

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

CIVIL ACTION  
SUPERIOR COURT  
NO: 2010-636 B

ROBERT M.A. NADEAU,  
Plaintiff

vs.

[NANCY MADORE],  
Defendant

MEMORANDUM OF DECISION

This case involves whether the defendant owes legal fees to the plaintiff. The plaintiff, Robert Nadeau, is an experienced attorney licensed to practice law in Maine, New Hampshire and Massachusetts. He was hired by the defendant, who knew him socially, to represent her brother in a series of civil disputes. The defendant's brother [Daddy], plainly was the client who was being represented by Attorney Nadeau. [Daddy] was the named party in the lawsuit filed by Attorney Nadeau; he was the person allegedly who lost money as a result of a fraudulent scheme; [Daddy] was the person who signed the initial fee agreement. See Exhibit 2A.

Although [Daddy] was plainly the client being represented by Attorney Nadeau, this factual finding does not resolve the issue. The question to be resolved is whether the defendant, [Nancy Madore], promised to pay or guarantee payment for the legal bills incurred on behalf of her brother. There is no dispute that the defendant cared for her brother and wanted to assist him in the lawsuit. This, in and of itself, was sufficient consideration if there existed sufficiently clear promise on the defendant's behalf to pay her brother's legal fees. In order to resolve whether there was a promise, and hence an enforceable contract, to guarantee payment for any legal fees that [Daddy] couldn't meet, further findings of fact are necessary.

In approximately 2004, [Nancy Madore] came to know Attorney Nadeau through her best friend [Maryann]. [Maryann] was, at the time, the fiancé to Attorney Nadeau and was living with him. When [Nancy Madore] heard of her brother's legal difficulties, she decided to search for a lawyer to represent him. She did not know many lawyers and so she decided to contact Attorney Nadeau, an individual whom she had shared dinner with and enjoyed further social interaction. Thus, on June 29, 2005, she contacted, by email, Attorney Nadeau and asked him if he might give her brother, a building contractor, "a consultation" about a mechanic's lien issue. Attorney Nadeau promptly replied and stated that he could 'probably give him [the brother] some direction' and that there would be no charge for the 'first 30 minutes' of his time. He concluded the email with the statement which evidenced his friendship with the defendant: 'Nancy, you're simply a terrific person! My best to you.' See Exhibit 1. Unfortunately, those feelings were to change.

Initially, the dispute involved the adequacy of the representation provided by [Daddy's] prior attorney. For that, Attorney Nadeau required a \$500 retainer and this was set forth in an hourly fee agreement. See Exhibit 2A. At the time the fee agreement was signed, Attorney Nadeau had never met the defendant's brother, instead all of his communications were through [Nancy Madore] and [Nancy Madore] arranged to have her brother sign the hourly fee agreement. The \$500 retainer was paid and there is no dispute with regard to those fees.

[Nancy Madore] continued to be the sole individual that Attorney Nadeau dealt with in connection with representation of brother [Daddy]. The only time Attorney Nadeau had ever met Daddy was at a Massachusetts Courthouse when he was and needed him to sign an affidavit in order to obtain an attachment. All other communications were with [Nancy Madore]. These communications took the form of email exchanges and telephone conversations. See. e.g... Exhibits 3 through 11.

As can be seen from reviewing these email exchanges, the defendant [Nancy Madore] frequently referred to the underlying lawsuit as if it involved both she and her brother. As Attorney Nadeau's representation extended beyond [Daddy's] problems with his former attorney and into an area involving the [Daddy's lawsuit], [Nancy Madore] typically wrote to Attorney Nadeau using inclusive language: 'We are hoping that we can simply keep you on board to guide us on an 'as needed basis.' Likewise, when Attorney Nadeau informed [Nancy Madore] that he would need a retainer of \$7,500 to represent [Daddy] in the [Lawsuit], (Exhibit 3), [Nancy Madore] responded that 'we genuinely don't think that we have the money for a full blown lawsuit, we are kind of desperate to really make them think that we are prepared to go all the way if necessary.. (Exhibit 4). In addition, [Nancy Madore] concluded that email with the statement: 'We fully expect that a bill will be forthcoming and will pay it immediately.' Attorney Nadeau responded to this email by repeating that he required a minimum retainer of \$4,500 for proceeding with the lawsuit (Exhibit 5) and [Nancy Madore] responded 'absolutely...how much do you need?' (Exhibit 4) Based on these and other statements, Attorney Nadeau believed that Nancy —at least implicitly — was promising that both she and [Daddy] would assure payment of his attorney's fees. At no point was there a formal or written agreement entered into between Attorney Nadeau and either [Daddy] or his sister regarding the payment of a retainer and the hourly fee agreement for the representation in [Lawsuit].

Although Attorney Nadeau usually entered into formal fee agreements with clients, he made exceptions when his representation involved social acquaintances. Because of his warm feeling towards [Nancy Madore] Attorney Nadeau did not insist upon a formal written agreement. Obviously, he would later rue the day that he did not require this formality.

Despite frequently using the term 'we' in reference to her brother and herself, particularly in reference to the payment of fees, [Nancy Madore] claims that she never provided any personal insurance to Attorney Nadeau that she would be responsible for any legal fees that [Daddy] did not pay. Instead, she insists that she was merely the 'go between' for her brother and his attorney. She essentially casts herself as her brother's secretary (because of superior typing and computer skills) and argues that simply being the liaison doesn't make her responsible for attorney's fees incurred by [Daddy].

[Nancy Madore] plainly was the liaison between her brother and Attorney Nadeau but her role was significantly more than simply being a corresponding secretary. She was the person who decided to contact Attorney Nadeau; she evidenced a strong personal interest in the outcome of the litigation; she was the only person - other than one brief meeting with [Daddy] - that Attorney Nadeau had any contact with in connection with the litigation, she frequently assured Attorney Nadeau that "we" would pay certain fees. See Exhibits 8 and 12. She also was the person who received the billing statements. See Exhibit 13. And, she paid some of the outstanding attorneys fees with her credit card. See Exhibit 14.

Attorney Nadeau relied upon the implied assurance of [Nancy Madore] that she would be equally responsible for the payment of [Daddy's] legal bills. The unpaid portion of those bills eventually resulted in an unpaid balance due of \$6,526.28 (Exhibit 14). Attorney Nadeau's reliance, however, was not reasonable in the circumstances. [Nancy Madore] never signed any sort of written agreement guaranteeing payment of [Daddy's] legal bills. She never explicitly stated orally or in writing that she would personally assure that such legal bills be paid. The fact that she had the tendency to use the word "we" in connection with payment of legal expenses was more a colloquial

turn of phrase, rather than an assurance that could be legally relied upon. The fact that she would occasionally use her credit card to pay overdue legal bills ([Daddy] also paid a portion of the legal bills himself by check) did not obligate her to pay other legal bills incurred by [Daddy]. Thus, [Nancy Madore] is not responsible for the entire remaining balance of the bills owed by [Daddy].

The defendant [Nancy Madore], however, is responsible for a portion of the legal expenses incurred. On August 27, 2006, the defendant contacted Attorney Nadeau to inform him that her brother had decided to hire a different counsel in connection with the [Lawsuit]. Prior to August, there was already a considerable balance of legal bills owing. Although [Nancy Madore] informed Attorney Nadeau that he would no longer be representing [Daddy] in the ongoing litigation, she did request that 'we will need you to answer the counterclaims for us' due to pressing deadlines and also assured Attorney Nadeau 'we will pay for this in advance-just let me know how much it is.' She went beyond the collective 'we' in the next sentence and stated that 'whoever does the billing can call me...and I will pay her by phone.' The statement 'I will pay her by phone' in connection with legal fees incurred file answers to the counterclaims is an explicit promise. Attorney Nadeau reasonably relied upon this explicit promise expending time during the month of August 2006 to review the counterclaim, oppose [Lawsuit] motions and file an answer in connection with the counterclaims. All of this August work, even though some of it preceded the August assurance, related to responding to the [Lawsuit] counterclaims and motions. This was the work [Nancy Madore] explicitly requested from Attorney Nadeau and for which she explicitly promised to pay. These legal fees and expenses totaled \$1,964.17. (See Exhibit 13 -charges from August 11, 2006 to September 9, 2006 and Exhibit 14 -additional \$45.00 charge incurred on September 19, 2006). Despite her personal assurance that she would pay for these legal fees, [Nancy Madore]

never did and she owes that amount.

Despite defendant's arguments, Attorney Nadeau was fully competent representing [Daddy] throughout the litigation. His fee was reasonable and the time spent litigating the matter was appropriate.

Judgment to enter for the plaintiff in the amount of \$1,964.17, plus interest.

So Ordered

Signed by Richard E. Welch, III  
Justice of the Superior Court

Dated: August 28, 2012