IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

LAW OFFICES OF GARY R. DODGE,)	
P.A., a Delaware Corporation)	
)	
Plaintiff,)	
)	
V.)	
)	C.A. No. CPU5-13-000427
)	
SHAWN RUSSUM,)	
)	
Defendant.)	

Submitted: October 14, 2013 Decided: November 6, 2013

Upon Plaintiff's Motion for Partial Summary Judgment- DENIED

Gary R. Dodge, Esquire 584 North Dupont Highway Suite B Dover, DE 19901 Attorney for the Plaintiff Shawn Russum 384 Denney Street Dover, DE 19901 Pro Se Defendant

MEMORANDUM OPINION AND ORDER

INTRODUCTION

This action involves a fee dispute that arises out of legal representation of the Defendant by the Plaintiff in several courts. The Law Offices of Gary R. Dodge (hereinafter "the Firm") represented the Defendant, Shawn Russum (hereinafter "Russum") in matters before the Court of Chancery, the Superior Court, and the Court of Common Pleas. The Chancery action involved a dispute over personal property and real estate between Mr. Russum and his father. The Superior Court/Court of Common Pleas matters involved the recovery of the cash value of a certificate of deposit (hereinafter "CD") in Mr. Russum's name that his mother cashed without Mr. Russum's knowledge or permission. Mr. Russum signed fee agreements for each representation, but the Firm alleges that he stopped paying the billed invoices. Mr. Russum alleges that the Firm did not adequately represent him, nor did the members of the Firm listen to his requests for each of the two matters. Therefore, Mr. Russum claims that the Firm owes him money. After both parties submitted their pleadings, the Firm filed a motion for partial summary judgment with respect to the Superior Court/Court of Common Pleas matters. This is the Court's decision. The Plaintiff's Motion for Partial Summary Judgment is **DENIED**.

FACTS AND PROCEDURAL BACKGROUND

I. The Chancery Matter

Mr. Russum first sought legal assistance from the Firm on January 19, 2010.² He needed assistance with estate matters concerning his grandfather's estate and real estate matters involving his father. On October 19, 2012, Mr. Russum discharged Gary Dodge and the Firm from further representation, and as a result Mr. Dodge filed an application to withdraw with the

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¹ The Superior Court action and the subsequent Court of Common Pleas action will collectively be referred to as the "Superior Court/Court of Common Pleas matters."

² Pl. Compl., ¶ 3, at 1.

Court of Chancery.³ Vice Chancellor Glasscock heard Mr. Dodge's application on January 22, 2013. That same day, Vice Chancellor Glasscock also addressed the remaining issue in Mr. Russum's Chancery matter.⁴ Throughout his representation, the Firm mailed regular invoices for work done on the Chancery matter to Mr. Russum. The Firm began mailing invoices on February 4, 2010, and mailed the final invoice on March 9, 2012. The invoices for the Chancery matter totaled \$4,816.⁵ Mr. Russum made three payments on the account totaling \$430. Thus, the Firm claims that Mr. Russum owes a balance of \$4,336.

II. The Superior Court and Court of Common Pleas Matters

In addition to the Chancery matter, Mr. Russum needed help with the recovery of money from a CD that was in his name, which his mother had cashed without his knowledge. On November 30, 2010, Mr. Russum, acting *pro se*, filed a Complaint in the Court of Common Pleas against his mother for the repayment of the cash value of the CD titled in his name. After an oral motion to dismiss was made in that action, the Court of Common Pleas dismissed Mr. Russum's Complaint on the basis that the action was barred by the applicable statute of limitations. Thereafter, the Firm filed a notice of appeal with the Superior Court on April 25, 2011. That same day, Mr. Russum signed a fee agreement with the Firm. After briefing and argument on appeal, the Superior Court reversed and remanded the Court of Common Pleas decision on September 28, 2011.

Following the reversal and remand from the Superior Court, the Court of Common Pleas held trial on March 5, 2012, at which Mr. Dodge appeared on behalf of Mr. Russum. The Court

 $^{^3}$ Pl. Compl., ¶ 6, at 2. Gary Dodge is a principal with the Firm.

⁴ Pl. Compl., ¶ 7, at 3.

⁵ Pl. Compl. Ex. A. See Pl. Compl., ¶ 10, at 3.

⁶ Pl. Compl., ¶ 12, at 3.

⁷ Pl. Compl., ¶ 12, at 3.

⁸ Pl. Compl., ¶ 16, at 4. *See* Pl. Compl. Ex. B. The agreement outlined an hourly billing system, and required a \$2500 retainer fee.

of Common Pleas ultimately found in favor of Mr. Russum.⁹ Mr. Russum's mother then filed a motion for reargument, which the Court of Common Pleas denied. Both parties to the matter then entered negotiations regarding the amount of pre- and post-judgment interest to be charged. Mr. Russum ultimately received \$22,000 on September 27, 2012.¹⁰

The Firm asserts that it sent Mr. Russum invoices at regular intervals for its involvement with this matter. The first invoice is dated April 21, 2011, and the last invoice is dated November 19, 2012. The invoices for the Superior Court/Court of Common Pleas matters totaled \$9,628.¹¹ The Firm contends that Mr. Russum submitted five payments on the account totaling \$2,450, leaving a balance of \$7,178.

On April 10, 2013, the Firm filed a Complaint in this Court, seeking judgment for the outstanding balances owed to the Firm from its work on the matters for Mr. Russum. Mr. Russum filed an Answer on May 31, 2013, admitting that he agreed to the Firm's representation for the Chancery matter and the Superior Court/Court of Common Pleas matters. He, however, denies that he owes the full amount requested by the Firm. On July 26, 2013, Mr. Russum filed a Counterclaim against the Firm, alleging that the Firm did not satisfactorily represent him, which resulted in Mr. Russum recovering less money than he anticipated. Mr. Russum further alleges that he had to undergo additional unnecessary court proceedings. Mr. Russum requests that this Court enter judgment against the Firm for \$8,500, plus pre- and post-judgment interest.

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⁹ The Court issued its post-trial decision on June 6, 2012, awarding Mr. Russum \$16,039.39 plus pre- and post-judgment interest and court costs.

¹⁰ Pl. Compl., ¶ 21, at 5.

¹¹ Pl. Compl., ¶ 25, at 6; see Pl. Compl. Ex. C.

¹² The Firm seeks judgment in the amount of \$11,514.00; pre-judgment interest at the rate of 1.5% on the outstanding balance of \$7,178 from the Court of Common Pleas matter, from November 29, 2012; post-judgment interest; costs; and any other relief the Court deems just and proper. The Firm attached the following Exhibits to the Complaint: (1) Expense Report for Shawn Russum in regards to Dad's Case dated from February 4, 2010 to March 9, 2012; (2) Letter of Representation and Fee Agreement dated April 21, 2011, and signed by Laura D. Willis and Shawn Russum; (3) Expense Report for Shawn Russum in regards to Mom's Case dated from April 24, 2011 to November 19, 2012.

On August 8, 2013, the Firm filed an Answer to the Counterclaim, denying the allegation that Mr. Russum received less recovery than expected, and that he had to participate in unnecessary court proceedings as a result of the Firm's failure to properly represent him.

On September 30, 2013, the Firm filed a Motion for Partial Summary Judgment against Mr. Russum solely on the fees owed for the Firm's representation in the Superior Court/Court of Common Pleas matters. The Firm contends that Mr. Russum has not offered any proof that a genuine issue of material fact exists with respect to the fees owed on those matters. On October 14, 2013, Mr. Russum filed a Response to the Motion for Partial Summary Judgment, in which he asserts that a genuine issue of material fact does exist with respect to the commencement of the Court of Common Pleas/Superior Court representation, and whether the Firm abided by Mr. Russum's requests.¹³

PARTIES' CONTENTIONS

In its Motion, the Firm alleges that it was only after the Court of Common Pleas dismissed Mr. Russum's *pro se* Complaint that he retained the Firm to represent him in the Superior Court/Court of Common Pleas matters. The Firm further contends that its representation of Mr. Russum in the Superior Court appellate action would be necessary, whether or not the Firm had filed the original Court of Common Pleas action on Mr. Russum's behalf. The Firm thus concludes that the Superior Court appeal was an inevitability and Mr. Russum would have incurred the appellate fees even if the Firm had represented him in the initial Court of Common Pleas matter.

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¹³ Mr. Russum attached the following Exhibits to his Response: (1) Email from Julie Weidert to Shawn Russum dated July 1, 2010, regarding his file; (2) Letter from Gary Dodge to Roy Shiels regarding both the estate and CD matters, dated October 14, 2010; (3) Letter from Gary Dodge presumably to Roy Shiels regarding the matters against both parents. The letter is missing the first page, and therefore the date and recipient are unknown.

In his response to the Firm's Motion, Mr. Russum alleges that he believed that the Firm was representing him in both the estate and CD matters from the time the Firm first agreed to represent him. Mr. Russum alleges that the Firm was aware of the issues surrounding the CD and, as professionals, should have recognized the statute of limitations issue from the outset of the attorney-client relationship. Mr. Russum asserts that if the Firm recognized this issue at the beginning of the relationship, then it should have acted to rectify the situation immediately, not months later, thereby avoiding increased legal fees.

LEGAL STANDARD

Under Delaware law, a court will grant summary judgment only if there exists no genuine issue of material fact. Court of Common Pleas Civil Rule 56(c) provides that "[t]he judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitles to judgment as a matter of law." ¹⁴ If the record reveals that material facts are in dispute, or if the factual record has not been developed thoroughly enough to allow the Court to apply the law to the factual record *sub judice*, then summary judgment must be denied. ¹⁵ "Summary judgment must also be denied if there is a dispute regarding the inferences which might be drawn from the facts." ¹⁶ The moving party in an action has the burden of establishing the lack of a genuine issue, and the court will review all facts in a light most favorable to the non-moving party. ¹⁷

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¹⁴ CCP Civ. R. 56(c).

¹⁵ Ebersole v. Lowengrub, 180 A.2d 467 (Del.1962).

¹⁶ Edelstein v. Goldstein, 2011 WL 721490 at *3 (Del. Super. Mar. 1, 2011).

¹⁷ *Id.* at *3.

DISCUSSION

The record is clear that Mr. Russum filed a *pro se* Complaint in the Court of Common Pleas and subsequently requested the Firm to represent him on appeal. However, there is a genuine issue of material fact as to whether Mr. Russum requested that the Firm represent him in the original Court of Common Pleas action. If that was the case, then there is an issue of whether such representation would have obviated the need for a subsequent Superior Court appeal and concomitant fees incurred therefrom. Mr. Russum, in his response to the Firm's Motion for Partial Summary Judgment, attached two exhibits, both of which raise doubts as to the necessity of the appellate process in which the Firm engaged after the Court of Common Pleas dismissed the action on statute of limitations grounds.

First, Mr. Russum presented an email dated July 1, 2010, from Ms, Julie Weidert (hereinafter "Weidert") of the Firm, which states that she discussed the CD matter with Mr. Dodge. Ms. Weidert requested in the email that Mr. Russum provide more information with regards to the CD.¹⁸

Second, Mr. Russum provided the Court with a letter from Mr. Dodge and addressed to Mr. Roy Shiels, counsel for Mr. Russum's parents. In the letter, Mr. Dodge states that he met with Mr. Russum regarding matters involving his parents. After describing the Court of Chancery matter, Mr. Dodge goes into detail about the background of the CD matter. Although attorneys may receive information regarding issues of potential clients prior to them accepting the representation, Mr. Dodge specifically states in the letter that his "client" was a minor at the time the CD was created; that his "client" indicates that [Mr. Dodge] should be anticipating a

¹⁸ Def. Resp. to Pl. Mot. Summ. J. Ex. 1

¹⁹ Professional Conduct Rule 1.18, Comment 1.

telephone call from a detective; and that monies are due to his "client." The Firm argues in its pleadings that it did not begin representing Mr. Russum on the CD matter until the appeal to the Superior Court. However, Mr. Russum's exhibits raise doubt as to the accuracy of such assertions. If the Firm was "retained" to file an action on behalf of Mr. Russum prior to his *pro se* filing, and failed to do so, then a genuine issue of material fact exists as to whether the dismissal based on the expiration of the statute of limitations would have occurred and the need for a Superior Court appeal would have arisen.

The Firm argues that even if it represented Mr. Russum at the time he filed his pro se Complaint, the statute of limitations had already expired. Thus, even if the Firm had filed a complaint on behalf of Mr. Russum, it is more likely than not that the proof the Firm provided on remand would have been produced at the initial trial. Hence, the Firm argues that "it is much more reasonable to infer that the same briefing on appeal would have taken place in this Court."21 This argument militates in favor of Mr. Russum. It is reasonable to infer that if the Firm represented Mr. Russum in the original Court of Common Pleas action, then any arguments raised about the statute of limitations would have been addressed in the same manner and by the same briefing prepared by the Firm. Thus, with the advantage of the applicable case law and skilled argument by a trained lawyer, this Court would likely have found in favor of Mr. Russum on a motion to dismiss, just as it did after remand by Superior Court. Had this course of events taken place, the Superior Court appeal would not have been necessary, nor its attendant costs. Despite the Firm's contention that such a finding would require rank speculation, this Court views it as a logical conclusion, particularly since the Firm acknowledges that it would have engaged in the same briefing as it did in the Superior Court appeal.

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²⁰ Def. Resp. to Pl. Mot. Summ. J. Ex. 2.

²¹ Pl. Mot. Summ. J., ¶ 8, at 3.

At this stage of the proceedings, applying the necessary inferences under Rule 56, this

Court must look at the facts presented in a light most favorable to the non-moving party. In so

doing, I find that there is a genuine issue of material fact as to whether the appeal to the Superior

Court would have been necessary if the Firm had represented Mr. Russum in the original Court

of Common Pleas Action. If the appeal was unnecessary then the fees applied to the appeal

should not have been incurred. This material issue of fact cannot be resolved at the summary

judgment stage.

I want to be clear that by finding that a genuine issue of material fact exists, the Court is

not ruling on whether the Firm was required to handle the original Court of Common Pleas

Action. Rather, the Court has determined that a sufficient issue of fact exists to deny the motion

and have the issue resolved at trial.

ORDER

For the foregoing reasons, the Plaintiff's Motion for Partial Summary Judgment is

DENIED.

IT IS SO ORDERED.

The Honorable Sheldon K. Rennie,

Judge

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