

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Seitz, Van Ogtrop & Green, P.A. : C.A. No. 08-02-0034
 :
 Plaintiff, :
 :
 vs. :
 :
 John Sullivan, :
 :
 Defendant. :

Decision after trial.

Date of Trial: July 15, 2008

Date Decided: July 25, 2008

Judgment for the Plaintiff.

Edward T. Ciconte, Esquire, Ciconte & Wasserman, 1300 King Street, Wilmington, Delaware 19801, Attorney for Plaintiff.

John Sullivan, 214 Brandywine Drive, Bear, Delaware 19701, *Pro Se* Defendant.

Trader, J.

In this civil action for attorney's fees, I hold the defendant, John Sullivan, has breached his contract with the plaintiff for the payment of such fees. Accordingly, judgment is entered in behalf of the plaintiff and against the defendant for the sum of \$18,000.00, plus interest at the rate of 10% per annum from November 27, 2007, and the costs of these proceedings.

The relevant facts are as follows: Mr. Van Ogtrop and Mr. Sullivan have had a long-standing attorney-client relationship which dates back to 1994. Over the years, the defendant has been in a series of vehicular accidents that have left him with various personal injuries and Mr. Van Ogtrop has represented him in the related suits. On November 15, 1998, Mr. Sullivan was involved in another automobile accident and he employed Mr. Van Ogtrop, of the firm of Seitz, Van Ogtrop & Green, P.A., to represent him in the personal injury case. The plaintiff agreed to handle the case on a contingency fee basis of 30% of the jury award or settlement. The 30% contingency fee agreement was less than the 33 $\frac{1}{3}$ % usually charged by the plaintiff.

A civil action was filed by the plaintiff in the Superior Court of New Castle County in 1999. The police had reported the accident as a property damage accident and the defendant had suffered similar injuries in his prior accidents. Dr. Davis, an orthopedic surgeon, examined the defendant and opined that the defendant might have back pain that could lead to back surgery. Based on the above facts, Mr. Van Ogtrop's years of trial experience with cases of this type, and an evaluation of the defendant's injuries by Dr. Davis, Mr. Van Ogtrop rendered an opinion that the case was worth about \$20,000.00.

On September 3, 2002, the plaintiff reached an agreement in behalf of the defendant with the tortfeasor's insurance company for the sum of \$100,000.00, the liability limits of the insurance policy. Mr. Van Ogtrop, in a letter to Mr. Sullivan, explained that the settlement had three great aspects to it. First, because the settlement paid the policy limits, Mr. Sullivan could pursue an Underinsured Motorist claim. Second, because the settlement provided for some money up front, that money could be used to investigate another case that Mr. Sullivan wanted to bring. Third, "a jury verdict, in [Mr. Van Ogtrop's] humble opinion, would have been nowhere near \$100,000.00, at least not on the medical information [they had] to date." (Plaintiff's Exhibit 2)

The terms of the settlement were approved by Mr. Sullivan. (Plaintiff's Exhibit 1.) The terms of the agreement were that \$40,000.00 was payable up front to the defendant less attorney's fees and costs, and \$60,000.00 would be placed in a five-year annuity subject to the payment of 30% attorney's fees upon the annuity's date of maturity. The total amount of attorney's fees owed was \$30,000.00 and the plaintiff received \$12,000.00 in attorney's fees out of the \$40,000.00 plus court costs of \$2,563.44. The balance of \$25,436.56 was paid to the defendant. On or about November 27, 2007, the defendant received the balance of the settlement in the amount of \$60,000.00, but he has refused to pay the plaintiff the remaining balance of \$18,000.00 in attorney's fees.

This is a case decided by the law of contracts. To create a binding contract, there must be an offer and acceptance, consideration, and an objective meeting of the minds. *See William Lloyd, Inc. v. Hrab*, 1999 WL 1611315, at *2 (Del. Super. 1999). The evidence establishes that there was a binding contract between the parties and the

plaintiff fully performed the contract. The evidence also establishes that the defendant has breached his contract to pay the agreed amount of attorney's fees.

Although the defendant agreed to the structured settlement, he now objects to the fact that \$60,000.00 was placed in an annuity with a low interest rate. The fact that the defendant is now unhappy with the results of the settlement agreement does not establish a defense to a breach of contract action. Additionally, the plaintiff achieved a more than satisfactory result for the defendant because the settlement was five times the value of the case.

The defendant contends that the plaintiff had agreed to file a separate civil action on another matter in connection of the settlement of this case. None of the documents submitted into evidence in this case support the defendant's contention. Additionally, I accept Mr. Van Ogtrop's testimony that such a separate civil action was not a part of the settlement of this case.

In summary, based on the testimony of the plaintiff and the documents submitted, I conclude that the plaintiff has established by a preponderance of the evidence that it is entitled to attorney's fees in the amount of \$18,000.00, plus interest, and court costs. Therefore, judgment is entered in behalf of Seitz, Van Ogtrop & Green, P.A., and against John Sullivan for the sum of \$18,000.00, plus interest at the rate of 10% per annum from November 27, 2007, plus costs of these proceedings.

IT IS SO ORDERED.

Merrill C. Trader
Judge