

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

MAY 14, 1996

NOTICE

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

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

No. 95-2172-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

ARTHUR & OWENS, S.C.,

Plaintiff-Respondent,

v.

**MICHAEL A. DOUCAS,
an individual,**

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: LAURENCE C. GRAM, JR., Judge. *Reversed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Michael Doucas appeals from a judgment in favor of Arthur & Owens, S.C., his former counsel. The issue is whether Doucas entered into an hourly fee contract with Arthur & Owens. Pursuant to this court's order dated October 5, 1995, this case was placed on the expedited appeals calendar. We conclude that Doucas did not enter into an hourly fee

contract with Arthur & Owens; rather, he entered into a contingent fee contract. Accordingly, we reverse.¹

Doucas retained Arthur & Owens when a dispute arose between Doucas and his brother concerning the extent and value of Doucas's interest in a family business. Arthur & Owens sent Doucas a letter discussing the terms of the retainer. In the letter, Attorney Ronald Arthur stated:

I am willing to undertake this representation for a contingent fee equal to fifty percent (50%) of the recovery over One Hundred Fifty Thousand Dollars (\$150,000.00), with the further provision that the minimum fee shall not be less than ten percent (10%) nor more than twenty-five percent (25%) of the total recovery, nor less than One Hundred Twenty Five Dollars (\$125.00) per hour of time spent on this project by myself or any attorney in my office (subject to the 25% cap).

About a year later, Arthur met with Doucas and suggested that the fee agreement be changed because Arthur had concluded that Doucas would not receive an acceptable settlement offer. Doucas refused and retained other counsel. Arthur then brought this action against Doucas for fees based on the services he had rendered. Doucas moved the trial court for summary judgment, arguing that he did not owe Arthur & Owens any fees because he had entered into a contingent fee arrangement with the firm. The trial court denied the motion, concluding that the parties had entered into an agreement which provided for hourly fees. After the parties stipulated to the number of hours that Arthur had worked on the case and the reasonableness of those hours, the trial court entered judgment in favor of Arthur.

¹ We do not address whether the trial court properly awarded prejudgment interest to Arthur & Owens because we conclude that the parties entered into a contingency fee arrangement.

A contract is ambiguous when it is reasonably susceptible to more than one meaning. *Maas v. Ziegler*, 172 Wis.2d 70, 79, 492 N.W.2d 621, 624 (1992). "A construction which gives reasonable meaning to every provision of a contract is preferable to one leaving part of the language useless or meaningless." *Id.* Ambiguities in a contract should be construed against the drafting party. *Capital Invs., Inc. v. Whitehall Packing Co., Inc.*, 91 Wis.2d 178, 190, 280 N.W.2d 254, 259 (1979). Whether a contract is ambiguous is a question of law which this court decides independently and without deference to the reasoning of the trial court. *Maas*, 172 Wis.2d at 79, 492 N.W.2d at 624. If a contract is ambiguous, "extrinsic evidence can be considered in order to determine the parties' intent." *Energy Complexes, Inc. v. Eau Claire County*, 152 Wis.2d 453, 468, 449 N.W.2d 35, 41 (1989).

We conclude that the agreement is not ambiguous. It is a contingency fee contract. In the contract, Attorney Arthur states: "I am willing to undertake this representation for a contingent fee equal to fifty percent (50%) of the recovery over One Hundred Fifty Thousand Dollars" The contract lists a "further provision" that the minimum fee shall not be less than ten percent of the total recovery, nor less than \$125 per hour, and the maximum fee shall not be more than twenty-five percent of the total recovery. We conclude that, like the rest of the fee structure, the \$125 per hour fee is contingent on recovery. The \$125 per hour fee provides the measure for determining where on the ten to twenty-five percent range the contingency fee should reside. Any other reading would render the contingency fee range meaningless because there would be no

measure for determining at what percentage the fee should be set. Here, Arthur receives nothing because there was no recovery. Accordingly, we reverse.²

By the Court.— Judgment reversed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

² Even if we were to conclude that the agreement is ambiguous, we would conclude that the parties entered into a contingency fee agreement based on the extrinsic evidence of the parties' intent. In the affidavits and other evidence in the record, Attorney Arthur never denies that he entered into a contingency fee arrangement. In his July 22, 1994 affidavit, Attorney Arthur states that he "believed ... that it would have been a violation of the Code of Professional Responsibility to advance costs in a *contingency fee case* on behalf of a client who is not indigent and had the economic ability to make those payments." (Emphasis added.) Arthur further stated that while he "believed it was appropriate to *switch to an hourly rate* when Michael A. Doucas had turned down reasonable offers of settlement of the dispute, [he] never indicated that a *change in the compensation method was requisite for continued representation*" (Emphasis added.) In a letter dated January 10, 1992, Arthur stated that he was "willing to proceed based on our *contingent fee arrangement* as long as [Doucas] made a reasonable deposit to cover costs of discovery." In an affidavit dated July 8, 1994, Doucas averred that Arthur had told him "that he would only get paid if he recovered for me." These uncontradicted statements by the parties indicate that the parties intended to enter into a contingency fee arrangement.