Not Reported in A.2d, 2006 WL 798952 (N.J.Super.A.D.)
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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of New Jersey,
Appellate Division.
WEST MORRIS PEDIATRICS, P.A., and Avenel-Iselin Medical Group, P.A ., individually and on behalf of all others similarly situated, Plaintiffs-Appellants,
v.
HENRY SCHEIN, INC., doing business as Caligor, Defendant-Respondent.
Argued March 20, 2006.
Decided March 30, 2006.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. MRS-L-421-02.
Eric D. Katz argued the cause for appellants (Nagel, Rice & Mazie, attorneys; Mr. Katz, of counsel; Ben-David Seligman and Mr. Katz, on the brief).

Steven P. Benenson argued the cause for respondent (Porzio, Bromberg & Newman, attorneys; Mr. Benenson, on the brief; Proskauer Rose, attorneys; Leon P. Gold and Karen E. Clarke, on the brief).

Before Judges C.S. FISHER, YANNOTTI and HUMPHREYS.

PER CURIAM.

*1 Plaintiffs West Morris Pediatrics, P.A. (West Morris), and Avenel-Iselin Medical Group, P.A. (Avenel), commenced this action on their own behalf and on behalf of those similarly situated. They alleged that before and during the 2001-02 flu season, defendant's representatives quoted guaranteed sales prices for flu vaccine in order to obtain plaintiffs' commitment to purchase. Specifically, West Morris alleged that defendant's representatives quoted a price of $34.95 per vial; Avenel claimed it was quoted a price of $28.50 per vial. Notwithstanding these alleged representations, plaintiffs were later told shortly before delivery that the sale price would be approximately 80% higher. Claiming they had no choice, plaintiffs accepted those terms.

Based on these and other factual allegations, which we need not recount here, plaintiffs sought relief on their own behalf, and on behalf of those similarly situated. Their complaint asserted breach of contract, breach of the implied covenant of good faith and fair dealing, violations of the Consumer Fraud Act, *N.J.S.A.* 56:8-1 to -20, unjust enrichment, conversion, and promissory estoppel.

On September 3, 2004, Judge Dumont denied class certification for reasons expressed in a thoughtful and comprehensive written opinion. Following plaintiffs' failure to obtain class certification, the parties reached a partial settlement. Defendant Henry Schein, Inc. agreed to pay plaintiffs $17,616-a figure arrived at by trebling the maximum amount of damages sought. In exchange, plaintiffs agreed to dismiss all claims except their claim for attorneys' fees and costs. The remaining issue was brought before the court for resolution by plaintiffs' motion for an award of counsel fees in excess of $150,000.

In his oral decision, Judge Dumont first recognized that the only premise for an award of fees was plaintiffs' Consumer Fraud Act claim, "as the common law claims together with the failed class action, do not warrant any fee awards for the plaintiffs' law firm against the defendant." So viewing the limited basis for an award, Judge Dumont correctly applied the lodestar method required by *Rendine v. Pantzer*, 141 *N.J.* 292 (1995); he also recognized the need in this case, as authorized in

Furst v. Einstein Moomjy, Inc., 182 *N.J.* 1, 23 (2004), to decrease the lodestar in light of the "limited success" achieved by plaintiffs as highlighted by their inability to obtain class certification, explaining, in part, as follows:

> In setting the [lodestar], this [c]ourt finds the hourly rates set forth for the attorneys involved to be reasonable and there was no challenge by the defense to those rates. In particular, this [c]ourt finds Mr. Katz' rate of $375 an hour to be reasonable, given his experience, expertise, and his association with a well-known New Jersey law firm that primarily represents plaintiffs.
>
> However, the [c]ourt disagrees with Mr. Katz's delineation of the number of hours "reasonably expended" in the pursuit of the Consumer Fraud Act count of the complaint. While proportionality may not be required, nevertheless, the case began as a putative class action and the extensive pretrial effort in terms of motion practice and depositions was directed to the class related issues.
>
> ***2** It failed as a class action, as determined by this [c]ourt in September 2004. If one calculates the hours reasonably devoted to establishing a case under the Consumer Fraud Act in terms of pleading, depositions ..., motion practice, and settlement since early September 2004, the total fees come to approximately $39,700, according to the [c]ourt's calculation.
>
> On the other hand, if one looks just at the fees since class certification was denied, the fees approximate $24,173. Since this case is unique in the sense that the two individual claims represent less than $6,000, once the class action issues are stripped away, and the cost to the defense was greater in continuing to litigate than the claims were worth (even when trebled), the defendant agreed to pay the two plaintiffs in full.
>
> While this [c]ourt does not agree with the defense label of a "nuisance value settlement" because of the risks involved to the defendant, nevertheless, the settlement was in large part a business decision.
>
> Under the circumstances and given the "limited success" achieved in relation to the relief sought, this [c]ourt awards $32,000 in counsel fees and $1800 in costs.

After carefully scrutinizing the record on appeal and the legal arguments of the parties, we conclude that the judge's analysis of the issues, and the conclusions reached, represent a reasonable and principled response to the goals of the Consumer Fraud Act when compared to plaintiffs' "limited success" in pursuing this claim. Accordingly, we affirm substantially for the reasons set forth in Judge Dumont's well-reasoned oral decision.

Affirmed.

N.J.Super.A.D.,2006.
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