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FILED

JUL 01 2011

**ESTELA M. DE LA CRUZ
J.S.C.**

L&K DENTAL P.A., and DONG
HYUN LEE,

Plaintiffs,

-vs.-

RECEIVABLE MANAGEMENT SERVICE
a/k/a GLOBAL COLLECTION
COMPANY; TRANSNATIONAL
COMMUNICATIONS INTERNATIONAL;
and RDS SOLUTIONS,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

Docket No. BER-L-9555-09

CIVIL ACTION

DECISION PURSUANT TO
MAY 13, 2011 MOTION
FILED BY DEFENDANTS

Motion filed/returnable May 13, 2011

Decided July 1, 2011

Francis Liu, Esq. on behalf of Plaintiffs (Kimm Law Firm)

Glenn Reiser, Esq. on behalf of Defendants Transnational
Communications International (LoFaro & Reiser)

De La Cruz, Estela M., J.S.C.

I. Procedural History and Factual Background

This matter comes before the Court pursuant to a Notice of Motion for sanctions in relation to Rule 1:4-8 filed by defendant Transnational Communications International on May 13, 2011. This Court has considered papers in opposition filed by

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plaintiffs, Dong Hyun Lee and L & K Dental, P.A. as well as the movant's reply to opposition dated June 7, 2011. The Court makes the following findings and conclusions as required by Rule 1:7-4(a).

This matter has an extremely tortured history. This matter arises out of a three (3) year contract between Defendant Trans National Communications Int. ("TNCI") and Plaintiff L&K Dental, PA, ("L&K") for local and long distance phone service and internet service, entered into on December 31, 2008. The contract was signed by Plaintiff Dong Hyun Lee in his professional capacity as president of L&K. TNCI's telephone and internet services were installed and active at L&K's office for approximately four months from March 2009 until June 2009. L&K had previously used a company called XO for its telephone and internet services. The amount due and owing to TNCI from L&K was \$1,931.78, which included service charges and taxes. TNCI hired Defendant Receivable Management Services ("RMS") to collect the outstanding debt. The debt to this date has not been paid by Plaintiffs.

Plaintiffs sued alleging that Defendants TCNI and RMS violated the Fair Debt Collection Practices Act (FDCPA), in addition to violating the New Jersey Consumer Fraud Act and causing Plaintiff Lee intentional infliction of emotional distress. On March 19, 2010, Plaintiffs' claims alleging

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intentional infliction of emotional distress were dismissed pursuant to motions filed by TNCI and RMS. Also on March 19, 2010, this Court dismissed Plaintiffs' FDCPA claims against Defendant TNCI. On December 3, 2010, this Court found that the debt owed by L&K is a business debt, rather than a personal debt, and dismissed Plaintiffs' FDCPA claims against Defendant RMS. On August 20, 2010, Plaintiffs filed an Amended Complaint where they added two (2) new causes of action against TNCI, namely breach of contract and breach of fiduciary duty.

Plaintiffs' August 20, 2010 Amended Complaint also added claims against Defendant RDS Solutions ("RDS"). RDS is a commercial entity in the business of providing telecommunications consulting, service and support to business customers. On or about October 13, 2008, L&K Dental entered into a two-year Master Service Agreement and Enhanced Management Service Agreement with RDS for telecommunications services at a cost of \$50.00 per month. RDS proposed two different options to Dr. Lee for providing his business with the services that he requested. He signed documents for the TNCI option.

On December 10, 2010, Defendant TNCI filed a motion for summary judgment to dismiss those Counts of Plaintiff's Complaint alleging breach of contract, violation of the CFA and breach of fiduciary duty on the part of TNCI. On January 25,

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2011, this Court entered an Order and Rider granting Defendant TNCI's December 10, 2010 Motion for Summary Judgment in its entirety.

On January 28, 2011, Defendant TNCI filed a motion for sanctions against Plaintiffs. On February 10, 2011, Plaintiffs filed a cross-motion for sanctions against TNCI. On February 18, 2011, TNCI filed a motion for summary judgment on the Counterclaim. Also on February 18, 2011, Defendant RDS filed a motion for summary judgment. On March 8, 2011; Plaintiffs filed a cross-motion for summary judgment on TNCI's Counterclaim.

On April 5, 2011, this Court entered an Order and 17-page decision pursuant to 5 motions: TNCI's motion for sanctions was denied without prejudice as premature. Plaintiff's cross-motion for sanctions was denied with prejudice. TNCI's and Plaintiff's respective motions for summary judgment on the Counterclaim (breach of contract) were both denied with prejudice. RDS's motion for summary judgment was granted in part (CFA, Fiduciary Duty) and denied in part (breach of contract). As a result of the April 5, 2011 Decision and Order, the only remaining claims in this matter were: TNCI's Counterclaim for Breach of Contract and plaintiff's claim against RDS for Breach of Contract.

On May 9, 2011, TNCI voluntarily dismissed its Counterclaim against Plaintiff. Also on May 9, 2011, Plaintiff voluntarily dismissed its final Breach of Contract claim against RDS.

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As a result of the May 9, 2011 voluntary dismissals, there are no longer any open claims in this matter. Accordingly on May 13, 2011, TNCI re-filed its motion for sanctions against Plaintiff, as said application is no longer premature.

Rule 1:4-8(b) provides in pertinent part:

(2) Time for Filing; Attorney's Fees. A motion for sanctions shall be filed with the court no later than 20 days following the entry of final judgment. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorneys' fees incurred in presenting or opposing the motion. For purposes of this rule, the term "final judgment" shall include any order deciding a post-judgment motion whether or not that order is directly appealable.

(3) Scope of Responsibility. Except in extraordinary circumstances, a law firm shall be jointly responsible for violations committed by its partners, shareholders, associates and employees.

(c) Sanction on Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate this rule and directing the attorney or pro se party to show cause why he or she has not violated the rule. The order to show cause shall issue before a voluntary dismissal or settlement of the claims made by or against the pro se party or the attorney who is the subject of the order to show cause.

(d) Order for Sanctions. A sanction imposed for violation of paragraph (a) of this rule shall be limited to a sum sufficient to deter repetition of such conduct. The sanction may consist of (1) an order to pay a penalty into court, or (2) an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation, or both.

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Among the factors to be considered by the court in imposing a sanction under (2) is the timeliness of the movant's filing of the motion therefore. In the order imposing sanctions, the court shall describe the conduct determined to be a violation of this rule and explain the basis for the sanction imposed.

This Court on April 5, 2011 found that movant did satisfy Safe Harbor pre-requisite of Rule 1:4-8(b) by way of their letter to plaintiffs dated March 26, 2010. That letter offered to release plaintiffs from any and all obligations on the \$1,931.78 that was allegedly due and owing to movant for the four-month service provided to plaintiffs, if plaintiffs withdrew their Consumer Fraud Act claim against TNCI with prejudice. In that April 5, 2011 decision, this Court questioned the fact that the \$1,931.78 alleged to be due and owing which was precisely what formed the basis for plaintiffs' ascertainable loss theory, and why plaintiffs did not accept TNCI's offer to withdraw their Consumer Fraud Act claim then, or sooner, as requested in the Safe Harbor letter. The basis and procedural requirements of Rule 1:4-8 had been satisfied. This Court now turns to the amount requested for fees and a determination as to whether they are reasonable and appropriate.

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The court is guided by RP 1.5 with respect to reasonableness: 1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; 2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; 3) the fee customarily charged in the locality for similar legal services; 4) the amount involved and the results obtained; 5) the time limitations imposed by the client or by the circumstances; 6) the nature and length of the professional relationship with the client; 7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and 8) whether the fee is fixed or contingent.

The most important step in the attorney fee-setting process is to determine the lodestar amount. The leading and guiding source for this task is Rendine v. Pantzer, 141 N.J. 292 (1995). Rendine clearly defines what the lodestar is: the number of hours reasonably expended, multiplied by a reasonable hourly rate. To determine the amount of lodestar, a trial court must carefully evaluate both the hours expended and the specific hourly rates advanced by counsel for the prevailing party in support of the fee application.

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A determination of the reasonable lodestar to be allowed the prevailing party begins with a determination as to whether the hourly rates charged for the participating attorneys in the litigation are reasonable. A reasonable hourly rate is calculated according to the reasonable, current prevailing market rates in the community. This market rate is arrived at where the court assesses the skills and rates of the prevailing party's attorney against the rates of attorneys of reasonably comparable skill. Rendine at 337. The analysis required need not be unnecessarily complex or protracted, but the court should satisfy itself that assigned hourly rates are fair, realistic, and accurate, or should make appropriate adjustments.

In Rendine, certifications by several lawyers in plaintiff's own firm attested that the hourly rates used to calculate the lodestar were consistent with the standard hourly rates for the participating lawyers. Attorneys from outside firms also provided certification that the rates billed were commensurate with the rates billed by attorneys of similar skill and experience. Here, the hourly rates billed pursuant to the defendant Transnational Communications International is \$325 per hour for partners' legal services and \$285 hourly for associates. Glenn R. Reiser, Esq.'s May 12, 2011 Certification explains that the rates are consistent to that which is set forth in the firm's retainer agreement with the client. Further,

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Ms. Reiser details his and other defense counsel's experience, including the fact that Mr. Reiser has been a member of the New Jersey bar since 1990 and has concentrated in commercial litigation and civil matters in state and federal courts, bankruptcy and creditor litigation and foreclosure and asset recovery matters. His Certification also certifies the hourly rates requested by his associate Melanie Costantino, who spent time on the preparation of this file. Ms. Costantino, the associate who billed at \$285, was admitted to the New Jersey bar in 2008 and was a legal intern for the Honorable Renee Jones Weeks, J.S.C. Given these attorneys' level of experience in litigation matters, the Court finds that the two hourly rates billed in this instance are commensurate with rates billed by attorneys of similar skill and experience and are reasonable. There is no noteworthy opposition that persuasively shows that these rates are inflated, excessive or unreasonable.

The entries billed and proposed for attorney's fees award have been carefully reviewed and the following is the Court's assessment of same. Counsel has billed a total of \$20,402.50 in fees and claims \$967.38 in disbursements. The applicant attorney has further certifies that he voluntarily discounted the January 7, 2011 invoice by \$1,000. Counsel has amply described the tasks performed for the defendant client that were necessitated by plaintiffs and plaintiffs' counsel due to the frivolity and

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worthlessness of their claims and applications during the course of this litigation. None of the entries billed are found to be excessive or unnecessary given the challenges presented by plaintiffs.

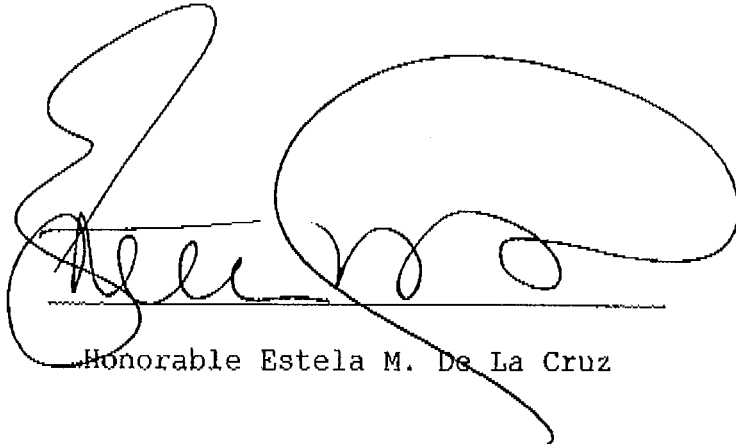
As to the disbursements claimed for \$967.38, this amount is not reconciled as the attorney Certification indicates a different total that is from \$125 for Court filing fees, \$379.92 for photocopying charges and \$391 used to pay for the transcript of Dr. Lee. These three amounts total \$895.92, not \$967.38. A review of the actual time sheets reveals only one additional \$30 charge for filing cost. The Court will allow the disbursements for Court filings totaling \$155 and also will allow the expense incurred for Dr. Lee's deposition in the amount of \$391. This deposition expense amount was more than one-third of the modest disbursement amount incurred by defendant and which discovery was truly pivotal in exposing the true lack of merit in Dr. Lee's own claims. The Court is now allowing reimbursement for photocopying, as that expense is deemed a cost of business and should be absorbed by counsel in fees. Total disbursements allowed are \$546.

The overall baseless nature of plaintiffs' claims presentation and trial tactics further had the effect of taking Mr. Reiser's attention from work on other clients' files to constantly address, respond, argue orally or defend the issues

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in this case. None of the billing is excessive and it is all found to have been triggered by plaintiffs' relentless attempts to accuse and amend to add additional claims against this defendant, all of which were dismissed by the Court, or reluctantly, by plaintiffs. The Court therefore concludes that \$20,402.50 in legal fees plus \$546 in disbursements is reasonable and was necessary to address the frivolous, relentless and meritless claims presented by plaintiffs.

Judgment in favor of Transnational Communications International and as against plaintiffs L&K Dental P.A. and Dong Hyun Lee in the total amount of \$20,948.50 is hereby entered. Counsel for defendant TNCI is hereby directed to submit a form of Order to enter judgment consistent with this decision, with a copy to plaintiffs' counsel, by July 13, 2011. The parties are guided accordingly.



Honorable Estela M. De La Cruz