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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

LEE C. ARTER,

Plaintiff and Appellant,

v.

SCOTT SHABEL,

Defendant and Respondent.

B278721

(Los Angeles County
Super. Ct. No. BC568423)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard L. Fruin, Jr., Judge. Affirmed.

Gerald P. Peters for Plaintiff and Appellant.

Murphy, Pearson, Bradley & Feeney for Defendant and Respondent.

In this legal malpractice action, the trial court granted summary adjudication of the first cause of action, sustained a demurrer to the second cause of action, and entered judgment for defendant Scott Shabel, the respondent in this appeal. Plaintiff and appellant Lee C. Arter¹ appeals from the judgment (order of dismissal), challenging only the order sustaining the demurrer. Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In the present litigation (*Arter v. Shabel* (Super. Ct. L.A. County) No. BC 568423), appellant contends respondent committed legal malpractice in pursuing appellant's claim for unpaid attorney fees in a previous case. (*Rodriguez v. Arter* (Super. Ct. L.A. County, No. BC480982).) Because the present malpractice case is a third-generation lawsuit, we provide a brief road map of the matters that led to the current litigation.

The Underlying Tort Action

Appellant is an attorney who initially represented his former clients, the Rodriguez plaintiffs, in the underlying tort action against the Safeway defendants. (*Rodriguez v. Safeway* (Super. Ct. Alameda County No. HG08428327).) Part way through that action, the Rodriguez plaintiffs terminated their relationship with appellant and replaced him with a successor attorney, Gary Dordick. The Rodriguez plaintiffs authorized Dordick to pay appellant \$700,000 for services previously rendered. Appellant accepted the \$700,000 but claimed he was entitled to additional compensation.

¹ Appellant filed this action in his personal capacity and as principal of Lee C. Arter, a Professional Corporation.

The Underlying Attorney Fee Action

After the underlying tort action was resolved by an arbitration award in favor of the Rodriguez plaintiffs, they filed an action against appellant for malpractice and other wrongs. (*Rodriguez v. Arter* (Super. Ct. L.A. County, No. BC480982.) Appellant retained respondent to represent him in that action. On appellant's behalf, respondent filed a cross-complaint against the Rodriguez plaintiffs and Dordick for additional compensation for services rendered in the original tort action (Case No. HG 08428327).

The cross-complaint in the underlying attorney fee action was resolved in two parts. As to the Rodriguez plaintiffs, the claims and cross-claims were resolved by a confidential settlement agreement that was negotiated by respondent on behalf of appellant. As to Dordick, the trial court granted summary judgment of the cross-complaint and entered judgment in his favor.

The Present Malpractice Action

In the present action (Case No. BC 568423), appellant contends respondent was professionally negligent in handling the underlying attorney fee action against Dordick (Case No. BC 480982). He argues that because of respondent's malpractice, he did not recover additional attorney fees against Dordick for services rendered to the Rodriguez plaintiffs in the tort action.

As discussed below, Dordick recovered two attorney fee payments in the tort action. He shared part of the initial attorney fee payment with appellant, but refused to pay appellant the additional attorney fees Dordick earned in arbitration of the tort action against the Safeway defendants.

The Initial Attorney Fees Shared with Appellant

While appellant was representing the Rodriguez plaintiffs in the tort action, they rejected an initial \$6.2 million settlement offer from the Safeway defendants. The Rodriguez plaintiffs believed that amount was insufficient compensation for their serious personal injuries, particularly because the accident had rendered one of them a paraplegic.

After refusing the initial \$6.2 million settlement offer, the Rodriguez plaintiffs terminated appellant and retained Dordick to represent them in the underlying tort action. The Rodriguez plaintiffs had a separate contingent fee agreement with each counsel, appellant and Dordick.

As successor counsel, Dordick negotiated a “high/low” arbitration agreement with the Safeway defendants. The agreement guaranteed the Rodriguez plaintiffs a minimum recovery of \$5 million, imposed a \$25 million cap on the maximum recovery, and resulted in an initial \$5 million settlement payment from the Safeway defendants.

Pursuant to his contingent fee agreement with the Rodriguez plaintiffs, Dordick received 35 percent of the initial \$5 million payment (\$1.75 million) under the “high/low” agreement. With the written consent of the Rodriguez plaintiffs, Dordick disbursed 40 percent of his initial \$1.75 million fee recovery (\$700,000) to appellant for services rendered before his termination.

The Dispute Over Additional Attorney Fees

The underlying tort action was submitted to arbitration and resulted in an arbitration award of \$35 million for the Rodriguez plaintiffs. Given the \$25 million cap imposed by the arbitration agreement and the initial payment of \$5 million,

Safeway was required to and did make a further payment of \$20 million to satisfy the \$35 million award to the Rodriguez plaintiffs.

The Rodriguez plaintiffs paid Dordick 35 percent of the \$20 million (\$7 million) arbitration award pursuant to his contingent fee agreement. The Rodriguez plaintiffs refused to pay appellant any additional attorney fees, and Dordick refused to split his \$7 million fee recovery with him.

The Underlying Attorney Fee Action

In the underlying attorney fee action, the Rodriguez plaintiffs sued appellant for malpractice, fraud, breach of fiduciary duty and other claims arising from his handling of the tort action. Appellant, who was represented by respondent Shabel, filed a cross-complaint for additional attorney fees from the Rodriguez plaintiffs under theories of breach of the retainer agreement and quantum meruit. Appellant and the Rodriguez plaintiffs resolved their respective claims in the underlying attorney fee action through a confidential settlement agreement. The terms of that agreement have been redacted from the documents filed in the present record on appeal.²

² According to the respondent's brief, the settlement of the underlying attorney fee action between Arter and the Rodriguez plaintiffs resulted in a further attorney fee payment to appellant of \$500,000, which increased Arter's total attorney fee recovery to \$1.2 million (\$700,000 initial fee recovery + \$500,000 subsequent fee recovery = \$1.2 million). There is no evidence in our record to support this assertion. Appellant's reply brief does not dispute that he received a total of \$1.2 million in attorney fees from the Rodriguez plaintiffs, but argues this assertion is "outside the pleadings and cannot be considered on demurrer."

The cross-complaint filed by appellant in the underlying attorney fee action also sought additional attorney fees from Dordick. It alleged claims for conversion, money had and received, breach of oral contract for division of attorney fees, intentional interference with contract, and declaratory relief. Dordick moved for summary judgment on these claims, and provided a declaration in which he denied the existence of a fee-sharing agreement with appellant. Dordick alternatively argued that a fee-sharing agreement, if any, is invalid without the informed written consent of the clients, citing rule 2-200(A)(1) of the California Rules of Professional Conduct,³ and no such consent had been obtained from the Rodriguez plaintiffs. The trial court granted Dordick's summary judgment motion and entered judgment in his favor on the cross-complaint by appellant.

The Present Malpractice Action Against Shabel

In the present action, appellant contends respondent was professionally negligent in pursuing the cross-complaint in the underlying attorney fee action against Dordick. Appellant's complaint raises no issue as to the handling of the underlying cross-complaint against the Rodriguez plaintiffs, and is silent as to whether additional fees were recovered from them. The focus of his claim against respondent is alleged negligence in failing to recover additional attorney fees of at least \$2.25 million from Dordick.

Appellant's operative pleading (third amended complaint) contains two causes of action. The first alleges that respondent was negligent in the underlying attorney fee action against

³ All further references to rules are to these rules.

Dordick by failing to present evidence of an oral fee-splitting agreement and failing to allege a claim of equitable estoppel against Dordick. The second alleges that respondent was negligent in failing to allege a claim for quantum meruit against Dordick.

In granting respondent's motion for summary adjudication of the first cause of action, the trial court stated that the malpractice claim based on failure to offer evidence on the oral contract claim and to assert the theory of equitable estoppel against Dordick in the underlying attorney fee action was subject to summary adjudication because appellant "did not comply with Rule of Professional Conduct 2-200(A)(1), which requires that a fee splitting agreement among attorneys must be in writing, and that the clients must have knowingly consented to the agreement in writing. California authority is clear that any fee-splitting agreement which fails to comply with Rule 2-200 is unenforceable, irrespective of the manner in which the claim is couched." The trial court stated that even "if it is assumed that ARTER's first cause of action for legal malpractice incorporates the allegation that SHABEL failed to assert a cause of action for quantum meruit against Dordick, it is still subject to summary adjudication. As established by SHABEL's Demurrer, ARTER did not have a viable quantum meruit claim against Dordick because ARTER's legal services were not rendered to Dordick or at Dordick's request."

The trial court sustained respondent's demurrer to the second cause of action for failure to allege a quantum meruit claim against Dordick in the underlying action. The court explained: "As a matter of law, there is no basis for the second cause of action against SHABEL. ARTER did not have a viable

quantum meruit cause of action against Dordick because ARTER's legal services were not rendered to Dordick or at Dordick's request. There cannot be a quantum meruit cause of action against Dordick unless the legal services rendered by ARTER were at the request of the party to be charged, i.e., Dordick. *Olsen v. Harbison* (2010) 191 Cal.App.4th 325, 330–332; *Strong v. Beydoun* (2008) 166 Cal.App.4th 1398, 1404. The legal services for which ARTER sought quantum meruit were rendered directly to ARTER's former clients, the Rodriguez Plaintiffs, pursuant to a separate written fee agreement to which Dordick was not a party. As such, SHABEL's Demurrer to the second cause of action in ARTER's [complaint] is sustained without leave to amend."

The trial court entered judgment for respondent based on the demurrer and summary adjudication rulings. This timely appeal followed.

DISCUSSION

Appellant contends the order sustaining the demurrer must be reversed because there is a colorable cause of action for professional negligence based on Shabel's failure to pursue a quantum meruit claim against Dordick. In analyzing an order sustaining a demurrer, we apply the de novo standard. (*Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 43.) Doing so, we find no error.

To state a claim for quantum meruit, the plaintiff must allege that he or she "performed certain services for defendants, [the] reasonable value [of those services], that [the services] were rendered at the special instance and request of defendants, and [that the services] are unpaid." (*Haggerty v. Warner* (1953) 115

Cal.App.2d 468, 475.) Appellant’s complaint alleges the services he provided in the tort action were subject to his contingent fee agreement with the Rodriguez plaintiffs. Significantly, he does not allege that he provided services pursuant to a fee-splitting agreement with Dordick. Because the services were not rendered to Dordick or at his request, appellant has no viable claim for quantum meruit against him. (*Olsen v. Harbison, supra*, 191 Cal.App.4th at p. 332 [plaintiff, a discharged attorney who provided legal services pursuant to an attorney-client fee agreement, was entitled to pursue quantum meruit claim against former client, but not against successor attorney].)⁴

Contrary to Arter’s assertion, *Huskinson & Brown v. Wolf* (2004) 32 Cal.4th 453 (*Huskinson*) does not establish error in this case. *Huskinson* stands for the narrow principle that an attorney

⁴ In *Olsen v. Harbison, supra*, 191 Cal.App.4th 325, the client, Kathleen Klawitter, retained plaintiff Christopher Olsen to handle her personal injury action. (*Id.* at p. 328.) Olsen subsequently brought in associate counsel, defendant Joseph F. Harbison III, with Klawitter’s informed written consent. (*Ibid.*) Klawitter then fired Olsen, and retained Harbison. (*Id.* at p. 329.) After Harbison settled the personal injury case, Olsen sued Harbison to recover attorney fees under several theories, including quantum meruit. (*Ibid.*) The trial court sustained Harbison’s demurrer to the quantum meruit cause of action, finding no basis for the cause of action because Olsen performed services only for the client, not for Harbison. (*Ibid.*) The appellate court affirmed, stating that because Olsen had a written retainer agreement with Klawitter, he “might be entitled to quantum meruit—from the client. Instead, he sought to recover the value of services rendered from [Harbison]. There is no basis for such a claim, and the trial court properly sustained [Harbison’s] demurrer to this cause of action.” (*Id.* at p. 332.)

whose services were provided pursuant to a fee-splitting agreement with another attorney may recover from the other attorney on a quantum meruit theory notwithstanding the lack of informed consent by the client. (*Id.* at pp. 457–459.) *Huskinson* did not consider whether a discharged attorney whose services were provided pursuant to a contingent fee agreement may recover in quantum meruit from successor counsel, which is the situation in this case. *Huskinson* is not dispositive of this case. (See *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 372 [cases are not authority for issues they do not consider].)

Appellant also cites *Strong v. Beydoun, supra*, 166 Cal.App.4th 1398, which involved facts similar to those in *Huskinson*. Like the plaintiff in *Huskinson*, the plaintiff in *Strong* did not have a financial agreement with the clients, and the services she provided were pursuant to a fee-sharing agreement with another attorney. (*Id.* at p. 1404.) On learning the fee-sharing agreement was unenforceable because the clients did not sign it, the plaintiff sought to recover the reasonable value of her services from the clients. (*Id.* at p. 1401.) The clients successfully demurred to the complaint and were dismissed from the case. (*Id.* at p. 1402.) In affirming the judgment (order of dismissal) for the clients, the court reasoned that quantum meruit is not available against clients who neither requested services from the plaintiff nor agreed to pay for them. (*Id.* at p. 1404.) The plaintiff's recourse, the court stated, was to pursue her pending claim for quantum meruit against the other attorney. (*Id.* at pp. 1403–1404.) *Strong* is not helpful to appellant because, as previously discussed, he provided services pursuant to a contingent fee agreement with the clients, and thus his recourse was to pursue a claim for quantum meruit against

the clients, not Dordick. (See *Olsen v. Harbison*, *supra*, 191 Cal.App.4th at p. 332.)

In *Weiss v. Marcus* (1975) 51 Cal.App.3d 590, which appellant cites as the leading authority in his favor, a discharged attorney sought to enforce an attorney fee lien created by a written attorney fee agreement with his client. The first question considered was whether that lien survived the attorney's discharge and entitled the attorney to recover from the client's settlement proceeds the reasonable value of services rendered prior to discharge (\$6,750). (*Id.* at pp. 595, 598.) The *Weiss* court held the lien survived the attorney's discharge and attached to the portion of the settlement proceeds paid to the successor attorney. (*Id.* at p. 598.) Because the successor attorney was holding funds that were subject to the lien, he was sued by the discharged attorney for money had and received, conversion, constructive trust, and intentional interference with contract. (*Id.* at pp. 599–601.) The theory of recovery was *not* that the successor attorney was subject to quantum meruit for having requested services from the discharged attorney. Because *Weiss* did not consider whether the successor attorney was subject to a claim for quantum meruit, it does not support a reversal of the order sustaining the demurrer. (See *Roberts v. City of Palmdale*, *supra*, 5 Cal.4th at p. 372.)

Appellant cites no controlling authority for his assertion that a discharged contingent fee attorney may recover in quantum meruit from the successor contingent fee attorney. Because all of appellant's services were performed under a fee agreement with his clients, he has no viable claim for quantum meruit against Dordick, and, therefore, no viable malpractice claim against respondent. (*Olsen v. Harbison*, *supra*, 191

Cal.App.4th at p. 332.) The demurrer was properly sustained. As there is no reasonable possibility that appellant may amend his complaint to allege a valid cause of action, leave to amend was properly denied.

DISPOSITION

The judgment (order of dismissal) is affirmed. Respondent is entitled to recover his costs on appeal.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.