



SOUTHERN CALIFORNIA

ATTORNEY MALPRACTICE

Fee Disputes

Clients claimed attorney fees were exorbitant

DECISION (P) \$2,558,237

CASE

Gene Simpson, an individual, Donna Simpson, an individual, and C&W Parking Corporation, a Cal. Corporation, Plaintiffs, vs. Ronald S. Barak, an individual, The Law Offices of Ronald S. Barak, Defendants.

No. BC 282616

COURT

**Superior Court of Los Angeles
Los Angeles, CA**

JUDGE Ernest Hiroshige

NEUTRAL(S) Lester Olson

DATE 9/16/2004

PLAINTIFF ATTORNEY(S)

**Ronald W. Makarem, Ruben & Makarem, Los Angeles, CA
Marni Folinsky, Ruben & Makarem, Los Angeles, CA**

DEFENSE ATTORNEYS

**Robert C. Baker, Baker, Keener & Nahra,
Los Angeles, CA
Daniel P. Leonard, Baker, Keener & Nahra, Santa Monica, CA**

FACTS & ALLEGATIONS

Plaintiffs Gene Simpson, 70s, and his wife, Donna, 50s, were co-owners of two parking facilities near Los Angeles Airport called Auto Airport Parking. In 2001, they retained the legal services of Pacific Palisades attorney Ronald S. Barak to represent them in two separate unlawful detainer actions relating to eviction proceedings that had been commenced against them by their landlord, Kilroy Realty. (Barak had previously represented them in other litigation matters.)

Barak entered a cross-complaint against Kilroy Realty. The first unlawful detainer action proceeded to trial and a tentative decision in favor of the Simpsons was issued; having the second unlawful retainer action pending. Shortly after the tentative decision was issued, the Simpsons and Kilroy began talking settlement.

The Simpsons had signed an hourly fee agreement with Barak on Feb. 14, 2001, at a rate of \$400 per hour. Barak originally estimated the cost of litigation to be \$150,000. He did not produce a signed copy of the retainer agreement with his signature. The Simpsons continued to pay him on a monthly billing basis until they ran out of cash.

During the litigation, the Simpsons claimed that they continuously told Barak that they could not afford his fees and requested that he slow down his rapid billing pace. Summaries of his billing records indicated that he spent 23 hours preparing a two-page motion in limine, 150 hours preparing a 113- page trial brief, 70 hours preparing a motion for summary judgment (that was never filed) and 32 hours preparing a motion for attorney fees before judgment was entered. Barak charged for secretarial overtime, billing the Simpsons a total of \$ 19,000 for his secretaries' services. Barak also billed the Simpsons for his associate's time, and at the associate's standard billing rate, when the associate was merely acting as a messenger. The filing of one document in court cost the Simpsons \$570 in legal fees. In total, Barak billed them nearly \$1.4 million in hourly fees, costs and interest charges.

On April 25, 2002, Barak and the Simpsons entered into a contingency agreement. The Simpsons claimed they were pressured into it after receiving repeated phone calls over the course of several days at their residence regarding the agreement, which did not include a provision for a credit. Pursuant to a fine-print clause in the Simpsons' bills, Barak began "discounting" the fees attributable to his associate's time. However, the discount was actually a contingency charge: Barak had structured it so that should the client receive a settlement, then the discounted amount would be doubled and charged back to the client in the form of hourly fees. Barak discounted a total of \$98,000 in fees and, after the case settled, claimed that the "discount" reverted to a charge twice that amount, or \$196,000.

Two-and-a-half months after the Simpsons signed the contingency agreement, Kilroy agreed to pay the Simpsons \$2.3 million to vacate the premises. After the settlement was reached, Barak claimed he was entitled to 40% of the \$2.3 mil lion settlement, or \$920,000, plus \$1.4 million in past due hourly fees, costs and interest.

In July 2002, the Simpsons sought legal counsel and initiated the instant action for legal malpractice, claiming Barak's hourly fees and charges were unreasonable and that the contingency agreement was unconscionable and violated California statutes. The Simpsons further claimed that Barak failed to investigate and timely tender a claim with the Simpson's business insurance that would have covered the defense of the unlawful detainer actions. (Barak and his counsel filed a motion to compel arbitration on the grounds that the agreement was binding and reasonable; hence the references to the parties herein as claimants and respondents)

In their complaint, the Simpsons contended that the hourly fee agreement was void and unenforceable because Barak did not sign the agreement, as required by Business and Professions Code § 6148. The clients contended the contingency fee agreement was void and unenforceable because it did not contain the statement that "fees are negotiable and not set by law" as required by Business and Professions Code §6147, that it was unconscionable and that it was not a fair and reasonable trans action. The Simpsons requested the immediate release of undisputed funds held in the client trust and return of their files. Barak that all his fees and costs were reasonable. He contended that it was the Simpsons' idea to enter into a contingency agreement and that he was resistant to the idea. Barak contended that the contingency agreement was a valid and binding agreement. Barak further contended that it was a surprise to him when Kilroy began settlement discussions in the seven-figure range.. As to the Simpsons' claim that Barak was negligent for failing to investigate whether such coverage existed, he contended that he asked the Simpsons whether their insurance policy covered wrongful detainer actions, but the Simpsons told him it did not and they refused to provide him with a copy of the policy.

The plaintiffs sought release of settlement funds and return of their files.

RESULT In October 2003, Judge Olson awarded \$2.55 million, including attorney fees, cost and related interest charges and penalties, against attorney Barak.