

**GULF COAST BANK & TRUST
COMPANY, INC.**

*

NO. 2017-CA-0489

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VERSUS

COURT OF APPEAL

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**GILLES J. CASSE, GMD
INTERNATIONAL, INC. AND
DAMON BALDONE**

*

FOURTH CIRCUIT

STATE OF LOUISIANA

* * * * *

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2010-01908 C\W 2014-11068, DIVISION "L-6"
Honorable Kern A. Reese, Judge

* * * * *

Judge Edwin A. Lombard

* * * * *

(Court composed of Chief Judge James F. McKay, III, Judge Edwin A. Lombard,
Judge Roland L. Belsome)

Jack A. Ricci
Michael S. Ricci
Jonathan L. Schultis
Brian G. LeBon
RICCI PARTNERS, LLC
101 W. Robert E. Lee Boulevard, Suite 400
New Orleans, LA 70124

COUNSEL FOR PLAINTIFF/APPELLEE

Damon J. Baldone
Thomas E. Dunn
162 New Orleans Blvd.
Houma, LA 70364

COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED

NOVEMBER 22, 2017

The instant appeal involves a dispute over attorneys' fees pursuant to a contingency fee agreement between Gulf Coast Bank and Trust ("GCBT") and the Appellee, Ricci Partners, LLC ("the Appellee"). The Appellant, Damon Baldone, seeks review of the district court's January 10, 2017 judgment wherein it reduced its prior award of attorneys' fees to the Appellee to \$800,000. Finding the district court did not abuse its discretion, we affirm.

Facts

The Appellee represented GCBT in a contract suit filed by GCBT in 2010 against Mr. Baldone in his capacity as a personal guarantor for obligations that were defaulted upon. In January 2014, GCBT and the Appellee entered into a contingency fee agreement.

Following the trial and while the matter was under advisement in Civil District Court ("district court"), in May 2014, Mr. Baldone filed a complaint with the Federal Deposit Insurance Corporation ("FDIC")— and a similar complaint with the Louisiana Office of Financial Institutions ("OFI")— seeking damages and penalties for himself against GCBT as well as the revocation of GCBT's charter. According to the Appellee, Mr. Baldone's filings referenced this litigation and

asserted that GCBT purposefully hid or destroyed documents. The FDIC claim against GCBT was closed in May 2014, after the Appellee intervened on behalf of GCBT.

The following month, Mr. Baldone filed a bar complaint against Jack A. Ricci (“Mr. Ricci”), who is an attorney with the Appellee’s firm and was representing GCBT, with the Office of Disciplinary Counsel (“ODC”). The bar complaint was later dismissed by the ODC.¹

Mr. Baldone then filed a petition for damages on July 23, 2014, in the 32nd Judicial District Court for the Parish of Terrebonne, raising spoliation claims against GCBT. Such claims had previously been raised by Mr. Baldone in a motion for spoliation of evidence in the district court, but had been dismissed. As such, on August 4, 2014, GCBT filed a declinatory exception, which was granted by the 32nd Judicial District Court. The matter was dismissed and transferred to the district court.²

In January 2015, Mr. Baldone filed an amended petition in the lawsuit that had been transferred from Terrebonne Parish to the district court and consolidated with the underlying litigation. GCBT, in response, filed an exception of res judicata/collateral estoppel to dismiss the new claims raised in the amended petition.

¹ Mr. Baldone thrice attempted to re-open the bar complaint against Mr. Ricci, after the district court rendered judgment in favor of GCBT. The dismissal of the bar complaint was re-affirmed on June 8, 2015, and August 24, 2015, respectively, and permanently closed in December 2015. In February 2015, Mr. Baldone filed a bar complaint against another of GCBT’s attorneys, Michael S. Ricci, who is also a member of the Appellee’s firm. That complaint was also dismissed by the ODC.

² The Appellee explains that Mr. Baldone notified the 32nd Judicial District Court of his intent to seek a writ application, which he never filed. The Appellee further avers that there were issues with the transfer of the Terrebonne lawsuit to the district court, which resulted in the Appellee filing a motion to enforce judgment on behalf of GCBT.

On February 11, 2015, the district court rendered judgment in favor of GCBT, and granted its declinatory exceptions dismissing the claims raised in Mr. Baldone's amended petition. The district court awarded GCBT \$2,109,221.69, plus unpaid fees in the amount of \$127,030.85, plus interest until paid. Lastly, the district court awarded attorneys' fees to GCBT, pursuant to the contingency fee agreement, in the amount of 40% of the final judgment, or approximately \$894,501.00.

Mr. Baldone appealed the February 11, 2015 judgment, which was affirmed in all respects by this Court, except as to the attorneys' fee award.³ The attorneys' fee award was vacated and the matter was remanded to the district court to conduct a reasonableness hearing. The Supreme Court denied Mr. Baldone's application for a writ of certiorari on September 16, 2016.

The district court held a reasonableness hearing on August 22, 2016, and later rendered a judgment reducing its award to \$800,000. Mr. Baldone timely filed the instant appeal. He raises three assignments of error:

1. The district court erred in awarding attorneys' fees to the Appellee based on a contingency fee agreement;
2. The district court erred in awarding attorneys' fees based on an affidavit of counsel for GCBT that it had stopped billing GCBT after the execution of a contingency fee agreement; and,
3. The district court erred in accepting the Appellee's misleading representations of the number of hours spent in prosecuting GCBT's case.

³ *Gulf Coast Bank & Tr. Co. v. Casse*, 15-0657, 15-0658 (La.App. 4 Cir. 4/27/16), 192 So.3d 845, writ denied, 16-1000 (La. 9/16/16), 206 So.3d 211.

Standard of Review and Applicable Law

The trial court has much discretion in fixing an award of attorneys' fees, and its award will not be modified on appeal absent a showing of an abuse of discretion. *Whitney Bank v. NOGG, L.L.C.*, 15-1399, pp. 6-7 (La.App. 1 Cir. 6/3/16), 194 So.3d 819, 824 (citing *Regions Bank v. Automax USA, L.L.C.*, 02-1755, p. 4 (La.App. 1 Cir. 6/27/03), 858 So.2d 593, 595. The trial court's determination of whether a fee is clearly excessive is a factual question which will not be disturbed absent manifest error. *Teche Bank and Trust Co. v. Willis*, 93-732 (La.App. 3d Cir. 02/02/94), 631 So.2d 644, 647.

The First Circuit recently set forth the role of Louisiana courts in reviewing contracts executed between attorneys and their clients involving the amount of attorneys' fees charged:

Further, “[c]ourts are vested with the responsibility of both monitoring and analyzing the attorney-client relationship, even when it is based on a written contract between the parties.” *In re Interdiction of DeMarco*, 2009-1791 (La.App. 1 Cir. 4/7/10), 38 So.3d 417, 427. However, that responsibility must be carried out with restraint, especially when the parties have signed a contract that sets the terms of the attorney-client relationship. *DeMarco*, 38 So.3d at 427. Part of any attorney-client relationship is the fee the attorney may charge the client for professional services. **Any court-ordered reduction in an attorney's fee must rest upon a factual finding that the excessive fee amount was never earned. *DeMarco*, 38 So.3d at 427. Absent a showing that the fee charged was clearly excessive, a contractual relationship between an attorney and client should not be altered. *DeMarco*, 38 So.3d at 427. [Emphasis added].**

Whitney Bank, 15-1399, p. 5, 194 So.3d at 823-24.

Assignments of Error

The crux of Mr. Baldone's appeal is that attorneys' fees awarded in this matter are unreasonable. Despite Mr. Baldone listing the above-referenced three (3) assignments of error, the arguments Mr. Baldone actually discusses in his brief do not correspond to the above-listed assignments of error. The following issues are actually briefed by Mr. Baldone: 1) there are errors contained with the Appellee's prebills evidencing that the Appellee did not perform the amount of work it contends and calling into question the Appellee's credibility; 2.) Mr. Ricci's affidavit contains material misrepresentations and his fees should be disallowed; and 3.) the Appellee cannot collect its judgment pursuant to the terms of the contingency fee agreement as the underlying judgment to GCBT has not been paid. We understand the above-listed issues to be Mr. Baldone's assignments of error and will refer to these as such throughout this opinion.

Errors within the Appellees' Prebills

In his first assignment of error, Mr. Baldone avers that the Appellee's prebills contain errors evidencing that the Appellee did not perform the amount of work it contends and calling into question the Appellee's credibility. Mr. Baldone raises four (4) issues regarding the prebills drafted by the Appellee: 1) the prebills are false, unreliable documents evidencing

an absence of billing judgment;

2) the time entries on the prebills are illogical and physically impossible;

3) the billing rates in the prebills are overly inflated; and

4) the prebills impermissibly contain billing entries for the Appellee's defense of itself with the Louisiana Disciplinary Board and an FDIC investigation of GCBT, which are unrelated to the instant matter.

Mr. Baldone asserts that the prebills drafted by the Appellee should not be given any evidentiary weight because the documents are false and unreliable. The prebills were not submitted to GCBT. Furthermore, Mr. Baldone maintains that the prebills reflect that the Appellee lacked billing judgment and that the billing is patently unreasonable as evidenced by billing entries in increments of 10 and 12 hours. According to Mr. Baldone, the Appellee explained that these billing increments represented a full day, but not “actual, measured increments of time.” Mr. Baldone maintains that the Appellee continued billing GCBT after the contingency fee agreement was executed by the parties.

Mr. Baldone asserts that this Court may take judicial notice that it is reasonable and customary for clients to insist that their attorneys bill in tenth or quarter hour increments. Mr. Baldone challenges the reasonableness of the Appellee’s various entries of 10.0 and 12.0 hour increments for an entire day based upon vague and repetitive billing entries. He further maintains that Mr. Ricci’s allegedly inconsistent testimony further reflects that Mr. Ricci cannot support these entries or quantify the actual time he expended. Mr. Baldone avers that during his deposition, Mr. Ricci related that he had numerous 10.0 hour entries because that is his billing maximum when he works for a full day on a file. He later offered the same explanation for the 12-hour entries stating that generally his max is 10 hours, but that number can occasionally increase to 12.

Mr. Baldone notes that Mr. Ricci admitted in his testimony that the prebills contained errors; however, Mr. Baldone maintains that said entries comprise a substantial portion of the prebills. According to Mr. Baldone, from May 11, 2014 to July 3, 2014— a period of fifty-four (54) days— the Appellee’s prebill

contained 36 ten-hour entries, equaling 360 hours. During this fifty-four day period, he alleges that Mr. Ricci's individual billing hours totaled 600.25 hours. Mr. Baldone also asserts that in a 23-day period spanning from July 13, 2015 to August 4, 2015, Mr. Ricci's portion of the prebills included 31 ten-hour entries, and the total amount of hours he worked during that time equaled 375.4 hours. Mr. Baldone asserts that these times are excessive and unreasonable.

Moreover, Mr. Baldone maintains that the Appellee's prebills defy logic in that it is physically impossible within one day to bill for as many hours as those included in the Appellee's prebills. Mr. Baldone avers that Mr. Ricci's explanation that the prebills are inaccurate is an insufficient explanation. Mr. Baldone lists other discrepancies contained within the prebills:

- The prebills include billing for the attorneys attending a four-day trial in May 2014; yet, there was no trial in this case during that time. The trial in this matter occurred from April 28, 2014 to May 1, 2014. Counsel had already billed for two days of trial in April. The prebills are simply false and unreliable.
- The prebills contain at least two billing entries of more than 24 hours, both in the month of July 2015. This is impossible as there are only 24 hours in a day.
- The prebills also include entries of more than 20 hours a day. Mr. Baldone urges this Court to view said entries with skepticism, especially since the bills actually tendered to GCBT do not contain the same large hourly billing increments, which Mr. Baldone characterizes as "erratic, irregular, and unreliable."
- The prebills dated August 3-4, 2015 stated that the Appellee worked for 20 hours on the appellate brief on August 3rd and another 10 hours on August 4th. Mr. Baldone notes that the Appellee filed its appellate brief at approximately 5:00 p.m. on August 3; thus, the attorneys at the firm could not have worked on said brief for 20 hours on August 3rd and not at all on August 4th.

Additionally, Mr. Baldone avers that attorney rates contained in the prebills are inflated, which further evidences the Appellee's attempt to augment the award. Mr. Baldone relies upon discrepancies between the actual bill of the Appellee as opposed to the prebills. The actual bill contained the following hourly billing rates: Mr. Ricci- \$250/hour; Michael Ricci-\$175/hour; and Johnathan Schultis-\$150/hour.⁴ According to Mr. Baldone, the prebills increase the hourly rate for each of the attorneys as follows: Mr. Ricci- \$350/hour; Michael Ricci-\$250/hour; and Johnathan Schultis-\$200/hour. Mr. Baldone avers that the prebills are "inconsistent and disingenuous insofar as at the same time Ricci Partners is claiming these higher rates to the trial court, it was in fact billing its original, lower rates to the Bank." Mr. Baldone further alleges that Mr. Ricci admitted in his deposition testimony that although the inflated prebill rates were in effect, the firm continued to bill GCBT at the original lower rate. Mr. Baldone additionally contends that Mr. Ricci further testified that the Appellee continued receiving payments from GCBT during this time.

Lastly, Mr. Baldone argues that the prebills contain matters that were outside of the scope of the Appellee's representation of GCBT, and thus, are unrecoverable under the applicable contractual attorney-fee clause, which provides that the guarantor is responsible for the costs and expenses incurred by GCBC "in connection with the collection of all or any party of the indebtedness and obligations owing by Obligor under the RPA [Receivables Purchase Agreement], or the protection of, or realization upon, the collateral securing all or any party of

⁴ Mr. Ricci further testified that another attorney, Joe Pappalardo, Jr., also worked on the underlying matter and that his billable rate was comparable to that of Mr. Schultis.

such indebtedness and obligations.” Mr. Baldone avers that the Appellee has impermissibly attempted to stretch the above-referenced language to encompass the defense of counsel for GCBT regarding disciplinary complaints, or investigations by applicable regulatory agencies relating to GCBT’s compliance with regulations.

Mr. Baldone avers that clients cannot reasonably be expected to pay for their lawyer’s defense of his or her law license when he or she is accused of unethical conduct during the course of representing their clients. Mr. Baldone points to the fact that Mr. Ricci did not submit the bills for this representation to GCBT and, thus, should not be submitted to him for payment. He further asserts that the regulatory oversight of GCBT by the FDIC and the OFI are unrelated to the collection of the indebtedness or the protection of RPA collateral. None of these actions are covered by the attorney fee provision contained in the contracts at issue in this matter.

We find that Mr. Baldone’s arguments regarding the prebills are not germane to the district court’s review of this matter where the fee due to the Appellee was based upon a *contingency fee agreement*. Both parties agree that the prebills were *not* submitted to the GCBT. The Appellee relates that the existence of the contingency fee agreement eliminated the need to bill GCBT. Mr. Ricci testified that the prebills submitted to Mr. Baldone were unredacted and were generated as an internal document for the attorneys working on the GCBT matter to keep a record of their time.

Mr. Ricci further testified during his deposition and before the district court that the prebills contained time-entry errors and that GCBT was erroneously billed for time, by the Appellee’s former accountant, after the contingency fee agreement

was executed by the parties. Mr. Ricci also explained that while Mr. Baldone discovered some erroneous prebill entries, such mistakes were minimal:

. . . If you recall at my deposition, as I said on the record, I fell on my sword. We made mistakes. I don't know what else to tell you. Out of 2,006 time entries, you found fifty-six that are potentially wrong. . . But I'm telling you we made mistakes. How much of those mistakes did we make out of \$906,000, let's say it's \$50,000, you want to make it \$100,000, we can still make it \$100,000, numbers are fungible. You make them do what you want them to do. You asked me for all my numbers, I gave you all my numbers, unredacted.

The district court heard Mr. Ricci's testimony first-hand and reviewed the prebills at issue. We cannot say that the district court abused its discretion if it did rely upon Mr. Ricci's explanation of the errors included in the prebills and the occasional payments the Appellee received from GCBT following the execution of the contingency fee agreement.

Furthermore, if the district court did consider Mr. Ricci's testimony regarding Mr. Baldone's levying of FDIC and OFI complaints against GCBT, and filing disciplinary complaints against himself and Michael Ricci were inextricably connected to the underlying lawsuit such that the Appellee should be compensated, we find no error in that judicial determination based on record. As the Appellee argues, the issues that Mr. Baldone alleges exist with the prebills were discussed at the reasonableness hearing, and thus, were considered by the district court before it awarded \$800,000 in attorneys' fees to the Appellee. We find that this assignment of error lacks merit.

Mr. Ricci's Affidavit Contained Material Misrepresentations and His Fees Should be Disallowed

Mr. Baldone argues that the district court relied upon the affidavits of Mr. Ricci and GCBT in granting the Appellee's attorneys' fees; however, both

affidavits, he claims, contain material misrepresentations in order to persuade the district court to award a larger attorney fee award against him. He argues that the doctrine of unclean hands should be applied against the Appellee to deny any award of attorneys' fees to GCBT.

Mr. Baldone avers that the following are material misrepresentations in Mr. Ricci's post-trial affidavit:

1. the Ricci firm did not bill GCBT after the contingency fee agreement was executed and the firm absorbed all the costs of the litigation thereafter; and,
2. the Appellee performed approximately 1800 hours of work from the time the contingency fee agreement was executed up until the post-trial memo was drafted.

Mr. Baldone contends that bills produced by the Appellee reflect that it continued to bill GCBT and receive payments from GCBT after the contingency fee agreement was executed. According to Mr. Baldone, Mr. Ricci testified that the Appellee received six (6) payments totaling \$42,652.30 from GCBT. This contradicts what Mr. Ricci attested to in his affidavit. Regarding the hours of work performed by the Appellee, Mr. Baldone avers that bills of the Appellee actually reflect that the firm performed 684.7 hours of work, not 1800 hours, from the time the contingency fee agreement was executed to the filing of the post-trial memo.

Based upon these misrepresentations, Mr. Baldone avers that the district court should have exercised its discretion to deny an award of attorneys' fees pursuant to the contingency fee agreement. Additionally, Mr. Baldone asserts that pursuant to the doctrine of unclean hands, the district court should have refused to award attorneys' fees. The doctrine is applicable, according to Mr. Baldone, because the district court had the discretion to refuse awarding the Appellee any

attorneys' fees as a result of having unclean hands. *Precision Instrument Mfg. Co. v. Auto. Maint. Co.*, 324 U.S. 806, 815, 65 S.Ct. 993, 998 (1945).

In the instant matter, the district court twice considered the amount of attorneys' fees due to the Appellee. On remand, the district court observed and heard Mr. Ricci testify and reviewed his affidavit. The discrepancies that Mr. Baldone argues exist with Mr. Ricci's affidavit were discussed at the reasonableness hearing, and thus, were taken into account by the district court before it made its award. Indeed, Mr. Ricci testified at the reasonableness hearing that he stood by his affidavit because he had instructed his former accountant, Mike West, not to bill GCBT after the contingency fee agreement was executed; nevertheless, Mr. West did not follow his instructions. He also explained that Mr. West did not accurately record in the invoices his [Mr. Ricci's] hourly rate increases from \$250 up to \$350. Mr. Ricci further testified that Mr. West erroneously entered the billing rate for an associate at the firm.

With regard to the payment of attorneys' fees during the course of the underlying litigation by GCBT, Mr. Ricci testified that payments were received from GCBT prior to the parties executing the contingency fee agreement. He further explained that GCBT paid the Appellee for its services in Terrebonne Parish case before that case was consolidated with the underlying matter. Lastly, he also explained that GCBT was also billed monthly by the Appellee for other cases in which it was representing GCBT.

"Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong." *Rosell v. ESCO*, 549 So. 2d 840, 844 (La. 1989). Additionally, the district court seems to have found the testimony of Mr. Ricci credible. "When findings are based on

determinations regarding the credibility of witnesses, the manifest error-clearly wrong standard demands great deference to the trier of fact's findings; for only the factfinder can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and belief in what is said.” *Id.* We cannot say that the district court’s credibility determination was manifestly erroneous or clearly wrong.

Furthermore, the Louisiana Supreme Court has identified 10 factors to be considered when determining the reasonableness of attorneys’ fees: (1) ultimate result obtained; (2) responsibility incurred; (3) importance of the litigation; (4) amount of money involved; (5) extent and character of the work performed; (6) legal knowledge, attainment, and skill of the attorneys; (7) number of appearances made; (8) intricacies of the facts involved; (9) diligence and skill of counsel; and (10) court's own knowledge. *State, Dep't of Transp. and Development v. Williamson*, 597 So.2d 439, 442 (La. 1992).

Mr. Ricci testified that over the course of approximately seven (7) years that this matter was pending, the attorneys at the Appellee firm performed the following acts: prepared for the case; tried the case for a five-day period; filed two Motions for Summary Judgment; defended two Motions for Summary Judgment; defended GCBT against an FDIC claim; defended Mr. Ricci and his son, Michael Ricci, against bar complaints brought by Mr. Baldone; and handled the litigation Mr. Baldone filed in Terrebonne Parish until it was dismissed and consolidated with the underlying matter.

He further testified that he is a diligent worker and often works 14-hour days arriving at his office at 4:30 a.m., eating at his desk and not leaving work until 6:00 p.m. He related that he has represented GCBT for approximately 25 years in

various matters. The record reflects that Mr. Ricci initially billed GCBT at a rate of \$250 per hour in 2010, but later increased to \$350 per hour in 2014. Mr. Ricci also testified that there were two other attorneys at the firm who also worked on the underlying litigation, Michael Ricci and Jason Schultis, and their hourly rates during the course of the underlying litigation ranged from \$150-\$250 per hour. Considering Mr. Ricci's deposition and hearing testimony wherein he attests to the prebilling and invoice errors, as discussed above, we find that the district court did not err in considering Mr. Ricci's affidavit, which Mr. Ricci explained truthfully recounted how billing in the underlying litigation was handled at the Appellee firm based upon his understanding.

Based upon our review of the record and the factors enumerated in *State, Dep't of Transp. and Development, supra.*, the Appellee prevailed on behalf of GCBT after five years of litigation and an appeal, and facing FDIC and bar complaints on the licenses of GCBT and its attorneys, respectively, during that time period as well. The litigation was of great importance as GCBT sought to recover monies from a corporation, which Mr. Baldone was a member of, that defaulted on a receivables purchase agreement. Mr. Baldone was a personal guarantor of the receivables purchase agreement. In the instant matter, the Appellee recovered a total of \$2,236,252.54, plus interest, for GCBT. Additionally, the Appellee has represented GCBT for 25 years in various matters. Mr. Ricci testified as to his skill and diligence as well as that his fellow attorneys. Throughout the course of the lengthy litigation, numerous appearances were made by the attorneys with the Appellee's firm for motion hearings, exceptions and trial in both the district court and the 32nd Judicial District Court.

Finally, we find that the doctrine of unclean hands is inapplicable in this matter as the record does not reflect that the Appellee engaged in any reprehensible conduct in this matter. *See Bossier Par. Sch. Bd. v. Pioneer Credit Recovery, Inc.*, 49,525, p. 4 (La. App. 2 Cir. 1/14/15), 161 So. 3d 1007, 1009. Based upon the foregoing, we find no error in the judgment of the district court awarding the Appellee \$800,000 in attorneys' fees. This assignment of error is without merit.

Fees Are Not Yet Due Under the Contingency Fee Agreement

In its final assignment of error, Mr. Baldone maintains that the Appellee is not yet entitled to a fee under the terms of the contingency fee agreement because no amounts have been collected. Mr. Baldone relies upon the following language in the contingency fee agreement: "Client agrees to pay to its Attorney a contingent fee of Forty (40%) percent of the proceeds of any judgment collected after the filing of suit." Mr. Baldone avers that the entry of judgment in itself does not entitle the attorney to collect fees from the client. The proceeds of the judgment must actually be collected. According to Mr. Baldone, Mr. Ricci admitted at his deposition that no proceeds of the judgment have actually been collected by GCBT. Therefore, he maintains that no fees are due, and any fee award under that formulation would be improper.

Mr. Baldone further asserts that despite there being a contingency fee agreement, GCBT paid the Appellee substantial amounts of money in attorneys' fees at various times. Thus, Mr. Baldone asserts that the contract may have been a simulation under La. Code Civ. Proc. art. 2025. Mr. Baldone argues that in the alternative, GCBT's continual payment of monthly invoices, together with the fact that it was executed shortly before trial, goes to the weight of the contingent fee agreement.

We also find that these arguments are without merit. First, Mr. Baldone is not a party to the contingency fee agreement and, thus, has not established a right to enforce its terms against the Appellee. Furthermore, an “attorney's right to a contingency fee is not acquired until the claim in the underlying case is reduced to judgment or settlement.” *Cox v. Boggs*, 39,566, pp. 4-5 (La.App. 2 Cir. 4/6/05), 899 So.2d 770, 773 [citations omitted]. In the matter *sub judice*, the underlying case has been reduced to judgment and affirmed on appeal. Therefore, the Appellee has a right to collect its fee. It is fortuitous for Mr. Baldone to raise this argument as he is the party responsible for paying the underlying judgment, which he appealed thereby causing this matter to be in its current procedural posture. It would be untenable for this Court to hold that the Appellee cannot recover its fees under the facts presented. Lastly, Mr. Baldone offers no legal or factual support for his assertion that the contingency fee agreement is a simulation. For these reasons, we find that this assignment of error is without merit.

DECREE

For the foregoing reasons, the January 10, 2017 judgment of the district court awarding \$800,000 in attorneys’ fees to the Ricci Partners, LLC, is affirmed.

AFFIRMED