

No. 1-11-2908

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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JONATHAN LUSTIG,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 09 M 22460
	)	
PAPPAS, HEALY & PAPPAS, LLC,	)	
an Illinois Limited Liability Company,	)	Honorable
	)	Leon Wool,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Justices Hall and Karnezis concurred in the judgment of the court.

**ORDER**

¶ 1 **Held:** Trial court properly granted defendant's motion for judgment on the pleadings as to plaintiff's attorney's action based on a referral-fee agreement. Because the agreement did not comply with Rule 1.5(e) of the Rules of Professional Conduct, enforcement of the agreement would be against public policy.

¶ 2 Plaintiff, attorney Jonathan Lustig, appeals from an order that denied his motion for judgment on the pleadings, granted the motion for judgment on the pleadings filed by defendant, the law firm of Pappas, Healy & Pappas, LLC (Pappas Healy), and dismissed plaintiff's suit. Plaintiff had brought the instant suit to recover fees from Pappas Healy pursuant to a referral-fee agreement which plaintiff

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alleged was embodied in a contingency-fee contract between Pappas Healy and a non-party, Sejfidin Hamzabegovic. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 On October 4, 2000, Mr. Hamzabegovic was injured at work while using a press manufactured by Northern Hydraulics. Subsequently, plaintiff referred Mr. Hamzabegovic to Pappas Healy. Both Mr. Hamzabegovic and John J. Pappas, Sr., a lawyer and member of Pappas Healy, signed a contingency-fee agreement (contingency agreement) on January 17, 2007.<sup>1</sup> Pappas Healy agreed to represent Mr. Hamzabegovic as to his "claim against Northern Hydraulics, and other responsible parties, \*\*\* for personal injuries sustained on account of an incident which happened to wit: October 4, 2000 \*\*\*." Mr. Hamzabegovic agreed to pay Pappas Healy "for their services a sum equal to Forty (40%) Percent of any sum or sums which may be received by way of compromise settlement of said claim, or by judgment \*\*\*." The contingency agreement further stated:

"In consideration of the above and foregoing, the said PAPPAS, HEALY & PAPPAS, LLC, hereby agree to undertake the investigation and adjustment of the aforesaid claim and the prosecution of a suit, if necessary, to recover whatever damages may be found to be due to [Mr. Hamzabegovic] on account of said claim."

The contingency agreement also included the following provision as to plaintiff's referral fee:

"PAPPAS, HEALY & PAPPAS, LLC will pay a referral fee to JONATHAN LUSTIG for his work on this case on the basis of one-third (a) of the fee to JONATHAN LUSTIG, and two-thirds (b) of the fee to PAPPAS, HEALY & PAPPAS, LLC, and we consent [to]

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<sup>1</sup> Mr. Pappas signed on behalf of the firm.

this fee arrangement."

¶ 5 The record shows that Pappas Healy filed an action in the law division of the circuit court of Cook County on behalf of Mr. Hamzabegovic (*Hamzabegovic v. Northern Hydraulics, et al.*, 2007 L-398) (personal injury suit). Prior to full resolution of the personal injury suit, Mr. Hamzabegovic terminated the attorney-client relationship with Pappas Healy.

¶ 6 The personal injury suit was subsequently settled, finally, at a conference with the trial judge presiding over that case. Pappas Healy was present in court at the time of the settlement conference to present a claim it made for attorney fees based on *quantum meruit* principles. A February 10, 2009, order dismissing the personal injury suit stated that pursuant to the parties' "agreement," Northern Hydraulic would pay Mr. Hamzabegovic \$200,000, and specified how that amount would be disbursed. As part of this disbursement, the order directed that Pappas Healy was to receive the sum of \$66,666.66.

¶ 7 Plaintiff later filed this suit to collect a share of the monies received by Pappas Healy through disbursement of the personal injury suit's settlement proceeds. In his first-amended complaint, the pleading at issue here, plaintiff alleged that he had referred Mr. Hamzabegovic to Pappas Healy, and that the contingency agreement memorialized his referral agreement with Pappas Healy. Plaintiff claimed that Pappas Healy had refused to pay him the agreed referral fee of one-third of \$66,666.66. Plaintiff brought breach-of-contract (count I), unjust-enrichment (count II) and conversion (count III) claims. The contingency agreement was attached to the first-amended complaint. Plaintiff alleged that: "[a]s a direct and proximate result of [Pappas Healy's] breach of the referral agreement with Plaintiff, as memorialized in and consented to by Hamzabegovic in [the contingency

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agreement], Plaintiff has incurred damages in the amount of \$22,222.22."

¶ 8 In its answer to the first-amended complaint, Pappas Healy admitted: (1) the contingency agreement attached to the complaint was genuine; (2) Pappas Healy had prepared the contingency agreement; (3) Mr. Hamzabegovic and John J. Pappas, Jr., on behalf of Pappas Healy, had signed the contingency agreement; and (4) Pappas Healy admitted that the contingency agreement "memorializes that 'Pappas Healy & Pappas, LLC will pay a referral fee to Jonathan Lustig, for his work on this case on the basis of one-third (⅓) of the fee to Jonathan Lustig, and two-thirds (⅔) of the fee to Pappas, Healy & Pappas, LLC and we consent to the fee arrangement.' " However, after admitting each of these points, Pappas Healy stated repeatedly in its answer that: "on September 23, 2008, Hamzabegovic terminated Pappas, Healy & Pappas, LLC as his attorney and the [contingency agreement] ceased to exist. Any attorney fees that Pappas, Healy & Pappas, LLC, recovered after September 23, 2008 was based solely on *quantum mer[u]it*." Pappas Healy denied it had breached a referral agreement and denied plaintiff was entitled to recover damages.

¶ 9 Plaintiff filed a motion seeking judgment on the pleadings as to his breach-of-contract claim pursuant to section 2-615(e) of the Code of Civil Procedure (Code). 735 ILCS 5/2-615(e) (West 2010). Plaintiff argued that he was entitled to a share of the fees received by Pappas Healy pursuant to the referral-fee agreement, the terms of which were set forth in the contingency agreement. Pappas Healy filed a cross-motion for judgment on the pleadings as to all counts. Pappas Healy argued that the contingency agreement ceased upon the termination of its attorney-client relationship with Mr. Hamzabegovic and, therefore, the referral agreement could not be enforced.

¶ 10 The trial court entered an order on September 9, 2011, denying plaintiff's motion, granting

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defendant's cross-motion, and dismissing plaintiff's first-amended complaint with prejudice. The trial court found that because the contingency agreement ceased to exist after Mr. Hamzabegovic terminated Pappas Healy, the fees recovered by Pappas Healy were based on *quantum meruit* principles and were, therefore, not subject to the referral agreement. Plaintiff filed a timely notice of appeal.

¶ 11

## II. ANALYSIS

¶ 12 On appeal, Mr. Lustig argues: (1) the referral agreement complied with the applicable Rules of Professional Conduct and he was entitled to a share of the fees received by Pappas Healy; (2) the record does not establish that Pappas Healy was terminated by Mr. Hamzabegovic; and (3) even if Mr. Hamzabegovic had terminated the relationship, and the fees received were based on *quantum meruit* principles, Pappas Healy remained obligated to share its fees under the referral agreement. Defendant responds that plaintiff admitted in the trial court that Mr. Hamzabegovic had terminated the attorney-client relationship with defendant, the fee-sharing agreement did not survive after that termination, and—under Rule 1.5(e)—there can be no division of fees where the contingency agreement has been terminated by the client.

¶ 13 Section 2-615(e) of the Code provides: "Any party may seasonably move for judgment on the pleadings." 735 ILCS 5/2-615(e) (West 2010). A party who moves for judgment on the pleadings concedes "the truth of the well-pled facts in the respondent's pleadings [citation]; all fair inferences that may be drawn from the pleadings in favor of the respondent [citation]; and for the purpose of the motions, that the allegations in its own pleadings are false insofar as they have been contradicted by the respondent in its pleadings." *Richco Plastics Co. v. IMS Co.*, 288 Ill. App. 3d

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782, 786 (1997). Judgment on the pleadings may be entered where the pleadings disclose no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Illinois Tool Works, Inc. v. Commerce and Industry Insurance Co.*, 2011 IL App. (1st) 093084, ¶ 15. In determining whether to grant a motion for judgment on the pleadings, a court may "consider only those facts apparent from the face of the pleadings, judicial admissions in the record and matters subject to judicial notice." *Id.* at ¶ 16.

¶ 14 We review an order granting judgment on the pleadings *de novo*. *Gillen v. State Farm Mutual Auto Insurance Co.*, 215 Ill. 2d 381, 385 (2005). When reviewing a decision granting a defendant's motion for judgment on the pleadings, "we must draw all reasonable inferences in favor of the plaintiff and construe the allegations contained in the complaint strictly against the defendant." *Clarke v. Community Unit School District 303*, 2012 IL App (2d) 110705, ¶ 21. Additionally, "we construe the allegations in the complaint in the light most favorable to the plaintiff." *Id.* An order granting a defendant's motion will be affirmed "only if it is clearly apparent that no set of facts can be proven that would entitle the plaintiff to recovery." *Id.*

¶ 15 A. Breach-of-Contract Claim

¶ 16 In count I, plaintiff sought to enforce his referral-fee agreement with Pappas Healy to divide fees relating to the personal injury suit of Mr. Hamzabegovic. Plaintiff alleged that the terms of this referral-fee agreement fully complied with the Illinois Rules of Professional Conduct, and were memorialized in the contingency agreement between Pappas Healy and Mr. Hamzabegovic. Plaintiff alleged that Mr. Hamzabegovic had notice of the referral-fee agreement and approved the arrangement when he signed the contingency agreement.

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¶ 17 We first consider plaintiff's argument that the referral agreement met the requirements of the Illinois Rule of Professional Conduct of 2010 (Ill. Rs. Prof. Conduct R. 1, *et seq.* (eff. Jan. 1, 2010)) by examining the applicable rules as they currently exist (See *Paul B. Episcopo, Ltd. v. Law Offices of Campbell and Di Vincenzo*, 373 Ill. App. 3d 384, 394 (2007) (a "supreme court rule is applied retroactively, even though it was different from its predecessor rule") (citing *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 481 (1998))).

¶ 18 Rule 1.5 of the Illinois Rules of Professional Conduct of 2010 (Ill. Rs. Prof. Conduct R. 1.5 (eff. Jan. 1, 2010)) governs the propriety of attorney-fee agreements. The provisions of Rule 1.5 "operate with the force and effect of law." *Romanek v. Connelly*, 324 Ill. App. 3d 393, 399 (2001). "Contracts between lawyers that violate Rule 1.5 are against public policy and cannot be enforced." *Richards v. SSM Health Care, Inc.*, 311 Ill. App. 3d 560, 564 (2000).

¶ 19 Rule 1.5 allows a division of fees between lawyers who are not in the same firm. Specifically, Rule 1.5(e) applies to such agreements as to the division of fees and states:

"(e) A division of a fee between lawyers who are not in the same firm may be made only if:

- (1) the division is in proportion to the services performed by each lawyer, or if the primary service performed by one lawyer is the referral of the client to another lawyer and each lawyer assumes joint financial responsibility for the representation;
- (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and
- (3) the total fee is reasonable." Ill. Rs. Prof. Conduct R. 1.5(e) (eff. Jan. 1, 2010).

Rule 1.5(e), therefore, allows "lawyers to divide a fee either on the basis of the proportion of services

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they render or, where the primary service performed by one lawyer is the referral of the client to another lawyer, if each lawyer assumes financial responsibility for the representation as a whole."

Ill. Rs. Prof. Conduct R. 1.5(e), Committee Comments, at 7 (eff. Jan. 1, 2010). "Joint financial responsibility for the representation entails financial responsibility for the representation as if the lawyers were associated in a general partnership." *Id.* (citing *In re Storment*, 203 Ill. 2d 378 (2002)).

The client must agree to the fee division and the "agreement must be confirmed in writing." Ill. Rs. Prof. Conduct R. 1.5(e), Committee Comments, at 7 (eff. Jan. 1, 2010).

¶ 20 Rule 1.5(e) "embod[ies] this State's public policy of placing the rights of clients above and beyond any lawyers' remedies in seeking to enforce fee sharing arrangements." *Romanek*, 324 Ill. App. 3d at 399; *Richards*, 311 Ill. App. 3d at 564 (The requirements of Rule 1.5 are "designed to protect the client."). "While the [Rules of Professional Conduct] expressly approve[ ] of fee sharing agreements where the primary service performed by one lawyer is the referral of the client to another lawyer [citation], such arrangements cannot rest on the referral alone. Most importantly, the referring attorney must assume 'the same legal responsibility for the performance of the services in question as would a partner of the receiving lawyer.' [Citation.]" *Romanek*, 324 Ill. App. 3d at 403; *Storment*, 203 Ill. 2d at 398 ("The writing must not only authorize a division of fees, but also set out the basis for the division, including the respective responsibility to be assumed and economic benefit to be received by the other lawyer.").

¶ 21 In his first-amended complaint, plaintiff alleged that the terms of his agreement with Pappas Healy for the division of fees were embodied in the contingency agreement. Pappas Healy admitted this allegation. The contingency agreement, attached as an exhibit to the first-amended complaint,

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stated that the referral-fee agreement provided for a specific division of the fees between plaintiff and Pappas Healy. The allegations of the first-amended complaint and the attached contingency agreement, when construed in the light most favorable to plaintiff, show that Mr. Hamzabegovic had notice of the referral-fee agreement and, by signing the contingency agreement, consented to this referral-fee arrangement as set forth therein. However, the terms of the referral agreement as embodied in the contingency agreement do not state that plaintiff assumed joint financial responsibility for the personal injury suit as required by Rule 1.5(e). The referral agreement, as set forth in the contingency agreement, is thus silent as to *any* responsibility of plaintiff for the personal injury suit. As to the assumption of responsibility, the contingency-fee agreement sets forth only that Pappas Healy agreed to take responsibility to pursue the suit on behalf of Mr. Hamzabegovic.

¶22 Additionally, in his breach-of-contract claim (count I), plaintiff never alleged he assumed any responsibility for the personal injury suit as part of the referral agreement. Plaintiff's claim for unjust enrichment (count II), did contain conclusory language claiming that plaintiff "performed services in connection with the Hamzabegovic Claims, including but not limited to referring the Hamzabegovic Claims to [Pappas Healy] and assuming the same legal responsibility to Hamzabegovic that [Pappas Healy] had to Hamzabegovic for the performance of the legal services in connection with the Hamzabegovic Claims." Plaintiff did not adopt or incorporate this allegation as part of his breach-of-contract action of count I. Even if he had done so, this allegation alone would not establish an enforceable referral-fee agreement. Rule 1.5(e) requires that the referring attorney's assumption of joint financial responsibility be provided to the client in writing. See *Daniel v. AON Corp.*, 2011 IL App. (1st) 101508, ¶ 22; *Storment*, 203 Ill. 2d at 398. Nowhere in the first-

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amended complaint does plaintiff allege that any assumption of responsibility on his part was a term of the referral agreement, which was fully disclosed to and consented to by Mr. Hamzabegovic in writing.

¶ 23 Plaintiff's first-amended complaint has, therefore, not set forth the terms of a referral-fee agreement which complies fully with Rule 1.5(e). Thus, it would be against public policy to enforce the referral-fee agreement set forth in the first-amended complaint.

¶ 24 Plaintiff has not specifically addressed his compliance with the particular requirement of Rule 1.5(e) that the referring attorney's assume joint financial responsibility. In his reply brief, he appears to recognize the requirement, when he states: "But for Lustig making the referral of Hamzabegovic to [Pappas Healy] and assuming joint financial representation, [Pappas Healy] would not have represented Hamzabegovic and earned the fee which it thereafter failed to share with Lustig." Moreover, Pappas Healy never challenged the referral agreement on this particular basis in the context of arguing that the referral agreement was otherwise contrary to Rule 1.5(e). Lastly, the trial court did not base its decision on this failure to comply with Rule 1.5(e). However, we review the decision to grant judgment on the pleadings *de novo* (*Gillen*, 215 Ill. 2d at 385), and are forbidden to enforce a contract which is contrary to public policy (*Richards*, 311 Ill. App. 3d at 564). Furthermore, this court may "affirm the trial court on any basis that appears in the record, regardless of whether the trial court relied upon such ground or whether its rationale was correct." *Bowers v. State Farm Mut. Auto. Ins. Co.*, 403 Ill. App. 3d 173, 176 (2010). Additionally, plaintiff was aware of the provisions and applicability of Rule 1.5(e), argued that the referral agreement complied with the rule and, therefore, cannot claim prejudice as to the basis for our decision.

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¶ 25 For the foregoing reasons, we find that plaintiff's first-amended complaint has not set forth the terms of a referral-fee agreement which fully complies with Rule 1.5(e). It would be against public policy to enforce the agreement set forth in the first-amended complaint. It is, therefore, clear that no set of facts can be proven that would support a breach-of-contract action for the division of fees, and the trial court, thus, properly granted Pappas Healy's motion for judgment on the pleadings as to count I.

¶ 26 B. Unjust-Enrichment and Conversion Claims

¶ 27 On appeal, plaintiff has not presented any arguments as to his unjust-enrichment (count II) and conversion (count III) claims, and has, therefore, waived any error in granting judgment on the pleadings for defendant on these counts. *Lozman v. Putnam*, 379 Ill. App. 3d 807, 824 (2008) (an argument may be waived by failing to argue it, provide citation to relevant authority, or provide case citations or other legal authority in support of the argument). Further, we also note that the claims for unjust enrichment and conversion are predicated on plaintiff's assertion that he was wrongly deprived of fees based on the referral-fee agreement. As we have found that agreement to be unenforceable, no set of facts exist to support these claims. Thus, we also find that the trial court properly granted Pappas Healy's motion for judgment on the pleadings as to counts II and III.

¶ 28 Finally, because we have found the first-amended complaint did not set forth an enforceable referral-fee agreement, we need not address the other issues raised on appeal.

¶ 29 III. CONCLUSION

¶ 30 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 31 Affirmed.