

Freeman v Lustig

2007 NY Slip Op 34303(U)

December 26, 2007

Supreme Court, New York County

Docket Number: 0106922/2006

Judge: John E H. Stackhouse

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - PART 14

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JENNIFER FREEMAN,

Plaintiff,

Index No.: 106922/2006

-against-

DECISION

JONATHAN LUSTIG,

Defendant.

JOHN E. H. STACKHOUSE, JSC:

On May 19, 2006 Ms. Freeman, the plaintiff, commenced this action against Mr. Lustig, the defendant, seeking to enforce his promise to pay her for the legal services she rendered in the Chinese Merchants Association v. Wung Yeung Chang, et al. case.

The bench trial was held on August 2nd and 3rd, 2007. At the conclusion of the evidence the parties requested the opportunity to submit post trial memoranda. Having read the memoranda and reviewed the testimony of Robert Lewis, Jennifer Freeman and Jonathan Lustig and carefully examined the exhibits in evidence, I make the following findings of fact and conclusions of law:

FACTS:

In late 2001 the Chinese Merchants Association("CMA") hired the defendant and three other lawyers to prosecute claims against former CMA officers and directors for breaches of their fiduciary duties. The original four attorneys entered into an engagement agreement with CMA, providing that CMA would pay them a contingent fee ("the fee"). The agreement provided that each of the original attorneys could bring in additional counsel to work on the matter. The additional counsel would be paid an equal portion out of the fee.

On November 16, 2001 the original attorneys filed a complaint in Chinese Merchants

Association v. Wung Yeung Chan, et al, Index No. 605506/01 (NYSUPCT) hereafter referred to as the CMA case.

In March 2002, the original attorneys decided to bring in the plaintiff to aid in the litigation. The plaintiff agreed on a fee at a premium hourly rate. Defendant promised to pay plaintiff at a rate of \$900.00 an hour. Subsequently plaintiff prepared and conducted depositions, managed discovery disputes, drafted motions and played a lead role in readying the case for trial. At the trial the plaintiff was instrumental in negotiating a settlement of the case.

According to the uncontroverted testimony of Mr. Lewis, the original attorneys, collectively and individually, praised the plaintiff for her work and assured her she would be paid an equal fee. The defendant personally praised plaintiff's work and never objected to her role in any way. In September, 2005 plaintiff got a letter from Matthew Eltin, one of the other original attorneys, telling her defendant was not going to pay her. Plaintiff testified that she called defendant who assured her that she was an equal partner on the case, and that she would be paid equally.

On November 28, 2005 defendant signed a letter recognizing the plaintiffs' contribution and her entitlement to an equal share with the original partners. A short time later, Matthew Eltin, one of the original partners, filed an arbitration against Robert Lewis another one of the partners. The remaining partners decided to defend the arbitration in a united front.

In March, 2006, while the arbitration was pending, CMA met with the original partners concerning the fee. In April, 2006 CMA paid \$1.53 million to the lawyers, which was placed in escrow. Ultimately the arbitration was settled. As part of the settlement three of the original partners each paid the plaintiff 5% of the fee, as they had agreed to. The Defendant alone refused

to pay the plaintiff. The defendant insists he has no obligation to pay the plaintiff at all. To date 95% of the fees have been distributed. Each of the original partners have received 20% of the fee and the plaintiff has received 15%. The remaining 5%, which the defendant refuses to pay as promised is the subject of this litigation.

The credible evidence at trial established that the plaintiff entered a contract with the defendant, where she agreed to preform legal work on the CMA case in exchange for an equal share of the attorney's fees, no less than what the defendant was paid. The defendant clearly and unequivocally agreed to pay the plaintiff her fair share. He breached their contract when he refused to pay her.

CONCLUSIONS OF LAW:

An agreement between attorneys to split fees may take many forms and need not be in writing. Krug V. Offerman et al, 214 A.D. 2d 889 (1995). Objective manifestations of intent as gathered from their words and deeds may, as here, prove the existence of the contract. Brown Bros. V. Bream Construction Corp., 41 NY 2d 397, 393 NYS 2d 350, 361 NE 2d 999(1997). Where the contract is effective at the time of the oral agreement it need not be reduced to a formal writing. In the Matter of Municipal Consultants & Publishers, Inc. V. Town of Ramapo, 47 NY 2d 144, 417 NYS 2d 218 (1979)

To establish the terms of the contract, the court will look to the credibility of the parties testifying to those terms. Here there is no contest. The evidence is overwhelming that the defendant breached his contract. Bouchoueva v. Novoye Russkove Publishing Co. 4 Misc 3rd 1020 (A) 798, AD 2d 343,(NY City Civ. Ct. Sept 2, 2004). In the November 28, 2005 letter, the defendant expressly admitted that he received, read for content, recognized that it was sent over

his name, endorsed it as "well stated" and signed it. His claim that when he said "well stated" he merely meant that it was well written, is manifestly absurd. He was an incredible witness.

Therefore, the defendant is liable to the plaintiff for his breach of contract for the 5% of the fees, with interest from April 2006. Plus costs, disbursements, and attorneys fees.

The attorneys are to pick up their exhibits from Part 14, 80 Centre Street, Room 308.

SETTLE JUDGMENT.

DATED: December 26, 2007



JOHN E.H. STACKHOUSE, JSC

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