

**Snodgrass v Frischmann**

2010 NY Slip Op 31325(U)

May 25, 2010

Supreme Court, Wayne County

Docket Number: 67685/2009

Judge: Dennis M. Kehoe

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK  
SUPREME COURT COUNTY OF WAYNE

---

CYNTHIA L. SNODGRASS, ESQ.,  
Plaintiff

-vs-

VALERIE FRISCHMANN,  
Defendant

---

DECISION

Index No. 67685

2009

Lacy Katzen, LLP  
Michael Schnittman, Esq., of counsel  
Attorneys for Plaintiff

Valerie Frischmann, Pro Se  
Defendant

---

The Plaintiff, Cynthia L. Snodgrass, Esq. has moved for an order pursuant to CPLR §3212, granting summary judgment against the Defendant Valerie Frischmann and awarding her a money judgment against the Defendant in the amount of \$15, 989.34, together with interest from July 28, 2008, representing unpaid counsel fees. The Defendant has filed a pro se submission in opposition to the motion. A hearing was held on April 20, 2010, at which both parties testified.

The Plaintiff's claim for attorney fees arises from her representation of the Defendant in her capacity as Plaintiff in the divorce action, Frischmann v Frischmann, Index No. 00833. The action was commenced

in May 2006, and was ultimately resolved on the day of trial, culminating in a written Property Settlement and Separation Agreement dated June 15, 2007, which was prepared by the Plaintiff. In the interim period, the Plaintiff maintains that she performed numerous services on behalf of the Defendant, including significant discovery, review of extensive records relating to the husband's business, motion practice, review of appraisals and evaluations, and trial preparation.

At the outset, the parties entered into a written Retainer Agreement, which provides for compensation at the hourly rate of \$190.00 per hour (together with provisions for \$125.00 per hour for associates' time and \$75.00 per hour for paralegals' time). The Agreement further provides for payment of a \$4000.00 retainer fee, which was paid by the Defendant. The Defendant made no further payments to the Plaintiff throughout the course of the litigation, although the Defendant received itemized statements from the Plaintiff every 30 days for services rendered. The credible testimony indicates that the Defendant never objected to any of the statements until the action was concluded, and the Defendant received the final billing.

At the time of the hearing, the Plaintiff submitted copies of all

statements sent to the Defendant during the pendency of the action. She also testified at the hearing that she spent considerable time counseling the Defendant regarding related matrimonial - related issues for which she did not bill the Defendant. The Defendant was offered the opportunity to participate in fee arbitration, which she declined.

In response to the Plaintiff's motion, the Defendant raises four primary objections: 1) the settlement is "unworkable"; 2) the legal fees are "exorbitant", especially in light of the results; 3) her inability to pay the legal fees; 4) ineffective assistance of counsel, coupled with duress. She also insists that the Plaintiff proceeded against her direct wishes by commencing the action in Wayne County rather than Monroe County, a decision which she maintains was at least partly responsible for the inflated fees. Moreover, the Defendant claims that she was coerced by her attorney into signing the settlement agreement, in order to avoid "a lengthy and costly trial" and to spare her family the pain of testifying.

Initially, the Court notes that, while it is regrettable that the Defendant finds herself in financial difficulty, her alleged inability to pay her attorney fees does not constitute a defense to the Plaintiff's motion. Therefore, the extensive information provided by her to the Court regarding her expenses

is not relevant to the motion.

The Defendant also goes into great detail regarding the choice of venue. The Defendant is adamant that her attorney insisted upon bringing the action in Wayne County, despite the Defendant's objections. The Plaintiff is equally insistent that the parties discussed the venue issue - including the cost of travel time - at great length, and the Defendant's expressed desire to eliminate any closer ties with her husband, included her wish to avoid commencement of the action in Monroe County, where her husband resided. These discussions are not matters of record; however, whatever issues of credibility may exist are moot, in that a review of the Plaintiff's billing statements does not indicate any significant over-billing for travel time. Other alleged venue - related issues raised by the Defendant do not affect this motion.

Next, the Defendant maintains that the terms of the Settlement are unworkable, and that she received inadequate legal representation, which culminated in an agreement which she was forced to accept on the day of trial. The divorce proceedings took place before another judge, and this Court will not delve too deeply into the terms of the agreement. Nevertheless, many of the problems raised by the Defendant as to the

agreement are matters which are the proper subject of a motion for enforcement, a motion which the Plaintiff is under no obligation to pursue, on the Defendant's behalf, given the present circumstances. Also, the relief obtained by the Defendant pursuant to the agreement does not appear in any way unconscionable so as to raise a claim of ineffective assistance of counsel (Complaints by the Defendant regarding such matters as her failure to obtain lifetime maintenance or payment of counsel fees by her husband do not render the agreement inherently unjust.)

Finally, the Defendant's claim that the Plaintiff's legal fees are "exorbitant" must be addressed. The Plaintiff has met the procedural requirements regarding any fee dispute by presenting a copy of the retainer agreement, which clearly sets forth the terms of payment, together with itemized statements which were mailed to the Defendant at least as frequently as required by court rules. In determining the reasonableness of counsel fees, the appellate courts have consistently held that a court must consider such factors as " ... the time, effort and skill required; the difficulty of the questions presented; the responsibility involved; counsel's experience, ability and reputation; the fee customarily charged in the locality; and the contingency or certainty of compensation" . (See, e.g.,

Shrauger v Shrauger, 146 AD2d 955 (3<sup>rd</sup> Dept, 1989)). Certainly, the Plaintiff's hourly rate is comparable to that charged by other experienced matrimonial attorneys in this area. The time expended in rendering the services provided by the Plaintiff does not appear to be excessive or inflated. The case itself, while not involving matters of immense complexity, nevertheless involved a long-term marriage, with issues regarding parcels of real property, a timeshare, valuation of a business, and maintenance. Based on the records and the credible testimony, this Court must find that the Plaintiff has met her burden in establishing the reasonableness of the fees as requested.

Therefore, the Court grants the Plaintiff's motion for summary judgment against the Defendant. Counsel for the Plaintiff may submit an order granting the relief requested in the Complaint.

Dated: May 25, 2010  
Lyons, New York



Honorable Dennis M. Kehoe  
Acting Supreme Court Justice

10 MAY 27 P 3:21

SUPREME AND COUNTY COURT  
WAYNE COUNTY, N.Y.