Opinion issued January 13, 2011

In The

Court of Appeals

For The

First District of Texas

NO. 01-09-00662-CV

RANDALL P. CRANE, Appellant

V.

RIMKUS CONSULTING GROUP, INC., Appellee

On Appeal from the County Civil Court at Law No. 1
Harris County, Texas
Trial Court Case No. 929428

MEMORANDUM OPINION

Appellee, Rimkus Consulting Group, Inc. ("Rimkus"), sued appellant, Randall Crane, for breach of contract, suit on an account, and quantum meruit,

arising out of Crane's failure to pay Rimkus for litigation evaluation services. The trial court rendered summary judgment in favor of Rimkus on its breach of contract claim.[1] In three issues on appeal, Crane contends that the trial court erred in rendering summary judgment because (1) fact issues exist regarding whether Rimkus materially breached the contract and whether there was a failure of consideration; (2) fact issues exist regarding the reasonableness of Rimkus's attorney's fees and its professional services fees; and (3) Rimkus's summary judgment affidavits describing the reasonableness of its services fees and attorney's fees were conclusory and not proper summary-judgment evidence.

We affirm.

Background

In June 2006, Crane, who was investigating the potential causes of a fatal one-car accident, contacted Rimkus for "litigation support consulting services" in connection with the evaluation of this accident. After meeting with Crane and discussing the assignment, Rimkus mailed Crane a "Confirmation of Assignment" letter on June 26, 2006, along with a copy of its "Terms and Conditions" and a fee schedule for the services offered. The letter stated, in bold, that Rimkus would invoice Crane "each month for services provided and expenses incurred during the

[1] Rimkus specifically abandoned its suit on an account and quantum meruit causes of action in its summary judgment motion.

preceding month." On July 6, 2006, Crane, per Rimkus's request, signed and dated a copy of the Confirmation of Assignment letter and returned it to Rimkus.

The Terms and Conditions included a similar provision, stating that Rimkus would invoice Crane each month for the services and expenses incurred during the previous month. This document specified the hourly rate for each category of Rimkus employees that could potentially work on the project, such as consultants and technical assistants, and set out the costs for "fixed rate expenses," such as evidence storage, photocopying, and freight charges. The Terms and Conditions included the following merger clause:

> The Terms and Conditions and the Engagement Letter shall form the entire agreement between the parties hereto with respect to the subject matter. No oral representations of any officer, agent, or employee of [Rimkus] or [Crane], either before or after execution of this agreement, shall affect or modify any obligation of either party hereunder. [Crane] agrees that [he] has not been induced to enter into this agreement by any representations, statements or warranties of [Rimkus] or any officer, agent or employee of [Rimkus], other than those herein expressed.

Neither the confirmation letter nor the Terms and Conditions contained a provision stating the specific services that Rimkus agreed to provide for Crane or any special billing conditions, such as a condition that Rimkus would charge Crane only if it determined that third-party negligence likely caused the accident.

On September 13, 2006, Rimkus mailed Crane an invoice for $3,463.75 for services rendered after June 20, 2006, the day Crane first met with Rimkus

representatives. The invoice described the specific services performed, such as "inspect, measure, and photograph vehicle in Harlingen, TX," and stated the title of the employee performing the services, the amount of time expended, the hourly rate, and the total cost for each day's work. Rimkus employees spent a total of 20.25 hours on Crane's project, for a total fee amount of $3,269.75, plus $194 in expenses.

After Crane failed to pay the invoice, Rimkus sued for breach of contract, suit on an account, and quantum meruit. As affirmative defenses, Crane asserted prior material breach of the contract by Rimkus, negligent misrepresentation, fraud, and failure of consideration.

Rimkus moved for traditional summary judgment on its breach of contract claim. As summary-judgment evidence, Rimkus attached the Confirmation of Assignment letter, the Terms and Conditions, the invoice, the affidavit of Ralph Graham, Rimkus's Senior Vice President, and the affidavit of Richard Judge, the primary attorney for Rimkus. Rimkus argued that it provided "expert witness and consulting services" to Crane and although Crane accepted these services, he refused to pay the outstanding invoice amount. Rimkus sought as damages the amount of the debt, $3,463.75, and $8,269.25 in attorney's fees.

Graham averred that Crane requested that Rimkus "evaluate a vehicle accident where the driver of a Toyota 4-Runner left the roadway, entered an

irrigation ditch and crashed, and died due to injuries from the crash." According to Graham, although Rimkus "performed its contractual obligations under the Terms & Conditions" and Crane promised to pay Rimkus for the "reasonable prices charged to provide the services," Crane ultimately refused to pay Rimkus for the services rendered.

Judge averred that the amount sought by Rimkus for attorney's fees, $8,269.25, was reasonable and necessary. He stated that his firm agreed to a reduced hourly rate of $150 for the two attorneys working on the case, and that the two legal assistants had hourly rates of $85. Judge stated that he was familiar with the hourly rates for Harris County, and he opined that these rates were reasonable. He also specified the number of hours that each attorney and legal assistant worked on the case, and described all of the actions taken by the firm on behalf of Rimkus. Judge noted, "[t]he majority of our billable hours have been spent in response to the various actions and filings by the Defendant in this litigation." Finally, he listed the *Arthur Andersen v. Perry Equipment Corp.* factors for determining the reasonableness and necessity of attorney's fees, and stated that he considered these factors when concluding that the fees sought were reasonable and necessary.

In response, Crane argued that the trial court should deny Rimkus's summary judgment motion because, although Rimkus had pleaded that it had fully performed under the contract and that "all conditions precedent to [Rimkus's]

recovery have occurred," Rimkus "failed to establish the existence of a liable third party [in the car accident] which was a condition precedent to incurring any indebtedness by defendant" and it also "fail[ed] to investigate the major area of concern, i.e., the existence of a manufacturing or design defect." Crane also argued that Rimkus materially breached the contract by failing to provide monthly invoices "so that [Crane] could have monitored the cost being incurred." Crane further stated that Rimkus failed to provide either a report of its findings or copies of evidence supporting its findings. Additionally, he argued that Graham's affidavit was conclusory, because it only stated factual conclusions and not the underlying facts. According to Crane, the affidavit was also defective because it did not demonstrate that the time spent on the services or the amount that Rimkus charged for the services was reasonable and necessary. Crane also attacked Judge's affidavit as conclusory because it "fail[ed] to break the hourly charges down so [that] the reasonableness of the time incurred can be determined."

As summary-judgment evidence, Crane attached his own affidavit. Crane averred that, because the car involved in the accident was an SUV, he contacted Rimkus to perform a "cursory inspection" of the vehicle for manufacturing or design defects. Crane "made clear" to Rimkus that he was not willing to incur expenses unless Rimkus could demonstrate that a third party's negligence caused the accident, and a Rimkus representative agreed to investigate only on an

"exploratory basis." The employee stated that Crane needed to sign a fee agreement so that the employee could charge his time against a document. Crane signed the agreement "after a good deal of the investigation had already been done." Crane averred that, aside from his initial visit and one phone call, he had no contact with Rimkus until he received the invoice in September. According to Crane, if Rimkus had sent a bill earlier, Crane "would have been able to verify the billing agreement with [Rimkus] and cut off further work when it was learned [Rimkus] expected to be paid for its cursory investigation." Crane averred that he never would have entered into the contract if Rimkus had not represented that Crane would need to pay only if Rimkus determined that a viable cause of action existed.

Crane further averred that Rimkus's charges for its services were "neither reasonable nor customary." Crane based this assessment on his experience with "a great many experts in the area of accident reconstruction," and he opined that Rimkus's charges were "repetitive, inflated, and unnecessary." Crane also averred that Rimkus's invoice reflected that it never performed the work that Crane requested because Rimkus never investigated a manufacturing or design defect. Finally, Crane averred that, "based on years of experience in practicing law," the charges for attorney's fees were neither reasonable nor necessary. Crane opined that, in "an efficiently managed law office," an attorney's staff usually performs

collection work, and thus an attorney's spending 49.5 hours on the case is not reasonable and necessary. Crane also averred that Judge's statements regarding the reasonableness and necessity of the attorney's fees were conclusory and that Judge offered no factual support for his determination.

Rimkus objected to nearly every part of Crane's affidavit and moved to strike it as summary-judgment evidence. Rimkus primarily objected to Crane's statements regarding alleged agreements by Rimkus to charge Crane for its services only if its preliminary investigation revealed that a third party was liable for the accident and to focus on a manufacturing or design defect. According to Rimkus, evidence of any such agreements violated the parol evidence rule because these alleged terms were not contained in the written contract. Rimkus also objected to Crane's statement regarding the reasonableness of Rimkus's professional services charges on the ground that Crane submitted no evidence that he was qualified to provide accident reconstruction services or qualified to render an opinion on the reasonableness of those services. Rimkus further objected to Crane's challenge to Rimkus's attorney's fees because Crane's affidavit failed to show that Crane had any experience or knowledge of attorney's fees in Harris County, and Crane offered no controverting evidence on what fee amount would be reasonable and necessary for this case.

After the trial court sustained most of Rimkus's objections, the entirety of Crane's summary judgment affidavit read as follows:

> My name is Randall P. Crane, I am over the age of twenty-one years of age[.] I have never been convicted of a felony or a crime involving moral turpitude and I am in all ways capable of making this affidavit. I am the defendant in this case and I have personal knowledge of the matters stated herein and the same are true and correct.
>
> I am a licensed attorney in the State of Texas and have been since my admission to the bar in 1972. I have maintained a general practice of law since that time and am familiar with the practice of law in various areas including that of contracts and debt collection.
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> In June of 2006 the undersigned was contacted by Leonard Guillen whose son had recently been killed in a one vehicle automobile accident. Mr. Guillen asked this office to investigate the circumstances surrounding this accident. An initial investigation of the accident was performed which included a review of the accident report, a site inspection, photographing, etc. It did not appear there was any third party negligence involved and therefore, the potential client was never asked to sign an employment contract.
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> . . . .
>
> The contract [with Rimkus] included a material representation that billing for work done will be on a monthly basis.
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> . . . .

The only other summary-judgment evidence that Crane provided was the Confirmation of Assignment letter, the Terms and Conditions, and the invoice from Rimkus.

The trial court rendered summary judgment in favor of Rimkus, and awarded it the amount of the invoice and the full amount of attorney's fees that it

had requested. After Crane's motion for new trial was overruled by operation of law, this appeal followed.

Standard of Review

We review de novo the trial court's ruling on a summary judgment motion. *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). A party seeking recovery may, at any time after the adverse party has answered or appeared, move for summary judgment on its own claim. TEX. R. CIV. P. 166a(a). The movant bears the burden of establishing that no genuine issue of material fact exists and that it is therefore entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c). When a plaintiff moves for summary judgment, it must prove that it is entitled to summary judgment as a matter of law on each element of its cause of action. *Harris County v. Walsweer*, 930 S.W.2d 659, 663 (Tex. App.—Houston [1st Dist.] 1996, writ denied) (citing *MMP, Ltd. v. Jones*, 710 S.W.2d 59, 60 (Tex. 1986) (per curiam)). If the nonmovant relies upon an affirmative defense to defeat summary judgment, he must present summary judgment evidence sufficient to raise a fact issue on each element of the affirmative defense. *Brownlee v. Brownlee*, 665 S.W.2d 111, 112 (Tex. 1984). A genuine issue of material fact exists if the nonmovant produces more than a scintilla of probative evidence regarding a particular element. *See Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004); *see also Forbes Inc. v. Granada*

Biosciences, Inc., 124 S.W.3d 167, 172 (Tex. 2003) ("More than a scintilla of evidence exists if it would allow reasonable and fair minded people to differ in their conclusions."). In determining if the nonmovant raised a fact issue, we review the evidence in the light most favorable to the nonmovant, crediting favorable evidence if reasonable jurors could and disregarding contrary evidence unless reasonable jurors could not. *Fielding*, 289 S.W.3d at 848 (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005)).

When the trial court sustains objections to a party's summary judgment evidence and the party does not attack the merits of that ruling on appeal, we may not consider the stricken evidence when reviewing the summary judgment. *See Little v. Needham*, 236 S.W.3d 328, 331 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (citing *Inglish v. Prudential Ins. Co. of Am.*, 928 S.W.2d 702, 706 (Tex. App.—Houston [1st Dist.] 1996, writ denied)).

Prior Material Breach by Rimkus

In his first issue, Crane contends that the trial court erred in rendering summary judgment on Rimkus's breach of contract claim because Crane raised a fact issue on his affirmative defenses of prior material breach of the contract by Rimkus and failure of consideration.

A breach of contract occurs when a party to the contract fails to perform an act that it has expressly or impliedly promised to perform. *Case Corp. v. Hi-Class*

Bus. Sys. of Am., Inc., 184 S.W.3d 760, 769–70 (Tex. App.—Dallas 2005, pet. denied). If a party commits a material breach of the contract, that breach discharges or excuses the other party from further performance. *Mustang Pipeline Co. v. Driver Pipeline Co.*, 134 S.W.3d 195, 196 (Tex. 2004) (per curiam). Materiality of a breach is generally a question for the fact-finder; however, the court can determine materiality and the resulting unenforceability of the agreement as a matter of law. *See Continental Dredging, Inc. v. De-Kaizered, Inc.*, 120 S.W.3d 380, 394–95 (Tex. App.—Texarkana 2003, pet. denied); *see also Mustang Pipeline*, 134 S.W.3d at 200 ("Based on this evidence, we hold that as a matter of law Driver committed a material breach.").

In *Mustang Pipeline*, the Texas Supreme Court adopted section 241 of the Restatement (Second) of Contracts, which lists five factors "significant in determining whether a failure to perform [a contractual obligation] is material." *Mustang Pipeline*, 134 S.W.3d at 199. The factors are:

> (a) The extent to which the injured party will be deprived of the benefit which he reasonably expected;
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> (b) The extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;
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> (c) The extent to which the party failing to perform or offer to perform will suffer forfeiture;
>
> (d) The likelihood that the party failing to perform or offer to perform will cure his failure, taking account of the circumstances including any reasonable assurances;

> (e) The extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

Id. (citing RESTATEMENT (SECOND) OF CONTRACTS § 241 (1981)). Restatement section 242 states two additional factors important in determining whether a party's contractual duties are discharged due to a material breach:

> (1) The extent to which it reasonably appears to the injured party that delay may prevent or hinder him in making reasonable substitute arrangements;
>
> (2) The extent to which the agreement provides for performance without delay, but a material failure to perform or to offer to perform on a stated day does not of itself discharge the other party's remaining duties unless the circumstances, including the language of the agreement, indicate that performance or an offer to perform by that day is important.

Id. (citing RESTATEMENT (SECOND) OF CONTRACTS § 242 (1981)).

As summary-judgment evidence, both Rimkus and Crane attached the Confirmation of Assignment letter, the Terms and Conditions, and the unpaid invoice. It is undisputed that the confirmation letter and the Terms and Conditions both state that Rimkus will invoice Crane each month for "services provided and expenses incurred during the previous month." It is also undisputed that Rimkus did not invoice Crane until September 13, 2006, nearly three months after Rimkus began work. Crane contends that "[t]he timeliness of invoices was a material factor because if billing had occurred as agreed, [Crane] would have immediately

been aware that a misunderstanding had occurred as to the payment for and scope of the project and would have been able to stop work."

In his summary judgment affidavit, Crane averred that he had made it clear to Rimkus that he was not willing to incur expenses unless Rimkus could determine that the negligence of a third party played a role in the accident that Crane was investigating. According to Crane, Rimkus agreed to investigate on an "exploratory basis" only, and it only had Crane sign a fee agreement so Rimkus's consultant could charge his time against a document. The trial court sustained Rimkus's objections and struck these statements from Crane's affidavit on the ground that the statements violated the parol evidence rule. Because Crane does not challenge the propriety of this ruling, we cannot consider this evidence in determining whether Crane raised a fact issue on Rimkus's alleged material breach.[2] *See Little*, 236 S.W.3d at 331.

We previously addressed whether a party's alleged failure to bill monthly, contrary to the parties' fee agreement, constitutes a material breach as a matter of law under *Mustang Pipeline*. *See Williams v. Jackson*, No. 01-07-00850-CV, 2008

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[2] One of the only sentences in Crane's affidavit that the trial court did not strike states that, "[t]he contract included a material representation that billing for work done will be on a monthly basis." Crane did not address any of the *Mustang Pipeline* factors in his summary judgment response, affidavit, or on appeal. His conclusory statement that this provision was material is, without more, no evidence that Rimkus materially breached the contract.

WL 4837484, at *3–4 (Tex. App.—Houston [1st Dist.] Nov. 6, 2008, no pet.) (mem. op.). We focused on Restatement section 242, which "addresses the implications of time deadlines stated in a contract for deciding whether [an] alleged breach of a deadline by the party seeking enforcement of a contract . . . will discharge the other party to the contract . . . ." *Id.* at *4. Under section 242, "'the extent to which the agreement provides for performance without delay' is a circumstance that affects materiality of lack of timely performance." *Id.* (citing *Mustang Pipeline*, 134 S.W.3d at 199). Section 242 also states that "a material failure to perform . . . on a stated day does not of itself discharge the other party's remaining duties unless the circumstances, including the language of the agreement, indicate that performance . . . by that day is important." *Id.* (citing RESTATEMENT (SECOND) OF CONTRACTS § 242). We noted that, unlike in *Mustang Pipeline*, the contract between Williams and Jackson did not "impose a duty of compliance [with the billing provision] on either a stated day or without delay." *Id.* Similarly, nothing in the fee agreement suggested that monthly billing was "of the essence," such that it "serve[d] as a predicate to compliance by Williams with his duty to pay Jackson." *Id.* We thus concluded that the contract did not support Williams' argument that Jackson's failure to comply with the billing requirements discharged Williams from his duty to pay. *Id.*

Here, the Terms and Conditions do not "impose a duty of compliance" on Rimkus to bill either on a stated day or without delay. Also, nothing in the Terms and Conditions or the Confirmation of Assignment letter indicates that strict monthly billing is "of the essence," such that Rimkus's failure to comply would discharge Crane from his duty to pay Rimkus for its services. Crane offered no admissible evidence to suggest otherwise. We conclude that Crane failed to raise a fact issue on whether Rimkus materially breached the contract and on whether that alleged material breach discharged Crane from future performance.[3] We therefore hold that the trial court correctly rendered summary judgment in favor of Rimkus.

We overrule Crane's first issue.

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[3] In his Issues Presented, Crane also contends that he submitted summary-judgment evidence and raised a fact issue on the affirmative defense of failure of consideration. Crane, however, presents no arguments or authorities to support this contention, and we therefore hold that he has waived this argument on appeal. TEX. R. APP. P. 38.1(i). Crane also contends that Rimkus materially breached the contract by failing to investigate a manufacturing defect when he specifically requested Rimkus to investigate this aspect. As Rimkus points out, the trial court struck the portion of Crane's summary judgment affidavit in which he states that he was "primarily interested" in learning if a manufacturing defect caused the accident but that Rimkus never investigated this possibility, and Crane produced no other summary judgment evidence reflecting this agreement. *See Little v. Needham*, 236 S.W.3d 328, 331 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (holding that appellate court should not consider portions of summary judgment affidavit struck by trial court when appellant does not challenge ruling on appeal). Crane also contends that fact issues exist regarding whether Rimkus materially breached by "fail[ing] to submit a report" on its findings. Crane produced no summary-judgment evidence regarding this obligation, and he does not present arguments on appeal regarding the materiality of this alleged breach.

Reasonableness of Professional Services Fees

In his second issue, Crane contends that the trial court erred in rendering summary judgment in favor of Rimkus because he raised fact issues concerning the reasonableness of Rimkus's professional services fees.

In his summary judgment response, Crane argued that his "affirmative defense[s] include[] the denial of the reasonableness of the time charged [by Rimkus] for the various elements of work allegedly undertaken and the necessity of the work performed." As this is an affirmative defense, Crane bears the burden to raise a fact issue on each element of this contention to defeat summary judgment in favor of Rimkus. *See Brownlee,* 665 S.W.2d at 112.

The trial court struck the portion of Crane's summary judgment affidavit in which he disputed the reasonableness of Rimkus's services charges on the ground that Crane failed to establish his qualifications to provide this testimony. Because Crane does not challenge the propriety of this ruling on appeal, we cannot consider this evidence when reviewing the trial court's summary judgment. *See Little*, 236 S.W.3d at 331. Crane presented no other summary judgment evidence challenging the reasonableness of Rimkus's professional services charges. We conclude that Crane failed to raise a fact issue on the reasonableness of Rimkus's services charges, and therefore the trial court properly rendered summary judgment on Rimkus's breach of contract claim.

Reasonableness of Attorney's Fees

Crane also contends, in his second issue, that the trial court erred in rendering summary judgment in favor of Rimkus because he raised fact issues concerning the reasonableness of attorney's fees.

Usually, the determination of the amount to be awarded as reasonable attorney's fees is a question of fact to be determined by the fact-finder and the award must be supported by competent evidence. *See Volume Millwork, Inc. v. W. Houston Airport Corp.*, 218 S.W.3d 722, 735 (Tex. App.—Houston [1st Dist.] 2006, pet. denied); *Beere v. Duren*, 985 S.W.2d 243, 249 (Tex. App.—Beaumont 1999, pet. denied). The general rule is that testimony of an interested witness, such as a party to the suit, though not contradicted, only raises a fact issue on the amount of attorney's fees to be determined by the jury.[4] *Ragsdale v. Progressive Voters League*, 801 S.W.2d 880, 882 (Tex. 1990). An exception to this rule exists, however, when the "testimony of an interested witness is not contradicted by any other witness, or attendant circumstances, and the same is clear, direct and positive, and free from contradiction, inaccuracies, and circumstances tending to

[4] To the extent Crane objects to the affidavits of Ralph Graham, Rimkus's Senior Vice President, and Richard Judge, one of Rimkus's attorneys, on the ground that they were made by interested witnesses, we note that "affidavits of interested witnesses present a defect of form requiring an objection in the trial court." *See Ahumada v. Dow Chem. Co.*, 992 S.W.2d 555, 562 (Tex. App.—Houston [14th Dist.] 1999, pet. denied). Because the record reflects that Crane did not raise this objection in the trial court, he has waived this complaint on appeal. *Id.*

cast suspicion thereon." *Id.* Such testimony "is taken as true, as a matter of law." *Id.*; *see also Hunsucker v. Fustok*, 238 S.W.3d 421, 432 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (holding that trial court abused its discretion in awarding no appellate attorney's fees "in the face of uncontroverted evidence of the fees incurred and anticipated").

Crane contends that he controverted the reasonableness of Rimkus's attorney's fees in his summary judgment affidavit, in which he stated his qualifications for disputing the fee amount requested. Crane ignores, however, the trial court's ruling in which it sustained Rimkus's objections to Crane's affidavit and struck the two paragraphs in which Crane disputed the reasonableness and necessity of Rimkus's attorney's fees. Because Crane does not challenge the propriety of this ruling on appeal, we cannot consider this evidence when reviewing the summary judgment. *See Little*, 236 S.W.3d at 331.

Crane presented no other summary judgment evidence to controvert these fees. We conclude that Rimkus's attorney's fees evidence is "clear, direct and positive, and not contradicted by any other witness or attendant circumstances, and there is nothing to indicate otherwise." *Ragsdale*, 801 S.W.2d at 882. We therefore hold that the trial court properly rendered summary judgment as a matter of law on Rimkus's claim for attorney's fees.

We overrule Crane's second issue.

Conclusory Summary Judgment Affidavits

In his third issue, Crane contends that Rimkus's affidavits describing its professional services charges and the reasonableness of its attorney's fees were conclusory and did not constitute proper summary-judgment evidence.

Affidavits containing conclusory statements unsupported by facts are not competent summary-judgment evidence. *Prime Prods., Inc. v. S.S.I. Plastics, Inc.*, 97 S.W.3d 631, 637 (Tex. App.—Houston [1st Dist.] 2002, pet. denied) (quoting *Aldridge v. De Los Santos*, 878 S.W.2d 288, 296 (Tex. App.—Corpus Christi 1994, writ dism'd w.o.j.)); *Rizkallah v. Conner*, 952 S.W.2d 580, 587 (Tex. App.—Houston [1st Dist.] 1997, no pet.) ("A conclusory statement is one that does not provide the underlying facts to support the conclusion."). An affidavit must be factual—mere conclusions of the affiant lack probative value. *Prime Prods.*, 97 S.W.3d at 637; *see also Ryland Group, Inc. v. Hood*, 924 S.W.2d 120, 122 (Tex. 1996) ("[Conclusory affidavits are neither] credible nor susceptible to being readily controverted."). However, a party moving for summary judgment is not required to provide supporting affidavits as summary-judgment evidence. *See* TEX. R. CIV. P. 166a(a) ("A party seeking to recover upon a claim . . . may . . . move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.").

Here, Crane contends that the "only evidence supporting the reasonableness of time charged for [Rimkus's] various activities is the global and conclusionary *[sic]* statement submitted by an interested party, Ralph S. Graham." Graham stated that Crane owed Rimkus $3,463.75, and he averred that this amount was "just and true, due and owing, and all just and lawful offsets, payments and credits have been allowed." Crane argues that this statement "does not provide evidence that the time spent on the various activities was either just or fair." As additional summary-judgment evidence, however, Rimkus attached the Terms and Conditions, which set forth the hourly rate of each Rimkus employee and the fee schedule for "fixed expenses," and the unpaid invoice. Crane cites to no authority holding that this evidence is insufficient to establish a breach of contract plaintiff's entitlement to summary judgment.

Crane further contends that Richard Judge's affidavit regarding Rimkus's attorney's fees is defective because it "fails to break down attorney's fees by showing how much time was allegedly spent on what legal functions by the attorney or his staff."

When proving reasonable and necessary attorney's fees, "[t]here is no strict requirement that the work of an attorney be expressed in terms of hours spent; the amount of work expended can be proved by alternative methods, including evidence of what tasks were undertaken on behalf of the client." *Brighton Homes*,

Inc. v. McAdams, 737 S.W.2d 340, 344 (Tex. App.—Houston [14th Dist.] 1987, writ ref'd n.r.e.) (holding evidence sufficient to support fee award when attorney did not state specific number of hours worked, but testified regarding specific actions taken and attorney's billing rate); *Hugh Wood Ford, Inc. v. Galloway*, 830 S.W.2d 296, 298 (Tex. App.—Houston [14th Dist.] 1992, writ denied) (holding attorney's fees award sufficient, even though attorney kept no time records, when testified in detail regarding work performed and time estimate was not contradicted by opposing party); *see also Town & Country P'ship v. Frontier Leasing Corp.*, No. 01-07-00555-CV, 2009 WL 723991, at *4 (Tex. App.—Houston [1st Dist.] Mar. 19, 2009, no pet.) (applying *Brighton Homes* and *Hugh Wood Ford* and holding affidavit sufficient, despite no itemized statement of services and charges, because affiant "detailed the nature and extent of the services rendered").

Here, in his summary judgment affidavit, Richard Judge opined that $8,269.25 was a reasonable and necessary amount for Rimkus's attorney's fees. Judge stated the billing rates for the attorneys and the legal assistants who worked on the case, as well as the number of hours each person worked. Although Judge did not specify the number of hours each person expended on each particular task, he did state in detail the tasks performed on behalf of Rimkus. Judge noted that the "majority of [the firm's] billable hours have been spent in response to the various actions and filings by [Crane] in this litigation." Judge specifically listed the eight

factors from *Arthur Andersen & Co. v. Perry Equipment Corp.*, 945 S.W.2d 812, 818 (Tex. 1997), used when considering the reasonableness of an attorney's fees award and stated that he was familiar with the usual billing rates of attorneys and legal assistants in Harris County. We conclude that Judge's affidavit sufficiently established the reasonableness and necessity of the attorney's fees incurred by Rimkus, and therefore the trial court correctly rendered summary judgment in favor of Rimkus.

We overrule Crane's third issue.

Conclusion

We affirm the judgment of the trial court.

Evelyn V. Keyes
Justice

Panel consists of Justices Keyes, Higley, and Bland.