the IHS product. (Pl. Exh. 6). This Court finds that Param's itemized costs are fair and reasonable, and accordingly grants judgment in favor of Param and against IHS in the amount of $75,715.

II. Assumption of Personal Liability by Ms. Evans or Mr. Marks

Generally, a corporate officer is not personally liable for a corporation's debts or contractual obligations, unless the officer expressly promises payment in his individual capacity or otherwise voluntarily assumes liability. See, e.g., In re Estate of Duran, 692 A.2d 176, 179 (Pa. Super. Ct. 1997); Kiska v. Rosen, 124 A.2d 468, 469-70 (Pa. Super. Ct. 1956); Weimer v. Bockel, 194 A. 318, 321 (Pa. Super. Ct. 1937).

Plaintiff has presented no evidence whatsoever that Defendant Ms. Evans assumed personal liability for the expenses of IHS. Accordingly, judgment will be granted in favor of Defendant Ms. Evans and against Plaintiff Param.

With respect to Defendant Mr. Marks, Plaintiff contends that he should be liable for IHS' debt to Param because of an e-mail in which he wrote, "I will take on the responsibility of payment for your services." (Pl. Exh. 5). The email was signed, "Steve Marks, Intelligent Home Solutions." This Court finds that the e-

mail in question is insufficient evidence of a voluntary assumption of personal liability by Mr. Marks.

In part because of the signature identifying Mr. Marks as an agent of IHS, the e-mail is ambiguous as to whether it demonstrates Mr. Marks' willingness to assume personal responsibility for Param's payment. While use of corporate letterhead or identification of the corporate entity is not determinative of an agent's personal liability, a court may consider such evidence and any other circumstantial evidence of the agent's intent to be personally bound. See In re Estate of Duran, 692 A.2d 176, 179-180 (Pa. Super. Ct. 1997); Publicker Industries, Inc. v. Roman Ceramics Corp., 652 F.2d 340, 344 n. 10 (3rd Cir. 1981). The circumstances of this case, when viewed in light of common business practices, suggest to this Court that Mr. Marks did not intend to be personally liable for payment to Param.

Mr. Marks' statement, "I will take on the responsibility of payment for your services," was made in response to Param's threat of legal action against IHS and Ms. Evans, and directly after an assurance by Mr. Marks that he had consulted with his business associates and that such legal action would be unnecessary. Had Mr. Marks explicitly agreed to pay Param out of his own pocket, Param would still have a viable cause of action against IHS, the corporation that was receiving the benefit of

its services. The only interpretation of Mr. Marks' statement that would render legal action against Param unnecessary would be an assurance that Mr. Marks, as an agent of IHS, would take responsibility for ensuring that IHS made whatever payments were required. Indeed, it is not uncommon in the business world for clients to be assured that some agent of the corporation will take the steps necessary to ensure that payment is made by the corporate entity. The instant situation is no different. Absent some more explicit statement by Mr. Marks indicating voluntary acceptance of a personal obligation to pay Param for its services, separate from any obligation as a corporate officer, this Court cannot find Mr. Marks liable for IHS' corporate debts. Accordingly, judgment will be granted in favor of Defendant Mr. Marks and against Plaintiff Param.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and subject matter of this action pursuant to 28 U.S.C. 1332(a)(1).

2. There was no "meeting of the minds" between Plaintiff and Defendant IHS with respect to the scope or value of the services to be provided by Plaintiff to IHS.

3. There was no valid and enforceable contract between Plaintiff and Defendant IHS for the provision of software development services by Plaintiff.

4. Defendant IHS was unjustly enriched by receipt of the benefit of Plaintiff's services, for which it made no payment.

5. $75,715.00 is a fair and reasonable estimate of the cost to Plaintiff of developing the software product requested by Defendant IHS.

6. By virtue of the default judgment entered against it, Defendant IHS owes Plaintiff $75,715.00, the fair and reasonable estimate of the quantum meruit cost to Plaintiff for services rendered.

6. Defendants Ms. Evans and Mr. Marks were not parties to the transaction between Plaintiff and Defendant IHS, and assumed no personal responsibility for the debts of their corporation, Defendant IHS, and judgment is properly entered in favor of the Defendants Ms. Evans and Mr. Marks.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PARAM TECHNOLOGIES, INC.,	:	CIVIL ACTION
	:	
Plaintiff	:	No. 04-1348
	:	
v.	:	
	:	
INTELLIGENT HOME SOLUTIONS, INC., SUSAN EVANS, and STEVEN MARKS,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 25th day of August, 2005, pursuant to a non-jury trial held before the undersigned on August 9, 2005, it is hereby ORDERED and DECREED that Judgment is entered in favor of Defendants Susan Evans and Steven Marks and against the Plaintiff in no amount.

FURTHER, it appearing to the Court that default judgment was entered against Defendant Intelligent Home Solutions, Inc. on March 31, 2005, with damages to be assessed at a later date (Doc. No. 45), Defendant Intelligent Home Solutions, Inc. is HEREBY ORDERED to pay judgment in the amount of $75,715.00.

BY THE COURT:

s/J. Curtis Joyner
J. CURTIS JOYNER, J.