

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 11, 2003

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 02-2364
STATE OF WISCONSIN**

Cir. Ct. No. 01-CV-860

**IN COURT OF APPEALS
DISTRICT III**

BIERSDORF & ASSOCIATES, S.C.,

PLAINTIFF-APPELLANT,

V.

**SPIRE CAPITAL CORPORATION, A/K/A SPIRE CAPITAL
LIMITED, A/K/A ATLAS WAREHOUSE COLD STORAGE,**

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Brown County:
J. D. MCKAY, Judge. *Reversed and cause remanded.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. The law firm of Biersdorf & Associates appeals a judgment finding it was not entitled to a contingent fee resulting from a reduction in tax liability on Atlas Warehouse Cold Storage's property. The trial court found the reduction was not the result of Biersdorf's involvement. Because we conclude the trial court's finding is not supported by the evidence, we reverse the judgment

and remand to the trial court for a determination whether the contingent fee was reasonable, and, if it is not, to determine a reasonable fee.

BACKGROUND

¶2 On June 28, 1996, Atlas and Biersdorf entered into a contingent fee agreement. Biersdorf agreed to perform legal services in order to achieve property tax reductions on Atlas's property in Green Bay. Atlas agreed to pay attorney fees of one-third of the tax savings. The contract covered the years 1996-1998. The dispute arose with the 1997 property tax assessment.

¶3 Atlas received a notice from the City of Green Bay in November 1997 that the value of Atlas's property had been reassessed and substantially increased. Atlas contacted Biersdorf to attempt to get a reduction of the assessment. After providing Atlas with its analysis of the assessment, Biersdorf set up a meeting with Lee Clouse, the assessor. Representatives from Biersdorf and Atlas, as well as the assessor attended the meeting.

¶4 Before the meeting Clouse made a printout of the assessment to use at the meeting and realized the assessment was wrong. Clouse then went into the meeting, and a reduction of the assessment was discussed. Subsequently, after further review by Clouse, the assessment was reduced by \$5,000,000.

¶5 Biersdorf requested its contingent fee for 1997 and 1998 based on the reduction, for a total of \$85,269. Atlas refused to pay the fee. The trial court determined that Biersdorf was not entitled to a contingent fee because the correction had nothing to do with Biersdorf's involvement. Biersdorf appeals.

STANDARD OF REVIEW

¶6 The trial court's determination that the correction had nothing to do with Biersdorf's involvement represents a finding of fact. We will not disturb such a finding unless it is clearly erroneous. WIS. STAT. § 805.17(2).

DISCUSSION

¶7 Biersdorf contends the trial court ignored the work that Biersdorf did to bring about the detection of the valuation error and its subsequent correction. Biersdorf argues that the error would not have been recognized had Biersdorf not set up the meeting with the assessor. Atlas argues, however, that the error was obvious and that Clouse found the error before the meeting took place. Therefore, Atlas maintains Biersdorf's involvement had nothing to do with the reduction.

¶8 The record supports Biersdorf's argument that it was involved in bringing about the reduction. Biersdorf arranged the meeting to discuss the assessment. Just before this meeting, Clouse made a printout of the assessment, which alerted him to the mistake. This mistake was subsequently corrected, resulting in the \$5,000,000 reduction in the building's valuation. Clouse testified that if the assessment had not been called to his attention, the error would have remained uncorrected. The assessment was brought to his attention as a direct result of Biersdorf's involvement in setting up the meeting. Atlas's argument that Clouse became aware of the error before the meeting took place is not the decisive factor. Instead, the decisive factor is that the error would not have been found if not for Biersdorf's efforts in arranging the meeting.

¶9 We consequently determine that the trial court's finding that the correction had nothing to do with Biersdorf's expertise or involvement is clearly

erroneous. The further question regarding whether the contingent fee is reasonable is a question of fact for the trial court. *See Village of Shorewood v. Steinberg*, 174 Wis. 2d 191, 204, 496 N.W.2d 57 (1993). The trial court here never reached this issue. We therefore remand the case for a determination whether the contingent fee was reasonable and, if it is not, to determine a reasonable fee.

By the Court.—Judgment reversed and cause remanded.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

