

IN THE COURT OF APPEALS OF IOWA

FILED

JUN 4 1986

CLERK SUPREME COURT

DUNCAN, JONES, RILEY & FINLEY,

)

Plaintiff-Appellee,

)

FILED JUNE 4, 1986

vs

)

6-62
85-311**PRUDENTIAL LINES, INC.,**

)

Defendant-Appellant.

)

Appeal from the Iowa District Court for Polk County (57-33686), A. M. Critelli, Judge.

Defendant-corporation appeals a judgment for plaintiff law firm in this action for breach of a contingent legal fee contract. **AFFIRMED.**

Radu Herescu of New York City, and Bernard J. Connolly, Jr., Des Moines, for defendant-appellant.

Randy Duncan and R. Todd Gaffney of Duncan, Jones, Riley & Finley, Des Moines, for plaintiff-appellee.

Heard by Oxberger, C.J., Donielson, and Schlegel, JJ.

Considered en banc.

PER CURIAM.

Defendant-corporation appeals a judgment for plaintiff-law firm in this action for breach of a contingent legal fee contract. On appeal, defendant contends the contract should be reformed due to a unilateral mistake. We affirm.

In January 1983, Prudential Lines, Inc. retained Duncan, Jones, Riley & Finley for representation in a federal proceeding. Correspondence between the parties reflects that they entered into a retainer agreement. The law firm was to undertake the matter "on a 20% contingency fee basis plus billing at the hourly rate of \$40."

Duncan, Jones, Riley & Finley commenced litigation and proceeded to go through the discovery process. The case was settled in November 1983 for \$100,000, which was paid to Prudential Lines.

Plaintiff thereafter sought to recover legal fees in the amount of \$22,085.25, representing a contingent fee of \$20,000, itemized expenses of \$969.25, and fees at the hourly rate totaling \$1,116. Despite repeated letters from the law firm, Prudential Lines refused to pay. Duncan, Jones, Riley & Finley then commenced this action, claiming breach of contract for legal fees.

Following a trial, the district court entered judgment for the law firm. Prudential Lines has appealed.

The issue on appeal stems from a dispute concerning the terms of the contingency fee arrangement. The law firm claims they were to receive twenty percent of any recovery in the federal lawsuit. Prudential Lines states that at the time of the agreement its representatives reasonably believed that there existed no possibility of settlement without trial. Because of this mistaken belief, defendant claims it is now entitled to have the contract reformed to provide that the fee was only due if the matter actually went to trial. Defendant asks that we remand the case for further consideration of this issue. We decline to do so.

Our careful review of the record reveals that Prudential Lines has requested reformation for the first time on appeal. There are references in the record to defendant's "mistaken belief" that the case would go to trial; this evidence was considered by the trial court in reaching its decision. Prudential Lines cannot now expand upon its argument and claim it is entitled to reformation. Our court will not consider on appeal a theory of relief not asserted in the district court. Kartidg Pak Co., v. Department of Revenue, 362 N.W.2d 557, 561 (1985). We do not intimate that we would find defendant's claim meritorious if we were to consider it.

Finding no error the decision of the district court is affirmed.

AFFIRMED.