

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

HOSTE, BEJIN & IHRIE, P.C.,

Plaintiff,

vs.

Case No. 2015-26-CK

CONVERGENT REVENUE CYCLE  
MANAGEMENT, INC.,

Defendant.

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OPINION AND ORDER

Plaintiff has filed a motion for summary disposition. Defendant has filed a response and requests that the motion be denied. In addition, Plaintiff has filed a reply in support of its position.

*Facts and Procedural History*

Defendant is a national receivables management company. Beaumont Hospital was one of Defendant's clients. Defendant was hired by Beaumont to collect delinquent receivables through their legal department. In exchange for its services to Beaumont, Defendant charged a 35% contingent fee.

On June 11, 2012, the parties executed a "Retainer Agreement" pursuant to which Defendant retained Plaintiff to assist its efforts to collect outstanding fees from Beaumont (the "Agreement"). With respect to fees, the Agreement provides, in pertinent parts:

1. Until October 31, 2012 [Plaintiff's] compensation will be based on [Plaintiff's] time, effort, and services rendered. [Plaintiff's] time will be charged at a rate of \$225.00 per hour, billed in minimum .3 hour increments. Paralegal time will be charged at a rate of \$125.00 per hour, billed in minimum .3 hour increments. After July 31, 2012 [Plaintiff's] compensation

will be paid on a fixed-percentage contingent fee basis, as detailed in paragraph 7 below.

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7. After October 31, 2012, [Plaintiff] shall not be paid on an hourly basis. After such date, as compensation for legal services [Plaintiff] renders, [Defendant] assigns to [Plaintiff] one third of the amount recovered after costs, including all money and things of value recovered in the claim, whether they are recovered by compromise, settlement, appeal, or otherwise.

At or around the time it retained Plaintiff, Defendant made clear that its goal was to try to negotiate a quick settlement with Beaumont. However, Plaintiff advised Defendant that it might take filing a lawsuit in order to get Beaumont to settle the dispute. On September 25, 2012, Plaintiff, on behalf of Defendant, filed a lawsuit against Beaumont. As of October 31, 2012, Defendant allegedly cut off its communications with Plaintiff, but did not formally terminate the attorney-client relationship. On November 13, 2012, Defendant and Beaumont reached a settlement agreement pursuant to which Beaumont paid Defendant \$90,000.00 (“Settlement Funds”).

On January 5, 2015, Plaintiff filed its complaint in this matter seeking to recover 1/3 of the Settlement Funds pursuant to the Agreement. On February 9, 2015, Plaintiff filed its instant motion for summary disposition pursuant to MCR 2.116(C)(10). Defendant has filed a response and requests that the motion be denied. On March 2, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

#### *Standard of Review*

A motion under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered

evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

### *Arguments and Analysis*

In its motion, Plaintiff contends that it is entitled to one-third of the Settlement Funds based on the Agreement. In its response, Defendant contends that Plaintiff's requested fees should be denied as the requested amount is unreasonable.

The Michigan Court of Appeals in *Univ Rehab Alliance, Inc v Farm Bureau Gen Ins Co* of Mich, 279 Mich App 691, 699-700; 760 NW2d 574 (2008) addressed the analysis that a Court must complete in connection with determining whether requested fees are reasonable in the context of contingent fee agreements. Specifically, the Court of Appeals observed:

This Court in *Liddell v Detroit Automobile Inter-Ins Exch*, 102 Mich App 636; 302 NW2d 260 (1981) rejected the claim that a contingent fee is always reasonable. But in *Hartman v Associated Truck Lines*, 178 Mich App 426, 430–431, 444 NW2d 159 (1989), this Court held that the trial court abused its discretion by not considering a contingent-fee agreement when determining a reasonable attorney fee. We also find instructive our Supreme Court's discussion in *Dep't of Transportation v Randolph*, 461 Mich. 757, 610 NW2d 893 (2000), regarding reimbursement under the Uniform Condemnation Procedures Act, MCL 213.51 *et seq.*, of a property owner's reasonable attorney fee. The *Randolph* Court contrasted the specific multistep analysis required by MCL 213.66(3) with “other fee-shifting statutes that simply authorize the trial court to award ‘reasonable attorney fees without regard to the fees actually charged.’” *Randolph, supra* at 765–766, 610 N.W.2d 893. With statutes like MCL 500.3148(1), “the [trial] court is free to award *any* fee as long as it is reasonable.” *Randolph, supra* at 766, 610 N.W.2d 893 (emphasis in the original). The *Randolph* Court instructed trial courts in determining reasonableness to “consider the eight factors listed in MRPC 1.5(a)” and rejected both a contingent fee as presumptively reasonable and also the so-called “lodestar” method of multiplying the reasonable number of hours worked by a reasonable hourly rate as the preferred way of determining the reasonableness of attorney fees. *Id.* at 766 n. 11, 610 N.W.2d 893. Thus, a reasonable attorney fee is determined by considering the totality of the circumstances. While a contingent fee is neither presumptively reasonable nor

presumptively unreasonable, multiplying the reasonable number of hours worked by a reasonable hourly rate is not the preferred method.

In this case, the parties have failed to address the factors set forth in MRPC 1.5. Consequently, the Court is unable to determine whether the requested fee is reasonable given the particular facts presented in this matter. As a result, Plaintiff's motion must be denied without prejudice.

*Conclusion*

Based upon the reasons set forth above, Plaintiff's motion for summary disposition is DENIED, WITHOUT PREJUDICE. This *Opinion and Order* neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

/s/ John C. Foster  
JOHN C. FOSTER, Circuit Judge

Dated: March 6, 2015

JCF/sr

Cc: *via e-mail only*

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