

1977

Keith E. Sohm v. Kendell D. Winegar : Brief of the Defendant-Respondent

Utah Supreme Court

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Roger F. Cutler; Attorney for Defendant-Respondent;

Keith E. Sohm; Attorney for Plaintiff-Appellant;

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IN THE SUPREME COURT OF THE STATE OF UTAH

KEITH E. SOHM,)	
)	
Plaintiff-Appellant,)	
)	
-vs-)	Case No. 14654
)	
WENDELL D. WINEGAR, dba)	
UTAH ELECTRIC & MOTOR)	
COMPANY,)	
)	
Defendant-Respondent.)	

BRIEF OF THE DEFENDANT-RESPONDENT

This is an appeal from a trial judgment granted by the Third District Court in and for Salt Lake County, State of Utah, Stewart M. Hanson, Sr., Judge.

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FILED

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ELECTRIC & MOTOR COMPANY,)	
)	
Defendant-Respondent.)	

NATURE OF THE CASE

This is an action by the appellant, Keith Sohm, to collect contingent legal fees. The respondent-Winegar asserted that he only agreed to pay a reasonable fee for services rendered and counterclaimed to recover excessive fees which were retained by attorney Sohm.

DISPOSITION OF THE LOWER COURT

The Lower Court, sitting without a jury, found that there was no contingent fee agreement; rather, the appellant-Sohm had been retained on an implied agreement, whereunder the respondent-Winegar would pay a reasonable fee. The Court found that the appellant-Sohm had in fact

been paid more than a reasonable fee and dismissed his complaint. The Lower Court, further, dismissed Mr. Winegar's counterclaim and ordered each party to bear its own costs.

RELIEF SOUGHT ON APPEAL

The defendant-respondent, Wendell D. Winegar, seeks this Court to affirm the Lower Court's decision and to award him costs.

STATEMENT OF FACTS

The plaintiff-appellant has failed to state the facts in a light most favorable to the prevailing party below. The facts when so viewed show the following:

1. The plaintiff-appellant (hereinafter "appellant-Sohm"), is a licensed member of the Utah Bar and commenced doing legal work for the defendant-respondent, (hereinafter "respondent-Winegar"), in the 1960's. At that time he did work on the basis of a \$25.00 per month retainer. (R-66). Subsequently, the appellant-Sohm changed the fee arrangement and began doing work on a basis of \$25.00 per hour. (R-67). This sum was later increased to \$35.00 per hour. (R-67; see Exhibit P-6).

2. In mid 1972, the appellant-Sohm was working on an hourly basis. At approximately that time, he accepted a case involving Mr. Winegar known as the "All Grain" Matter. When he undertook the case, appellant-Sohm did not discuss

his fee with Mr. Winegar, but assumed that he would be paid a reasonable fee. He testified:

"Q. (Mr. Cutler) You didn't discuss your fee?

"A. (Mr. Sohm) No I didn't.

...

"Q. (Mr. Cutler) You just contemplated a reasonable fee of Mr. Winegar ...

"A. (Mr. Sohm) Very much so.

"Q. (Mr. Cutler) You knew he had to pay the fee?

"A. (Mr. Sohm) Yes.

...

"Q. (Mr. Cutler) Mr. Winegar would have had the resources to pay any fee you charged him as long as it was reasonable?

"A. (Mr. Sohm) Yes.

"Q. (Mr. Cutler) The outcome of this litigation didn't depend on whether you would or would not be paid?

"A. (Mr. Sohm) It didn't matter. I think he would have paid me ..." (T-69-70)

After the suit was commenced, appellant-Sohm wrote to Mr. Winegar and indicated he may be willing to take it on a contingent fee basis, if he received a \$600.00 cash retainer. (T-70). Concerning this offer, Mr. Sohm testified:

"Q. (Mr. Cutler) Well, Mr. Sohm, as of August 21, 1972, by your own letter, you said you wanted a \$600. retainer fee to be applied against the contingent arrangement, or you wanted to be paid on an hourly basis, isn't that correct?

"A. (Mr. Sohm) Right.

"Q. (Mr. Cutler) Had you performed some work on

this matter, assuming, as I understand your testimony, that at any rate you would be paid some reasonable fee?

"A. (Mr. Sohm) This is right." (T-71).

The defendant-respondent never accepted the offer of a contingent fee and never tendered the \$600.00 retainer fee requested by Mr. Sohm. (R-76). Rather, appellant-Sohm's first billing demanded payment based on the hours worked to that date. (See Statement of August 21, 1972 marked as Exhibit 3-P, R-72). In this statement, Mr. Winegar was billed for 18 hours of legal work at \$25.00 per hour. (R-73). That billing was paid by Mr. Winegar. (R-74).

3, On December 21, 1972, Attorney Sohm obtained a summary judgment against All Grain Company, but a personal claim against a Mr. Lawrence C. Taylor was continued for trial. (See Exhibit 2-P). However, negotiations concerning payment of the account were apparently underway subsequent to the entry of the summary judgment, but prior to the trial of Mr. Taylor. On February 16, 1973, Attorney Sohm informed Mr. Winegar that there was a prospect of obtaining payment on account in installments of \$1,000. Now that some payment appeared probable on the account, Attorney Sohm attempted to convert the heretofore hourly arrangement to a contingent one by unilaterally informing respondent-Winegar that he was going to figure his fees on a contingent basis. (Exhibit 8-D).

4, The first payment on the All Grain case was made on February 24, 1973 and irregular payments were made through

August, 1973. Thereafter appellant-Sohm did little or nothing to collect the balance owed on the account. Mr. Winegar testified:

"Q. (Mr. Cutler) Did you have to undertake future collections after this (February, 1973) payment?

"A. (Mr. Winegar) Yes. I waited for a number of days or 2 or 3 weeks and I had heard nothing so I called Mr. Sohм to see if any money had been received, and he said, 'no.'

And I says, have you done anything? And he says, 'I have been awful busy,' and he came back and says, 'I can't find your file.'

And I said that time is very important to me and ask him what he was going to do to get this money.

And he said, 'let me check it out.'

And I didn't wait but got on the phone and started calling these people, and I found out they had no contact and I had to make thirty or forty phone calls on my time and efforts because I couldn't get Mr. Sohм to do it for me. (See Exhibit 15-D, showing records of long distance telephone calls and dates evidencing about thirty phone contacts).

...

"Q. (Mr. Cutler) Did you contact Mr. Sohм during this period to see if Mr. Sohм would pick up your laboring oar?

"A. (Mr. Winegar) Yes. I was continually provoked because I couldn't get him to do anything. And he said, 'I will check into it,' and he would call All Grain.' And I said, 'I ain't going to wait. It seems to me you ought to be the attorney, Mr. Sohм, ...' (R-101, 102 and 103).

The respondent-Winegar's records show that payment of \$1,000. was received October 1, 1973 and \$1,958. as full payment on a compromised settlement was received by Mr. Winegar on October 3, 1973. (See Exhibit 13-D; cf. Mr. Sohм's testimony

reported at Page 3 of appellant's brief).

5. The plaintiff-appellant was unable to state the total work he had performed for Mr. Winegar at trial on the All Grain matter; however, he did prepare a complaint, make two (2) Court appearances on Motions and negotiate preliminary arrangements with opposing counsel concerning payment of the debt. (R-79).

6. Appellant-Sohm thereafter billed Mr. Winegar in a variety of ways, at times requesting a fourth and at other times requesting a third of the sums collected, including sums collected by Mr. Winegar's own efforts. (R-79, 80; cf. Exhibit 10-D).

7. For services rendered Mr. Winegar, the appellant-Sohm admitted he received a total of \$2,000., excluding payments made on the Flint-Walling matter. (R-59). Respondent-Winegar's records indicate Mr. Sohms received \$2,500. (Exhibit 13-D; R-106).

8. In approximately 1962, appellant-Winegar requested that attorney Sohms file litigation concerning a Mr. Kurt P. Rothe. After filing the action, the case was dismissed because of the Deadmans Statute. Appellant-Sohms claims that the matter was taken as a contingency. (See Second Cause of Action, R-3). However, he inconsistently testified that he billed Mr. Winegar and was paid his billings. (R-3; cf. R-81). Concerning the Rothe case, Mr. Sohms testified:

"No I billed him something, I thought I ought to have something for it." (R-82, 83).

9. On or about January 24, 1975, (approximately 13 years later), the executor of the Kurt P. Rothe estate determined that approximately \$1,780. was available to pay Mr. Winegar on a claim that he had filed against the estate. The executor was unable to locate Mr. Winegar from his location in Heber City, but noted that Attorney Sohm had previously represented him. Therefore, contact was made with Mr. Sohm in attempt to locate Mr. Winegar. (R-83).

10. Mr. Sohm estimated he spent two or three hours in calls to Mr. Winegar and in obtaining the money from the executor of the estate. (R-85). However, no court appearance was required and no legal papers were drafted by Mr. Sohm. (R-87). Rather, the extent of Mr. Sohm's efforts involved telephone calls with an attorney representing the estate, contacting Mr. Winegar to inform him of the event and confirming his approval of the settlement with the executor. (R-88).

11. Thereafter, the executor forwarded a check made payable to Mr. Winegar; however, Mr. Sohm typed his own name on the check and demanded that he be given a 25% contingency before he would endorse it over to Mr. Winegar. (R-104). Respondent-Winegar refused to pay what he considered extortion and directly contacted the executor. (R-105). The executor cancelled his first check and issued another made payable to Mr. Winegar and

11. The appellant-Sohm demands a one-fourth contingent fee and has billed the defendant the sum of \$445.14. Respondent-Winegar never agreed to pay and never understood that appellant-Sohm expected one-fourth of the estate check, until after Mr. Sohм placed his own name on the check as a payee. (R-105).

12. Appellant-Sohm asserts that \$50. for two hours work is due on a case known as the "Flint-Walling" matter which was billed on an hourly rate. (R-3, 65, 66).

ARGUMENT

POINT I

APPELLANT-SOHM FAILED TO MEET HIS BURDEN TO PROVE THAT THE PARTIES CONTRACTED AND AGREED THAT MR. SOHM WOULD RECEIVE A CONTINGENT PERCENTAGE FEE OF ANY RECOVERY MADE ON BEHALF OF RESPONDENT-WINEGAR.

As is clear from the pleadings of appellant-Sohm, he has alleged that he had an agreement with respondent-Winegar to receive a 25% contingent fee of all recoveries made on two collection matters. The first known as the "All Grain" suit, involved a collection on an account receivable for merchandise and services delivered. The second known as the "Rothe Estate" involved another account payable situation.

Interestingly, appellant-Sohm not only failed to prove the existence of such a contingency fee agreement, but (at least with regard to the All Grain suit) admitted that he had abandoned that claim and sought to recover on the basis of a reasonable charge for services rendered. His testimony clearly stated that he took the All Grain matter on an

hourly basis; however, after collection became probable, he attempted to convince Mr. Winegar to substitute the hourly fee arrangement for a one-third contingency, with a \$600. base retainer. That arrangement was never consummated by Mr. Sohm's own admission. He testified:

"Q. (Mr. Cutler) After you tell him, (Mr. Winegar in a note on the bottom of a bill): ... 'I will pursue the matter on a contingent basis with a minimum as suggested in one of my previous letters,' did he (Mr. Winegar) agree to pay this?

"A. (Mr. Sohm) No, he did not agree to pay this." (R-76).

In fact, Mr. Sohm testified that he understood he would be working on an hourly rate as a basis of determining a reasonable fee and not a contingent one. (See quote in Statement of Fact No. 2). Thereafter, during pointed cross-examination he seemed to abandon his contingency fee claim and switch his legal theory to an argument that 25% of a collection was a reasonable fee. He stated:

"My contention, of course, is that as far as the fee: one-fourth is a reasonable fee." (R-75).

Therefore, although Mr. Sohm's complaint alleged a contingent fee agreement, his own testimony proved that the All Grain matter was taken on the basis of a reasonable fee. This fee was in turn based on the hours worked and payable at the rate of \$25. per hour.

Subsequently, appellant-Sohm did retain funds from payments received through his office, equal to 25% of the amount collected, and on several occasions billed Mr. Winegar for sums that equaled 25% of the amount of money received directly by him. On page 7 of his brief,

appellant-Sohm cleverly has quoted a portion of Mr. Winegar's testimony, which standing out of context would lead the Court to believe that Mr. Winegar did not object to this billing. However, Mr. Winegar's full response is as follows:

"Q. (Mr. Soh) And you never did object to the fee I had put on those bills of one-fourth did you?

"A. (Mr. Winegar) I don't believe that is a fair question.

"Q. (Mr. Soh) You never did?

"A. (Mr. Winegar) Yes, I did. (R-109) (Emphasis added).

Admittedly, billing and payment on some of those billings may be an indication concerning the agreement between the parties. However, Mr. Winegar's payment over objection and this suit itself, with its counterclaim to recover excessive fees, neuters any such inference. Thus, the record demonstrates that the Lower Court properly held that there was no agreement between the parties to pay Mr. Soh a contingency fee. This Court in its own memorandum decision stated:

"It clearly appears to the Court from the evidence that there never was a meeting of the minds as to any agreement, contract, rate of pay, or otherwise as to attorney's fees, and that the plaintiff has been well compensated for the services rendered by him to the defendant, ..." (R-48) (Emphasis added).

Appellant-Sohm has attempted to meet this finding by asserting the new legal theory of estoppel. (See page 7 of appellant's brief). Appellant-Sohm's failure to cite any legal authority for this assertion is indicative of

its true legal merit.

Promissory estoppel is an equitable principle, premised on detrimental reliance by one party because of the actions or failure to act on the part of another. Petty v. Gindy Mfg. Corp., 17 Utah 2d 32, 404 P. 2d 30. The appellant-Sohm has no pleadings asserting estoppel and has presented no fact to show detrimental reliance. The principle of estoppel simply does not apply to this case. Rather, this case is more correctly one of oral contract, with factual interests concerning offer, acceptance and the reasonability of charges. Certainly, such a case does not raise the issue of estoppel.

Further, this Court has repeatedly held that it is not proper to assert a new theory for the first time on appeal. In holding that matters not raised in the pleadings nor put at issue in the trial cannot be considered for the first time on appeal, this Court succinctly stated:

"Orderly procedure, whose proper purpose is the final settlement of controversies, requires that a party must present his entire case and his theory or theories of recovery to the trial court; and having done so, he cannot change to some different theory and thus attempt to keep in motion a merry-go-round of litigation." Simpson v. General Motors Corp., 24 Utah 2d 301, 470 P.2d 399; see also, Nickle v. Guarascio, 28 Utah 2d. 425, 503 P.2d 861 (1972).

However, it is to be noted that the writer has no quarrel with the general points made in the citations of authority submitted by appellant-Sohm, which in substance state that a fee arrangement between a lawyer and a client

is one of contract. The principles of contract do apply to such an agreement; however, the cannons of ethics regulating the conduct of lawyers throws significant light on how the Court should construe fee arrangements. These cannons impose the following duties upon a lawyer:

As soon as feasible after a lawyer has been employed, it is desirable that he reach a clear agreement with his client as to the basis of the fee charges to be made. ... It is usually beneficial to reduce to writing the understanding of the parties regarding the fee, particularly when it is contingent. A lawyer should be mindful that many persons who desire to employ him have had little or no experience with fee charges of lawyers and, for this reason, he should explain fully to such persons the reasons for the particular fee arrangement he proposes. Cannon 2-20 Code of Professional Responsibility and Code of Judicial Conduct. (Emphasis added).

Contingent fee arrangements in civil cases have long been commonly accepted. However, again the cannons of ethics proscribes the lawyers conduct with regard to them. They provide:

"Although a lawyer generally should decline to accept employment on a contingency basis by one who is able to pay a reasonable fixed fee, it is not necessarily improper for a lawyer, where justified by the particular circumstances of a case to enter into a contingency fee contract in a civil case with a client who, after being fully informed of all relevant factors, desires that arrangement. Cannon 2-20, Code of Professional Responsibility and Code of Judicial Conduct. (Emphasis added).

In the case before the Bar, the appellant-Sohm failed to meet these requirements. In fact, the proof submitted established that Mr. Winegar was able to pay a reasonable fee, contracted with appellant-Sohm to pay a reasonable fee based on an hourly charge of \$25. per hour; further, he paid to Mr. Sohms a series of billings, the first of which

clearly stated he was being charged on an hourly basis.

(See Statement of Facts number 2 through 7).

It is respectfully submitted that under the facts of this case appellant-Sohm failed to prove the existence of a contingent fee arrangement and the Lower Court findings should be affirmed by this Court.

Similarly, with regard to the Rothe matter, fundamental principles of contract law are particularly relevant.

The Rothe matter was commenced and terminated in approximately 1962, almost 13 years prior to the case before the Bar. Appellant-Sohm testified that the Rothe case was undertaken on a contingent fee basis; however, the respondent-Winegar could not recall specifically the fee arrangement which existed between him and Mr. Sohms in 1962. However, Mr. Winegar was certain that subsequent to the dismissal of that action because of the Deadman's Statute, he had received and paid a bill submitted by Mr. Sohms.

On examination concerning this assertion, Mr. Sohms admitted that subsequent to the case's dismissal, he had billed for his services and had been paid. He stated:

"I billed him something, I thought I ought to have something for it." (R-82-83).

Apparently, Mr. Winegar agreed, either because of their original understanding concerning fees or because he consented to a novation of their original understanding. At any rate, the matter was the subject of an accord and satisfaction, quite apart from the fact (as alleged in Mr. Winegar's answer and counterclaim) the Statute of

Sohm on this case. (See 78-12-36, Utah Code Ann., 1953; R-12).

The testimony at trial was clear and un rebutted that there was no specific agreement between the parties that respondent-Winegar would pay a contingency of 25% for the amount collected on the Rothe Estate check which was tendered in 1975. In fact, there was no mention or discussion of any fee by Mr. Sohм; rather, it was reasonably assumed by Mr. Winegar that he would pay a reasonable fee for the time rendered by Mr. Sohм. (See Statement of Facts 8 through 12).

Nowhere in the record does Mr. Sohм even suggest that in 1975 he entered into any arrangement which remotely could be considered as an agreement to assist Mr. Winegar on a contingency basis, with reference to the Rothe Estate matter. Rather, his entire claim is based upon the alleged contingent arrangement created some 13 years before, which by his own admission he had converted into a fixed fee arrangement and which fee had been fully satisfied in 1962.

It is respectfully submitted that the law of Utah requires lawyers to establish clearly their fee arrangements with their clients. Particularly where contingent fee arrangements are to be established, these arrangements should be explained clearly to the client and where possible, reduced to writing. Because of a vastly superior position of experience and knowledge, as recognized in the Canons of Ethics, the doubt concerning fee arrangements should be resolved against the lawyer.

In the case before the Bar the evidence overwhelmingly shows that appellant-Sohm agreed to provide his services on an hourly basis, but after collection became certain, he unsuccessfully attempted to persuade respondent-Winegar to accept a percentage contingent fee. Having failed to perform his burden of proof, the Court should affirm the Lower Court's decision that there existed no contingent fee arrangement.

POINT II

APPELLANT-SOHN HAS RECEIVED A REASONABLE FEE FOR HIS SERVICES.

Appellant-Sohm did not plead in the alternative that he should receive a reasonable fee for his service; however, the defendant, in his counterclaim, did assert that he had agreed to pay Mr. Sohms a reasonable attorney's fee. In this counterclaim, respondent-Winegar did allege that he had paid an excess of a reasonable fee and requested a judgment for the difference.

Concerning the reasonability of charges, the Canons of Professional Responsibility set the underlying framework concerning the determination of a reasonable and proper fee. These Canons recognize that lawyers must be compensated for their services in order to preserve the integrity and independence of the profession. However, it states:

"A lawyer should not charge more than a reasonable fee, for excessive costs of legal services would deter laymen from utilizing the legal system in protection of their rights. Furthermore, an excessive charge abuses the professional relationship between lawyer and client." (E.C. 2-17, Code of Professional Responsibility)

The Cannons further provide:

"The determination of the reasonableness of a fee requires consideration of all relevant circumstances, including those stated in the disciplinary rules. The fees of a lawyer will vary according to many factors, including the time required, his experience, ability, reputation, the nature of the employment, the responsibility involved, and the results obtained." (E.C. 2-18, Code of Professional Responsibility).

In the case before the Bar, appellant-Sohm cagily avoided all questions concerning the amount of time extended on the All Grain case, except the original 18 hour billing. (R-78). However, the Court record of the All Grain matter was before the Court and examined by the Judge. Further, Mr. Winegar described the work that was actually performed in that case in the following colloquy:

"Q. (Mr. Cutler) It is in the record, or in the Court that you have ten hours on it?

"A. (Mr. Sohм) I haven't added it up. I don't know the amount, and I suspect it is greatly over that.

"Q. (Mr. Cutler) You prepared the complaint and made two court appearances and then you had some conversations with Mr. Winegar, said you weren't doing anything to collect the money for him, is that correct?

"A. (Mr. Sohм) No. I have had no conversations at all. I have collected the money and sent bills on it and sent him records of it. " (R-79)

...

"Q. (Mr. Cutler) After you obtained judgment what efforts did you make at collection?

"A. (Mr. Sohм) I contacted the attorney on numerous instances, but mainly I kept the record of what was received and submitted back to them the interest, principle and the balance, and then received payments apparently in February, March, April and June. They skipped a month." (R-80).

mony concerning the work performed came from cross-examination of Mr. Sohmm. He testified that during 1975 he had a couple of telephone conversations with representatives of the Rothe Estate and conferences with Mr. Winegar. He testified:

"Q. (Mr. Cutler) Who did you have to call?

"A. (Mr. Sohmm) I called Mr. Winegar a couple of times and the attorney a couple of times, yes.

"Q. (Mr. Cutler) Was he in Heber City?

"A. (Mr. Sohmm) I phoned and used my own phone to talk to him to find out what it was all about and the necessary information.

"Q. (Mr. Cutler) Would it have been under a couple or three hours?

"A. (Mr. Sohmm) At least that." (R-85).

Mr. Sohmm then testified at that time he was billing at the rate of \$25. per hour to Mr. Winegar and stated:

"At that time I was billing \$25. per hour to Mr. Winegar, ..." (R-85).

With reference to the Flint-Walling dispute, Mr. Sohmm testified that he was entitled to two hours work at the rate of \$25. per hour; he stated:

"... the last bill that amounted to two hours was billed at \$25. per hour." (R-65; Exhibit 6-P).

Thus, giving Mr. Sohmm the benefit of the doubt, there were approximately 35 hours of legal work performed. At the rate of \$25. per hour it would have generated a charge of \$875. However, on the contrary, the plaintiff was paid by his own admission \$2,000.00, but the sum of \$2,500.00 if Mr. Winegar's testimony is believed. (See Statement of Fact 7).

Regarding the facts before the Lower Court, it specifically found:

"1. ...regarding the matters of issue before the Court, there never was a meeting of the minds to an agreement concerning the payment of attorney's fees. Defendant did impliedly agree to pay a reasonable fee for services rendered on the cases subject of the within litigation.

"2. The plaintiff (Mr. Sohmm) has been fully paid a reasonable attorney's fee by the defendant (Mr. Winegar) for all services rendered to the date of the termination of their relationship and, in particular, on all matters subject to the within litigation." (R-49).

The law in Utah, concerning appeals of contested issues of fact, is so clear as to hardly require recitation: Facts found by the lower Court will be viewed in a light most favorable to the prevailing party. Further, judgments will be sustained on appeal if they are supported by any substantial evidence or reasonable inferences to be drawn therefrom. The burden of overcoming the presumption of the validity is upon the challenger. Taylor v. Johnson, 15 Utah 2d. 343, 393 P.2d. 382 (1964); Powers v. Taylor, 14 Utah 2d. 152, 379 P.2d. 380 (1963); Gordon v. Provo, 15 Utah 2d. 287, 391 P.2d. 430 (1964).

As the foregoing demonstrates, the appellant-Shomm has chosen to quarrel with the findings sometimes on disputed issues of fact and on other occasions against his own admissions of record. Appellant-Shomm refused even under cross-examination to state with specificity the work which he had performed on behalf of Mr. Winegar or the hours worked. Rather, he attempted to proceed on the basis

of a contingency fee arrangement, despite his own admissions to the contrary.

It is respectfully submitted that the Lower Court attempted to give appellant-Sohm the benefit of the doubt on the reasonability of the fee received by failing to award a judgment to Mr. Winegar on his counterclaim for excessive fees paid. However, it is respectfully submitted that the findings of the Lower Court concerning the reasonability of the moneys received by Mr. Winegar should not be disturbed. It is respectfully submitted that this Court should affirm the decision of the Lower Court in all particulars and dismiss the appeal, with costs awarded to respondent-Winegar.

CONCLUSION

To minimize unnecessary appeals, it is incumbent upon appellants to view the facts in a light most favorable to the prevailing party below. The appellant-Sohm has failed to so view the facts.

The facts when viewed in a light most favorable to the prevailing party demonstrate that there was an explicit agreement whereunder respondent-Winegar agreed to pay a reasonable fee for sundry services rendered by attorney-Sohm. Mr. Winegar paid approximately \$2,500.00 in fees. In return he received legal services on two uncomplicated debt collection matters. A third case merely involved directing the executor of an estate to the right address of the defendant and acting as a middleman in presenting an offer

of settlement on behalf of the estate. A fourth merely represented two hours of work, billed at \$25. per hour.

The Lower Court finding that the moneys received were more than a reasonable fee is adequately demonstrated in the record and should be affirmed by the Court.

Respectfully submitted,

ROGER F. CUTLER,
Attorney for respondent-
Wen D. Winegar