Methfessel & Werbel v. Weintraub

2007 | Cited 0 times | New Jersey Superior Court | December 13, 2007

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Submitted December 3, 2007

Before Judges Stern and C.S. Fisher.

Plaintiff (the law firm) commenced this action in the Special Civil Part against defendant, alleging that defendant failed to compensate the law firm for legal services rendered on his behalf. At the conclusion of a non-jury trial, the judge set forth his oral decision and entered judgment in favor of the law firm in the amount of $7,695.25.

The evidence adduced at the trial reveals that as a result of a fire in his home on January 24, 2004, defendant pursued a claim against his fire insurer, U.S.A.A. Insurance Company, seeking reimbursement for the reconstruction of his home, property lost in the fire, and temporary housing. In addition, defendant sought reimbursement for temporarily housing his four dogs with a friend, Thomas O'Laria. Even though O'Laria never billed defendant and expected no compensation for boarding the dogs, defendant submitted a claim to the fire insurer for pet care services in the amount of $7,480.

When the fire insurer requested a copy of the bill, defendant created one and signed O'Laria's name. Defendant submitted this forged bill to the fire insurer and falsely claimed he had paid O'Laria.

Apparently not satisfied with defendant's submission, the fire insurer sent a representative to O'Laria's home to question him about the bill. As a result of what was then learned, the fire insurer requested that defendant undergo an examination under oath and warned that the entire claim could be denied if this pet care claim was found fraudulent.

Correctly appreciating how these circumstances could jeopardize his entire fire loss claim, see Longobardi v. Chubb Ins. Co. of N.J., 121 N.J. 530 (1990), defendant consulted with an attorney. This attorney referred defendant to Marc Dembling, Esq., who was "of counsel" with the law firm. Dembling informed defendant that the fee for his services would be based upon a $250 hourly rate and that a retainer of $1,000 was required. Defendant paid the retainer. According to Dembling's testimony, a letter that memorialized the retainer agreement was lost or misplaced.

Defendant was examined under oath by the fire insurer. As a result, the fire insurer refused to pay

defendant's pet care claim and indicated that it was considering whether to seek disgorgement of all funds previously paid defendant.

After the examination under oath, the law firm billed defendant $2,375; the bill indicates Dembling's hourly rate of $250. The law firm continued to represent defendant and eventually a settlement was reached. The fire insurer agreed not to seek disgorgement of the $378,000 already paid to defendant or to commence any other action against defendant, and defendant agreed not to pursue further his pet care claim or any additional claims based on the fire loss.

The law firm billed defendant an additional $6,264.25 for these additional services. When defendant failed to pay the second (and last) bill -- he had also failed to pay the first --the law firm commenced this action.

At trial, the judge heard the testimony of Dembling, defendant and O'Laria. As we have observed, the judge rendered an oral decision and entered judgment in favor of the law firm for the full amount that had been billed, less the $1,000 retainer, plus costs and fees. Defendant appealed, raising the following arguments for our consideration:

I. AS A MATTER OF LAW PLAINTIFF FAILED TO ESTABLISH STANDING AND THIS ACTION MUST BE DISMISSED WITH PREJUDICE.

II. AS A MATTER OF LAW PLAINTIFF COULD NOT REPRESENT DEFENDANT AS A RESULT OF THE PER SE CONFLICT THAT WOULD ARISE FROM PLAIN-TIFF'S HAVING REPRESENTED [THE FIRE INSURER'S] ADVERSE INTERESTS IN SIMILAR MATTERS PREVIOUSLY.

III. AS A MATTER OF LAW MR. DEMBLING'S REPRESENTATION OF DEFENDANT WAS TAINED [SIC] BY PLAINTIFF'S IMPUTED CONFLICT.

IV. THE IMPUTATION TO MR. DEMBLING OF PLAINTIFF'S PER SE CONFLICT OF INTEREST AND THEIR OTHER VIOLATIONS OF THE [RULES OF PROFESSIONAL CONDUCT] SHOULD BE A COMPLETE BAR TO RECOVERY IN QUANTUM MERUIT FOR SERVICES RENDERED BY MR. DEMBLING.

V. ALTERNATIVELY PLAINTIFF'S RECOVERY OF QUANTUM MERUIT SHOULD BE COMPLETELY OFFSET BY THE EFFECT OF THE PER SE CONFLICT AND OTHER ETHICAL VIOLATIONS ON THE SERVICES MR. DEMBLING PERFORMED.

We find insufficient merit in these arguments to warrant discussion in a written opinion, R. 2:11-3(e)(1)(E), and add only the following comments.

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There is no merit in the argument, which appears not to have been asserted by defendant at trial, that the law firm did not have standing to bring this action. As the record reveals, Dembling was "of counsel" to the law firm, it was the law firm which billed defendant, and it was the law firm that was entitled to any fees received. Accordingly, there is no doubt that the law firm had a sufficient monetary stake in the outcome of the matter and, therefore, had standing to sue. See, e.g., In re Camden County, 170 N.J. 439, 448 (2002); Strulowitz v. Provident Life & Cas. Ins. Co., 357 N.J. Super. 454, 459 (App. Div.), certif. denied, 177 N.J. 220 (2003). Defendant's argument to the contrary is frivolous.

In addition, we find no merit in defendant's contention that either the law firm or Dembling, or both, entered into a conflict of interest by representing him in his dispute with the fire insurer. Although it acknowledged its past representation of the fire insurer in other matters, the law firm's relationship with the fire insurer had ended in 1994, approximately ten years before defendant's retention of the law firm in this matter.

Lastly, we observe that defendant mistakenly characterizes the law firm's claim as having been based on the doctrine of quantum meruit. The law firm did not contend it had no contract with defendant but instead claimed it had misplaced the letter agreement. The trial judge found Dembling's testimony in this and all other respects to be credible -- a finding deserving of our deference. Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 483-84 (1974).

In any event, even if the law firm's claim was based upon a quantum meruit theory, the absence of a written retainer agreement would not be fatal. Starkey v. Estate of Nicolaysen, 172 N.J. 60, 68-69 (2002). The record fully demonstrates that the law firm provided valuable legal services, that defendant accepted those services, that there was an expectation of payment, and that the amount billed by the law firm represented the reasonable value of the services rendered. Id. at 68. Accordingly, we are satisfied that the judge's findings fully supported the granting of relief on this alternate theory of recovery. Again, we defer to the findings of a trial judge in a non-jury setting when -- as here -- they are supported by adequate, substantial and credible evidence. Rova Farms Resort, supra, 65 N.J. at 484.

Affirmed.