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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

MARK R. LEEDS, Plaintiff and Appellant, v. REINO & IIDA, a Professional Corporation et al., Defendants and Respondents.	B282878 (Los Angeles County Super. Ct. No. VC060276)

APPEAL from a judgment of the Superior Court of Los Angeles County. Lori Fournier, Judge. Affirmed.

Charles E. Clark for Plaintiff and Appellant.

Cannon & Nelms, Anthony L. Cannon and David A. Poull for Defendants and Respondents.

* * * * * * * * * *

Plaintiff Mark R. Leeds sued Reino & Iida, a Professional Corporation, and individual lawyers Donald Reino and Myles Iida, claiming that defendants breached an agreement to pay him 25 percent of attorney fees earned for workers' compensation cases plaintiff referred to them. The trial court granted defendants' motions for summary judgment, reasoning that the fee splitting agreement was illegal under Rules of Professional Conduct, rule 2-200 (hereafter rule 2-200), because the parties had not obtained written client consent. We affirm.

BACKGROUND

This is the second time this case has been before us. Plaintiff and his law firm, the Law Offices of Mark R. Leeds, sued defendants for declaratory relief, alleging the parties agreed plaintiff would refer workers' compensation cases to defendants, and in return, he would receive 25 percent of the fees recovered in settlement or awarded by the Workers' Compensation Appeals Board (WCAB). According to the complaint, plaintiff and his law firm separated from defendants in October 2010, and a controversy arose regarding plaintiff's entitlement to fees for cases plaintiff had referred to defendants.

Unexecuted copies of the contracts were appended to the complaint. Both agreements were captioned "Agreement for Referral of Cases." The first agreement was between plaintiff, on behalf of "the firm of Mark R. Leeds, Attorney at Law" and "the Law Offices of Donald J. Reino and Law Offices of Norton, Reino & Ainbinder." The unexecuted contracts provided that plaintiff would refer workers' compensation cases to defendants, and would receive from defendants 25 percent of the fees.

Defendants also would provide plaintiff with a window office and telephone, and plaintiff was to pay defendants $500 a

month in rent. Plaintiff was entitled to use office amenities such as reception, photocopying, and coffee. Plaintiff's name would appear in the directory on the ground floor of the building, and at defendants' office suite. Plaintiff was "[o]f [c]ounsel" to defendants, and his status would be reflected on defendants' stationery.

Plaintiff was to maintain his separate law firm, the Law Offices of Mark R. Leeds, with his own cases. The parties would maintain separate errors and omissions policies. The contract provided that plaintiff "shall be permitted to communicate at any time with any client he brings to [defendants] and will be permitted to appear at any and all legal proceedings. [Plaintiff] will not be required to do any work on any of the cases but may volunteer to do so."

The second agreement, substantially similar to the first, was between plaintiff on behalf of "the firm Mark R. Leeds, Attorney at Law" and defendant Myles I. Iida, on behalf of "Law Offices of Reino & Iida and Law Offices of Myles Iida."

The trial court sustained defendants' demurrer to the complaint. Plaintiff and his law firm appealed, and we reversed and remanded for further proceedings, concluding that plaintiff and his law firm should be given leave to amend their complaint to state a cause of action for breach of contract. (*Leeds v. Reino & Iida* (Sept. 20, 2013, B242516) [nonpub. opn.] (*Leeds I*).)

We cautioned, however, that "rule 2-200(A)(1) of the Rules of Professional Conduct provides that a member of the State Bar '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 . . . . [¶] . . . [t]he 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 . . . .' [¶] Our Supreme Court has held that rule 2-200 unambiguously directs that a member of the State Bar *'shall not divide a fee for legal services'* unless the rule's written disclosure and consent requirements and its restrictions on the total fee are met." We noted that "rule 2-200 'encompass[es] any division of fees where the attorneys working for the client are not partners or associates of each other, or are not shareholders in the same law firm,' and a lawyer's failure to comply with rule 2-200 precludes him from sharing fees pursuant to a fee splitting agreement." (*Leeds I*, *supra*, B242516.)

After the case was remanded to the trial court, plaintiff filed a first amended complaint stating a single cause of action for breach of written contract. His law firm was omitted from the pleadings. Defendants moved for summary judgment, on the basis that plaintiff could not furnish an executed copy of the written agreements, and on the basis that the agreements were illegal because they violated rule 2-200.[1] During the pendency of defendants' motions, the trial court granted plaintiff leave to file a second amended complaint to include causes of action for breach of oral contract and quantum meruit. Therefore, defendants' pending motions were treated as motions for summary adjudication of the breach of written contract claim, and were granted on the basis that "the agreements alleged by plaintiff constitute fee-splitting agreements for which written client consent is required and plaintiff's failure to obtain such consent renders them unenforceable."

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[1] The motions are not part of the record on appeal. We draw these facts from the trial court's ruling on the motions.

Plaintiff's second amended complaint for breach of oral contract and quantum meruit included copies of the contracts, and alleged that "[a]t various times before 2010, Plaintiff and Defendants entered into written contracts . . . . Defendants, and each of them, offered employment to Plaintiff upon the terms and conditions set forth in [the contracts]. Plaintiff accepted that oral offer. Defendants paid Plaintiff for about 14 years pursuant to their oral promise to pay contained in [the contracts]. On or about October, 2010, Defendants breached said implied agreement . . . ."

Nowhere in the second amended complaint did plaintiff allege that he performed any services for defendants or for any clients (other than the referral services contemplated by the contracts).

Defendants separately moved for summary judgment on the second amended complaint. In support of their motions, defendants argued that all of plaintiff's claims were based on illegal fee-splitting agreements which did not comply with rule 2-200, and that plaintiff was not entitled to quantum meruit recovery because he was seeking a percentage of a contingent fee rather than the reasonable value of his services. The individual defendants also argued that they were not parties to the alleged contracts.

Defendants provided evidence that plaintiff is a licensed California attorney, who operated the Law Offices of Mark R. Leeds. His practice maintained an errors and omissions policy, separate from the defendant law firms' policies. Plaintiff did not receive a salary from defendant law firms, an hourly wage, equity in the defendant law firms, or health or retirement benefits. From 1994 until 2005, plaintiff was issued a Tax Form 1099 each

calendar year. Plaintiff had admitted all these facts in his deposition, and he testified in his deposition that he was paid a percentage of fees earned by defendants by way of settlement or an award by the WCAB.

Plaintiff also admitted in deposition that he was not aware of any documents evidencing client consent to fee sharing between plaintiff and defendants, and he never asked any clients for their consent after he stopped working with defendants.

Plaintiff's declaration in opposition to the motions stated he entered into oral agreements to "refer" cases to defendants in exchange for "25% of the attorney fees awarded from the Workers[']' Compensation cases . . . ." He referred cases to defendants in accordance with the agreement from 1994 until they stopped paying him in October 2010. According to plaintiff, he acted as the "primary" lawyer for the referred cases, "perform[ing] nearly, if not, all of the legal work on these cases . . . ." Plaintiff "managed these cases on a day to day basis and personally handled the clients' matter, and met face to face with them and otherwise communicated with the clients; [he] was lead and trial counsel; [he] did client intake; [he] prepared pleadings and letters; [he] attended depositions and court hearings; [he] conducted settlement negotiations and settlement finalizations by which attorney fees were paid and for which the Defendants gained money and benefits."

Plaintiff did not testify in his declaration to how many hours he worked on the cases, or what was the reasonable value of his services. Moreover, plaintiff did not testify that he ever received client consent to receive a portion of the attorney fees. According to plaintiff, he is "in the process of securing client consent pursuant to [rule 2-200] and will have those consents

after Defendants are ordered to pay me and they are ready, willing, and able to pay."

Defendants objected to plaintiff's declaration. The trial court's ruling on those objections does not appear in the record on appeal.[2]

The trial court granted the motions for summary judgment, concluding that plaintiff "is not seeking a quasi-contractual recovery of the reasonable value of services. . . . He's seeking a percentage share based on a contingency and not based on the reasonable value of his services. [¶] . . . [T]here is no evidence anywhere of your client working a certain number of hours on the cases that are at issue here and having any entitlement to a particular hourly rate. [¶] . . . [Y]our client is seeking the very sort of fee-splitting that is forbidden by rule 2-200. [¶] . . . [A]s a matter of law, your client's agreement . . . is illegal and unenforceable."

Judgment was entered for defendants and plaintiff timely appealed.

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[2] Plaintiff elected to proceed with an appellate appendix, but did not include the trial court's ruling on any objections. At the hearing on the summary judgment motions, the trial court stated that the evidentiary objections were "moot" given the legal basis for its decision. The later filed judgment indicates that the rulings on the objections appear in the court's file. Plaintiff contends in his reply brief that no ruling on the objections could be found in the court's records, and it is unclear from the superior court case summary whether any rulings to the objections are in the court's file. Plaintiff asks us to strike a portion of respondents' brief, where defendants argue that plaintiff has not adequately alleged error as to the trial court's evidentiary rulings, as "false and misleading." We decline the request.

DISCUSSION

"[T]he party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) "Once the [movant] has met that burden, the burden shifts to the [other party] to show that a triable issue of one or more material facts exists as to [that] cause of action . . . ." (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, at p. 850.) The party opposing summary judgment "shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists . . . ." (§ 437c, subd. (p)(2).) A triable issue of material fact exists where "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar*, at p. 850.)

Our Supreme Court has made clear that the purpose of the 1992 and 1993 amendments to the summary judgment statute was " 'to liberalize the granting of [summary judgment] motions.' " (*Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536, 542; *Aguilar*, *supra*, 25 Cal.4th at p. 854.) It is no longer called a "disfavored" remedy. "Summary judgment is now seen as a 'particularly suitable means to test the sufficiency' of the plaintiff's or defendant's case." (*Perry,* at p. 542.) On appeal, "we take the facts from the record that was before the trial court . . . . ' "We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained." ' " (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037, citation omitted.)

1. Breach of Contract

Rule 2-200, captioned "Financial Arrangements Among Lawyers," provides that "[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: [¶] (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." (Rule 2-200(A).)

It is undisputed that the parties have not obtained written client consent for the division of fees among them. Plaintiff contends that client consent is not required, because he performed all of the work on the cases under defendants' control, and he did not merely refer the cases to defendants. Plaintiff argues that rule 2-200 was not intended to apply to this type of situation. No authority supports plaintiff's contentions.

In *Chambers v. Kay* (2002) 29 Cal.4th 142 (*Chambers*), our Supreme Court explained that rule 2-200 "does not limit its application to 'pure referral fees' . . . , in which one lawyer receives ' "a percentage of a contingent fee for doing nothing more than obtaining the signature of a client upon a retainer agreement while the lawyer to whom the case is referred performs the work." ' [Citation.] Nor does it purport to categorically exempt fee divisions among attorneys who work jointly on behalf of a client. Rather, rule 2-200's language, reasonably read . . . encompass[es] any division of fees where the attorneys working for the client are not partners or associates of

each other, or are not shareholders in the same law firm." (*Chambers*, at p. 148.)

In *Chambers*, the Supreme Court described the relationship between the lawyers giving rise to the disclosure and consent requirements of rule 2-200(A)(1) as follows: "[T]he record is undisputed that Chambers was never Kay's salaried employee and that Chambers did not expect Kay to pay him a salary or other wages as compensation for his work in [the case]. On the contrary, all of the evidence shows that the parties agreed Chambers would be compensated based solely on a percentage of any contingent fee that [the client] paid to Kay. The evidence also establishes that Chambers advanced costs in the . . . case, reflecting additional conduct inconsistent with his claim to have been Kay's employee. Viewed together, these uncontroverted facts establish a 'division of fees' governed by rule 2-200[(A)(1)] . . . ." (*Chambers*, *supra*, 29 Cal.4th at p. 152.)

Like the plaintiff in *Chambers*, plaintiff here is not an associate, shareholder, or partner of defendants. (See Rules Prof. Conduct, rule 1-100(B)(4) [defining an associate as "an employee or fellow employee who is employed as a lawyer"]; rule 1-100(B)(5) [defining a shareholder as "a shareholder in a professional corporation pursuant to Business and Professions Code section 6160 et seq."]; see also *Chambers*, *supra*, 29 Cal.4th at p. 151 ["[A] partnership connotes co-ownership in partnership property, with a sharing in the profits and losses of a continuing business."].) Plaintiff admitted he was not defendants' employee; he was not paid a salary or other wages or benefits other than the contingent fee to which the parties agreed; and he was not a shareholder of defendant firm. Although defendants provided plaintiff with an office, and some office amenities, these facts are

insufficient as a matter of law to support an exemption to rule 2-200.

Plaintiff attempts to distinguish this case from *Chambers*, reasoning that rule 2-200 should not apply to workers' compensation cases where the attorney fees awarded have been deemed reasonable by the workers' compensation judge, and there is no risk that the client's fee will be increased by the fee-splitting agreement. He also contends that *Chambers* found that rule 2-200 applies in cases of *concurrent* representation, whereas he performed all of the work on the cases here.

Plaintiff bases these arguments on the following passage in *Chambers*, discussing the policy considerations behind rule 2-200: "the rule's written disclosure and consent requirements remain equally important where, as here, the division of fees accompanies or is prompted by a division of the legal services provided to the client. As part of their professional obligations, attorneys are required to 'keep a client reasonably informed about significant developments relating to the employment or representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed.' [Citation.] A division of fees may reflect each participating attorney's responsibilities in a case or fees may be charged for multiple attorney participation in the case without regard to the particular services each attorney performs. Such information may affect the client's level of confidence in the attorneys and is indispensable to the client's ability to make an informed decision regarding whether to accept the fee division and whether to retain or discharge a particular attorney." (*Chambers*, *supra*, 29 Cal.4th at p. 157.)

We believe these policy considerations apply in this case. Workers' compensation clients, like all other clients, have a right to know who is working on their case, and how fees will be divided. Plaintiff admits that defendants were counsel of record for the cases at issue in this lawsuit. If it is true (as plaintiff claims) that he performed all the work on these cases, the clients have a right to know that a firm allegedly performing no work was receiving 75 percent of the legal fees for their cases. Clients also have a right to know if plaintiff performed none of the work, other than the referral of the case, and received 25 percent of the fees. In short, we see no meaningful distinction between this case and *Chambers*.

Lastly, plaintiff contends that even if client consent is required, it is not required until the fees are actually divided, and therefore noncompliance with rule 2-200 is not a basis for summary judgment. He relies on *Mink v. Maccabee* (2004) 121 Cal.App.4th 835 (*Mink*), where the court found that rule 2-200 "requires that the client's written consent be obtained prior to any division of fees. This simple dictate cannot reasonably be read to require the client's written consent prior to the lawyers' entering into a fee-splitting arrangement, or prior to the commencement of work, or at any time other than prior to any division of fees." (*Mink*, at p. 838.)

Mink does not support plaintiff's contention, because the lawyer seeking fees in *Mink* had complied with the requirements of rule 2-200 prior to instituting his claim for a division of fees. *Mink* does not hold that summary judgment should not be granted for noncompliance with the requirements of rule 2-200. It has long been held that summary judgment for noncompliance

with rule 2-200 is proper. (See, e.g., *Scolinos v. Kolts* (1995) 37 Cal.App.4th 635, 640-641.)

2. Quantum Meruit

Alternatively, plaintiff contends that he is entitled to quantum meruit recovery of the reasonable value of his services. Even when rule 2-200 prohibits recovery under a fee-sharing agreement, an attorney may be able to recover the reasonable value of his or her services in quantum meruit. (See, e.g., *Huskinson & Brown v. Wolf* (2004) 32 Cal.4th 453, 464 (*Huskinson*).)[3] In the context of rule 2-200, it is axiomatic that "the particular fee that two attorneys negotiate without the client's consent does not furnish a proper basis for calculating the amount of recovery [in quantum meruit]." (*Huskinson*, at p. 458, fn. 2.) Instead, an attorney may recover the *reasonable value of services rendered on the client's behalf*. (*Id*. at p. 464.)

The second amended complaint did not allege that plaintiff provided any services for defendants or their clients, other than referring cases, and the contracts appended to the complaint specifically stated that plaintiff was not required to provide any legal services for the referred clients. Plaintiff did not allege that he worked on cases, or the nature of the work or the number of hours he worked, or the reasonable value of his services to support a claim to recover the reasonable value of services rendered. Instead, plaintiff merely seeks to enforce the contingent fee agreement.

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[3] Plaintiff also asks us to strike portions of defendants' discussion of the *Huskinson* case as misleading, without any developed explanation of why or how defendants have mischaracterized the case.

On a motion for summary judgment, the issues are framed by the pleadings. (*AARTS Productions, Inc. v. Crocker National Bank* (1986) 179 Cal.App.3d 1061, 1064.) A party moving for summary judgment " 'need not ". . . refute liability on some theoretical possibility not included in the pleadings." ' " (*Tsemetzin v. Coast Federal Savings & Loan Assn.* (1997) 57 Cal.App.4th 1334, 1342.) Nor may a party opposing summary judgment "defeat a summary judgment motion by producing evidence to support claims that are outside the issues framed by the pleadings." (*Vournas v. Fidelity Nat. Tit. Ins. Co.* (1999) 73 Cal.App.4th 668, 674, fn. 6.)

Because plaintiff did not allege a proper basis for quantum meruit recovery, his declaration that he performed services (without specifying what services or their value) did not demonstrate a material disputed fact, and summary judgment of this claim was proper.

3. Evidentiary Objections

Lastly, plaintiff argues in his opening brief that his declaration in opposition to the motions was "admissible," without identifying what, if any, order the court made regarding its admissibility. He admits in his reply brief that because the trial court's evidentiary rulings do not appear in the appellate record, "all comment and argument . . . is beyond the scope of appellate review." We agree that we are unable to review the trial court's evidentiary rulings, as the rulings do not appear in the appellate record. And, in any event, we find plaintiff has necessarily forfeited any claim of error, in light of his acknowledgment that the trial court's evidentiary rulings are beyond appellate review. (*DiCola v. White Brothers Performance Products, Inc.* (2008) 158 Cal.App.4th 666, 679 [a trial court's

evidentiary rulings are reviewed for abuse of discretion, and the burden is upon the appellant to demonstrate abuse of discretion].)

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal. Appellant's motion to strike portions of respondents' brief is denied.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

STRATTON, J.