

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LANE POWELL PC, an Oregon
 professional corporation,

 Plaintiff,

 v.

 MARK DeCOURSEY and CAROL
 DeCOURSEY, individually and the marital
 community composed thereof,

 Defendants.

No. 11-2-34596-3SEA

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER ON LANE POWELL PC'S
MOTION FOR SUMMARY
JUDGMENT

~~PROPOSED~~ 

On November 16, 2012, this matter came on for hearing before the Court on Plaintiff Lane Powell PC's Motion for Partial¹ Summary Judgment in favor of Plaintiff Lane Powell PC against Defendants Mark and Carol DeCoursey ("DeCourseys") for the following relief:

1. Judgment that the DeCourseys breached the parties' September 19, 2007 contract (as amended December 30, 2008), in which the DeCourseys had agreed to pay Lane Powell for its legal services in connection with a lawsuit entitled *V&E Medical Imaging Services, Inc. v. Mark DeCoursey, et ux., et al.* ("underlying action");

¹ As stated in Lane Powell's opening brief, Lane Powell's motion seeks partial summary judgment (because it was based only on Lane Powell's breach-of-contract claim), but that claim includes the full amount of damages sought in this lawsuit. In short, with the granting of Lane Powell's motion, it will be unnecessary to address Lane Powell's alternative claims.

ORIGINAL

1 2. Damages for breach of the contract in the amount of \$422,675.45
2 (\$384,881.66 due and owing as of August 3, 2011, plus \$37,793.79 in interest accrued
3 through the date of hearing).

4 In connection with Plaintiff Lane Powell's motion, the Court heard oral argument
5 of Plaintiff's counsel and Defendants Pro Se, and considered the following:

- 6 (1) Plaintiff Lane Powell PC's Motion for Partial Summary Judgment;
- 7 (2) Declaration of Hayley A. Montgomery in Support of Lane Powell's Motion
8 for Partial Summary Judgment Exhibits A-MM attached thereto;
- 9 (3) DeCourseys' Response to Plaintiff Lane Powell's Motion for Partial
10 Summary Judgment with Subjoined Declaration and Exhibits 1-17
11 attached thereto;
- 12 (4) Second Declaration of Mark H. DeCoursey in Opposition to Plaintiff Lane
13 Powell's Motion for Partial Summary Judgment and the attachment
14 thereto;
- 15 (5) Declaration of Carol DeCoursey;
- 16 (6) Plaintiff Lane Powell's Reply in Support of its Motion for Partial Summary
17 Judgment; and
- 18 (7) Second Declaration of Hayley A. Montgomery in Support of Plaintiff Lane
19 Powell's Motion for Partial Judgment and Exhibits NN-OO attached
20 thereto.

21 The Court also considered the records and files herein. Based on the argument of counsel
22 and the evidence presented, and being otherwise fully advised therein, the Court granted
23 Lane Powell's motion for summary judgment in favor of Lane Powell and against the
24 DeCourseys for breach of contract. The Court awarded all damages Lane Powell sought,
25 except for those attorneys' fees and costs that had not already been reviewed for
26 reasonableness. It also required the parties to file supplemental briefs addressing the issue
of whether the Court should independently review for reasonableness the fees and costs
that were previously not reviewed by another court (as well as the issue of whether Ryan
McBride's 2011 hourly rate is reasonable).

1 In connection with this supplemental briefing, the Court considered the
2 following:

- 3 (1) Plaintiff Lane Powell's Supplemental Brief re Reasonableness of Fees
4 Pursuant to November 16, 2012 Order;
- 5 (2) Third Declaration of Hayley A. Montgomery in Support of Lane Powell
6 PC's Motion for Summary Judgment and Supplemental Brief re
7 Reasonableness of Fees Pursuant to November 16, 2012 Order;
- 8 (3) Declaration of Ryan P. McBride in Support of Plaintiff Lane Powell PC's
9 Motion for Summary Judgment and Supplemental Brief re Reasonableness
10 of Fees Pursuant to November 16, 2012 Court Order;
- 11 (4) Declaration of Andrew J. Gabel in Support of Plaintiff Lane Powell PC's
12 Motion for Summary Judgment and Supplemental Brief re Reasonableness
13 of Fees Pursuant to November 16, 2012 Court Order;
- 14 (5) Defendants' response, and supporting material, if any; and
- 15 (6) Plaintiff's reply, and supporting material, if any.

16 The Court also considered the records and files herein. Being fully advised on this matter,
17 the Court hereby makes the following Findings of Fact and Conclusions of Law and enters
18 the following Order:

19 1. The DeCourseys entered into a binding written fee agreement with Lane
20 Powell on September 19, 2007, (as amended December 30, 2008), to pay for legal
21 services performed in connection with the underlying action, plus interest.

22 2. Pursuant to Rule of Professional Conduct (RPC) 1.5(a), Lane Powell is
23 entitled to charge and collect the reasonable attorneys' fees and expenses the DeCourseys
24 agreed to pay under the fee agreement.

25 3. On the DeCourseys' behalf, Lane Powell performed \$639,232.26 in legal
26 services, \$325,424.26 of which the DeCourseys have not paid.

4. The DeCourseys did not present evidence challenging the reasonableness
of these fees and costs on summary judgment.

1 5. The Court finds that Lane Powell reasonably charged the DeCourseys
2 \$639,232.26 in attorneys fees and costs incurred prevailing in the underlying action, and
3 Lane Powell is entitled to collect that amount.

4 6. In the underlying action, the DeCourseys submitted fee and cost reports
5 that were edited to remove entries not reasonably related to prevailing on claims providing
6 for fee-shifting. The courts reviewed the edited reports and awarded the DeCourseys
7 \$568,006.50 (including a 30 percent multiplier) in reasonable attorneys' fees and costs.

8 7. On summary judgment, this Court found that the DeCourseys are estopped
9 from challenging the reasonableness of attorneys' fees and costs that were reviewed by
10 previous courts. Nevertheless, the Court accepts as reasonable the fees and costs awarded
11 by other courts (including the \$45,000 in costs found reasonable in the trial court but
12 disallowed on appeal because not provided for under the DeCourseys' Real Estate
13 Purchase and Sale Agreement (REPSA)), as well as Judge Fox's analysis on Lane
14 Powell's exceptional work done on the DeCourseys' behalf.

15 8. The hourly rates charged by attorneys in this matter ranged from \$205 to
16 \$470. The attorneys were assisted by paralegals and legal assistants, whose hourly rates
17 ranged from \$80 to \$190.

18 9. The Court has reviewed the hourly rates of Lane Powell timekeepers that
19 were not previously reviewed for reasonableness. The Court finds that these hourly rates
20 are reasonable based on each timekeeper's skill, experience, reputation, and ability, and
21 are customarily charged in the locality for similar legal services. * (see p - 6)

22 10. The Court has reviewed the 2011 hourly rate of Ryan McBride (\$440).
23 The Court finds that Ryan McBride's 2011 hourly rate (\$440) is reasonable (despite the
24 fact that a small portion of the fees claimed for Mr. McBride's work was disallowed based
25 on the Supreme Court commissioner's review). The Court makes this finding based on
26 his skill, experience, reputation, and ability, the approval of this rate by subsequent courts,

1 including the same Supreme Court commissioner as in the underlying action, and
2 evidence that this rate is customarily charged in the locality for similar legal services.

3 11. The Court has reviewed the fee and cost reports submitted by Lane Powell.
4 The Court finds that Lane Powell has appropriately edited the reports to remove time
5 entries and costs that were previously reviewed in the underlying action.

6 12. The Court finds that the 567.3 hours of work (\$147,924.50) not already
7 reviewed is reasonable given the novelty and difficulty of the questions involved, amount
8 involved and results obtained, and nature and length of the professional relationship. **
(P-6)

9 13. The Court finds that the \$4,331.60 in costs not already reviewed are
10 reasonable.

11 14. The Court finds that the terms of the fixed fee agreement between Lane
12 Powell and the DeCourseys were reasonable, and that the September 19, 2007 fee
13 agreement, (as amended December 30, 2008), demonstrates that the DeCourseys received
14 a reasonable and fair disclosure of material elements of the fee agreement and of Lane
15 Powell's billing practices. Based on the foregoing findings of fact and conclusions of law,

16 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff's
17 Motion for Partial Summary Judgment is GRANTED. Judgment shall be entered in favor
18 of Plaintiff and against Defendants Mark and Carol DeCoursey for breach of contract in
19 the amount of \$422,675.45. The Clerk is directed to disburse the balance of the
20 \$384,881.66 held in the Court Registry to Lane Powell PC, in care of McNaul Ebel
21 Nawrot & Helgren PLLC.


22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the
23 DeCourseys shall release \$37,793.79 of the amounts held in the form of a supersedeas

24 ///

1 bond to Lane Powell, in care of McNaul Ebel Nawrot & Helgren PLLC, to cover interest
2 accrued pursuant to the parties' contract.

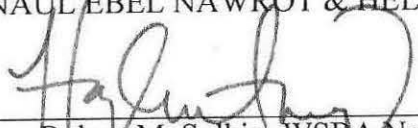
3 IT IS SO ORDERED.

4 DATED THIS 14th day of December, 2012.

5 
6 Honorable Redacted D. Eadie
7 King County Superior Court Judge

8 Presented by:

9 McNAUL EBEL NAWROT & HELGREN PLLC

10 By 
11 Robert M. Sulkin, WSBA No. 15425
12 Malaka M. Eaton, WSBA No. 32837
13 Hayley A. Montgomery, WSBA No. 43339

14 Attorneys for Plaintiff Lane Powell, PC

15 * The court reviewed the declaration of Grant
16 Degginger Sub #255, and especially Ex. 2 in
17 determining the reasonableness of the rates charged
18 particularly by attorneys Degginger and Gabel. (RE)

19 ** In so finding the court also finds that Undermere
20 Real Estate has no interest, direct or indirect, in
21 the determination of the reasonableness of these fees
22 or of the hourly rates charged. (RE)