IN THE SUPREME COURT OF TEXAS

NO. 16-0107

ALBERT G. HILL, JR., PETITIONER,

v.

SHAMOUN & NORMAN, LLP, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS

Argued October 10, 2017

JUSTICE GREEN delivered the opinion of the Court.

JUSTICE GUZMAN did not participate in the decision.

This case involves a law firm's quantum-meruit suit for the reasonable value of its services in assisting its client reach a comprehensive settlement of various lawsuits filed against him. We must decide whether Texas Government Code section 82.065 or our common law permits the firm's quantum-meruit recovery for services it performed under an unenforceable contingent-fee agreement and whether the firm's damages expert improperly based his damages model on that agreement. We hold that despite the firm's lack of a signed writing, the statute of frauds does not preclude its quantum-meruit claim. In addition, we hold that there was sufficient evidence to demonstrate that the firm performed compensable services in negotiating the global settlement. However, we hold

that the expert's opinion as to the reasonable value of the firm's services cannot be given legal weight, and without it, there is legally insufficient evidence to support the jury's award. Because there is some evidence of the reasonable value of the firm's services, we reverse the part of the court of appeals' judgment that reinstated the jury's award and remand the case to the trial court for a new trial on the amount of the firm's recovery.

I. Background

Albert G. Hill, Jr. (Hill) became involved in contentious litigation with his son, Albert Hill, III (Hill III) and numerous other parties beginning in 2007. These lawsuits, referred to as the "spider web of litigation," involved other members of the Hill family, family trusts, trustees, and various business entities. In February 2010, this web of litigation comprised more than twenty lawsuits, spanning multiple courts and involving approximately one hundred lawyers representing various parties and entities.

Shamoun & Norman, LLP (S&N) initially became involved in the web of litigation in 2009. Hill and Gregory Shamoun signed two limited-engagement agreements for S&N's representation in what the parties refer to as the "Abbott Financial" case (agreement signed November 19, 2009) and the "Bordeaux Trust" case (agreement signed January 15, 2010). The Abbott Financial case involved the collection of a debt against Hill III, and the Bordeaux Trust case involved a suit alleging that Hill and his wife withdrew money from a trust for their own benefit. Shamoun testified that at the time he was retained for representation in those two cases, he had not yet engaged in "global settlement negotiations" for Hill.

In March 2010, Hill was also facing a federal civil RICO lawsuit, set for trial in May 2010, in which $1 billion in damages were sought against him by Hill III and other family members for alleged impropriety in withdrawing and distributing funds related to various trusts (the "RICO case"). At an earlier point in the RICO case, Hill had been sanctioned and held in contempt for filing a false affidavit. This contempt order frustrated Hill's settlement efforts, and as of March 2010, settlement negotiations had effectively halted.

On March 5, 2010, Frances Wright, Hill's personal attorney, asked Shamoun to attend a meeting with the lawyers for the trust, trustees, and Hill's family because Hill needed to find "a person who could be one voice for the group" and deal with Hill III's lead attorney, Steven Malouf. Shamoun attended the meeting, and though he did not formally become settlement-negotiations counsel at that time, he began communicating and negotiating with Malouf about a global settlement. According to Malouf, settlement negotiations became "very active" when he started dealing with Shamoun, and Shamoun "reenergized" the settlement discussions. In early- to mid-March, Shamoun offered Malouf's clients $55 million to settle, but they rejected the offer. Malouf emailed Shamoun on March 27, expressing his lack of interest in settling and stating, "We just need to let the jury decide."

Hill claims that Shamoun first requested a potential discretionary bonus in a meeting sometime in the first week of March. Hill claims he told Shamoun he would consider it, and that as Hill understood it, he had unfettered discretion in whether there would be a bonus and how much any bonus might be.

On March 27, Wright called Shamoun on behalf of Hill and explained that Hill wanted Shamoun to get involved in the RICO case and work toward a global resolution of the cases composing the web of litigation before the RICO trial in May. Wright discussed Hill's desire to increase his outstanding settlement offer from $55 million to $73 million, and authorized Shamoun to make this offer to Malouf to settle all pending cases. In this conversation, Wright also told Shamoun that Hill had offered to pay him a bonus based on this settlement offer—Hill would pay Shamoun 50% of the savings, if any, between the $73 million ceiling and the cash component of the global settlement if that resolution was reached before the RICO trial in May. As Shamoun understood it at the time, Hill would keep the other 50% of any settlement savings. If a global settlement was achieved for $73 million or more, Shamoun understood that under Hill's offer he would receive nothing.

Shamoun immediately relayed the $73 million settlement offer to Malouf, who again indicated no interest in settling. After this rejection, Shamoun called Hill. Shamoun told Hill that he and Wright had spoken earlier that day, and Wright had relayed Hill's desire for a global resolution of all the cases in the web of litigation and had extended Hill's settlement-bonus offer to achieve that end. Shamoun claims that in this conversation he formally accepted Hill's offer. Shamoun's understanding of his obligation under this alleged oral contingent-fee agreement was to achieve a global resolution of all the cases in the web of litigation before the RICO trail and have the trial court vacate the contempt order against Hill.

In April 2010, after Hill's counsel withdrew in the RICO case, Shamoun agreed to formally represent Hill in that case and in a separate probate case. Hill and Shamoun executed two hourly

fee, limited-engagement agreements on April 12 and April 13—bringing the total to four written engagement agreements between Hill and Shamoun.

On April 30, Shamoun and Hill were summoned to the federal courthouse to discuss the status of the settlement. Shamoun and Hill both testified that during their visit to the courthouse, Shamoun told Hill three times to "remember my bonus," and that each time Hill confirmed that he remembered. Hill testified that he thought Shamoun's request was odd, and he later told Wright about the exchange.

On May 2, Wright presented to Hill a document entitled "Performance Incentive Bonus." Wright testified that she prepared the document in May, that she alone drafted it, and that the document correctly represented the oral contingent-fee agreement Shamoun reached with Hill. The document, which was introduced into evidence by both parties, stated: "The performance incentive bonus shall be calculated as the delta between $55 million and $73 million, and shall be split 50/50 between Law Offices of Frances Johnson Wright, P.C. and Shamoun and Norman." Shamoun testified he had not seen the document before it was presented to Hill and had no part in drafting it. When Wright presented the document to Hill, Hill refused to sign it.

A settlement conference was ordered in the RICO case for May 4, 2010, before federal Magistrate Judge Paul Stickney. In attendance were Shamoun, Hill, Hill III, and Hill III's attorney, Charla Aldous. At this conference, Shamoun communicated Hill's settlement terms to Hill III and his attorney. Aldous said the terms included, but were not limited to, vacating federal orders from the federal lawsuit and settling the cases composing the web of litigation. No settlement documents were signed at that time, but the parties were back in court the next day for a court-ordered

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