102 A. 516 (R.I. 1918)

CRAFTS

v.

MECHANICS' SAV. BANK et al.

No. 5082.

Supreme Court of Rhode Island

January 4, 1918

On Motion for Reargument, Jan. 18, 1918.

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Lewis A. Waterman and A. B. Crafts, both of Providence, for plaintiff.

Gardner, Pirce, and Thornley, of Providence, for defendants.

PER CURIAM.

This is an action in assumpsit on the common counts and quantum meruit to recover a balance of account alleged to be due the plaintiff for legal services. The case was tried by a jury in June, 1915, and resulted in a verdict for the defendant. Subsequently on motion of the plaintiff the trial justice set this verdict aside on the ground that it was against the evidence, and that the verdict should have been for the plaintiff for the reason that the amount already received by the plaintiff and acknowledged by him was not a sufficient compensation for the services rendered. The case comes before this court on the exception of the defendant to this ruling of the trial justice in granting the plaintiff's motion for a new trial.

From the testimony it appears that on April 26, 1901, the defendant bank was insolvent and was about to go into liquidation. The plaintiff had acted prior to this time, at different times, as attorney for the bank, and on this date was notified of the situation by one of the trustees of the bank, and was engaged at that time to act as general counsel to give advice and render services in Westerly, exclusive of any litigation, at an annual salary of $500.

J. B. Foster, who was dead at the time of the plaintiff's employment, and E. B. Foster, who died in the latter part of 1909, had each been successively treasurer of the bank. They had invested the funds of the bank in speculative securities, and had borrowed the money of the bank upon such securities, among which were certain certificates of stock of the Phoenix Oil Company and the Osage Oil Company. The assets of these corporations were leases of oil and gas lands located in Oklahoma and Indian Territory and belonging to the Indian tribes. These leases expired in March, 1906, and were made upon condition that the land should be developed by the lessees, and could only be renewed by action of the federal government, which action was dependent on the development made of the property by the lessees and the income received by the Indian tribes. In the year 1901, after the plaintiff's employment, it became known to the bank and to the plaintiff, its counsel, that these leases were in peril through the failure to develop the property, and all parties in interest in December, 1901, united to form a new corporation called the Indian Territory Illuminating Oil Company under the laws of New Jersey, which company took over the property of the two oil companies, and assumed their obligations, and the stockholders of the old

companies became stockholders in the new company.

Prior to the incorporation of this Indian Territory Oil Company a contract had been made with certain promoters to lease and operate the property, and they continued in control of the property until some time in December, 1902. The stock of the Phoenix and Osage companies had been issued in the names of different persons, and the title of the bank, as pledgee of the Fosters or by reason of money which it had advanced, was not satisfactorily evidenced, but after various negotiations with the representatives of the estates of the two Fosters a conveyance of all the stock and interests of the two estates was made to the bank. The promoters, in whose charge the company's affairs had been placed, were not successful in the operation of the company's affairs, and in December, 1902, a meeting of a number of the stockholders and of the trustees of the bank was held in Westerly at which Mr. Crafts, representing the bank, and a Mr. Brennan, a Wisconsin attorney, representing some of the other stockholders, were present. At this meeting plans were made to begin proceedings to oust the promoters and their assigns, and get possession of the property and develop it. An agreement was made between the bank and some of the other parties that Mr. Brennan should have charge of these proceedings, with authority to bring any necessary suits in the name of the bank. At this meeting, an attempt was made to define the interests of the different parties, and an instrument was drawn in which it was stated that the bank was entitled to receive from the company about $69,000 in cash and stock of the par value of $200,000. This agreement was executed by the bank, and by some, but not all, of the other parties, and it is admitted that it was not legally binding on any of the parties. Immediately thereafter in January, 1903, Mr. Brennan began legal proceedings in New Jersey, where the company was incorporated, and ancillary proceedings in Oklahoma and Indian Territory, where its property was located and local counsel were also employed in both these jurisdictions.

In the meantime the promoters or their assigns, who had elected themselves to the officers in the corporation, brought suit in the courts of the Indian Territory to compel the former officers to deliver to them the books and paraphernalia of the company. Negotiations for a settlement of all this litigation were entered into, and in February, 1903, a settlement was made by which the promoters

resigned their offices and transferred their small holdings of stock. Certain of the parties represented by Brennan were elected to the offices, and Mr. Stillwell, a relative of Mr. Brennan, was appointed receiver, which action at the time was approved by the plaintiff. In May, 1903, through the activities of others than the plaintiff, a sublease of a part of the property was made for the sum of $80,000, and the bank and the plaintiff were kept informed of these proceedings. Meantime the bank and Mr. Crafts were attempting to dispose of the bank's interest in the property, but were unsuccessful. When the officers of the company received the money for this lease, they immediately prepared to settle with its creditors, of whom the bank was the principal one. The receiver was discharged, and Mr. Brennan, who had telegraphed to Mr. Crafts in Westerly that he was coming to Westerly to settle with the bank, started east with $55,000 in legal tender. Upon receipt of this telegram, Mr. Crafts started at once for Indian Territory, leaving with the treasurer of the bank, Mr. Thompson, a telegram to be sent to Mr. Stillwell as soon as he (Mr.

Crafts) was out of the state, to the effect that no settlement would be considered, and that he (Crafts) was coming out to have the receiver reinstated. Mr. Crafts did not tell the trustees that Brennan was coming to Westerly to settle the bank's claim, but instructed them that if any one should come to Westerly in his absence with an offer of settlement to refuse any such offer. Brennan arrived at Westerly and made an unlimited tender of $55,000 to the trustees on account of the bank's claim, and also offered to deposit this amount in the Washington Trust Company in Westerly, and to give bond for the payment of any further judgment which the bank might obtain. The trustees, acting upon the advice given by the plaintiff, refused these offers.

The plaintiff upon his arrival in Indian Territory filed in court a motion asking that the receiver be reinstated. To meet this the company deposited with the court $70,000 to satisfy the claim of the bank as it might be allowed. In October, 1903, the bank joined with certain other creditors, and plaintiff and other counsel were sent to Oklahoma to try to effect a settlement. Brennan testifies that at that time he made an offer to plaintiff of $70,000 in cash and $300,000 par value stock, which was refused. All the other parties effected settlements at this time, but plaintiff, although requested to have the trustees come out, refused to do so. This large offer was made, as testified to by Mr. Brennan, by reason of the necessity for the company to settle with its creditors in order that they might proceed with development work and hold their leases. In November, 1903, plaintiff, accompanied by Mr. Thompson, the treasurer of the bank, and Mr. Crandall and Mr. Willard, two of the trustees of the bank, again went West in order, if possible, to effect a settlement. At this time there was pending in the Western court a motion of the company to enjoin a threatened foreclosure by the bank of stock of the Phoenix and Osage companies which it claimed to hold as collateral, and a referee was appointed to take testimony. The hearings before the referee by counsel were continued from day to day while the parties negotiated, and an agreement was finally arrived at between Mr. Brennan representing the corporation and the trustees representing the bank whereby the bank released its claim upon the receipt of $60,000 cash, $200,000 par value stock, and 21,840 acres of leased land, such leases expiring in 1906. The agreement of settlement was drawn by Mr. Brennan, and the trustees assisted to a certain extent by Mr. Crafts, but there is evidence that not only during this time, but during the prior visit in October, the plaintiff was incapacitated at times from conducting the business of his clients, and that as a consequence at the last meeting, when the settlement of the bank's claim was made, the trustees were obliged to employ local counsel in order to see that their rights were properly protected in the agreement of settlement. When the payment of the $60,000 was made the treasurer of the defendant bank requested that the check be made to the order of the bank, but to this Mr. Crafts objected, and upon application to the court it was ordered to be drawn to the order of Mr. Crafts as counsel of record. Mr. Crafts offered to have two checks made, one to him for $10,000, and one to the bank for $50,000, which offer the bank officials declined. The bank at that time and ever since has claimed that the plaintiff had no right to retain as much as $10,000 on the ground that such amount was an excessive charge for the services which had been rendered. Mr. Crafts did not wish to carry $60,000 to Rhode Island, and therefore sent the check to his wife in Westerly, and had it deposited to his credit. Upon his return to Westerly he gave the treasurer of the bank $50,000, retaining $10,000. Plaintiff admits that, in addition to this $10,000, he has received for

services in this oil litigation, so-called, about $1,200, while the trustees claim that he received about $2,300 or $12,300 in all. For all services rendered between April, 1901, and December, 1903, he has received, as appears by the bill of particulars, $13,731.17.

Plaintiff asserts that he told the officers of the bank when he paid them the $50,000 that should the stock and leases prove valuable he should expect an additional fee, but they all deny that he made such a statement. In December, 1903, the bank demanded an itemized bill, which was not furnished until August, 1904. To this was appended a memorandum that an additional charge would be made contingent upon the value of the stock and leases. This, the trustees testify, was

the first knowledge that they ever had that plaintiff made any such claim. On the other hand, the plaintiff claimed that the trustees were notified of the nature of his claim for compensation by letter of January 20, 1903. The trustees denied any knowledge of this letter. The question whether such a letter was ever sent, or if sent was ever received by the bank, was a question of fact for the jury, and not for the court.

On December 14, 1909, six years lacking two or three days after the rendering of his last service, Mr. Crafts brought this suit for $50,000. The delay in bringing this suit when considered with reference to the somewhat arbitrary action of the plaintiff in the retention of the $10,000 above referred to naturally raises the question as to whether the claim made in the present suit is not an afterthought on the part of the plaintiff, and if the jury came to this conclusion we cannot say that their finding was erroneous.

At the trial the court charged the jury carefully in regard to the law applicable to the case. The court stated that the principal contest came on the question of whether or not the compensation for the plaintiff's services was to depend in any way upon the result of the litigation in regard to the oil properties; that it was agreed that the annual payment of $500 did not cover all the services rendered, and that he was to receive compensation outside of this amount for what extra services he had rendered to them, and that it was for the jury "to determine what the contract was in that respect, what the services were that were performed, and what was their worth, and whether Mr. Crafts had been insufficiently compensated for them, and, if so, then what sum would sufficiently compensate him in regard to the services rendered in that respect." The question of whether counsel by his improper conduct had made unnecessary labor for himself was left to the jury, with instructions that in any event counsel was not entitled to recover for such services. Again the court says:

"Now, gentlemen, even though Mr. Crafts had a special contract, as he says, with the bank, by which his services were in a measure to be determined according to results that were attained in the oil matters, still if notwithstanding that agreement he has received all that his services are fairly worth, he is not entitled to receive anything more, that is, under the contract. The parties are bound by the contract, but if, taking into consideration the contract, he has been paid in full, of course you will not award him anything more."

The jury were properly instructed in regard to the testimony of plaintiff's expert witnesses as to the value of his services. In this respect it is to be noted that this testimony was given in answer

to a hypothetical question, to which exception was taken at the time of the trial by the defendant. The court allowed the question, which in our opinion was improper, because it did not fairly state the case, even from the plaintiff's standpoint, as based on the testimony. Although the admission of this question may not be reversible error, nevertheless it is based on such a partial statement of the testimony that in our judgment the answer of the experts to the same is much weakened, and is not entitled to any decisive weight in the consideration of the question now before this court. In the rescript of the trial judge on file in this case the court says:

"If the jury found that the value of the services so far as affected by the special agreement was adjusted in the retention of $10,000 by the plaintiff December 1, 1903, their verdict is against the evidence so far as such finding is concerned. I am of the opinion that the jury found that there was no special agreement by which the plaintiff's services were to be affected by the result of the oil litigation. If so their verdict is clearly against the weight of the evidence. The existence of such an agreement being established, the verdict should have been for the plaintiff. The amount already received by the plaintiff in view of such an agreement is not sufficient compensation."

After a careful consideration of the testimony in this case we are forced to the conclusion that the statements above quoted are merely the result of conjecture on the part of the trial judge. No special findings on these questions were asked for by counsel or made by the jury. On the contrary, these issues were specifically left to the jury, with directions to find a general verdict in accordance with the instructions of the court applicable thereto. The plaintiff was the principal and, except as to minor matters, the only witness offered in support of his claim in regard to the character and amount of the services rendered by him, and his testimony was opposed to that of a number of witnesses presented by the defendant. After careful consideration of the testimony we are of the opinion that there is ample testimony to support the verdict of the jury, and that the trial court was in error in granting the petition for a new trial.

The principal question submitted to the jury was whether the plaintiff had received adequate compensation for all services rendered by him, or to state it in another way, what was the fair value of the service rendered?

The defendant admitted that plain-had rendered valuable services, but claimed that plaintiff had been paid for the same and in fact overpaid. It must be conceded that in the absence of an express agreement as to the exact amount to be paid for professional services, the decision of either court or jury as to the fair value of such services is from the nature of the case necessarily largely a matter of opinion, based of course on the facts as proved in each case. No two cases are ever precisely alike, and there is no fixed standard by which an award may be measured with exactness. Reasonable men may well differ, within certain limits surely, in

their estimates, and the question is one which is perhaps exceptionally suitable for the decision of a jury. In actions of this character in which there is no definite measure of damages, the rule is well settled that the inadequacy of the recovery must be very apparent to justify the allowance of a new trial, and the opinion of the trial justice on this question, although it merits careful consideration, is not conclusive.

For the reason stated, the exception of the defendant is sustained, and the case is remitted

to the superior court, with direction to enter judgment upon the verdict.

On Motion for Reargument.

This is a motion for leave to reargue the above case, filed by the plaintiff with the consent of this court. After considering this motion and the reasons advanced therein for the reargument, the court finds nothing therein suggested as a ground for reargument which was not fully considered in the opinion of the court already on file in this case, and accordingly the motion is denied.