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Lackey v. Bridgestone/Firestone, Inc.
Fla.App. 3 Dist.,2003.

District Court of Appeal of Florida,Third District.
Melissa LACKEY, Appellant,

v.

BRIDGESTONE/FIRESTONE, INC., d/b/a Dayton
Tire Company, a Tennessee corporation; Ford Motor
Company, Inc., a Michigan corporation; Bella Auto-
motive Group, Ltd., a Florida limited partnership, d/
b/a Headquarter Toyota; and Bella Automotive
Group, Inc., a Florida corporation, individually and
as general partner of Bella Automotive Group, Ltd.,
d/b/a Headquarter Toyota, Appellees.

No. 3D02-1009.

Oct. 8, 2003.

Client appealed from order of the Circuit Court,
Miami-DadeCounty, [Ronald C. Dresnick](#), J., which
approved division of attorney's fees by allocating fees
among three attorneys pursuant to representation
agreement between client and one attorney. The Dis-
trict Court of Appeal, [Shevin](#), J., held that: (1) unen-
forceable provisions in representation agreement did
not render entire agreement void or affect fee ar-
rangement, but (2) evidence was insufficient to sup-
port award to other two attorneys, who were not
parties to agreement and thus could only recover fees
based on quantum meruit.

Affirmed in part, reversed in part, and remanded.
West Headnotes

[1] Attorney and Client 45 ↪147

[45](#) Attorney and Client

[45IV](#) Compensation

[45k146](#) Contingent Fees

[45k147](#) k. Requisites and Validity of Con-
tract. [Most Cited Cases](#)

Attorney was entitled to recover fees under contin-
gent fee agreement as included in representation
agreement with client, although portions of represen-
tation agreement were unenforceable; infirm clauses
were not at issue in fee dispute, and contingent fee

clauses in agreement did not violate rules governing
contingent fees.

[2] Attorney and Client 45 ↪166(1)

[45](#) Attorney and Client

[45IV](#) Compensation

[45k157](#) Actions for Compensation

[45k166](#) Evidence

[45k166\(1\)](#) k. In General. [Most Cited](#)

[Cases](#)

Attorney and Client 45 ↪166(4)

[45](#) Attorney and Client

[45IV](#) Compensation

[45k157](#) Actions for Compensation

[45k166](#) Evidence

[45k166\(4\)](#) k. Performance. [Most Cited](#)

[Cases](#)

Evidence was insufficient to support amount of attor-
ney's fee award to attorneys who lacked contingent
fee agreement with client, although they settled case
for client and were entitled to fees on a quantum
meruit basis; one attorney's testimony at fee hearing
did not specify time he expended on case or his
hourly rate, and other attorney did not appear at hear-
ing and was not represented.

[3] Attorney and Client 45 ↪130

[45](#) Attorney and Client

[45IV](#) Compensation

[45k130](#) k. Right to Compensation in General.

[Most Cited Cases](#)

An attorney who has no contingent fee agreement
with a client is only entitled to recover fees on a
quantum meruit basis.

[Michael M. Tobin](#), Coral Gables; Caruso, Burlington,
Bohn & Compiani and [Philip Burlington](#), West Palm
Beach, for appellant.

[Marc Cooper](#) and [Ervin Gonzalez](#), Coral Gables, for
Colson Hicks Eidson and Turner & Associates.

[Lauri Waldman Ross](#) and [Theresa L. Girten](#), Miami,
for Friedman & Friedman, appellees.

Before [GREEN](#) and [SHEVIN](#), JJ., and [NESBITT](#), Senior Judge.

[SHEVIN](#), Judge.

Melissa Lackey appeals an order disbursing settlement funds and approving the division of attorneys' fees. We affirm in part, reverse in part, and remand.

Melissa Lackey was a passenger in a Ford Explorer driven by her boyfriend, Kelvin Naranjo. She was injured when the Explorer rolled over after a rear tire blew out. Naranjo retained Marvin Friedman to represent him. Thereafter, Lackey also retained Friedman and entered into a contingent fee agreement with him. Friedman referred the case to Mike Eidson, of the Colson Hicks Eidson firm. Eidson testified that when he met Lackey, he told Lackey that Tab Turner, an Arkansas attorney, would be involved in the case.^{FN1} Lackey did not sign a retainer agreement with either Eidson or Turner. Eidson's firm sued Firestone/Bridgestone, Ford Motor Company and Naranjo on Lackey's behalf. The case against Ford was settled. However, Lackey was dissatisfied with the attorneys' fees detailed in the closing statement. It allocated 40% of *1188 the first million dollars as fees, pursuant to the Friedman contingent fee agreement, to be split among the three attorneys. Thereafter, Lackey discharged the attorneys.

^{FN1}. Turner and Eidson were involved in the federal multi-district litigation against Ford Motor Company.

The attorneys petitioned the court to approve the fee division and to disburse settlement funds as fees. Lackey asserted that the attorneys were only entitled to 33 1/3% of the first million dollars recovered. She challenged the fee request alleging that Friedman should be disqualified from recovering a fee because a conflict of interest existed between Lackey and Naranjo, and because portions of the agreement violated the Rules Regulating the Florida Bar. Lackey also argued that Eidson and Turner were not entitled to participate in the fee as she had not entered into a written agreement with them. After a hearing, the court approved Friedman's requested fee, and approved Eidson and Turner sharing in that fee. Lackey appeals.

[1] First, we address the issue of whether Friedman was entitled to recover fees under the contingent fee agreement. We are not persuaded that the inclusion of the infirm clauses renders the agreement void and forecloses Friedman from recovering his fee: the offending clauses are not at issue here. Hence, this is not a case where an attorney is seeking to recover fees under a void provision in a contingent fee agreement. Cf. [King v. Young, Berkman, Berman & Karpf, P.A.](#), 709 So.2d 572 (Fla. 3d DCA 1998)(attorney can't recover under "bonus fee" clause as it violates Florida Bar Rules prohibition against contingent fees in divorce cases). See [Chandris, S.A. v. Yanakakis](#), 668 So.2d 180 (Fla.1995)(attorney fee agreement void as non-Florida lawyer lacked capacity to contract to represent Florida litigant). In this case, Friedman seeks to recover under the contingent fee clauses of the agreement, which are not infirm. We will not hold that the inclusion of the unenforceable terms voids the entire contract. See [King](#), 709 So.2d at 574 n. 2 ("illegal terms may be refused enforcement without wholly avoiding the contract.").

We believe this result follows from the dictates of *Chandris*. The *Chandris* Court addressed the validity of a contingent fee agreement executed by a non-Florida lawyer. The Court declared that agreement void because a non-Florida lawyer lacks the capacity to represent clients in Florida. That is not the case here. The contingent fee clauses in Friedman's agreement do not violate the rules governing contingent fees, as cautioned by [Chandris](#), 668 So.2d at 185-86.^{FN2} Although the non-complying clauses on other matters are unenforceable, they do not render the agreement void. Therefore, the offending provisions may be severed allowing for enforcement of the agreement. See [King](#), 709 So.2d at 574 n. 2. Thus, we affirm the award of Friedman's fee under the agreement.

^{FN2}. The *Chandris* requirements for contingent fee agreements are found at R. Regulating. [Fla. Bar 4-1.5\(f\)](#).

[2][3] We next address the issue of whether Eidson and Turner may partake in the contingent fee. Under Florida law, an attorney who has no contingent fee agreement with a client is only entitled to recover on

a quantum meruit basis. [Chandris, 668 So.2d at 186 n. 4](#); [Searcy, Denney, Scarola, Barnhart & Shipley, P.A. v. Poletz, 652 So.2d 366 \(Fla.1995\)](#). Hence, in this case, where Lackey never signed any agreement with Eidson and Turner, quantum meruit is the only recourse available to them. However, the record demonstrates that there is insufficient evidence to support the amount awarded by the trial court as a quantum meruit award. Eidson's testimony did not *1189 specify the time he expended on the case or his hourly rate. Turner did not appear at the hearing and was not represented. In *Searcy*, the Court held that a trial court must consider the amount of time the attorneys devoted to the representation and a reasonable hourly rate as factors in computing an award, as well as the totality of the circumstances surrounding the client/lawyer relationship in awarding fees. *Searcy*, at 369; [Frank J. Pepper, Inc. v. Vining, 783 So.2d 1160 \(Fla. 3d DCA 2001\)](#). Here, although the trial court considered the latter, there was no testimony as to the former factors. We therefore reverse the portion of the order awarding fees to Eidson and Turner. [FN3](#) On remand, the court must hold an evidentiary hearing to take testimony on the *Searcy* factors sufficient to support an award.

[FN3](#). We are not persuaded that Turner is barred from partaking in the fee by virtue of the fact that he is a non-Florida attorney. *Chandris* states that “a non-Florida attorney can join with a Florida attorney in a joint representation of a client in Florida on the basis of a contingent fee agreement that complies with the rules.” [Chandris, 668 So.2d at 186](#). That is the situation here, as Friedman's contingent fee agreement is enforceable.

Based on the foregoing, we affirm the award to Friedman, reverse the award to Eidson and Turner, and remand for further consistent proceedings.

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