

## Hourly Rate In Engagement Letter Held Not To Be Ambiguous

Posted on April 2, 2009 by [John "Jack" S. Pierce](#)

A client hired an attorney to represent him in a case. The client signed an engagement letter to pay the attorney \$200.00 per hour and further agreed to hourly billing rates for the attorney's staff. The attorney and client negotiated a \$10,000 retainer, later reduced the retainer, by agreement, to \$5,000. At the case's conclusion, attorney billed client for \$35,304 after crediting the client the \$5,000 retainer paid. Client paid only \$5,000 on the outstanding balance.

After failing to collect all of his fees, the attorney sued the client for nonpayment. The client argued that because the written contract did not explicitly state whether the parties had agreed to an open account or a flat, maximum fee, the contract was ambiguous and therefore, a fact issue existed regarding the contract terms. The trial court disagreed and granted summary judgment for the attorney, but a Texas Court of Appeals held that the parole evidence could be admitted to raise a fact issue and reversed the trial court's decision.

Recently, the Supreme Court of Texas in [Sacks v. Haden](#) \_\_\_ S.W.3d \_\_\_ (Tex. July 11, 2008), a *per curiam* decision, reversed the appellate court and reinstated the trial court's judgment.

The issue was framed by the Court at the outset of the opinion:

"The question in this case is whether a written attorney's fee agreement that specifies only hourly fee rates may be modified by evidence of an oral capping agreement. We hold that it may not because parole evidence cannot modify a written agreement absent ambiguity. Accordingly, we reverse the court of appeals' judgment and reinstate the trial court's judgment."

Here is the critical passage in the court's opinion:

"The plain language of the engagement letter demonstrates that Haden agreed to pay Sacks an hourly fee, and that no cap on fees was set. Haden argues that a fee agreement must specifically state that hourly fees will accrue without limit in order for the agreement to be unambiguous and enforceable. But the lack of such explicit language is irrelevant if the agreement can be reasonably interpreted only one way. We have never held that an open-ended hourly fee agreement will be enforced only if it expressly states there is no cap on fees, and we decline to do so now. If a contract is unambiguous, the parole evidence rule precludes consideration of evidence of prior or contemporaneous agreements unless an exception to the parole evidence rule applies."

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