

**THE TROTH CORPORATION
D/B/A PERSONNEL
CONSULTING GROUP**

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NO. 2006-CA-0457

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COURT OF APPEAL

VERSUS

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FOURTH CIRCUIT

**DEUTSCH, KERRIGAN &
STILES, L.L.P.**

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STATE OF LOUISIANA

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CANNIZZARO, J. DISSENTS WITH REASONS

I respectfully dissent from the majority opinion. I think that the full amount of the attorneys' fees awarded in this case was not proven and was excessive.

In Kem Search, Inc. V. Sheffield, 434 So.2d 1067, 1070 (La. 1983), the Louisiana Supreme Court stated in a suit involving La. R.S. 9:2781 that "[t]he trial court is given discretion in setting this award, but excessive attorney's fees are prohibited by disciplinary rules of this court." In Frank L. Beier Radio, Inc. v. Black Gold Marine, Inc., 449 So.2d 1014,1015-16 (La. 1984), the Supreme Court further stated that La. R.S. 9:2781 should be strictly construed, "because the award of attorney fees is exceptional and penal in nature."

In S. Jackson & Son, Inc. v. Aljoma Lumber, Inc., 93-2531 (La. App.

4 Cir. 5/26/94), 637 So.2d 1311, 1313, this Court discussed the factors to be considered by the trial court in making an award of attorney's fees. The factors included the following: (1) the ultimate result obtained; (2) the responsibility incurred; (3) the importance of the litigation; (4) the amount involved; (5) the extent and character of the labor performed; (6) the legal knowledge required; (7) the attainment and skill of the attorney; (8) the number of appearances made; (9) the intricacies of the facts and law involved; (10) the diligence and skill of the attorney; (11) the court's own knowledge; and (12) the ability to pay of the party who is liable for the attorney's fees. See also Hoskins v. Ziegler, 506 So.2d 146, 148 (La. App. 4th Cir. 1987).

In Dutel v. Touzet, 94-0978 (La. App. 4 Cir. 1/19/95), 649 So.2d 1084, this Court considered the evidence required for a claimant to carry his burden of proof for purposes of an award of attorneys' fees under La. R.S. 9:2789. This Court held that an attorney, who was the claimant on a suit on an open account, proved his entitlement to his fees in collecting on the account. This Court found that the hourly rate, to which the parties agreed, was not excessive. Additionally, there was "substantial testimony in the record . . . regarding the nature and extent of the work done in the matter which warrants the fee charged." 649 So.2d at 1087.

In the instant case, however, there was no testimony from the Personnel Consulting Group regarding the factors that courts are to consider in determining the reasonableness of attorneys' fees. The only evidence of the attorneys' fees in the record before us consists of (1) a ledger listing the attorneys' fees and costs that were charged to the Personnel Consulting Group for the time period from April 4, 2002, until May 9, 2005, (2) copies of invoices for four depositions, and (3) itemized statements of Lowe, Stein, Hoffman, Allwiess & Hauver, L.L.P. dated September 8, 2004, October 12, 2004, November 8, 2004, December 6, 2004, January 12, 2005, and February 10, 2005. Although this documentary evidence established the amount of the fees billed to the Personnel Consulting Group, there is no evidence in the record before us upon which a determination regarding several of the factors set forth in the S. Jackson & Sons case can be made. The list of the statement amounts contains no information regarding these factors, and the itemized statements, which together total only about \$6,000 of the \$31,595.90 award made by the trial court, contain minimal information from which a determination regarding these factors can be made.

With respect to the amounts explained on the itemized statements, I cannot say that the trial court judge abused her discretion in including those

amounts in the award she made. With respect to the majority of the award, however, I think that the trial court judge abused her discretion in making an award based on the amounts listed in the ledger that were not even supported by a minimally sufficient itemized statement. There was nothing in the ledger to explain what services were rendered or the amount of time it took to render those services, and these were the services that were rendered prior to and during the trial, when the bulk of the legal work was done. Certainly, there was nothing to indicate whether the fees and charges listed on the ledger were reasonable.

Nevertheless, I think that the Personnel Consulting Group is entitled to reasonable attorneys' fees under La. R.S. 9:2871. In its brief, Deutsch Kerrigan suggested that \$15,825.00 in attorneys' fees and costs is "more than reasonable" under the circumstances. Deutsch Kerrigan also stated in its brief that it had no way to challenge the accuracy of the attorneys' calculation of the number of hours of professional services that were rendered. Deutsch Kerrigan contends, however, that the attorneys' fees in this case were excessive considering the factors set forth in the Hoskins case, which were reiterated in the S. Jackson & Sons case.

I agree. Because I think that the trial court judge abused her discretion in awarding part of the attorneys' fees, I think that a review of the

record should have been conducted to determine what would constitute reasonable attorneys' fees in this case.