NOT DESIGNATED FOR PUBLICATION

THE TROTH CORPORATION D/B/A PERSONNEL CONSULTING GROUP	*	**NO. 2004-CA-0605**
	*	**COURT OF APPEAL**
VERSUS	*	**FOURTH CIRCUIT**
DEUTSCH, KERRIGAN & STILES, L.L.P.	*	**STATE OF LOUISIANA**
	*	

*** * * * * * ***

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2002-7562, DIVISION "J"
Honorable Nadine M. Ramsey, Judge

* * * * * *

JUDGE MAX N. TOBIAS, JR.

* * * * * *

(COURT COMPOSED OF JUDGE TERRI F. LOVE, JUDGE MAX N. TOBIAS, JR., AND JUDGE LEON A. CANNIZZARO, JR.)

DAVID M. PRADOS
LOWE, STEIN, HOFFMAN, ALLWEISS & HAUVER
701 POYDRAS STREET
3600 ONE SHELL SQUARE
NEW ORLEANS, LA 70139-7735
COUNSEL FOR PLAINTIFF/APPELLEE

JOSEPH L. MCREYNOLDS
DEUTSCH, KERRIGAN & STILES, L.L.P.
755 MAGAZINE STREET
NEW ORLEANS, LA 70130-3672
COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED IN PART; AMENDED IN PART; REVERSED IN PART; REMANDED.

JANUARY 26, 2005

This case arises from a fee dispute between a New Orleans law firm and a professional personnel placement firm, the Troth Corporation d/b/a Personnel Consulting Group ("PCG"), concerning the hiring of a director of administration, Don A. Champagne, C.P.A. ("Champagne") by the law firm.

On 28 September 2001, Dan Prados ("Prados") of PCG was contacted by Sidney William Provensal, III, C.P.A. ("Provensal"), the director of administration at Deutsch, Kerrigan & Stiles, L.L.P. ("DKS"), a law firm practicing law in New Orleans. Provensal advised Prados that he was resigning from his position at DKS and that he was seeking resumes for potential replacements. Provensal had previously contacted PCG to provide resumes of candidates for positions within DKS, and had used PCG resources to fill three positions in the internet technology department at DKS. For each previous hire, DKS had paid the fee charged by PCG. PCG forwarded five resumes to Provensal on 28 September 2001 for consideration for the director of administration position. On 1 October 2001, PCG forwarded four additional resumes to Provensal, including that of

Champagne. The e-mail sent to Provensal transmitting Champagne's resume contained the following language:

> Emailed resumes are the property of The Personnel Consulting Group and are submitted on a confidential and company fee paid basis in accordance with our fee policy and guarantee. The fee for our services is earned upon the hiring of these candidates within one year of our last activity on your behalf with respect to these candidates for any positions with your company, or any subsidiary, affiliate or related company.

All of the resumes forwarded to DKS by PCG included the large-font letterhead of PCG inserted at the top of the first page of each resume.

Subsequently, on or about 8 October 2001, DKS, through its managing partner, Richard Montgomery ("Montgomery"), retained the services of Kushner LaGraize, L.L.P. ("Kushner LaGraize"), an accounting firm, to assist in the search for a director of administration. Wilson LaGraize ("LaGraize"), a partner of Kushner LaGraize, was to manage the search for the DKS director of administration. It is uncontested that neither Provensal nor LaGraize had the authority to hire a new firm administrator.

By correspondence dated 10 October 2001, Prados followed up his phone contact with Provensal regarding the open position, thanking him for engaging the services of PCG and advising him that "in the event that any candidate is hired or engaged by [his] company as a consultant, employee or

independent contractor, [that] company will be responsible to PCG for the payment of a fee as set forth in PCG's Fee Policy, a copy of which is attached." The attached fee policy contains the following language:

> **FEES:** PCG is entitled to a fee in the event your firm or company hires or retains a candidate furnished by PCG, regardless of the time or resources expended by PCG in the search for the candidate. The fee is also earned in the event your company refers our candidate for any other position within your firm or refers the candidate to any outside source who hires or is involved in the placement of our candidate. The fee is calculated from a percentage of the employee's estimated annual income for the first year of employment, as follows:
>
> **FEE: 30% OF ANNUAL COMPENSATION**

[Emphasis in original.] A copy of the fee policy was also forwarded by e-mail on 10 October 2001 to Markell Currault ("Currault"), the Human Resource Director for DKS, advising her that Provensal had engaged PCG to find his replacement.

In its search to fill the position, LaGraize prepared a number of documents associated with the search, including a resume log. The log in question indicates that, initially, Kushner LaGraize had information that Champagne had learned of the position from PCG. Later, updated versions of the log show that it had been revised to show that Champagne had learned about the position from Kushner LaGraize itself. DKS submits that Kushner

LaGraize already had Champagne's resume on file and that it also received his resume from sources other than PCG. According to DKS, although Kushner LaGraize had been provided with a copy of Champagne's resume provided by PCG, it did not use that resume and in fact never opened the envelope in which it had been provided.

Following the preliminary search, LaGraize recommended five candidates to be interviewed by DKS, including Champagne. The DKS search committee interviewed Champagne as a final candidate, and it is undisputed that one of the interviewing partners, Duris Holmes ("Holmes"), had a copy of Champagne's resume with the PCG letterhead on it during the interview with Champagne.

Following the interview process, DKS hired Champagne as Provensal's replacement. On 3 January 2002, PCG forwarded a bill for its services to DKS totaling $33,000.00, or thirty percent of Champagne's starting salary. By letter dated 10 January 2002, Montgomery refused to pay the PCG on behalf of DKS, asserting that the firm had no knowledge of any request asking PCG "to perform any services on our behalf in our search for a new Office Administrator." The letter went on to state that Montgomery had been advised by LaGraize that he had not used PCG's services in any way in connection with the hiring of Champagne.

PCG filed suit against DKS on 13 May 2002 for its fee associated with the hiring of Champagne, as well as for attorneys' fees and interest. A bench trial on the merits was held on 21 and 22 October 2003. Testimony was received from a number of fact witnesses, including Prados, Provensal, LaGraize, Champagne, and Montgomery.

Prados testified that he had worked with Provensal at DKS to fill positions prior to the search for a new firm administrator. He testified that DKS had retained PCG to fill a "controller" position in 1991, which was eventually filled by a candidate referred by another source. He further testified that PCG had successfully placed a director in information systems at DKS in 1998 and was paid 30% of the starting salary. He also detailed the placement of a network administrator with DKS in 1998, for which a fee of approximately 25% of the starting salary was paid to PCG, as well as the successful placement of an information technology employee at DKS in August 2001, for which 30% of the starting salary was paid to PCG.

Prados testified that he first met Champagne in 1994 when he contacted PCG in search of employment. PCG was not able to secure employment for Champagne in 1994, but Champagne again contacted Prados by e-mail on 16 July 2001, again in search of a new position. Shortly thereafter, Champagne met with Prados in person to discuss the parameters

of his job search.

Prados detailed his conversation with Provensal on 28 September 2001, and relayed that Provensal had told him that he was starting the search to replace him at DKS. Prados testified that Provensal told him that Montgomery, the managing partner at DKS, had asked Provensal to assist in finding qualified candidates for his position. Provensal reportedly described the position to Prados, including the projected salary, the requirements of the position, and other information regarding DKS and the search for his replacement. Prados testified that he did not discuss the fee arrangement with Provensal during the initial telephone conversation because he had worked with Provensal before and understood that he was aware of the billing practices of PCG.

Prados reportedly called Provensal on 9 October 2001 and inquired as to how the search for a replacement was going and who at DKS would be handling the search, insofar as Provencal's last day of employment was approaching. Provensal reportedly told him that Kushner LaGraize would be handling the search for his replacement. Prados testified that he was concerned to hear this, because, in his experience, when CPA firms got involved in searches for professional candidates, employment firms would often be "brushed aside" and "squeezed out" of the process. He indicated

that he had experienced similar problems with Kushner LaGraize in the past. Prados further testified that he asked Provensal to inform LaGraize that PCG had been involved in the search for a firm administrator and to forward the resumes provided by PCG to him, with the understanding that the resumes were the property of PCG and that if any of those candidates were to be interviewed, PCG should be contacted.

Provensal confirmed that he had engaged the services of PCG on behalf of DKS in the past, and testified that he understood that a 30% fee was the "normal and ordinary arrangement" that DKS had with PCG. He testified that he had engaged a number of placement firms other than PCG on behalf of DKS in the past, and that he did not obtain written contracts from these firms because "there [wa]s an assumption that if I were to hire a person from that group, then there would be a fee." He testified that when he had received the same resume from more than one placement firm in the past, his practice was to contact the firm(s) that had not sent the resume first, and advise them that he was already in possession of that candidate's resume.

Provensal confirmed receipt of the e-mail transmissions of resumes on 28 September, 1 October and 2 October 2001 from Prados. He testified that his understanding of the language contained in the e-mail was that if he

received an e-mail from PCG, he was to "honor the fact that the resume came from" PCG. He also testified that he understood that DKS would be liable for the fee billed by PCG if the candidate were hired for the position in question. Provensal stated that he had solicited resumes from other placement firms, from within the firm itself and from Kushner LaGraize. Provensal reportedly received a great number of resumes in response to the search for his replacement.

Provensal testified that although he had given his notice in late September 2001, he continued to perform the duties of his job and was still entrusted with the authority vested in him as firm administrator. As an accountant, he prepared annual reports to the Internal Revenue Service on pension plans, profit sharing plans, and defined benefit plans. He also had the authority to sign firm checks and signed a great number of checks relating to firm expenses, payroll, and reimbursement on behalf of DKS up to the last date of his employment. He further testified that he had been involved in negotiations with the DKS legal billing software provider. Provensal was also entrusted with finding candidates to replace him at DKS, although he did not have the authority to actually hire a replacement.

Provensal testified that he was asked to find applicants for the position by Montgomery, managing partner of DKS. He reportedly told

Montgomery that he planned to obtain resumes from a number of different sources, including placement firms and from the Association of Legal Administrators. Montgomery agreed to Provensal's plans and instructed him to begin collecting resumes. Provensal distinguished this search from others done in the past for DKS. He explained that in this case he was searching for applicants, while in the past he had the authority to actually hire candidates for other positions in the firm. His handling of the search, however, was no different in any other respect from the hiring searches he had performed in the past at DKS.

Provensal testified that after being informed that Kushner LaGraize was taking over the search for his replacement, he contacted all of the placement firms from whom he had received resumes to make them aware of that fact. He confirmed that Prados asked him to relay to LaGraize that the resumes supplied by PCG were the property of PCG, with all its attending proprietary rights, and that he had, in fact, placed all of the resumes in an envelope and given them to LaGraize with the message from Prados. He further testified that he told LaGraize that should he want to contact any candidates whose resumes had been supplied by PCG, he should contact Prados. According to Provensal, LaGraize agreed that he would contact Prados should he seek to interview any of the candidates whose resumes

were supplied in the envelope.

In a meeting with Montgomery and LaGraize, Provensal reportedly delivered almost all of the resumes he had collected to LaGraize, as well as a list of five candidates he felt were most qualified, which had been requested by Montgomery. He testified that he told Montgomery in the meeting that the resumes had been received from professional placement firms, such as PCG, as well as from other sources.

On cross-examination, Provensal reiterated that his position differed from the others filled while he was employed at DKS because of the vast responsibility and authority held by the firm administrator. He testified that as firm administrator, he was responsible for the administration of the entire firm, and that all other positions he had filled were ones that reported to him. As firm administrator, he answered to the managing partner and the management committee of the firm. He confirmed again that he did not have the authority to hire his replacement, and that he communicated that fact to everyone he contacted regarding the position, including Prados. Provensal confirmed that he had been hired at DKS in 1994 after interviewing with LaGraize. He further testified that although Montgomery authorized him to collect resumes, he did not instruct him to contact any placement firms. He stated that he does not know whether LaGraize ever

opened the envelope Provensal delivered to him containing, among others, Champagne's resume. Finally, he testified that although it was his understanding that if a resume supplied by a placement firm were used to hire his replacement, a fee would be paid to that firm; he did not know whether LaGraize had used the resume supplied by PCG or whether the resume used to interview and hire Champagne had originated elsewhere. He reportedly told Prados, as well as all other placement firm representatives that he dealt with, that he would be receiving resumes from a number of sources and that he was not working exclusively with any firm. He confirmed that he would have honored the first provider of any particular resume received from more than one source with regard to any fee arrangements.

LaGraize testified Kushner LaGraize is an accounting firm that prepared the federal and state tax returns and that audits the financial statements and balance sheets for DKS. He confirmed that Kushner LaGraize had provided CPA services to DKS for a number of years, and that his firm had placed Provensal at DKS. He testified that Provensal contacted him in late September 2001 to advise him that he was leaving DKS. He testified that he was subsequently contacted on 9 October 2001 by Montgomery to ask him to assist in finding a new firm administrator. He

confirmed that he met with Montgomery later that day to discuss the search, and brought along two associates from Kushner LaGraize, Al Liebra ("Liebra") and Ernie Gelpi ("Gelpi"). Although LaGraize was to coordinate the search, Liebra and Gelpi were to facilitate the search. Liebra, in particular, was responsible for matching resumes with particular positions, with Gelpi taking more of a role in the actual interview and "engagement" process.

LaGraize was further questioned regarding the resume log apparently prepared by Kushner LaGraize. This log listed the resumes received for the position by the name of the candidate. For each entry, the log listed the candidate's educational background, months and/or years of experience with law firms, and source of the candidate. The entry regarding Champagne reflected that PCG was the source.

LaGraize was also cross-examined regarding a letter he had sent to Montgomery dated 27 November 2001. In the letter, LaGraize enclosed an interview schedule for the candidates for the position. The schedule, which was prepared by Kushner LaGraize, lists eight candidates along with dates and times for their interviews with DKS. The schedule also noted the "source" of the candidate (presumably of the candidate's resume) and listed the "source" for Champagne as "The Pers. Cont. Grp." LaGraize admitted

that this abbreviation referred to PCG. He testified, however, that he did not recall seeing the schedule before sending it to Montgomery and that sometimes he perfunctorily signed letters scheduling interviews without examining the letters first, as he had been instrumental in choosing the candidates for interview and that he had already approved the list. Additional documents prepared by Kushner LaGraize include handwritten notes on lined paper frequently used by accountants, in which Champagne's name is listed as a candidate received from PCG. The name "Personnel Consulting Group" had been scratched out. LaGraize admitted that it appeared that the document had been prepared by Kushner LaGraize, but as it did not contain any identifying initials or marks, he did not know who had prepared the document.

Champagne testified that he had contacted PCG in July 2001 in search of a new position. He understood that if he were hired for a position through PCG's efforts, PCG would be paid a fee for his hire. He testified that, in addition to PCG, he had given his resume to at least two other placement firms in hopes of finding a position. Champagne testified that the first firm to contact him regarding the opening at DKS was PCG. He was contacted by Prados sometime later and was advised that Kushner LaGraize had taken over the search to fill the position at PCG. He testified that Prados told him

that his resume would probably not be considered, as Prados was under the impression that all resumes received from firms other than Kushner LaGraize would probably be discarded, based on prior dealings with the accounting firm.

Champagne testified that, in his first meeting with LaGraize, LaGraize appeared to have a copy of his resume without the PCG logo. When asked, he told LaGraize that he had learned of the position from PCG. LaGraize told him that he had received his resume from another source, but did not elaborate. Sometime later, LaGraize reportedly told Champagne that Kushner LaGraize had received his resume in a response to a blind ad in the local newspaper regarding another, unrelated position at a firm other than DKS. Champagne also reportedly sent his resume to a friend who was employed at Kushner LaGraize after learning that it was taking over the search for a director of administration. He admitted that he was unsure of the timing of events, but believed that he had contacted his friend in early October after learning from Prados that his application might no longer be in consideration for the position.

After interviewing with Kushner LaGraize, Champagne met with the search committee at DKS. He testified that he met with Montgomery, Holmes, and Bill Wright ("Wright"), all DKS partners. He recalled that the

resume in Holmes' possession during the interview was one with the PCG logo affixed to the top. He did not see the resumes being used by Montgomery or Wright during the interview. He recalled asking Montgomery how he came into possession of the resume from PCG, and he could not determine its exact origin, except that it was in his file.

Champagne testified that after he was hired by DKS, he had a conversation with Prados and that he had relayed to Prados that there might be "some issues" regarding PCG's fee. He later spoke with Nancy Marshall, a partner on the managing committee at DKS, in which he relayed Prados' concern that he was going to be "taken out of the loop" regarding the fee associated with Champagne's hire. Champagne also spoke with LaGraize on his first day at DKS and asked him what would happen with regard to PCG and its fee. He said that LaGraize told him that his resume had come from other sources, namely a blind ad in the local newspaper, and that he had never used a resume received from PCG in his interview process.

Frank Loria, II ("Loria"), the owner of PCG, testified that he has been in the business of personnel placement since April 1979, when he became employed by Accounting Personnel Consultants, the predecessor to PCG, as an engineering and technical recruiter. He purchased an ownership interest in the company in 1983, and in 1987 became the sole owner. PCG supplies

recruiting services in the fields of accounting and finance, information technology, engineering, sales and marketing, office support, human resources, as well as in the legal field. He testified that PCG does not have exclusive relationships with any job applicants, unless they decide on their own not to place resumes with other companies, but that it is standard practice in the recruiting industry that the first firm to deliver a resume to a company from an eventual hire is due a fee for the placement. He confirmed a prior recruiting relationship with DKS and further noted that PCG does not ask companies to sign a fee contract; customarily, the agreement is verbal, based on a "handshake"-type agreement. He testified that PCG has had to sue companies to recover fees before, and that PCG filed suit in this matter because he felt he had exhausted all manner of recourse to recover the fee on behalf of the company.

Loria testified that he became concerned once he learned from Prados that Kushner LaGraize was taking over the search for DKS, and that PCG directed correspondence to Provensal, the human resource director at DKS, as well as to LaGraize himself, confirming PCG's proprietary interest in the resumes sent to Provensal. He testified that sometime during the hiring process Prados had communicated with Champagne and that Champagne had disclosed that DKS had interviewed him with a resume bearing the PCG

logo. Therefore, Loria believed that DKS had used the PCG resume in interviewing and eventually hiring of Champagne. Further, Loria testified that neither Montgomery nor LaGraize had ever contacted him to "disengage" PCG regarding the search for a director of administration.

Following the placement of Champagne, Loria sent a note to Montgomery congratulating him on the hire and thanking him for his business. In response to his note and the invoice, he received correspondence from Montgomery stating that DKS had not retained PCG to perform any services and did not believe that any amount was due PCG. In response to the letter from Montgomery, Loria sent additional correspondence to both Montgomery and LaGraize, restating his position that PCG was due its entire fee and that he had hoped to preserve what had been a good professional relationship with DKS. He testified that he received no response to his correspondence and retained counsel to file suit thereafter. He admitted under cross-examination that he had never spoken to Montgomery regarding this matter, although he had tried to reach him twice by telephone.

He articulated his position that even though he had not actually spoken with Montgomery regarding the fee dispute, this fact had no bearing on the obligation of DKS to pay the fee. He testified that whether or not he

or his employees speak to the "hiring authority" is irrelevant; companies engage his company, and that frequently PCG provides services to companies in which he never communicates directly with the hiring authority at that particular company. In fact, it is his experience that the "hiring authority" at a particular company might not want to communicate directly with him, and that they frequently have delegated that responsibility to other personnel within the company, such as a human resources director or other agent of the company.

Loria further testified that as a result of the litigation he had incurred legal fees in the amount of $18,327.32, which included fees incurred up to a couple of days prior to trial, and did not include fees incurred for the actual trial.

Montgomery testified that he became the managing partner for DKS in early 2000. He recounted his conversation with Provensal in which he was advised that Provensal was leaving DKS to pursue another opportunity. Provensal offered to "put it on the street" that DKS would be hiring for his position, and Montgomery approved his suggestion. Montgomery testified that he never approved the engagement of recruiting firms, and that Provensal told him that he would contact the Association of Legal Administrators to advise of the opening. He described the duties of the

director of administration, and testified that the hiring capabilities of that position were strictly delineated, so that a system of accountability relating to hires was in place at DKS. He testified that Provensal did not have the authority to hire associate attorneys, and was not authorized to hire his replacement.

Montgomery testified that when Provensal announced his departure, DKS was transitioning to a more "corporate" culture from a "laissez-faire culture." Therefore, he determined that someone should fill the position with different "qualities" than Provensal, even though Provensal had been an excellent employee in his position. He planned to take a few months to find a replacement, and, within a week of Provensal's announced departure, he contacted LaGraize to coordinate the search for a replacement.

Montgomery engaged LaGraize on behalf of DKS to narrow down the pool of candidates for the position, as well as to conduct an exit interview with Provensal to determine his thoughts and opinions regarding the firm and the course he believed the firm should take in the future, ostensibly to assist in evaluating the candidates for his replacement. Montgomery also asked LaGraize to perform an evaluation of middle management to see how strong it was with regard to the administration of the firm. He confirmed receipt of a letter from LaGraize dated 16 October 2001, outlining the

services Montgomery had asked Kushner LaGraize to perform on behalf of DKS.

Montgomery testified that prior to leaving DKS Provensal approached him with an envelope containing resumes to be forwarded to LaGraize to assist in the search and that Provensal had indicated which candidates he thought DKS might want to consider. Montgomery testified that he did not open the envelope, because he did not want to get involved in evaluating resumes until the pool had been substantially narrowed; he was practicing law and involved in the management of the firm and did not have time to become involved in the early process of the search for a new director of administration. Montgomery testified that after Provensal left, some paperwork was left in his office, some of which was discarded and some of which was forwarded to Montgomery.

Montgomery testified that during the hiring process, he did not know what PCG was, and even though he had received a log indicating that PCG was the source of Champagne's resume, it did not mean anything to him. He was not aware of any fee arrangement with PCG to pay 30% of Champagne's starting salary upon hiring him. He never saw any correspondence from Prados to Provensal or any other employee at DKS regarding Champagne's resume prior to trial. He relied on LaGraize to

handle the collection and evaluation of the resumes and did not know what "source" meant in the context of the resume logs. He did not know Loria or Prados prior to trial, and never had any relationship with PCG.

Montgomery acknowledged that he had been contacted directly by another recruiting firm, but that he had directed all inquiries and resumes to Kushner LaGraize, as they were handling the selection process. He testified that it did not occur to him that when he received documentation from LaGraize noting the source of a resume from any recruiting firm that DKS might somehow owe that firm any fee. Further, he had no knowledge of any communications between Provensal and Prados during the hiring effort.

The trial court issued judgment in favor of PCG on 7 November 2003. The judgment rendered was in the amount of PCG's claimed damages of $33,000.00 plus costs and judicial interest, but did not include an award for attorneys' fees. In its reasons for judgment, the trial court found that PCG and DKS had a "relationship where [PCG] would place positions at DKS' request" and that DKS "was aware of [PCG]'s placement and billing procedure." Finally, the trial court ruled that the evidence "overwhelmingly" preponderated to show that Champagne's resume had come from PCG and not Kushner LaGraize.

On 19 November 2003, PCG filed a motion for new trial, asking that

the trial court reconsider its refusal to award attorneys' fees and that it also set the date from which judicial interest was to run. The trial court declined to award attorneys' fees, but ruled that interest ran from the date suit was filed by PCG.

DKS suspensively appealed, assigning four errors to the trial court. The first two assignments of error take issue with the trial court's finding that DKS and PCG had entered into a binding contract: DKS asserts that there was no "meeting of the minds" between PCG and DKS with regard to a search for a job candidate and, further, that Provensal had neither apparent nor actual authority to enter into a contract with PCG on behalf of DKS. In its third assignment of error, DKS maintains that even if it were liable under a contract to PCG, the award of $33,000.00 should be reduced pursuant to the legal doctrine of *quantum meruit*. Finally, DKS asserts that the trial court erred in admitting prejudicial hearsay testimony.

PCG filed an answer to the appeal, asserting that the trial court erred in failing to award attorneys' fees to PCG pursuant to La. R.S. 9:2781 and, further, that the trial court erred in assessing judicial interest from the date suit was filed and not from the date the debt was due, which it maintains was 3 January 2002.

First, we address whether an enforceable contract existed between

PCG and DKS. DKS maintains that no contract existed with regard to the hiring of Champagne, because there was no mutual consent as to the terms of the contract. Further, DKS asserts that the only person with the authority to enter into any contract with PCG, Montgomery, did not authorize any agreement with PCG. Any agreement that might have been reached between Provensal and PCG is invalid, as Provensal lacked any authority to bind DKS to a fee arrangement.

At the outset, we note that findings of fact made by a trial court are only reviewable under a "manifestly erroneous" or "clearly wrong" standard. *Stobart v. State through Dept. of Transportation. & Development*, 617 So. 2d 880 (La. 1993). Thus, where different permissible views of the evidence exist, a trial court's adherence to one view cannot be manifestly erroneous or clearly wrong. *Id.* Finally, we note that, where findings of fact are based on determinations of the credibility of witnesses, those evaluations of credibility should not be disturbed. *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989).

It is axiomatic that a contract is only formed by the consent of all parties to that contract. La. C.C. art. 1927. However, the principles of mandate allow a party to be bound to a contract entered into by his express or implied mandatary.

"Implied or apparent agency exists if the principal has the right to control the conduct of the agent and the agent has the authority to bind the principal." *Urbeso v. Bryan,* 583 So.2d 114, 117 (La. App. 4 Cir.1991); *Craft v. Trahan,* 351 So.2d 277, 281 (La. App. 3 Cir.1977). The Louisiana Supreme Court has held that:

> For the doctrine of apparent authority to apply, the principal must first act to manifest the alleged agent's authority to an innocent third party. Second, the third party must rely reasonably on the manifested authority of the agent.... [T]he principal will be bound for the agent's actions if the principal has given the innocent third party a reasonable belief the agent had authority to act for the principal.

Boulos v. Morrison, 503 So.2d 1, 3 (La.1987); *Cross v. Cutter Biological, Div. of Miles, Inc.,* 94-1477, p. 27 (La. App. 4 Cir. 5/29/96), 676 So.2d 131, 147 ("Apparent agency arises when the principal acts in such a manner as to give an innocent third party the reasonable belief that the agent has the authority to act for the principal."). Apparent agency is established "by the words and conduct of the parties and the circumstances of the case." *Self v. Walker Oldsmobile Co., Inc.,* 614 So.2d 1371, 1375 (La. App. 3d Cir.1993); *Urbeso,* 583 So.2d at 117. An agency relationship may be created even though there is no intention to do so. *Cross,*94-1477, p. 28, 676 So.2d at 147; *Self,* 614 So.2d at 1375; *Urbeso,* 583 So.2d at 117. However, "[a] third

party seeking to benefit from the doctrine of apparent authority may not blindly rely upon the assertions of an agent. He has a duty to inquire into the nature and extent of the agent's power." *Boulos,* 503 So.2d at 3. Finally, the party seeking to bind the principal has the burden of establishing the existence of the agency relationship. *Id*. The question of apparent authority thus turns on whether the principal has acted in a manner that manifests the alleged agent's authority and whether the third party reasonably relied on the agent's authority. *Ehlinger & Associates v Louisiana Architects Ass'n*, 989 F. Supp. 775 (E.D. La. 1998).

We find that the evidence preponderates to establish that Provensal acted as an apparent agent for DKS when he contacted Prados asking for resumes of potential candidates for the position. Although DKS argues strenuously that because Provensal did not have the authority to hire his replacement he did not have the authority to bind DKS to a contract with PCG, we find that PCG reasonably relied upon its prior transactions with DKS and Provensal, as well as on the initial contact made by Provensal to PCG regarding the opening. The fact that Provensal might not have had actual authority to bind DKS to a fee agreement is of no moment in this matter; PCG had no way of knowing that Provensal might not have that authority; he had exercised just such a function in the past on behalf of DKS.

The fact that the position in question was one of greater authority and at a higher level is of no moment. PCG could not be expected to draw such a distinction, especially in light of the fact that DKS initiated the relationship with PCG regarding this particular hire. In fact, PCG properly “inquired" into the “authority” of Provensal to bind DKS when it followed the contact with Prados with correspondence not only to Provensal, but also to the human resources director at DKS. Therefore, the trial court was not manifestly erroneous in its determination that PCG reasonably relied upon the apparent authority of Provensal to bind DKS to a standard fee arrangement when it forwarded resumes to him.

Further, the argument of DKS that because Montgomery did not realize it had contracted with PCG, no contract existed, is without merit. Montgomery was in possession of several documents citing PCG as the source of Champagne’s resume and he acknowledged receipt of those documents from LaGraize. Although he testified that he was unaware that PCG might make a claim for a fee resulting from Champagne’s hire, the mere knowledge that employment firms had supplied resumes to DKS and/or its agents to fill the position should reasonably lead to an expectation that an employment firm might seek compensation for introducing a candidate to the company if that candidate were hired. That, after all, is the

nature of an employment agency and, quite simply, how they make money.

DKS cites *Liberty Personnel, Inc., d/b/a Lawson & Associates v. Children's Hospital*, 487 So. 2d 518 (La. App. 4 Cir. 1986), to bolster its argument. In *Liberty Personnel*, an employment agency brought suit against a hospital for fees allegedly owed as a result of the hiring of two medical employees. Like PCG, Liberty Personnel forwarded a standard fee schedule to the hospital and did not obtain any written contract. However, that case is distinguishable from the facts in the case *sub judice*. In *Liberty Personnel*, the hospital contacted the employment agency to advise that it was seeking candidates for a unit director of rehabilitation. The agency supplied the hospital with resumes for two candidates in particular; the first candidate, a Ms. Deese, was offered the position, but declined the offer. She was, however, later hired for a part-time staff position unrelated to the original position. The second candidate, a Ms. Byerly, was hired by the hospital, but only after the hospital had contacted the agency and refused to accept her resume, as it already had her resume on file.

In the present matter, the evidence preponderates that DKS never refused to accept the resumes from PCG for the position of director of administration; in fact, it solicited resumes for that exact position. Similarly, although PCG was advised of the involvement of Kushner LaGraize, it was never contacted by DKS specifically refusing the resumes presented to Provensal. Although PCG was concerned that LaGraize might "squeeze it out" of the hiring process, it was never told that its resumes had been discarded, and in fact, obtained credible information from the applicant himself that the resume supplied by PCG had in fact been used in the hiring

process. Finally, it is not in dispute that the only position filled in this case was that of director of administration; therefore the court's holding in *Liberty Personnel* regarding Ms. Deese is inapplicable. Next, we address whether the award to PCG should be reduced under a theory of *quantum meruit.* DKS argues that the fee sought by PCG is unreasonable, insofar as Kushner LaGraize billed only a fraction of the amount sought by PCG for far less work. It points to the invoice submitted by Kushner LaGraize that documents 98 hours of work billed to DKS for coordinating the job search for Provensal's replacement. This fact, however, is of no moment. Although DKS might view the payment of $33,000.00 to PCG as unjust in light of the relatively few hours purportedly spent on this file by PCG, we note that several witnesses have testified that such a fee is not unusual and is, in fact, standard in the field of recruitment. In fact, DKS had paid similar fees based upon the starting salary of employees hired through PCG in the past. Finally, the argument of DKS that the position filled by Champagne was a high-level position requiring careful review of the candidates only bolsters the award. The testimony at trial suggested that in many cases, a placement firm might only have minimal contact with a client during the placement process, frequently not even meeting the client during the transaction. Therefore, we find that the fee charged by PCS is reasonable in light of the nature of the recruitment business and in light of the relationship that existed between PCG and DKS in the past.

Having found that the trial court did not err in finding that a contract existed between PCG and DKS, and further that the amount claimed by PCG was not unreasonable, we next turn to the issue of attorneys' fees raised by PCG.

La. R.S. 9:2781 provides in pertinent part that:

> A. When any person fails to pay an open account within thirty days after the claimant sends written demand therefor correctly setting forth the amount owed, that person shall be liable to the claimant for reasonable attorney fees for the prosecution and collection of such claim when judgment on the claim is rendered in favor of the claimant. . . .
>
> * * *
>
> D. For the purposes of this Section and Code of Civil Procedure Articles 1702 and 4916, "open account" includes any amount for which a part or

> all of the balance is past due, whether or not the account reflects one or more transactions and whether or not at the time of contacting the parties expected future transactions. "Open account" shall include debts incurred for professional services, including but not limited to legal and medical services....

Therefore, although a trial court has discretion in the amount of attorneys' fees awarded, the language of La. R.S. 9:2781 compels an award upon judgment in favor of a party who has prevailed in a suit on open account.

In a case with very similar facts, we found a contract between an employment agency and a client company to be an open account, insofar as the employment agency provided "professional services" as described in subsection (D) of the statute. *Robert Half of Louisiana, Inc. v. Citizens Consulting, Inc.*, 2000-2415 (La. App. 4 Cir. 10/3/2001), 798 So. 2d 1124. We further distinguished the account in *Robert Half* from an exchange based solely on a contract by noting that there was no written contract between the employment agency and its client; rather, as in this case, the employment agency merely supplied the client with a fee schedule. *Id.* at 1127. We find that, under R.S. 9:2781, the claim made by PCG qualifies as a suit on open account, and that the trial court erred in refusing to award reasonable attorneys' fees. Insofar as PCG has further properly prayed for attorneys' fees and costs associated with this appeal in its answer to appeal, we remand

this matter to the trial court so that it may determine what attorneys' fees are reasonably owed PCG by DKS.

Finally with regard to the date from which judicial interest should run, we find that the trial court erred in awarding interest only from the date of suit, and not from the date the amount became due. La. C.C. art. 2000 provides that interest is due on damages caused by "delay in performance" from "the time it is due." Therefore, we amend the judgment to award judicial interest from the date demand was made on DKS by PCG, or 3 January 2002, which is the date of the invoice sent to DKS by PCG.

For the foregoing reasons, we affirm the judgment of the trial court with regard to liability on the party of DKS and with regard to its award of $33,000.00 to PCG. We amend the judgment to order that judicial interest accrues on the $33,000.00 from 3 January 2002. We reverse the trial court, however, with regard to the award of attorneys' fees, and remand this matter for a determination of reasonable attorneys' fees by the trial court.

AFFIRMED IN PART; AMENDED IN PART; REVERSED IN PART; REMANDED.