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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

COURTNEY ROSENBERG, Plaintiff and Respondent, v. MARYANN GALLAGHER et al., Defendants and Appellants.	B268944 (Los Angeles County Super. Ct. No. BC557718)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael P. Linfield, Judge. Affirmed.

Law Office of Gary Simms and Gary L. Simms for Defendant and Appellant Maryann Gallagher.

Law Offices of Michael J. Piuze and Michael J. Piuze; Peter Gold for Defendants and Appellants Michael J. Piuze and Law Offices of Michael J. Piuze.

The Boesch Law Group and Philip W. Boesch, Jr., for Plaintiff and Respondent.

I. INTRODUCTION

Defendants appeal from a judgment entered after a court trial. Defendants are as follows: Maryann Gallagher (Gallagher), the Law Offices of Maryann P. Gallagher (collectively the Gallagher defendants); and Michael J. Piuze (Piuze) and the Law Offices of Michael J. Piuze (collectively the Piuze defendants). The Piuze defendants separately appeal from the unfavorable judgment on their cross-complaint against the Gallagher defendants.

The Gallagher defendants initially represented plaintiff Courtney Rosenberg in litigation against a hospital and its parent corporation (the hospital defendants). Pursuant to a client retainer, plaintiff agreed to pay the Gallagher defendants 40 percent of any recovery. After several years of litigation, just prior to trial, the Gallagher defendants sought the assistance of the Piuze defendants. The parties signed an amended client retainer which increased the contingency fee to 50 percent of the recovery. The 50 percent contingency fee was to be divided as

follows: 40 percent to the Gallagher defendants; 40 percent to the Piuze defendants; and 20 percent to "[r]eferring [a]ttorneys."

Plaintiff prevailed in her underlying litigation and was awarded compensatory and punitive damages as well as statutory attorney fees. She subsequently settled all of her claims with the hospital defendants for a total of $8 million.

Plaintiff then sued for declaratory relief against defendants asserting the increase in the contingency fee was improper and the amended client retainer was voidable. Plaintiff argued, inter alia, defendants misrepresented the existence of a referring attorney in the amended client retainer and violated the California Rules of Professional Conduct. The Gallagher defendants filed a cross-complaint seeking declaratory relief and an order that the amended client retainer was valid.

The Piuze defendants filed a cross-complaint against the Gallagher defendants seeking declaratory relief. They alleged, if it was determined defendants' total attorney fees were 40 percent (as opposed to 50 percent) of the settlement amount due to false information in the amended client retainer, then the Gallagher defendants are to pay the Piuze defendant's an amount equivalent to their lost fees, i.e., $400,000.

Following trial, the court found in favor of plaintiff and against defendants on all of her causes of action, including four violations of the California Rules of Professional Conduct. The

trial court also found in favor of the Gallagher defendants against the Piuze defendants. The trial court ruled the amended client retainer was void, defendants were entitled to a 40 percent contingency to be shared equally, and defendants were not allowed to collect statutory attorney fees. Defendant appealed.

Defendants assert the amended client retainer was valid and did not violate any California Rules of Professional Conduct. The Piuze defendants reiterate their position that they should recover lost attorney fees against the Gallagher defendants if Gallagher's misrepresentation caused the amended client retainer to be voidable. The Piuze defendants also argue they were entitled to statutory attorney fees from plaintiff's share of the settlement.[1]

We affirm the judgment because (a) there is substantial evidence that fraud induced plaintiff to sign the amended client agreement, and (b) the settlement agreement extinguished any right to statutory attorney fees.

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[1] The Gallagher defendants do not challenge the trial court's order vacating the statutory attorney fees.

II. BACKGROUND

A. Initial Client Retainer

On July 13, 2006, plaintiff entered into a retainer agreement with the Gallagher defendants. The Gallagher defendants represented plaintiff in a lawsuit against the hospital defendants for negligent supervision and a violation of Civil Code section 51.9. The retainer agreement provided that the Gallagher defendants would receive as attorney fees one-third of any recovery if they did not have to file suit. It explained the ramifications of a lawsuit as follows: "If my attorneys feel it necessary to file suit, they are authorized to do so. In that event, the attorney[] fees are 40%. . . . I understand that this retainer is for purposes up to and including trial."

B. Piuze and the Amended Client Retainer

In June 2011 (approximately three months before the date set for trial), Gallagher contacted the Piuze defendants to assist as cocounsel on plaintiff's case. Gallagher and Piuze then met plaintiff on August 29, 2011 (two weeks prior to trial) and presented the amended client retainer to plaintiff. The parties signed the amended client retainer on that same day.

The amended client retainer provided in pertinent part: "*Due to the nature and complexity of this case*, and the trial, we have agreed to enter into this amended retainer which replaces any prior retainers in this action: [¶] My attorneys, The Law Offices of Maryann P. Gallagher, will represent me in [plaintiff's case against the hospital defendants]. . . . I understand that the attorneys' fees are not set by law, but are negotiable[.] Since litigation has commenced and been ongoing for 4 years, the attorney's fees are 50% of the compensatory damages, and 50% of any punitive damages. [¶] I understand that this retainer is for purposes up to and including trial."[2] (Italics added.)

The amended client retainer included a provision regarding statutory attorney fees: "Any additional attorney[] fees that are recovered in this case pursuant to statutory claim . . . would belong to the attorney who earned them. . . . I understand that any attorney fees that may be awarded would be above and beyond any compensatory or punitive damages and would be paid to the attorneys who earned them . . . ."

The method in which the fees were to be distributed was worded as follows: "I expect that from any such recovery, my attorneys will divide the sums as follows: [¶] 1. Reimburse whomever advanced the costs. [¶] 2. Pay attorney[] fees as

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[2] The parties do not dispute that the contractual attorney fees pursuant to the amended client retainer was 50 percent of any recovery.

agreed." The amended client retainer also provided for the division of any recovery, i.e., the 50 percent contingency fee after a judgment or settlement: 40 percent to the Law Offices of Maryann P. Gallagher; 40 percent to the Law Offices of Michael Piuze; and 20 percent to "The Referring Attorneys." Plaintiff acknowledged she had the right to have independent counsel review the amended client retainer.

C. The Amended Referral Attorney Authorization And Subsequent Settlement

A jury awarded $2,359,753 in compensatory damages and $65 million in punitive damages to plaintiff. The trial court later reduced the punitive damages amount to $5 million and awarded $1,500,512.50 in statutory attorney fees. Judgment was entered on December 18, 2012. Both parties appealed the judgment.

On April 19, 2013 (while the appeals were pending), plaintiff and defendants executed an amended referral attorney authorization. The document provided that the contractual attorney fees arising from plaintiff's claims against the hospital defendants would be divided as follows: 50 percent each to the Law Offices of Michael J. Piuze and the Law Offices of Maryann Gallagher. There was no mention of a referring attorney.

Plaintiff settled her claims against the hospital on August 12, 2013. The settlement dismissed all pending appeals. It also released the hospital defendants from all of plaintiff's claims, causes of action, damages, costs, and attorney fees stemming from the incident pertaining to the lawsuit.

D. Plaintiff's Trial Against Defendants

The three-day trial to determine the appropriate attorney fees began on August 3, 2015. We summarize the testimonies of the witnesses relevant to the dispositive issue on appeal.

1. Plaintiff's Testimony

Plaintiff hired Gallagher in July, 2006. When she signed the initial fee agreement, there was no reference to compensation for a referring attorney. Sometime prior to trial, Gallagher told plaintiff that they needed Piuze and without him they were not going to be able to move forward with the trial. Gallagher did not provide plaintiff with any other way the dilemma could be addressed; the only possible solution provided was to bring Piuze into the case.

At the August 29, 2011, meeting regarding the amended client retainer, defendants did not explain they intended to take

50 percent of the recovery plus statutory attorney fees. Gallagher did not tell plaintiff that Piuze was needed to help with funding or that she did not have the money to take the case to trial. Defendants did not orally explain to plaintiff that she had the right to have the amended client retainer reviewed by another attorney. Plaintiff did not know anything about a referring attorney and did not understand that the attorney fees were to be divided in a three-way split.

Plaintiff was given approximately one minute to review the amended client retainer before signing it. She did not believe she had any other viable option than to sign the document. Plaintiff testified, "In this case, I trusted my attorneys when they told me that I needed to sign it, and I did."

2. Laurel Rosenberg's Testimony

Laurel,[3] plaintiff's mother, was referred to Gallagher by Don Tobin of Tobin & Lucks. Tobin and Laurel were friends. At trial, Laurel was asked whether Tobin ever discussed a referral fee. Her response was, "Absolutely not." Similarly, at no time did she indicate to Gallagher that Tobin would be seeking a referral fee.

[3] Laurel Rosenberg is referred to by her first name for clarity as she and plaintiff share the same surname.

Laurel was at a meeting that occurred a few days prior to the August 29, 2011 meeting of Piuze, plaintiff, and Gallagher. This "pre-Piuze" meeting, involved a discussion between Laurel, plaintiff, and Gallagher about bringing another attorney into the case. Laurel explained, "It seemed that . . . Gallagher was not up to the task going forward, that the case was going to trial in about two weeks, and she needed help." It appeared as though there was no other option but to allow Piuze to assist in the trial. Gallagher did not mention that the need for Piuze's assistance had anything to do with issues of funding.

Piuze was ultimately retained and, at some point, asked Laurel about the referral fee in the amended client retainer. Laurel explained to him that Tobin provided her with Gallagher's name. At the request of Piuze, Laurel telephoned Tobin to confirm there was no referral fee. Tobin confirmed there was no referral fee and Laurel relayed that information to Piuze.

3. Gallagher's Testimony

On August 10, 2011, Gallagher sent a letter to Piuze asking him to associate into the case. In the letter, Gallagher wrote that the trial date was September 13, 2011, and she had difficulty funding the trial. She explained, "I am facing the expert depositions and the trial date of September 13, 2011. I can

handle both, but I am not able to fund the experts and the trial. . . . I just need help writing the checks between now and trial." Gallagher also mentioned the defense firms were "bullies" and characterized Piuze as a "guru" of punitive damages.

Gallagher told plaintiff that she wanted Piuze on the case because he had expertise on the issue of punitive damages. She admitted she did not disclose her funding issues to plaintiff.

Gallagher was responsible for inserting language in the amended client retainer indicating 20 percent of the contractual attorney fees would be paid to a referring attorney. Although Gallagher had spoken with an attorney at Tobin & Lucks who had referred plaintiff to Gallagher, she did not know whether the referring attorney would seek a fee.

Gallagher explained, "Since . . . Piuze was coming into the case, and there was this referring attorney, unknown whether he wanted a fee or not, I didn't want this person to pop out later . . . and say, 'Hey, everybody, I want my referral fee now,' so let's put the referring attorney reference in there in case that happens. And as it turned out, . . . it didn't happen, and[, after judgment was entered on the underlying case,] we amended the referral . . . ."

4. Piuze's Testimony

Piuze acknowledged receiving the August 10, 2011 letter from Gallagher. Piuze then sent Gallagher an e-mail confirming a prior conversation in which he stated that the contingency fee needed to be 50 percent in order for him to work on the case.

Gallagher informed Piuze that there was a referring attorney who wanted one-third of the recovered attorney fees. Piuze told Gallagher that in order for him to assist on the case, the referral fee had to be reduced to 20 percent.

Piuze requested Gallagher include a paragraph in the amended retainer which advised plaintiff that she had a right to have independent counsel review it. But, Gallagher did not do so. Thus, when the amended retainer was presented to Piuze for review he instructed one of his associates to insert that language as a final paragraph.

During trial, Piuze became "suspicious" and asked plaintiff and her mother about the referring attorney. Plaintiff informed Piuze that she spoke with her mother about whether there was a referral fee. Plaintiff said, "My mom checked and says that this referring attorney never had a referral fee." Plaintiff's mother reiterated the same thing directly to Piuze on two other occasions. Piuze was concerned that Gallagher would end up with 60 percent of the attorney fees (which would improperly

include the so-called referral fees) and he would receive 40 percent.

Piuze did not raise the referral fee issue prior to April 2013 (five months after the court entered judgment against the hospital defendants) because he did not want a confrontation with Gallagher. Gallagher subsequently indicated via e-mail there was no written or oral agreement regarding a referring attorney fee.

E. Judgment

On September 14, 2015, the trial court issued its judgment. The trial court determined the settlement vacated the underlying judgment and thus vacated the underlying award of statutory attorney fees. The trial court also voided the amended client retainer. We summarize below the findings made by the trial court in reaching its decision.

1. Findings Related To Plaintiff Signing The Amended Client Retainer

Gallagher "got in over her head" during pretrial litigation of plaintiff's case against the hospital defendants—she needed additional funds and experienced trial counsel in order to succeed

at trial. She therefore "associated in" the Piuze defendants. Piuze demanded the contingency fee increase to 50 percent before he would agree to assist.

Plaintiff signed the amended client retainer under duress and without informed consent. Several factors demonstrated she did not have any realistic option other than to agree to the amended client retainer. They included: the amended client retainer was signed two weeks prior to trial; Gallagher advised plaintiff she needed to bring in Piuze in order to succeed at trial; Gallagher needed Piuze because she could no longer fund the case; plaintiff relied on Gallagher and was not a sophisticated client; plaintiff was not in a position to bargain over the increased contingency fee; and Piuze stood firm on his demand for a 50 percent contingency fee.

2. Findings Related To Violations Of Professional Rules

Defendants violated four California Rules of Professional Conduct in drafting the amended client retainer.[4]

Rule 2-200(A) provides in pertinent part: "A member shall not divide a fee for legal services with a lawyer who is not a partner of, associate of, or shareholder with the member unless:

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[4] Further rule references are to the California Rules of Professional Conduct.

[¶] (1) The client has consented in writing thereto after a full disclosure has been made in writing that a division of fees will be made and the terms of such division; and [¶] (2) The total fee charged by all lawyers is not increased solely by reason of the provision for division of fees and is not unconscionable as that term is defined in rule 4-200."

Defendants violated Rule 2-200(A)(1) because the fee-splitting provision regarding a referral attorney was not true. The reference to a referring attorney was not true. The amended client retainer falsely indicated the reason for increasing the contingency fee was "due to the nature and complexity" of the underlying case. The actual reason was that Gallagher needed Piuze to "help fund the case." The amended client retainer also violated Rule 2-200(A)(2) because the increase in the contingency fee was to comply with Piuze's demanded rate.

The third rule violated was Rule 3-300. It provides: "A member shall not enter into a business transaction with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied: [¶] (A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and [¶] (B) The client is advised in

writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and [¶] (C) The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition." The trial court determined Gallagher did not advise plaintiff the amended client retainer would create a circumstance in which Gallagher would have an adverse pecuniary interest to plaintiff. The trial court also found Gallagher failed to advise plaintiff in writing to seek an independent lawyer's advice prior to signing the amended client retainer.

The fourth rule violated was Rule 4-200(A). That rule states: "A member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee." Defendants attempted to collect their statutory attorney fees and the full contingency fee. The trial court found this violated controlling California law, citing *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 401.

Because the amended client retainer was prepared in violation of four Rules of Professional Conduct, it was illegal. The amended client retainer was procedurally and substantively unconscionable.

III. DISCUSSION

A. Standard of Review

There are two components to our review: the interpretation of the amended client retainer; and the assessment of the evidence supporting the trial court's factual determinations. Contractual interpretation is reviewed de novo. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865; *Powers v. Dickson, Carlson & Campillo* (1997) 54 Cal.App.4th 1102, 1111.)

We review the trial court's resolution of disputed facts for substantial evidence. (*Kim v. The True Church Members of Holy Hill Community Church* (2015) 236 Cal.App.4th 1435, 1445; *Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632.) "As in all substantial evidence challenges, the appellate court's power of review commences and ceases with the location of any substantial evidence, contradicted or uncontradicted, which will support the determination. [Citations.]" (*Las Palmas Associates v. Las Palmas Center Associates* (1991) 235 Cal.App.3d 1220, 1239 [applying substantial evidence review to case of fraudulent inducement of a contract].) "'Even in cases where the evidence is undisputed or uncontradicted, if two or more different inferences can reasonably

be drawn from the evidence this court is without power to substitute its own inferences or deductions for those of the trier of fact . . . .'" (*Jonkey v. Carignan Construction Co.* (2006) 139 Cal.App.4th 20, 24.) "The term 'substantial evidence' means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value." (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.)

The doctrine of implied findings requires this court to infer the trial court made all factual findings necessary to support the judgment. (*Oceguera v. Cohen* (2009) 172 Cal.App.4th 783, 794; *Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58.) "A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness. [Citations.]" (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.)

B. Amended Client Retainer And Misrepresentation/Fraud

Among other things, plaintiff argues defendants misrepresented, in the amended client retainer, that there existed a referring attorney who would receive 10 percent of the total recovery (or 20 percent of the attorney fees). As noted, the trial court found for plaintiff on all of her causes of action,

including the cause of action that encompassed this claim. The trial court also determined plaintiff did not give informed consent when she signed the amended client retainer. We hold there is substantial evidence to support these findings and that they demonstrate plaintiff was subjected to fraud in the inducement of the contract.

Fraud is a ground to void a contract. (Civ. Code, § 1689, subd. (b)(1); *Brookwood v. Bank of America* (1996) 45 Cal.App.4th 1667, 1673, fn. 4.) Civil Code section 1572, concerning fraud in the inducement, provides in pertinent part: "Actual fraud . . . consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract: [¶] 1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true; [¶] 2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true . . . ."

"Fraud in the inducement . . . occurs when '"the promisor knows what he is signing but his consent is *induced* by fraud, mutual assent is present and a contract is formed, which, by reason of the fraud, is *voidable*. In order to escape from its obligations the aggrieved party must *rescind* . . . ."' [Citation.]" (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 415.)

1. The Amended Retainer

Interpretation of the amended client retainer is, in this case, not difficult. It clearly provides for the distribution of funds to referring attorneys equaling 20 percent of the total attorney fees recovered. This equates to 10 percent of the $8 million recovery in the underlying case. As we shall explain, there was sufficient evidence that this misrepresentation amounted to fraud in the inducement.

2. The Inducement

Gallagher's motivations for the amended client retainer are evident from the record. She was financially over-extended and sought Piuze to assist her in this regard. It is true that, in her August 10, 2011 letter, Gallagher also noted Piuze provided the added bonus of punitive damage expertise. His expertise, however, seemed secondary as she emphasized, in that same letter, she could handle both the expert depositions and the trial, but "just need[ed] help writing the checks."

Because Piuze demanded the attorney fees be raised to 50 percent of the total recovery (they would each be paid 25 percent), an amended retainer agreement was required. Gallagher then made efforts to accomplish that objective. Ultimately, Gallagher

was able to convince Piuze to accept 40 percent of the total attorney fees recovered (Gallagher would also receive 40 percent) because there was a referring attorney who wanted one-third of the attorney fees but agreed to accept 20 percent.

"Just as a client has a right to know how his or her attorney[] fees will be determined, he or she also has a right to know the extent of, and the basis for, the sharing of such fees by attorneys." (*Margolin v. Shemaria* (2000) 85 Cal.App.4th 891, 903.) Plaintiff was induced into believing that she was signing an amended retainer to increase the attorney fees to 50 percent of recovery because the expertise of Piuze was needed to take the case to trial and win. Gallagher orally represented as much and the amended retainer itself stated it was drafted because of the "complexity of this case." Those representations were not accurate. Gallagher's August 10 letter suggests plaintiff was actually signing a contract which brought Piuze into the case primarily to assist Gallagher financially. And, equally important, pursuant to the express language in the fee-splitting clause, the total fees were increased to 50 percent in order to cover the payment to a non-existing referral attorney, not to pay for the expertise of Piuze.

3. Gallagher's Intent

For several reasons, the record supports a finding that the inducement created by Gallagher was intentional. First, the original retainer agreement made no mention of the referral fees. Rather, it was only after Piuze was planning to associate into the case that referral fees suddenly needed to be accounted for. If the referral fees were legitimate, one would assume they would have been in the original retainer, not tied to an amendment intended to hire a second attorney.

Second, despite the request of Piuze, Gallagher's draft of the amended retainer did not contain a clause advising plaintiff she was at liberty to have it reviewed by private counsel. It was only because Piuze's associate added such language that it was inserted. This is particularly egregious given plaintiff's lack of legal sophistication.

Third, the record unquestionably shows Tobin & Lucks did not request a referral fee, much less enter an agreement with Gallagher to be paid such a fee. Indeed, Gallagher admitted she never verified whether a referring attorney would seek a referral fee. Nonetheless, she included the referral fee in the amended retainer and it operated to raise the total attorney fees to 50 percent of the recovery.

Gallagher testified the referral fee was included to cover the parties if a referring attorney were to "pop out" and demand fees. She takes the same position on appeal. This argument is not persuasive. As stated, there was no chance a referring attorney would magically appear because the only possible firm seeking a referral fee, i.e., Tobin & Lucks, never requested a fee and, when plaintiff's mother inquired, she was expressly told that no such fee existed. Moreover, the amended retainer does not characterize the referral fees as a mere possibility. Nor does it identify what would happen to the percentage attributed to those fees if there were no referring attorney. Rather, the amended retainer definitively states that "[r]eferring [a]ttorneys" would receive 20 percent of the attorney fees recovered.

4. Rescission

The trial court properly voided the amended client retainer. Because there was substantial evidence that fraud induced plaintiff to sign the amended client retainer, plaintiff had the right to rescind her consent. (Civ. Code, § 1689, subd. (b)(1).)[5]

5. The Cross-Complaint of Piuze

Substantial evidence supports the trial court's ruling in favor of the Gallagher defendants on Piuze's cross-complaint. As noted, Piuze sought recovery from Gallagher of the amount of fees he stood to lose if the court were to determine that, because of Gallagher's misrepresentation, the total fees recoverable were 40, rather than 50, percent of the $8 million. Piuze's argument is just two paragraphs and supported by citation to a portion of a

[5] We recognize, after judgment was entered in the underlying case, the parties signed an "amended referral attorney authorization" in which the parties indicated the attorney fees would be split 50-50 between Piuze and Gallagher. This document does not alter the outcome here. It was signed more than 19 months after the amended client retainer was signed. As stated, substantial evidence supports the finding that the fraud occurred upon entering into the amended client retainer. (See Civ. Code, § 1572; *Hinesley v. Oakshade Town Center* (2005) 135 Cal.App.4th 289, 294.)

dissenting opinion[6] standing for the proposition that a declaratory relief action could result in equitable relief. We hold Piuze has not adequately supported his claim with meaningful analysis or legal authority. (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.)

But, even if equitable relief were an available remedy for Piuze, he would not be entitled to it. The "basic principle of equity jurisprudence means that in any given context in which the court is prevailed upon to exercise its equitable powers, it should weigh the competing equities bearing on the issue at hand and then grant or deny relief based on the overall balance of these equities. [Citation.]" (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1133-1134, citing *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 180.)

There was evidence that it was not Piuze's practice to include language regarding a fee-split for referral attorneys in a client retainer.[7] But, he nonetheless reviewed and signed the amended client retainer containing such a provision. By the time of trial, Piuze's suspicions about the absence of a referring

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[6] *Consumer Watchdog v. Department of Managed Health Care* (2014) 225 Cal.App.4th 862, 888 (dis. opn. of Croskey, J.).

[7] In addition, at oral argument, representing himself, Piuze insisted he would "never, ever, ever" include a fee-splitting clause in a client retainer.

attorney were confirmed by plaintiff and her mother. Yet more than 19 months passed before he attempted to correct the misrepresentation contained in the amended client retainer, i.e., that the calculation of attorney fees was based on a 40-40-20 split amongst himself, Gallagher, and referring attorneys. Under these circumstances we are not persuaded equitable relief would have been appropriate. (See *Margolin v. Shemaria*, *supra*, 85 Cal.App.4th at pp. 901-903 [plaintiff/attorney is barred from recovering referral fees from defendant/attorney because the latter attorney did not obtain his client's written consent for fee sharing as required by rule 2-200].)[8]

C. Statutory Attorney Fees

"[A] settlement operates as a merger and ban as to all preexisting claims and those alleged in the lawsuit that have been resolved. [Citations.] . . . In short, a valid settlement agreement between the parties effectively extinguishes the judgment from which the appeal is taken, thus, ending the prior dispute between the parties. [Citation.]" (*Ebensteiner Co., Inc. v. Chadmar Group* (2006) 143 Cal.App.4th 1174, 1179-1180; accord,

[8] Because there is substantial evidence to support the trial court's decision to void the amended client retainer based on fraud, we need not address the parties' arguments concerning the Rules of Professional Conduct.

Kinda v. Carpenter (2016) 247 Cal.App.4th 1268, 1271, fn. 1.) The settlement extinguished the judgment and, necessarily, any basis for statutory attorney fees.

The Piuze defendants claim they may recover from plaintiff the statutory attorney fees awarded by the trial court in the underlying action because a settlement only extinguishes a prior court award of attorney fees if the settlement specifically provides for such extinguishment. The argument is unavailing.

The statute which would have applied if the judgment remained intact is Civil Code section 52, subdivision (b). That legislation permits attorney fees when a defendant violates a plaintiff's rights under Civil Code section 51.9. Recovery under Civil Code section 52, subdivision (b) necessarily requires that the hospital defendants violate Civil Code section 51.9. However, the settlement released the hospital defendants from all liability, including all causes of action and damages stemming from the incident. The settlement extinguished the judgment and thus ended the dispute between plaintiff and the hospital defendants. (*Armstrong v. Sacramento Valley R. Co.* (1919) 179 Cal. 648, 651; *Ebensteiner Co., Inc. v. Chadmar Group*, *supra*, 143 Cal.App.4th at p. 1180.) There was no longer a cause of action for violation of Civil Code section 51.9. Consequently, there was no statutory right to attorney fees under Civil Code section 52, subdivision (b).

IV. DISPOSITION

The judgment is affirmed. Plaintiff Courtney Rosenberg may recover her appeal costs from defendants Maryann Gallagher, the Law Offices of Maryann P. Gallagher, Michael J. Piuze, and the Law Offices of Michael J. Piuze. The Gallagher defendants may recover their appeal costs from cross-complainants the Piuze defendants on the appeal from the judgment against the Piuze defendants' on their cross-complaint.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KUMAR, J.*

We concur:

TURNER, P. J.

KRIEGLER, J.

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*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.