

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

| | | |
|-------------------------------|---|-------------------------|
| WILLIAM O. MURREY, JR. and |) | |
| ANGELA MURREY, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | C.A. No. 07C-08-137 CLS |
| v. |) | |
| |) | |
| TIM J. SHANK and S & W, INC., |) | |
| |) | |
| Defendants. |) | |

Date Submitted: June 8, 2011
Date Decided: August 30, 2011

INTERVENER'S MOTION FOR AWARD OF ATTORNEY'S FEES

ORDER

Stephen B. Potter, Esq., 840 N. Union Street, P.O. Box 30409, Wilmington, DE 19805. Tiffany M. Shrenk, Esq., 840 N. Union Street, P.O. Box 30409, Wilmington, DE 19805. Dion G. Rassias, Esq., 1125 Walnut Street, Philadelphia, PA 19107. Attorneys for Plaintiff.

L. Vincent Ramunno, Esq., 903 N. French Street, Wilmington, DE 19801.
Intervener.

Scott, J.

Introduction

Before this Court is an Intervener's Motion for Award of Attorney's Fees. The Court has reviewed the parties' submission and heard argument. For the reasons that follow, the Intervener's Motion for Award of Attorney's Fees is **GRANTED.**

Facts

William Murrey ("Plaintiff") was involved in an auto accident in March 2006. To pursue his claim for personal injury compensation, Plaintiff retained the Intervener, L. Vincent Ramunno ("Ramunno"), on May 8, 2006.

Initially, the Defendant's insurance company offered the Plaintiff a settlement of \$10,000. Ramunno declined this offer because he believed it was "grossly inadequate." Ramunno claimed that the Plaintiff desired to settle and be compensated quickly; nevertheless, he tried to convince the Plaintiff to get a larger settlement and educate him on the concept of liability. The Plaintiff testified that he understood that it would be his decision to settle. Ramunno testified that the Plaintiff indicated that he would accept a \$50,000 settlement. Therefore, on September 27, 2006, Ramunno recommended a settlement figure of \$50,000 to the insurance company based on medical reports and an accounting of medical expenses totaling \$24,789.38.¹ The letter did not account for lost wages, disability,

¹ Ex. P. 2.

future pain and suffering and future medical expenses.² The insurance company refused settlement at \$50,000 and the case proceeded to mandatory arbitration. In a letter to the arbitrator,³ Ramunno included exhibits and a list of outstanding medical expenses totaling \$36,404. The Plaintiff did not appear at the scheduled arbitration on February 14, 2008. When an arbitration hearing was held, the arbitrator awarded the Plaintiff \$100,000, but found him comparatively negligent and reduced his award to \$50,000.⁴ Through Ramunno, Plaintiff demanded a trial *de novo* in June 2008.⁵ Ramunno filed discovery, including requests for admissions, and answered discovery from the Defendants on July 21, 2008.⁶

Ramunno conceded that the nature of the relationship between him, the Plaintiff and Plaintiff's wife was problematic. Ramunno testified that the relationship was very difficult from the beginning⁷ and that the Plaintiff failed to cooperate and satisfy requests to do tasks, such as timely returning an I.R.S. authorization⁸ and a medical authorization.⁹ The Plaintiff did not appear for depositions. Additionally, Ramunno testified that the Plaintiff did not disclose to

² Resp. in Opp. to Intervener's Mot. For Award of Atty. Fees.

³ Ex. P. 7.

⁴ Arbitrator's Order.

⁵ Demand for Trial *De Novo*.

⁶ Intervener's Mot. to Award Atty. Fees.

⁷ Ramunno testified that this was his second time representing the Plaintiff in a in a personal injury suit.

⁸ Ramunno testified that he needed Murrey to complete the I.R.S. authorization for the purpose of seeking lost wages in arbitration.

⁹ Ex. R. 3.

him that he also treated at St. Francis Hospital. The Plaintiff testified that he did not know if he told Ramunno about St. Francis. The record also contains letters from Ramunno to Plaintiff indicating his inability to reach Plaintiff numerous times by phone and urging the Plaintiff to contact his office immediately.¹⁰

The Plaintiff retained Stephen Potter (“Potter”) to replace Ramunno. At Potter’s office, the Plaintiff made statements expressing his displeasure with Ramunno’s services. These statements were paraphrased and transcribed into a letter,¹¹ dated December 23, 2008. The letter informed Ramunno that Plaintiff was discharging him immediately and contained justifications of heated arguments, Ramunno’s failure to communicate and advise the Plaintiff, and Ramunno’s insulting demeanor toward his wife. The Plaintiff testified that Potter told him the contents of the letter and that he signed the letter without reading it. The Plaintiff also stated that he decided to discharge Ramunno once he learned that Ramunno was not representing his wife’s claim for loss of consortium. He also testified that the Plaintiff told him that he didn’t want his wife to be involved.¹² However, Mr. Ramunno testified that his duty was to the Plaintiff and not the Plaintiff’s wife.

After Potter requested the file from Ramunno, Ramunno sent Potter a letter informing him that he had done much work and spent an extraordinary amount of

¹⁰ Ex. R.2; Ex. R. 3; Ex. R. 5.

¹¹ Ex. R. 6.

¹² Although the Plaintiff’s wife testified that she and the Plaintiff were not separated, she did testify that she would leave occasionally for a day or more when they argued. The Plaintiff and his wife have different addresses and different last names on their driver’s licenses.

time on the Plaintiff's case. Ramunno informed Potter that the Plaintiff's file would be available once costs of \$801.07 were paid.¹³ Ramunno asked Potter to confirm that Potter would deposit the fee in escrow until they reached an agreement as to the division of the fee.¹⁴ He also noted that he had obtained medical records which measured about two-inches thick. Potter responded by way of a check in the amount requested.¹⁵

Potter believed the condition of the file to be "scant"; while it included a complaint and interrogatories, it was not two-inches thick as purported by Ramunno. However, Potter testified that the content of the folder did not lessen his ability to pursue the case.¹⁶ He reviewed the file, obtained St. Francis Hospital records, further investigated the details of the police report, interviewed the only eye-witness listed on the police report, and addressed issues regarding Plaintiff's bladder and bowel problems not previously addressed by Ramunno. He also retained two reconstruction experts, a vocational expert, and an actuary for lost wages and obtained an opinion from an urologist. Ramunno had identified¹⁷ but not retained experts and he did not interview the eye witness. He was unable to get the St. Francis records because the Plaintiff did not make him aware that he was

¹³ Ex. P. 8.

¹⁴ *Id.*

¹⁵ Ex. R. 7.

¹⁶ Potter testified that he did find Ramunno's settlement demand to be somewhat prejudicial because he believed it would be harder to convince the insurance company to offer more.

¹⁷ Intervener's Mot. For Award of Atty. Fees.

treating there. Potter asserted that he spent about \$40,000, hundreds of hours and incurred LexisNexis charges. Simultaneously, LexisNexis continued to bill Ramunno in relation to the case. Ramunno's bookkeeper paid those fees without informing LexisNexis of the substitution of representation; likewise, Potter did not inform LexisNexis of the substitution.

The Plaintiff accepted an offer¹⁸ which resulted in Potter's receipt of \$540,000 in fees.¹⁹ Ramunno moved to intervene to protect a claim for fees that he earned for his representation of the Plaintiff. Ramunno argues that, in more than 31 months, his firm expended over 100 hours in work relating to the Plaintiff's matter.²⁰ The Court granted the motion and ruled that the Court would award an amount "if the parties after a review of their professional obligation, [could not] figure the reasonable amount."²¹ The parties failed to reach an agreement and Ramunno sought the Court's determination of a reasonable amount.²²

Standard of Review

Superior Court Civil Rule 24 provides that anyone is permitted to intervene as a right or by permissive intervention in an action upon timely application to the court. Intervention as a right occurs through statute or

¹⁸ Mediation Report.

¹⁹ Intervener's Mot. For Award of Atty. Fees.

²⁰ *Id.*

²¹ *Murrey v. Shank*, C.A. No. 07C-08-137 CLS, March 17, 2009. (*Order granting Motion to Intervene*).

²² *Id.*

when an applicant claims an interest relating to the property or transaction which is the subject matter of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.²³

Here, Ramunno is intervening by right because the attorney's fees which he seeks constitute an interest in the transaction. A motion to intervene must state grounds for intervention and be accompanied by a pleading setting for the claim or defense for which the intervention is sought.²⁴

Discussion

I. Ramunno was not Discharged For Cause.

The Intervener's Motion for Attorney's Fees is granted because the Plaintiff did not discharge Ramunno for cause. The Court finds that Ramunno was not discharged for cause because he represented the Plaintiff in accordance with the Delaware Lawyers' Rules of Professional Conduct and he complied with discovery requirements. The Delaware Lawyers' Rules of Professional Conduct states that "[a] client has the right to discharge a lawyer at any time, with or without cause, subject to liability for payment of the lawyer's services."²⁵ The nature of the attorney-client relationship gives a client the absolute right to terminate an

²³ Super. Ct. Civ. R. 24(a).

²⁴ Super. Ct. Civ. R. 24(c).

²⁵ Prof. Cond. R. 1.16, Cmt. [4].

attorney's services at any time for any reason.²⁶ It is well-established that where an attorney is discharged without cause, his recovery of attorney's fees will be limited to *quantum meruit* not to exceed the contingency fee.²⁷ Therefore, a factual determination must be made by the Court to determine whether or not the attorney has been terminated with or without cause.

To determine discharge for cause, the Court may look to those requirements enumerated in the Delaware Lawyers' Rules of Professional Conduct.²⁸ A lawyer must act with diligence²⁹ and provide competent legal representation which requires legal knowledge, skill, thoroughness and preparation reasonably necessary.³⁰ However, a lawyer is not required to obtain every advantage that might be realized by the client.³¹ A lawyer must follow the decisions of his client concerning the objectives of representation, including a decision to settle a matter, and shall consult with the client as to the means by which they are to be pursued.³² It is a lawyer's duty to promptly keep his client reasonably informed³³ and to give straightforward and honest advice.³⁴ Other evidence suggesting discharge "for

²⁶ *Webb v. Harleysville Insurance Co.*, 1995 WL 716757, at *1 (Del. Super. Ct.).

²⁷ *Id.* at *3.

²⁸ *See Ramunno & Ramunno, P.A. v. Gary S. Nitshe, P.A.*, 2009 WL 395224 at *1 (Del. Super. Ct.); *See also Webb*, 1995 WL 716757, at *1.

²⁹ Prof. Cond. R. 1.3.

³⁰ Prof. Cond. R. 1.1.

³¹ Prof. Cond. R. 1.3, Cmt. [1].

³² Prof. Cond. R. 1.2.

³³ Prof. Cond. R. 1.4.

³⁴ Prof. Cond. R. 2.1, Cmt. [1].

cause” is failure to return a client’s phone calls and to keep the client advised as to the status of his case.³⁵

While the relationship between Ramunno and Plaintiff was disagreeable, the evidence does not show that Ramunno’s conduct was contrary to the Rules of Professional Conduct. Ramunno did not fail to keep his client informed; conversely, he made several attempts to contact Plaintiff to discuss the automobile accident³⁶ and to schedule his deposition.³⁷ Further, he kept diligent in trying to get the Plaintiff to complete forms which the Plaintiff did not return promptly. Ramunno acted in accord with his professional obligation to satisfy the demands of his client. Ramunno maintains that the Plaintiff pressed him to settle in order to get compensated more quickly. Potter testified that Plaintiff informed him that he was in need of money, so Potter helped him obtain a high-interest loan. Therefore, the Court finds that because the Plaintiff desired to settle quickly, Ramunno’s early attempts to settle for a lesser amount were in furtherance of his requirement to be diligent in pursuing the desired objectives of his client; he was not required to achieve every conceivable advantage that might be realized.

Under repealed Superior Court Civil Rule 16.1, Ramunno complied with the obligations of discovery. In an effort to show cause, Potter’s counsel emphasized

³⁵ See *Ramunno & Ramunno, P.A. v. Gary S. Nitshe, P.A.*, 2009 WL 395224, at *1 (Del. Super. Ct).

³⁶ Ex. R. 2.

³⁷ Ex. R. 5.

Ramunno's failure to interview the eyewitness and complete discovery in a timely fashion; nevertheless, this argument fails since Ramunno's involvement in the Plaintiff's matter was primarily during mandatory arbitration when he was not permitted to complete discovery. Mandatory arbitration is no longer required following the repeal of Superior Court Civil Rule 16.1.³⁸ Under the Rule,

[t]he parties may serve and file motions and discovery as allowed by the Superior Court Civil Rules; provided, however, that all responses thereto, except as provided for under Section (e) above, shall be stayed until a request for trial *de novo* is filed as provided by these Rules.³⁹

Thus, Ramunno was not required to complete such discovery until after the arbitration was concluded and a request for trial *de novo* was filed. After filing the request for trial *de novo*, Ramunno tried to get the Plaintiff to appear for deposition, but the Plaintiff did not appear and the Defendant had to file a motion to compel.⁴⁰ Potter argued that Ramunno also failed to properly complete discovery by failing to obtain medical records from St. Francis; however, Ramunno could not have obtained those records because the Plaintiff did not inform Ramunno of his treatment there. Since he was not required to complete discovery until the request trial *de novo* was filed and he directed the Plaintiff to

³⁸ Subsection (a) required that “[a]ll civil actions... (1) in which trial is available (2) monetary damages are sought (3) any nonmonetary claims are nominal and (4) counsel for claimant has not certified that damages exceed one hundred thousand dollars (\$100,000) exclusive of costs and interest, are subject to compulsory alternative dispute resolution.”

³⁹ Super. Ct. Civ. R. 16.1(j).

⁴⁰ Defendant's Motion to Compel was granted on December 22, 2008. Plaintiff discharged Ramunno on December 23, 2008.

comply with the Defendant's discovery requests, he satisfied his discovery obligations.

Since Ramunno complied with the Rules of Professional Conduct and of discovery, the Court finds that he was not discharged for cause.

II. Ramunno is entitled to Reasonable Attorneys Fees based upon Quantum Meruit.

Since Ramunno was not discharged for cause, this Court's application of *Webb* entitles Ramunno to fees limited to *quantum meruit* not exceeding the contingency fee of one-third.⁴¹ In *Webb*, this court articulated reasonable attorney fees must be measured under *quantum meruit* by a balancing of factors.⁴² These factors, which are derived from the Delaware Lawyer's Rules of Professional Conduct,⁴³ include:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) The likelihood, if apparent to the client, that the substance of the particular employment will preclude other employment by the lawyer;
- (3) The fees customarily charged in the locality for similar legal services;
- (4) The amount involved and the results obtained;
- (5) The time limitations imposed by the client or by the circumstances;
- (6) The nature and length of the professional relationship with the client;
- (7) The experience, reputation, and ability of the lawyer or lawyers to perform the services;

⁴¹ *Webb*, 1995 WL 716757, at *1.

⁴² *Id.* at *3.

⁴³ Prof. Cond. R. 1.5; *See General Motors Corp. v. Cox*, 304 A.2d 55, 57 (Del. 1973).

- (8) Whether the fee is fixed or contingent;
- (9) The employer's ability to pay; and
- (10) Whether claimant's counsel has received or expects to receive compensation from any other source.

Additional compensation, reflecting the contingent nature of the case, may be warranted when questions involved are novel or difficult, the outcome doubtful, and the result significant.⁴⁴

Further, fees must be reasonable under the circumstances and these factors are not exclusive.⁴⁵ A lawyer may seek reimbursement for the cost of services performed by charging a reasonable amount reflecting costs incurred.⁴⁶

In *Webb*, the Court concluded that the intervener was entitled to expenses and compensation based on an hourly rate plus an additional one-third due to the contingent nature of the claim, the issues involved and the result achieved. The intervener represented the plaintiffs for almost five years, expended over 79 hours on the case, with a current hourly rate for out-of-court time of \$125.00 per hour. Additionally, the Court found the issues to be more complex than the usual personal injury case. The plaintiff's case did not thwart any other employment by the intervener and a contingency was usually charged in that type of case.

Here, the time and labor that Ramunno believes to have invested is 31 months and over 100 hours. Ramunno represented Plaintiff from May 8, 2008 until he was discharged on December 23, 2008. He claims that he obtained an amount

⁴⁴ *Id.*

⁴⁵ Del. Cond. R. 1.5, Cmt [1]

⁴⁶ *Id.*

of medical records piling two-inches high. Unlike the issues in *Webb*, the Plaintiff's issues were not complex; the case involved an automobile accident with two vehicles and two drivers. While there was no express time limitation imposed on Ramunno by Plaintiff, it is clear that Plaintiff pressed Ramunno to settle more quickly because he told Ramunno that he wanted to settle despite Ramunno's suggestion to seek more than \$50,000. Further, Plaintiff's pursuit and acquisition of the high-interest loan with the help of Potter suggests that Plaintiff wanted to be compensated immediately. There is no evidence showing that Ramunno was not able to gain other employment based on the time dedicated to the Plaintiff's case. Ramunno's fee was contingent and based on one-third of the recovery. Potter has the ability to pay Ramunno based on the charging lien placed on the fees recovered.

Since Ramunno was not discharged for cause, the Court applies *Webb* in concluding that that Ramunno is entitled to \$16,667, which is one-third of the \$50,000 awarded to Plaintiff after arbitration and the same amount that Ramunno offered for settlement. This amount includes the LexisNexis fees sought by Ramunno.

Conclusion

Based on the forgoing, the Intervener's Motion for Award of Attorney's Fees is **GRANTED** in the amount of \$16,667, including LexisNexis filing fees.

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.