

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

TIMOTHY T. REID,)	CASE NO. CV 11 756587
)	
Plaintiff,)	
)	JUDGE BRENDAN J. SHEEHAN
v.)	
)	
NORCHI FORBES, LLC, <i>et al.</i> ,)	
)	OPINION AND JUDGMENT
Defendants.)	ENTRY
)	

This matter was tried to the bench commencing on May 18, 2012. Based upon the arguments, testimony and evidence presented, the Court finds as follows:

Plaintiff Timothy T. Reid is an attorney who was employed by Defendant Norchi Forbes LLC (fka Norchi, Barrett & Forbes LLC or NB&F), a local law firm, from approximately June 2009 to January 2011. Plaintiff and Defendant Kevin Norchi¹, a principal of the law firm, negotiated the terms of Plaintiff's employment and agreed to the following pertinent provisions:

1. Of the matters that you bring to NB&F and for which you bill for legal services, you will receive 75% of revenue derived from your billable time. The remaining 25% of your billable time will remain with NB&F along with any other revenue, including costs, derived from any file.
2. Of the matters that originate from your efforts that you bring to NB&F and on which NB&F attorneys work, you will receive 15% of billed legal time up to and until March 1, 2010. Thereafter, you will receive an origination fee of 20% until your retirement. We understand that the nature of the legal practice may require you to continue handling cases on a less than full-time basis. I propose that we define "retirement" as you billing less than 900 hours per year. Upon retirement, you will receive origination fees for the first year in the amount of 20% of fees generated by attorneys on matters which you are responsible for bringing to this firm. Origination fees for the second year will be 15% and then 10% for the third

¹ Plaintiff failed to present any evidence establishing liability against Defendant Kevin Norchi individually. Accordingly, all future references to "Defendant" indicates Defendant Norchi Forbes LLC only.

year. There will be no origination fees thereafter, unless specifically agreed upon by us.

Plaintiff maintains that he was not compensated as required by the contract.² Defendant maintains that the payments were not made because Plaintiff failed to satisfactorily perform various employment responsibilities such as properly supervising associates, transferring clients to the firm and accurately billing clients.

Plaintiff's claim is, in essence, a breach of contract claim that requires proof of the following elements: (1) the existence of a binding contract or agreement; (2) that the non-breaching party performed its contractual obligations; (3) that the other party failed to fulfill its contractual obligations without legal excuse; and (4) that the non-breaching party suffered damages as a result of the breach. *Regency Ctr. Dev. Co. v. Constr. Dimensions, Inc.*, 8th Dist. Case No. NO. 81171, 2003 Ohio 5067, ¶11, citing *Garofalo v. Chicago Title Insurance Co.*, 104 Ohio App.3d 95, 661 N.E.2d 218 (1995); *McIntyre v. Thriftco, Inc.*, 8th Dist. Case No. 77767, 2001 Ohio App. LEXIS 2182 (May 17, 2001).

While a written letter agreement exists, the agreement does not contain all of the terms under which Plaintiff's employment progressed. The evidence at trial demonstrated that Plaintiff was reimbursed for various expenses including professional association dues and travel expenses while the letter agreement is silent in that regard. Also, the letter agreement indicated that a certain associate would be retained on a contract basis when she was, in fact, retained on a salary basis. Further, the billing rates on some clients were lower than initially represented resulting in amendments to distributions.

² Plaintiff also alleged that he was denied possession of his furniture. No evidence was presented that any furniture allegedly owned by Plaintiff remains in the possession of Defendant.

It is clear from the letter agreement and the testimony presented that the business relationship between Plaintiff and Defendant anticipated Plaintiff's retirement with transition of his existing clients to Norchi Forbes LLC. It is also clear from the testimony presented that the business relationship between Plaintiff and Defendant failed to satisfy all parties' expectations.

While it is undisputed that Defendant did not increase Plaintiff's compensation from 15% to 20% as stated in the letter agreement, the Court is without a reliable basis upon which actual damages could be determined even if it was demonstrated that the parties had not modified the terms of compensation. Plaintiff clearly received benefits beyond those delineated in the contract, including reimbursement of expenses incurred shortly before his departure from the law firm and various legal services. Particularly troubling to the Court is Plaintiff's admission that fee bills submitted to certain clients did not accurately reflect services rendered. The bills were altered to indicate work performed by Plaintiff that had been performed by other attorneys. The alterations of the bills, that Plaintiff maintains was undertaken at the client's request, resulted in Plaintiff receiving a higher distribution than he was entitled to receive. Plaintiff failed to quantify the number of hours for which he was overcompensated.

With regard to damages, the Eighth District Court of Appeals has stated:

As a general rule, an injured party cannot recover damages for breach of contract beyond the amount that is established by the evidence with reasonable certainty, and generally, courts have required greater certainty in the proof of damages for breach of contract than in tort. *Kinetico, Inc. v. Independent Ohio Nail Co.* (1984), 19 Ohio App.3d 26, 19 OBR 92, 482 N.E.2d 1345, citing Restatement of the Law 2d, Contracts (1981) 144, Section 352.

Rhodes v. Rhodes Industries, Inc., 71 Ohio App. 3d 797, 808-809, 595 N.E.2d 441 (8th Dist. 1991).

For the foregoing reasons, the Court must find in favor of Defendants.

**JUDGMENT IN FAVOR OF DEFENDANTS NORCHI FORBES LLC AND KEVIN
NORCHI AND AGAINST PLAINTIFF TIMOTHY T. REID.**

IT IS SO ORDERED.


JUDGE BRENDAN J. SHEEHAN

Dated: 8-21-12

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed to the following this 21st day of August, 2012:

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