

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

Ira M. Denhoffer, P.C., : C.A. No. 06-11-0131  
 :  
 Plaintiff, :  
 :  
 vs. :  
 :  
 Kendrick Sutherland, :  
 :  
 Defendant. :

**Decision after trial.**

**Date of Trial: September 24, 2007**

**Date Decided: September 28, 2007**

**Judgment for the Plaintiff.**

**William W. Pepper, Sr., Esquire, Schmittinger & Rodriguez, 414 South State Street,  
Dover, Delaware 19901, Attorney for Plaintiff.**

**Kendrick Sutherland, 255 Webbs Lane, Apt. H21, Dover, Delaware 19904,  
*Pro Se* Defendant.**

**Trader, J.**

In this civil action, the plaintiff, Ira M. Denhoffer (Denhoffer), has filed a civil action against defendant, Kendrick Sutherland (Sutherland), for attorney's fees for services performed on behalf of Sutherland. I hold that the plaintiff has established by a preponderance of the evidence that he is entitled to recover attorney's fees in the amount of \$3,563.65, plus interest at the legal rate from January 18, 2005, and the costs of the proceedings.

The relevant facts are as follows: the defendant and his wife, Nikki Sutherland, retained the plaintiff for legal services to be performed on their behalf in connection with an application for lawful residence in the United States. Mr. and Mrs. Sutherland signed a retainer agreement and agreed to pay Denhoffer the sum of \$2,500.00 for the performance of these services. Denhoffer submitted the petition for Sutherland with the necessary forms to the U.S. Immigration and Naturalization Service (INS) at 26 Federal Plaza, New York, NY 10278. An interview by the INS was scheduled for May 7, 2003, but the defendant's wife had a baby on May 2, 2003, and, because she had had a cesarean section, her doctor advised her that she could not attend the interview with INS. Mr. Sutherland appeared on the day of the interview and requested a postponement of the interview. A stamped receipt from INS confirms the receipt of Mr. Sutherland's request for postponement. However, on May 8, 2003, citing the failure of the petitioner and beneficiary of the visa applicant to appear at the hearing, INS denied the application for lawful residence.

Thereafter, Sutherland contacted Denhoffer about the decision of INS and Denhoffer advised his client to pursue an appeal and that the fee for the appeal would be \$3,500.00. Sutherland also needed his work authorization document renewed and

Denhoffer agreed to perform legal services to obtain that document. Denhoffer's fee for taking an appeal was \$3,500.00, and his fee for renewing Sutherland's work authorization document was \$750.00. On April 5, 2005, Sutherland's application for employment authorization was denied. INS treated the appeal as a motion to reopen the May 8, 2005 INS decision and on May 25, 2005, that motion was denied.

The motion was denied because no proof was submitted to INS to attest to the fact that Nikki Smith Sutherland was discharged from the hospital on Monday, May 15, 2003, and that she had had a C-Section while there. The decision indicated that the motion should have included the discharge papers, or a letter from the hospital, or a birth certificate, or pictures of the new born child. On November 20, 2006, the plaintiff filed suit in this Court against the defendant for the sum of \$3,563.65 for legal services rendered. The defendant filed an answer denying the allegations of the complaint, but he filed no counterclaim.

This case can be decided on the basis of the law of contracts. The plaintiff agreed to perform certain legal services for the defendant and the defendant agreed to pay \$2,500.00 for the initial submission of documents to INS, \$750.00 for the re-authorization of the work permit, and \$3,500.00 for the appeal. Apparently, the defendant has paid for most of the legal services rendered except the sum for the appeal and the balance due is \$3,563.65 based on plaintiff's testimony. The defendant is dissatisfied with the results achieved by the plaintiff and he questions the skill of the plaintiff in performing the services rendered.

The defendant filed no counterclaim against the plaintiff to offset the sum sought by the plaintiff. At trial, the plaintiff offered the only testimony concerning the expertise

required of a lawyer to perform legal services in connection with immigration matters. He testified that he had been performing such legal services for over 40 years and he had the requisite skills to perform the services in this case. The defendant has produced no expert testimony that the plaintiff's skills in handling this case fell below the community standard prevailing in New York. New York law is applicable to this case given the fact that the contract was executed and performed in that state.

To create a binding contract under New York law, there must be an offer and acceptance and an objective meeting of the minds. *Robison v. Sweeney*, 301 A.D.2d 815, 817, (N.Y. App. Div., 3rd. Dept., 2003)( *quoting Matter of Express Indus. & Term. Corp. v. New York State Dept. of Transp.*, 93 N.Y.2d 584, 589 (N.Y. 1999)). The documents signed by the parties (Plaintiff's Exhibits 1, 2 and 3) established a binding contract between Denhoffer and Sutherland. Unless the contract was made under a mistake of fact, an express contract specifying a stated amount for an attorney's service is conclusive as to the amount of compensation. 7 Am Jur. 2D *Attorney at Law* § 292 (1997). The fact that the contract did not bring the results anticipated is not grounds for the client to avoid the contract. *Id.*

Based on the documents signed by the defendant, I hold that the defendant breached his contract with the plaintiff and the plaintiff may recover the balance due for the services performed. Accordingly judgment is entered on behalf of Ira M. Denhoffer and against Kendrick Sutherland for the sum of \$3,563.65, plus interest at the legal rate from January 18, 2005, and costs of these proceedings.

**IT IS SO ORDERED.**

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**Merrill C. Trader**  
**Judge**