UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re: Case No. 2:15-bk-04241-FMD
Chapter 7

Benjamin H. Yormak,

Debtor.
_____/

ORDER DENYING CREDITOR STEVEN R. YORMAK'S MOTION FOR RECONSIDERATION [Doc. No. 853]

THIS CASE came before the Court without a hearing on *Creditor Steven R. Yormak's Motion for Reconsideration* (the "Reconsideration Motion")[1] and Debtor's response.[2] In the Reconsideration Motion, Creditor Steven R. Yormak ("Dad") asks the Court to reconsider its February 3, 2021 summary judgment order (the "Summary Judgment Order").[3] In the Summary Judgment Order, the Court, *inter alia*, (1) granted the motion for summary judgment filed by Debtor ("Son"), (2) denied Dad's motion for summary judgment, and (3) disallowed Dad's Claim No. 4-2 (the "Claim") in the case.

Dad timely filed the Reconsideration Motion, primarily asserting that the Court did not consider his claim for compensation under an unjust enrichment theory. After filing the Reconsideration Motion, Dad filed a Notice of Appeal of the Summary Judgment Order.[4] Under Fed. R. Bankr. P. 8002(b)(2), if a party files a notice of appeal before the court disposes of a pending motion to alter or amend a judgment, the notice of appeal "becomes effective when the order disposing of the last such remaining motion is entered."

A. The Summary Judgment Order

Dad, a Canadian attorney, has never been licensed to practice law in the State of Florida. In 2011 and 2012, Dad and Son entered oral and written Consulting Agreements[5] for Dad to provide services to Son in connection with Son's Law Firm.

As explained in the Summary Judgment Order, the Court initially set Son's Objection to Dad's Claim for trial on the dispositive issue of whether the Consulting Agreements are void and unenforceable because they provide for the unlicensed practice of law.[6] Dad later filed a motion for leave to file a motion for summary judgment on the issue of the unlicensed practice of law;[7] the Court granted the motion and set a briefing schedule.[8]

In the Summary Judgment Order, the Court found that the undisputed evidence showed that in 2011, Dad intended to establish a legal practice in the State of Florida with Son, a 2009 law school graduate who only recently had been admitted to practice law in Florida. The Court concluded that all of Dad's services, whether legal or "nonlegal" in nature, were consistent with those of an attorney practicing law in Florida. Consequently, the Court determined that Dad's activities constituted the unlicensed practice of law; that the Consulting Agreements provided for Dad's unlicensed practice of law; that the Consulting Agreements are void and unenforceable as against public policy; and that Dad could not be awarded any compensation under the void contracts.[9]

In reaching its decision, the Court evaluated Dad's contention that his services were merely nonlegal support services such as consulting with or mentoring Son.[10] For example, the Court considered the expert report of Richard Greenberg, Esq., that Dad submitted as evidence that his services to Son did not constitute the practice of law.[11] But the Court determined that the totality of the evidence clearly established that Dad's services constituted the unlicensed practice of law.

[1] Doc. No. 853.
[2] Doc. No. 857.
[3] Doc. No. 851.
[4] Doc. No. 855.
[5] Capitalized terms refer to defined terms in the Summary Judgment Order.
[6] Doc. No. 851, p. 3.
[7] Doc. No. 793.
[8] Doc. No. 795.
[9] Doc. No. 851, pp. 47-48.
[10] Doc. No. 851, p. 3.
[11] Doc. No. 851, p. 37 (citing Doc. No. 798-2).

The record evidence considered by the Court included (1) Dad and Son's initial email communications regarding Dad's "brilliant idea" to address their situations and the proposed "BHY/SRY [Son/Dad] Arrangement;"[12] (2) the Main Consulting Agreement, which contemplates payment to Dad from fees earned on Client Files, as defined therein;[13] (3) the *Summary of Hours for Consultant S. Yormak 2011 to July 1, 2012*, prepared by Dad, which describes Dad's services in connection with establishing the Law Firm and Dad's work on client files;[14] (4) Dad's affidavit outlining the approximately 1500 hours of legal services he performed in the CBL Class Action over the course of two years;[15] and (5) Dad's Original Complaint against Son in which Dad identifies himself as a member of an "oral partnership" with Son to conduct a law practice.[16] The Court concluded that Dad "ran the show" at the Law Firm and that there was no evidence that Son supervised Dad.[17]

In the Summary Judgment Order, the Court also analyzed whether an unlicensed attorney is entitled on equitable grounds to compensation for services rendered. Citing *Morrison v. West*,[18] the Court found that an unlicensed attorney may not be awarded quantum meruit fees for services he performs under a void contract for three reasons. First, an unlicensed attorney's performance of services constituting the practice of law is illegal; second, his recovery of fees for such services is a violation of public policy; and third, the "judicial power of this state should not be used to effectuate a violation of public policy."[19] Accordingly, the Court concluded that an unlicensed attorney should not be awarded quantum meruit fees for services performed under a void contract.[20]

B. The Reconsideration Motion

Dad timely filed the Reconsideration Motion, without specifying whether he seeks relief under Fed. R. Civ. P. 59 or Fed. R. Civ. P. 60. However, a motion for reconsideration filed within 28 days after entry of the judgment is generally treated as a motion for relief under Fed. R. Civ. P. 59(e).[21]

Reconsideration of an order under Rule 59(e) is an extraordinary remedy to be granted sparingly because of the interest in the finality of orders and the conservation of judicial resources.[22] In the Eleventh Circuit, the only grounds for granting a motion for reconsideration under Rule 59(e) are newly discovered evidence or manifest errors of law or fact.[23] Dad has not alleged any newly discovered evidence; therefore, the Court will consider whether the Summary Judgment Order is based on any manifest errors of law or fact.

Dad raises three issues in the Reconsideration Motion. First, Dad disputes the Court's factual findings regarding his unlicensed practice of law.[24] Second, Dad disputes the Court's denial of his request to exclude the exhibits filed by Son in support of Son's motion for summary judgment.[25] But "[a] motion for reconsideration 'addresses only factual and legal matters that the Court may have overlooked. It is improper on a motion for reconsideration to ask the Court to rethink what it had already thought through – rightly or wrongly.'"[26]

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[12] Doc. Nos. 822-5, 822-6. Note: Doc. No. 822 consists of the exhibits to Son's summary judgment motion and response to Dad's summary judgment motion. The exhibits were filed under seal to protect client confidentiality pursuant to the Court's Order dated July 17, 2020 (Doc. No. 821).

[13] Claim No. 4-2, pp. 11-22.

[14] Doc. No. 822-72.

[15] District Court Case No. 2:16-cv-00206-PAM-MRM, Doc. No. 325; Doc. No. 822-24.

[16] Doc. No. 822-101.

[17] Doc. No. 851, pp. 45-46.

[18] 30 So. 3d 561, 565-66 (Fla. 4th DCA 2010).

[19] Doc. No. 851, p. 48 (citing *Morrison v. West*, 30 So. 3d at 565-66)(citing *Chandris, S.A. v. Yanakakis*, 668 So. 2d 180 (Fla. 1995), and *The Florida Bar v. Savitt*, 363 So. 2d 559 (Fla. 1978)).

[20] Doc. No. 851, p. 48.

[21] Fed. R. Civ. P. 59, as made applicable to bankruptcy cases by Fed R. Bankr. P. 9023. *In re John Q Hammons Fall 2006, LLC*, 614 B.R. 371, 376 (Bankr. D. Kan. 2020)(citations omitted); *In re Smith*, 541 B.R. 914, 915, n. 11 (Bankr. M.D. Fla. 2015).

[22] *In re Smith*, 541 B.R. at 915-16(citations omitted).

[23] *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007)(quoting *In re Kellogg*, 197 F.3d 1116, 1119 (11th Cir. 1999))(and cited in *In re Ardis*, 2017 WL 3491797, at *2 (Bankr. N.D. Fla. Jan. 6, 2017)).

[24] Doc. No. 853, ¶¶ 5-6.

[25] Doc. No. 853, ¶¶ 7-8.

[26] *In re Smith*, 541 B.R. at 916 (citations omitted).

Consequently, the Court will deny the Reconsideration Motion to the extent that Dad seeks to relitigate matters that were previously raised and decided by the Court and will limit its analysis to the Reconsideration Motion's third issue: Dad's contention that the Court failed to consider his claim for compensation under an unjust enrichment theory and his request for leave to take discovery relating to services that he claims were "non-lawyer in nature."

C. Dad's Unjust Enrichment Claim

In the Reconsideration Motion, Dad asserts that his Claim included a copy of his Amended Complaint against Son that was pending at the time in District Court, and that the Amended Complaint in turn included a claim for unjust enrichment.[27] In the Amended Complaint, Dad alleged that he and Son had entered oral and written Consulting Agreements for Dad to provide consulting services to Son, and that the services that he provided under the Consulting Agreements included "business expertise;" "goodwill and professional identity;" "market research;" "intellectual property (slogan, motto, test for promotions, website);" "preparation of a business plan;" "promotional and marketing strategy for acquiring employment and disability clientele;" "office precedents;" "office management protocol and procedures;" "case preparation;" "administrative and office set up;" "billing procedures;" "negotiation advice;" "client and opposing counsel communications;" "productivity advice;" "advocacy advice;" "time management;" and "all other business matters which make up a law practice with a focus on employment and disability law."[28]

Counts I and II of Dad's Amended Complaint alleged that Son breached the oral and written Consulting Agreements by refusing to pay the amounts owed to Dad for his services; Count III alleged a claim for unjust enrichment.

To establish a claim for unjust enrichment under Florida law, a plaintiff must prove that: "(1) plaintiff has conferred a benefit on the defendant, who has knowledge thereof; (2) defendant voluntarily accepts and retains the benefit conferred; and (3) the circumstances are such that it would be inequitable for the defendant to retain the benefit without first paying the value thereof to the plaintiff."[29] A claim for unjust enrichment is an equitable claim.[30]

In *Morrison*[31] and *Vista Designs v. Silverman*,[32] unlicensed attorneys requested compensation for their services under a quantum meruit theory; the courts denied the requests on the grounds that recovery for illegal services violates public policy. (The same public policy analysis applies to Dad's unjust enrichment theory because the elements required to establish the equitable claims are the same.[33]) In *Vista Designs*, the court stated:

> [The attorney] knowingly engaged in the representation of Vista Design in Florida even though he was not admitted to practice before this State. His representation of Vista Designs continued even after suit was filed in the Middle District of Florida, a court before which he was also not admitted to practice. Clearly, his actions went beyond mere legal support or consulting. *While [the attorney] conferred a benefit upon Vista Designs by providing expert legal services which may have assisted in the settlement of its legal dispute with Trend Marketing, public policy, however, dictates that a party should not benefit from its wrongdoing*.[34]

Here, based on the entirety of the record, the Court found in the Summary Judgment Order that Dad "ran the show" at the Law Firm, that Dad—who at that time was not licensed to practice law in *any* state in the United States—acted like a licensed lawyer, and that Dad did not work under Son's

[27] Doc. No. 853, ¶¶ 1-4, 9; Claim No. 4-2.
[28] Claim No. 4-2, pp. 5-6.
[29] *Duty Free World, Inc. v. Miami Perfume Junction, Inc*., 253 So. 3d 689, 693 (Fla. 3d DCA 2018).
[30] *CEMEX Construction Materials Florida, LLC v. Armstrong World Industries, Inc.*, 2018 WL 905752, at *12 (M.D. Fla. Feb. 15, 2018).
[31] 30 So. 3d 561, 565-66.
[32] 774 So. 2d 884, 888 (Fla. 4th DCA 2001).
[33] Florida law prescribes the same basic elements for equitable claims under quantum meruit, unjust enrichment, or quasi contract. *Dyer v. Wal-Mart Stores, Inc*., 535 F. App'x 839, 841-42 (11th Cir. 2013), and *Surgery Center of Viera, LLC v. Meritain Health, Inc*., 2020 WL 7389987, at *11 (M.D. Fla. June 1, 2020).
[34] *Vista Designs*, 774 So. 2d at 888 (emphasis added).

supervision. The Court, concluding that the services provided by Dad constituted the unlicensed practice of law and that Dad could not be compensated for his services on equitable grounds, stated:

> Moreover, an unlicensed attorney will not be awarded quantum meruit fees for services performed under a void contract. In *Morrison v. West*, the court denied an out-of-state attorney's request for quantum meruit fees on the grounds that the unlicensed attorney's performance of services was illegal under Florida Statute § 454.23. *The court held that an unlicensed attorney's recovery of fees for the unauthorized practice of law is a violation of public policy, regardless of any private understanding between the parties, and that the "judicial power of this state should not be used to effectuate a violation of public policy."*
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> Here, the Court finds that the Consulting Agreements provided for Dad to perform services that constitute the unlicensed practice of law. Therefore, the Consulting Agreements are void and unenforceable.[35]

In other words, in the Summary Judgment Order, the Court considered whether Dad was entitled to compensation on equitable grounds, and concluded that he was not.

In *Kossoff v. Felberbaum*,[36] a New York court analyzed, under Florida law, a New York attorney's unjust enrichment claim against a Florida attorney. In that case, Kossoff, a New York attorney, and Felberbaum, a Florida attorney, met in New York City and became close friends. Later, Felberbaum returned to Florida and established a law firm. Kossoff provided services to Felberbaum and the law firm, and Felberbaum assigned Kossoff an interest in the law firm as compensation for his services. During this period, Felberbaum had also loaned monies to Kossoff, and Kossoff executed a promissory note to Felberbaum for $515,000.00. Ultimately, conflicts arose between the two friends, and Kossoff sued Felberbaum for, *inter alia*, breach of contract, unjust enrichment, and a declaration voiding the promissory note.

The court acknowledged that Felberbaum's assignment to Kossoff of an interest in the law firm was never enforceable because Kossoff was not admitted to practice law in Florida.[37] However, the court found that the matters on which Kossoff had provided services, such as locating additional office space for the law firm, assisting in securing a line of credit, providing opinions as to litigation claims against the law firm, and interfacing with the law firm's new employees, had benefited the law firm and that good conscience required that Kossoff be compensated.[38] The court then considered whether public policy barred Kossoff from recovery.

The *Kossoff* court analyzed the rulings in *Morrison*, *Vista Designs*, and other Florida cases, and concluded that Kossoff's services to the law firm did "not amount to the types of professional actions that constitute the practice of law," and that "at no point did [Felberbaum and the law firm], *or anybody*, seem confused or mislead about whether Kossoff was licensed to practice law in Florida."[39] The court concluded that Kossoff's unjust enrichment claim was not barred by public policy.[40]

But the facts in *Kossoff* are materially and substantially different from those presented here, and the distinct facts of this case warrant a different conclusion.

First, the attorneys in *Kossoff* were friends who had managed separate legal careers before they met as adults and who each contributed proportionately to the relationship. Here, Dad and Son were not equal in either their family relationship or in their legal experience, with Dad's 30 years of legal experience far exceeding Son's 18 months as a lawyer. Second, the *Kossoff* court specifically found that Kossoff's services either did not constitute the practice of law or were excepted from the rule voiding compensation for

[35] Doc. No. 851, p. 48 (emphasis added).
[36] 281 F. Supp. 3d 454 (S.D.N.Y. 2017).
[37] *Id*. at 463.
[38] *Id*. at 466.
[39] *Id*. at 468-469 (emphasis added).
[40] *Id*. at 470.

such services.[41] Here, the overwhelming evidence established that Dad engaged in the unlicensed practice of law by committing four types of acts that are "commonly understood to be the practice of law" in the State of Florida.[42] Specifically, the Court found that Dad (1) held himself out as an attorney;[43] (2) advocated the merits of cases to attorneys;[44] (3) analyzed the law and discussed it with clients;[45] and (4) directed law-related activities at the Law Firm.[46] And third, in *Kossoff*, Kossoff did not seek to share in client fees generated by Felberbaum's Florida law practice and did not assert a claim for an amount greater than he normally and reasonably charged.[47] Here, Dad seeks 67% of the gross fees earned in connection with a number of the Law Firm's client files, and 70% of the fees earned the CBL Class Action and the Qui Tam Action.[48]

In addition, despite Dad's having acknowledged receipt of a Letter of Advisement from The Florida Bar advising him of the activities that constitute the practice of law in Florida,[49] Dad continued to act as an attorney. In the Letter of Advisement, acknowledged by Dad in May 2012, The Florida Bar advised Dad that it constitutes the unlicensed practice of law in Florida for a paralegal or nonlawyer to:

> (1) hold himself out as an attorney in dealings with others; (2) participate in settlement negotiations as if he were legal counsel for one of the parties; (3) discuss case law and legal strategy with clients; (4) speak on behalf of clients; and (5) argue the legal merits of cases.[50]

Yet on September 28, 2012, Dad met with attorneys in Philadelphia (without Son) to discuss the CBL Class Action. During the meeting, Dad discussed the merits of the case, venue selection issues, and the terms of a proposed co-counseling arrangement with the Philadelphia attorneys.[51] And the next day, Dad met in Philadelphia with attorneys from the Duane Morris firm and the Law Firm's client, Mariela Barnes, (again without Son) to present the merits of the Qui Tam Action. Ms. Barnes testified in her deposition that she understood that Dad attended the meeting in order to answer questions about the case and to interpret the discussion if necessary.[52] *In other words, to represent her at the meeting with the Duane Morris attorneys.*

Unlike the facts in *Kossoff*, the undisputed facts here demonstrate that Dad is not entitled to compensation on the equitable ground of unjust enrichment.

D. Conclusion

In his Reconsideration Motion, Dad has not alleged any newly discovered evidence, and he has not shown the presence of any manifest errors of law or fact that would warrant reconsideration of the Summary Judgment Order.

Accordingly, it is

ORDERED that *Creditor Steven R. Yormak's Motion for Reconsideration* is **DENIED.**

DATED: February 26, 2021.

/s/ Caryl E. Delano

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Caryl E. Delano
Chief United States Bankruptcy Judge

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[41] *Id*. at 468-69.
[42] *The Florida Bar v. Neiman*, 816 So. 2d 587, 594-95 (Fla. 2002).
[43] Doc. No. 851, pp. 39-40.
[44] Doc. No. 851, pp. 41-42.
[45] Doc. No. 851, pp. 42-44.
[46] Doc. No. 851, pp. 44-46.
[47] 281 F. Supp. 3d at 468.
[48] Doc. No. 851, p. 46.
[49] Doc. No. 493-5.
[50] Doc. No. 493-5 (citing *The Florida Bar v. Neiman*, 816 So. 2d 587 (Fla 2002)).
[51] Doc. No. 822-26.
[52] Doc. No. 822-16, pp. 3, 10.