

**RAYMOND A. PENDLETON &  
ASSOCIATES, INC.**

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**NO. 2004-CA-0229**

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**COURT OF APPEAL**

**VERSUS**

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**FOURTH CIRCUIT**

**DUNCAN T. PHAM, PHAM &  
ASSOCIATES, P.C. AND RAUL  
CALDERON**

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**STATE OF LOUISIANA**

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**CONSOLIDATED WITH:**

**CONSOLIDATED WITH:**

**RAYMOND A. PENDLETON &  
ASSOCIATES, INC.**

**NO. 2004-CA-0230**

**VERSUS**

**PHAM & ASSOCIATES, P.C.**

APPEAL FROM  
FIRST CITY COURT OF NEW ORLEANS  
NOS. 2002-51643 C/W 2002-56222, SECTION "C"  
HONORABLE SONJA M. SPEARS, JUDGE

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**JUDGE MICHAEL E. KIRBY**

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(Court composed of Chief Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray, Judge Michael E. Kirby)

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Defendants, Duncan T. Pham, Pham & Associates, P.C. and Raul Calderon, appeal the judgment rendered by the First City Court for Orleans Parish on two consolidated matters involving a suit on a contract and a suit for a check returned for non-sufficient funds (“NSF”). For the reasons assigned, we amend the judgment of the trial court; and, as amended, we affirm.

Defendants, a Texas law firm and two of its attorneys, hired plaintiff, Raymond A. Pendleton & Associates, a company based in New Orleans, Louisiana, to provide certain services regarding a lawsuit that defendants were handling arising out of a Houston, Texas nightclub incident. The contract for plaintiff’s services was entered into on January 3, 2001. The contract provided for 18% interest on amounts not paid and for 25% attorneys’ fees.

On December 1, 2001, plaintiff sent defendants invoices totaling \$3,637.60. On January 11, 2002, plaintiff received a check from Pham & Associates, P.C. in the same amount. The check was returned NSF by

defendants' bank. Plaintiff sent demand letters to Duncan Pham and Pham & Associates, P.C. on January 18, 2002 and July 25, 2002. By January 18, 2002, plaintiff's bill totaled \$6,255.98, reflecting additional services rendered by plaintiff through that date.

On March 8, 2002, plaintiff filed suit on the contract against Pham & Associates, P.C., Duncan Pham and Raul Calderon. On July 17, 2002, Pham & Associates, P.C. sent a replacement check for the NSF check. The check was made payable to Raymond A. Pendleton, personally. Mr. Pendleton chose not to deposit the check and informed Pham & Associates, P.C. that he wanted a certified check. On August 5, 2002, Pham & Associates, P.C. sent a second replacement check in the amount of \$3,819.48, allegedly to cover additional NSF charges. This check was also made payable to Raymond A. Pendleton, personally. Additionally, there was a notation on the check stating "full and final payment." Mr. Pendleton did not negotiate the check. Mr. Pendleton testified at trial that he did not want to acknowledge full and final payment of a debt that was far greater.

On September 23, 2002, plaintiff filed a separate lawsuit against Pham & Associates, P.C. for the NSF check. That action sought to recover twice the amount of the NSF check plus interest and attorney's fees pursuant to La. R.S. 9:2782. The matters were consolidated and tried on October 30,

2003.

Judgment was rendered in favor of plaintiff and against defendants Duncan T. Pham, Pham & Associates, P.C. and Raul Calderon in the full sum of \$9,730.65 plus legal interest and court costs from the date of judicial demand. In the same judgment, defendants Duncan T. Pham and Raul Calderon were dismissed from the lawsuit. The judgment does not explain how the amount was determined, and reasons for judgment were not provided. Defendants appealed.

Defendants first argue that the amount awarded does not have any correlation or support in the evidence adduced at trial. Throughout the trial, defendants maintained that many of plaintiff's charges were excessive and argued that plaintiff's total bill should be reduced.

The amount rendered in the appealed judgment is a finding of fact of the trial court. The appellate standard of review dictates that this court may not set aside the trial court's finding of fact in the absence of "manifest error" or unless it is "clearly wrong," and where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review. Rosell v. ESCO, 549 So.2d 840 (La. App. 4 Cir. 1989).

At the trial of this matter, Mr. Pendleton testified as to the services

rendered by his company in connection with the contract with defendants. Based on invoices presented at trial, Mr. Pendleton claimed that principal and interest of \$8,093.27 was due as of October 1, 2003. Mr. Pendleton was questioned at length and gave explanations regarding the charges claimed by defendants to be excessive. Apparently, the trial court was satisfied with Mr. Pendleton's explanations. After a thorough review of the record, we find that the evidence presented at trial supported Mr. Pendleton's claim. Although the judgment does not explain why plaintiff was awarded \$9,730,65, the additional amount was apparently awarded as interest and/or attorney's fees pursuant to the contract. We find no error in that award.

Defendants next argue that the judgment is contradictory within its text. The first paragraph indicates that the judgment is rendered against Duncan T. Pham, Pham & Associates, P.C., and Raul Calderon. In the two following paragraphs, however, the judgment decrees that Duncan T. Pham and Raul Calderon are dismissed from the lawsuit. Defendants maintain that the judgment as written lends itself to confusion and, worse, does actual harm to the two individuals who are erroneously named as debtors of plaintiff.

We agree that the judgment is contradictory and confusing. A reading of the entire judgment clearly reflects that the trial court did not intend to

cast Duncan T. Pham and Raul Calderon in judgment. Duncan T. Pham was dismissed from the action on his previously filed Exception of No Cause of Action, and Raul Calderon was never served in these proceedings.

Accordingly, we amend the judgment of the trial court and order that there be judgment in favor of Raymond A. Pendleton & Associates, Inc. and against defendant Pham and Associates, P.C., in the full sum of \$9,730.65, in addition to legal interest and court costs from the date of judicial demand.

For the foregoing reasons, the judgment rendered by the trial court on November 4, 2003 is amended and, as amended, affirmed.

**AMENDED; AND, AS AMENDED, AFFIRMED**