

STATE OF OHIO)
)
) SS:
CUYAHOGA COUNTY)

IN THE COURT OF
COMMON PLEAS

CASE NO. CV 10 727247

MICHAEL P. HARVEY CO., LPA,)
Plaintiff,)
)
vs.)
)
ANTHONY RAVIDA, et al.,)
Defendant.)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

SHIRLEY STRICKLAND SAFFOLD, JUDGE:

Plaintiff, Michael P. Harvey Co., LPA (hereinafter “Plaintiff”), brought this action against the Defendant, Anthony Ravida (hereinafter “Defendant Ravida”), seeking to recover allegedly unpaid legal fees. This matter was originally tried to the Court on October 24, 2011. After rendering a verdict in favor of the Defendant, and denying the Plaintiff’s Motion for Reconsideration, the Plaintiff appealed this Honorable Court’s Decision to the Eighth District Court of Appeals.

The Appellate Court subsequently reversed and remanded this matter for a new trial based on the denial of Plaintiff’s request to testify in the narrative. At the case management conference a trial date of October 29, 2012 was set. This matter was thus tried to the Court on October 29, 2012. In open court, and on the record, the Plaintiff waived his right to a *de novo* trial and instead requested that the Court consider the transcript of the first trial, combined with his narrative testimony and cross-examination. The Court accepted said waiver and the trial commenced. After consideration of the testimony and evidence, this Court hereby issues the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Plaintiff-Attorney Michael P. Harvey is an attorney retained by Defendant Ravida's employer, Co-Defendant Salvatore DiFalco.
2. Defendant Ravida was an employee of a company owned and operated by Co-Defendant Salvatore DiFalco.
3. Sometime in March 2009, Co-Defendant Salvatore DiFalco retained Plaintiff to represent himself, his wife Elizabeth DiFalco, his companies Silverback Stone, Inc. and Stone Appeal, Inc., and his employee, Defendant Ravida, as well as other employees, in Case No. 1:09-cv-02503 in The United States District Court for the Northern District of Ohio.
4. On, or about, October 27, 2009, Plaintiff entered a Notice of Appearance in said federal court case.
5. Plaintiff represented Defendant and Co-Defendants in the federal court case until its close sometime in 2010. However, no clear evidence was presented supporting the claim that Defendant personally hired Plaintiff for such representation. All of the evidence supports the contention that in fact the Plaintiff was hired by the co-Defendants to represent all of the Defendants, including Defendant Ravida, in the underlying federal case.
6. When the federal court case concluded there was allegedly due and owing to Plaintiff an outstanding balance of attorney's fees in the amount of \$27,352. To support this contention the Plaintiff submitted nothing more than a generalized itemized statement addressed to both Defendant and co-Defendant DiFalco at a business address.

7. Plaintiff filed this action against Defendants, Anthony Ravidia, Salvatore DiFalco, Elizabeth DiFalco, Silverback Stone, Inc., and Stone Appeal, Inc. on or about May 20, 2010 in this Honorable Court.
8. Plaintiff asserted claims for Breach of Contract, Breach of Oral Contract, Unjust Enrichment/*Quantum Meruit*, Promissory Estoppel, Promissory Fraud, and Fraudulent Misrepresentation.
9. Plaintiff entered into a confidential settlement agreement with Co-Defendants Salvatore DiFalco, Elizabeth DiFalco, Silverback Stone, Inc., and Stone Appeal Inc. on or about August 17, 2010.
10. After entering into a confidential settlement agreement with the Co-Defendants, the Plaintiff, despite having failed to ever serve the Defendant, filed a Motion for Summary Judgment with this Honorable Court demanding judgment in the miscellaneous amount of \$36,373.00. Plaintiff filed this Motion for Summary Judgment knowing that service had not been obtained and did nothing to bring this fact to the Court's attention. The Court, not knowing that service had not been properly obtained and trusting that the Plaintiff acting as an officer of the Court would not improperly file such a motion knowing that service was not obtained, granted Motion for Summary Judgment on or about March 24, 2011.
11. On, or about, April 19, 2011, the Defendant's Motion to Vacate the Summary Judgment Order based on the failure of the Plaintiff to ever properly serve the Defendant was granted and this matter was reinstated to this Court's active docket.

12. After a final payment from the Co-Defendants that satisfied their confidential agreement, the Plaintiff notified the Court on October 24, 2011 that it was reducing the demand from \$27,352 in unpaid legal fees to \$13,521.90.

CONCLUSIONS OF LAW

13. The evidence presented at trial established that the Plaintiff obtained signed agreements for representation and waiver of conflict of interest forms in the underlying federal case from Co-Defendants Salvatore DiFalco, Elizabeth DiFalco, Silverback Stone, Inc., and Stone Appeal, Inc.

14. Based upon the Defendant's denial and the Plaintiff's failure to produce a signed copy or a copy of the signed copy, Defendant never retained Plaintiff as his attorney or signed a Letter of Agreement or a Waiver of Conflict form as the other Defendants did. Furthermore, while all witnesses agree that the Co-Defendants Salvatore and Elizabeth DiFalco entered into an agreement for representation, no witnesses were able to testify that they saw the Defendant sign these forms. In fact, Salvatore DiFalco specifically testified that he, in fact, never saw the Defendant sign any agreement, stating, "I did not see him personally sign that piece of paper." Trial Tr. 17:6, Oct. 24, 2011.

15. Plaintiff repeatedly acknowledged that he did not have a signed original contract or a copy of said contract. "[A]nd as the court already noted that agreement is not even signed." Trial Tr. 31:14, October 24, 2011.

16. Furthermore, the Co-Defendants additionally paid the Plaintiff a retainer fee of \$5,000.00 for representation in the federal case. There is no proof or evidence that Defendant ever paid any such retainer.

17. As “proof” of the representation that would entitle him to judgment on his unjust enrichment/*quantum meruit* claim, Plaintiff submitted his Exhibit K which was entitled “Invoice submitted to: Sal DiFalco and Tony Ravidia.” This appears to be an invoice for legal services on the underlying federal case. However, the break down appears to be for the case as a whole, not for the representation of each client jointly and severally as the Plaintiff alleges occurred. It appears from the evidence that all representation was done globally, and that the invoices reflect this.
18. In addition to being unable to produce evidence of a signed agreement or of an oral agreement with the Defendant, counsel for the Plaintiff at trial presented conflicting arguments about the representation of the Defendant. At one point it was argued that the Defendant was represented individually and separately from the Co-Defendants, and at another point during trial counsel argued that in fact Defendant was represented jointly and severally with the Co-Defendants.
19. No evidence was presented to counter the claim that Defendant never retained Plaintiff to represent him. Defendant maintains, and no evidence to the contrary was submitted, that the Co-Defendants were the ones who entered into the Letter of Agreement, Waiver of Conflict, and paid a \$5,000.00 retainer fee, and that it was the Co-Defendants who agreed to retain and compensate the Plaintiff, not the Defendant.
20. In fact, the testimony supported the assertion that the co-Defendants were the only ones who entered into the agreement and paid a retainer to the Plaintiff. Furthermore, the testimony established that the co-Defendants had reached some sort of agreement with the Defendant that he would reimburse them for legal fees by working for Defendant DiFalco and/or his company as a salesman. Plaintiff stated during direct examination of

Defendant Sal DiFalco, “[H]e was going to work off his debit if you will by being a salesman for your companies...” Trial Tr. 8:8, October 24, 2011. Whether or not the Defendant fulfilled this agreement to “work off his debt” is irrelevant and is an issue to be resolved between the Defendants. This suggests to the Court that in reality, any claim against Defendant would be held by his co-Defendants, not the Plaintiff, who paid the legal fees, or a portion thereof, on Defendants behalf with an understanding that he would work off the debt.

21. It was further submitted that the co-Defendants made payments on behalf of all of the Defendants, including Defendant Ravida, globally. Trial Tr. 7:17, October 24, 2011. Based upon the evidence it appears that Defendant was not in fact unjustly enriched because the Plaintiff was retained by the co-Defendants to represent all the Defendants, including Defendant Ravida. Co-Defendants provided payment to the Plaintiff, and in fact have settled this matter with the Plaintiff. It is thus the view of the Court that the Defendant and co-Defendant were not jointly and severally liable and that in fact the Plaintiff has been reimbursed for any services rendered under the alleged contract.
22. Based upon a total lack of evidence that the Defendant ever retained the Plaintiff or entered into any agreement for representation with the Plaintiff, judgment is hereby rendered in favor of the Defendant, Anthony J. Ravida,
23. This judgment is final. Court costs assessed to the Plaintiff.

IT IS SO ORDERED.

SHIRLEY STRICKLAND SAFFOLD, JUDGE

DATE: November ____, 2012

NOTICE OF SERVICE

A copy of the foregoing Findings of Fact and Conclusions of Law was forwarded this

_____ day of November, 2012, via regular mail service to the following:

Michael P. Harvey, Esq.
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311 Northcliff Drive
Rocky River, Ohio 44116

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