

**LAWRENCE M. JARVIS and
LAWRENCE M. JARVIS, CHARTERED,
A Kansas Professional Corporation,**

Case No. 14-4096-JAR-GLR

V.

Defendant.

This matter is now before the Court on Defendant L. David Stubbs' Motion to Dismiss With Prejudice (Doc. 14) Plaintiffs' remaining breach of contract claim, filed June 1, 2015, and brief in support filed on June 8, 2015 (Doc. 15). Plaintiffs have not responded to the motion.

³Doc. 13.

Pursuant to D. Kan. Rule 6.1(d)(2), Plaintiffs had until June 29, 2015 to file a response.

Pursuant to D. Kan. Rule 7.4, “[i]f a respondent fails to file a response within the time required by Rule 6.1(d), the motion will be considered and decided as an uncontested motion, and ordinarily will be granted without further notice.” Accordingly, the Court grants Defendant’s motion as uncontested.

Moreover, the Court finds that the motion to dismiss should be granted on its merits, regardless of Plaintiffs’ failure to respond. To survive a motion to dismiss, a complaint must present factual allegations, assumed to be true, that “raise a right to relief above the speculative level” and must contain “enough facts to state a claim to relief that is plausible on its face.”⁴ Under this standard, “the mere metaphysical possibility that some plaintiff could prove some set of facts in support of the pleaded claims is insufficient; the complaint must give the court reason to believe that this plaintiff has a reasonable likelihood of mustering factual support for these claims.”⁵ The allegations must be enough that, if assumed to be true, the plaintiff plausibly (not just speculatively) has a claim for relief.⁶ As the Supreme Court recently explained, “[a] pleading that offers ‘labels and conclusions’ or a ‘formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’”⁷ Additionally, “[a] claim has facial plausibility when the

⁴*Bell Atl. Corp v. Twombly*, 550 U.S 544, 554 (2007).

⁵*Ridge at Red Hawk, L.L.C. v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007).

⁶*Robbins v. Oklahoma*, 519 F.3d 1242, 1247-48 (10th Cir. 2008). “‘Plausibility’ in this context must refer to the scope of the allegations in a complaint: if they are so general that they encompass a wide swath of conduct, much of it innocent, then the plaintiffs ‘have not nudged their claims across the line from conceivable to plausible.’” *Id.* (quoting *Twombly*, 550 U.S. at 570).

⁷*Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Twombly*, 550 U.S. at 555, 557).

plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”⁸ As Defendant points out, Jarvis conducts his legal practice and business under the professional corporation, Lawrence M. Jarvis, Chartered. Because the professional corporation is the real party in interest, Lawrence M. Jarvis does not state a plausible cause of action for breach of contract for legal services rendered, and his claim is dismissed.⁹

In addition, Defendant requests that the voluntary dismissal of Plaintiff professional corporation be with prejudice, as the limited action lawsuit previously filed in Wyandotte, County District Court was dismissed without prejudice, for lack of prosecution. Defendant cites K.S.A. 60-241, which he argues requires the dismissal of a cause of action that has been previously dismissed by a court to be with prejudice, and mirrors Fed. R. Civ. P. 41. Under Rule 41(a)(1)(B), “if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.” Rule 41(a)(2) also permits the court to dismiss an action at the plaintiff’s request by court order, with prejudice. Accordingly, the Court grants Plaintiff professional corporation’s request to dismiss Count One, as well as Defendant’s request that the dismissal be with prejudice.

IT IS THEREFORE ORDERED BY THE COURT that Defendant’s Motion to Dismiss With Prejudice (Doc. 14) is GRANTED with respect to Plaintiffs’ remaining breach of contract claim in Count One; this case is DISMISSED in its entirety, with prejudice.

IT IS SO ORDERED.

⁸*Id.*

⁹The Court notes that it appears Plaintiffs have also failed to furnish their Initial Disclosure or a copy of the Joint Rule 26(f) Report to Defendant as required by the Scheduling Order entered April 28, 2015. Doc. 11.

Dated: July 1, 2015

S/ Julie A. Robinson

JULIE A. ROBINSON

UNITED STATES DISTRICT JUDGE