

Nos. 13-1731 and 13-2106 (consolidated)

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

BERTON N. RING AND BERTON N. RING, P.C.,)	Appeal from the Circuit Court of Cook County.
)	
Plaintiffs-Appellees,)	
)	
v.)	No. 10 M1 161249
)	
DEMING II, LLC AND BJB LINCOLN PARK LLC,)	Honorable Diane M. Shelley and Honorable James Snyder
)	Judges Presiding
Defendants-Appellants.)	

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

ORDER

- ¶ 1 *Held:* A provision in a fee agreement that putatively violated the Rules of Professional Conduct did not preclude the attorney from attaining compensation. The attorney presented evidence from which a jury could conclude that defendant caused the damages. The attorney presented evidence from which a jury could ascertain and assess damages.
- ¶ 2 This case concerns the issue of attorney fees. The case arises out of an attorney-client relationship between Plaintiffs Berton N. Ring and Berton N. Ring, P.C. (collectively Ring) and

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non-party Alison Taylor. Taylor had a lease agreement with Defendant BJB Lincoln Park, Inc.

Taylor retained Ring for the purpose of terminating her lease agreement with BJB.

¶ 3

BACKGROUND

¶ 4 In 2008, Ring filed a class action suit on Taylor's behalf alleging that BJB was responsible for various violations of the Chicago Residential Landlord and Tenant Ordinance concerning the issue of habitability. Taylor and Ring had a contingency fee agreement under which Taylor agreed to pay, in the event of a settlement, Ring's then-current hourly billing rate or, alternatively, 50% of the settlement, whichever was greater. After the suit was filed, BJB contacted Taylor directly and they agreed that BJB would pay \$250 to Taylor and the parties would mutually release any claims they might have against one another. BJB also told Taylor that, in consideration for settling, it would pay her attorney fees. Pursuant to the release, Taylor's suit against BJB was dismissed with prejudice. Ring was never compensated for his services.

¶ 5 Ring filed a two-count complaint against BJB for tortious interference with contract and tortious interference with a prospective business opportunity. The case proceeded to a jury trial. At the close of evidence, BJB moved for a directed verdict. The trial judge reserved ruling on the motion for a directed verdict and submitted the case to the jury. The jury returned a verdict in favor of Ring on both counts awarding compensatory and punitive damages in the aggregate amount of \$62,500. BJB filed a renewed motion for a directed finding and moved for a judgment notwithstanding the verdict. The trial court denied those motions and entered judgment on the verdict in favor of Ring. BJB then filed certain post-judgment motions that were denied. BJB now appeals.

¶ 6 In its appeal, BJB argues that the contingency fee agreement between Ring and Taylor

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violates the Rules of Professional Conduct and is void and, thus, Ring cannot recover. BJB also argues that Ring cannot recover because it did not prove at trial that BJB caused its damages, and that Ring failed to prove the amount of damages to a reasonable degree of certainty. Ring filed a cross-appeal arguing that the trial court erred by failing to impose sanctions on BJB for alleged discovery violations.

¶ 7

ANALYSIS

¶ 8 The first issue on appeal is whether the fee agreement between Ring and Taylor violates the Rules of Professional Conduct and, if so, whether that precludes Ring from recovering from BJB. BJB argues that the fee agreement is void because it violates the Illinois Rules of Professional Conduct. BJB contends that because Ring failed to prove at trial that it had a valid contract with Taylor it cannot recover for tortious interference with contract, and because Ring failed to prove that it had a valid business arrangement with Taylor it cannot recover for tortious interference with a prospective business opportunity.

¶ 9 BJB points to two provisions in the fee agreement in particular which it claims renders the agreement invalid and precludes Ring from recovering. The agreement between Ring and Taylor provides that if the client fails to stay in contact with the attorney, the attorney "has the right to negotiate and accept a settlement for the client without the client's express authority." The agreement also provides that the client gives the attorney "full power and authority to do and perform all and every act and thing whatsoever" in connection with the representation. BJB maintains that this purported usurpation of the client's absolute right to decide whether to settle and to dictate the terms of the representation violates Rules 1.0, 1.2, and 1.5 of the Rules of Professional Conduct and, therefore, precludes Ring from recovering any fees.

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¶ 10 At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Ill. R. Prof. Conduct (2010) R. 1.2 cmt. 3 (eff. Jan. 1, 2010). However, an attorney is required to consult with the client and keep the client reasonably informed about the status of the representation, Ill. R. Prof. Conduct (2010) R. 1.4 (eff. Jan. 1, 2010), and the ultimate authority to determine the purposes to be served by legal representation, such as whether to settle a civil matter, must be made by the client, Ill. R. Prof. Conduct (2010) R. 1.2(a) (eff. Jan. 1, 2010). The decision of whether to settle a civil matter is one of the most fundamental and important rights reserved to the client. *Knisley v. City of Jacksonville*, 147 Ill. App. 3d 116, 120-21 (1986). Viewing Rules 1.2 and 1.4 together, along with other general, well-settled principles of the attorney-client relationship, we conclude that a fee agreement that delegates settlement authority to the attorney, signed at the outset of the representation, is inconsistent with the Rules of Professional Conduct. See *Knisley*, 147 Ill. App. 3d at 120-21 (1986) (a retainer agreement that allows a case to be settled without the client approving the terms of the settlement is opposed to the basic fundamentals of the attorney-client relationship); *In re Grievance Proceeding*, 171 F. Supp. 2d 81, 84-85 (D. Conn. 2001) (a fee agreement in which a client purports to surrender settlement authority to an attorney violates ethical rules).

¶ 11 BJB argues that the offending provisions render the contract void *ab initio*, and that permitting Ring to recover fees in this case would be detrimental to public policy. Oftentimes, contracts that violate the Rules of Professional Conduct are void *ab initio* and cannot be enforced. *In re Marriage of Newton*, 2011 IL App (1st) 090683, ¶ 39-40. However, not every Rule violation voids a retainer agreement as a matter of law so as to preclude the attorney from

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receiving compensation. *Lustig v. Horn*, 315 Ill. App. 3d 319, 327 (2000). While the provision here would be unlikely to withstand a direct challenge by the client, we find that, in the circumstances presented here, the inclusion of this provision does not bar Ring from recovering from BJB.

¶ 12 This case is unusual in that the provision at issue has nothing to do with the merits of Ring's case and it never became an issue during the course of the representation. Here, a non-party to the agreement is seeking to invoke the putatively offensive provision as a justification for not paying Ring's fees. But Ring and Taylor apparently never lost contact and Ring never attempted to settle the case on Taylor's behalf without her consent. It was actually Taylor who settled the case on her own. There is no evidence that Taylor ever objected to any part of the retainer agreement. In fact, the potential Rule violation was not even raised by BJB until it filed a post-trial motion—after the jury returned a verdict for Ring. BJB's argument is a belated attempt to evade liability, rather than a sincere concern for the solemnity of the attorney-client relationship between Ring and Taylor. As a general rule, a non-party to an agreement does not have standing to interpose claims or defenses based on the agreement. *Brockett ex rel. Brockett v. Davis*, 325 Ill. App. 3d 727, 731 (2001). There is no dispute that Taylor hired Ring, that Ring performed services on her behalf, and that BJB induced Taylor to settle by promising to pay her attorney fees, but never paid anything. Ring's services, namely drafting and filing the complaint, achieved the outcome that Taylor desired—terminating her lease. All of BJB's arguments are made in the face of its multiple admissions during the life of these cases that it was responsible for and would pay Taylor's attorney fees. We conclude that the inclusion of the putatively offending provision in the fee agreement does not prohibit Ring from recovering.

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¶ 13 BJB also argues that Ring failed to prove that BJB caused its damages. However, the undisputed facts demonstrate that Ring was not paid for its services because BJB settled with Taylor by promising to pay Ring's fees, but then never paid. Taylor did not pay the fees as set forth in the agreement because she was induced not to do so by BJB's promise to pay the fees. Taylor wrote in an email that she would have never agreed to the settlement had she known that BJB would "try to stiff [her] lawyers on their payment," that she would not "leave her lawyers out to dry." BJB's promise and then refusal to pay was the cause of Ring not being paid. Moreover, whether causation exists is a question of fact. *Martinez v. Mobil Oil Corp.*, 296 Ill. App. 3d 607, 614 (1998). The jury's verdict answered that question as it heard the evidence and concluded that, as a result of BJB's actions, BJB proximately caused Ring's damages. On the record before us, there is no reason to disturb that finding.

¶ 14 As part of its causation argument, BJB argues that Ring cannot recover because it failed to prove that Taylor would have succeeded in the underlying matter. BJB contends that Ring being compensated was dependent on success in the underlying case. However, the agreement provides that if the case was settled, Ring would be entitled to his hourly billing rate or 50% of the settlement, whichever was greater. In this case, the hourly billing rate was greater because the settlement was just \$250. Ring, on behalf of Taylor, never had the opportunity to prevail in the case because the case was settled, and BJB was able to settle the case by promising to pay Taylor's attorney fees. This case only concerns whether BJB is responsible for paying Ring's fees, so it would have been illogical for Ring to fully present the merits of Taylor's claims to the jury in this case. BJB's admitted promise to pay Ring's fees in return for a settlement estops it from arguing that Ring could not prove the merits of the underlying case.

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¶ 15 BJB's final argument is that Ring failed to prove its damages to a reasonable degree of certainty. BJB contends that Ring presented no evidence from which a jury could determine the likelihood of Taylor succeeding in the underlying case or the value of any fees Ring would have won in that case. Again, because the case was settled, under the agreement, Ring was entitled to his hourly billing rate. BJB is estopped from arguing that Ring cannot prove that it would have received the fees in the underlying case because BJB promised it would pay Ring's fees. Ring presented his billing records to the jury, and the jury calculated the damages and returned a verdict. The compensatory damages awarded by the jury come very close to matching Ring's billing records. BJB does not raise any issue concerning the punitive damages awarded. We only reverse a jury verdict if it is against the manifest weight of the evidence meaning that it bears no reasonable relationship to the loss suffered. *Profit Management Development, Inc. v. Jacobson, Brandvik and Anderson, Ltd.*, 309 Ill. App. 3d 289, 306 (1999). There is nothing in the record that compels us to overturn the jury's verdict.

¶ 16 Although we reject all of BJB's arguments, we note that neither party's position in this case engenders much support, legally or otherwise. Taylor was dismayed that she "had been taken advantage of by shady lawyers and equally shady landlords." The fee agreement between Ring and Taylor implicates various ethical concerns. Ring testified that the provision giving him authority to settle cases without its client's consent is included in the retainer agreement because his clients are generally younger, less sophisticated, and have fewer resources. Ring also exhibited problematic conduct during the course of the representation itself. For example, Taylor indicated that she never requested and never wanted Ring to file a class action suit on her behalf. Ring also failed to communicate a settlement offer to Taylor for two months. Taylor testified that

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when Ring did eventually communicate the offer, Ring indicated that the amount of the settlement was insufficient, which she took to mean that the settlement would not cover the amount of attorney fees. However, the settlement offer was for \$2,390, the amount sought in the complaint, and stated that BJB would *also* pay her attorney fees. Taylor ultimately settled for just \$250, so it seems apparent that if Ring would have accurately conveyed the offer, Taylor would have accepted and received a significantly better settlement. Ring also argued throughout the proceedings that Taylor somehow needed its permission to settle her claims with BJB despite the fact that it is well-settled that a client has an absolute right to settle her case without her attorney's consent. *Heiden v. Ottinger*, 245 Ill. App. 3d 612, 616 (1993). However, during the time that the underlying suit was pending, BJB indicated at various times that it would pay Ring's fees. But then, for no apparent reason either factually or legally, it abandoned its position and refused to pay, resulting in this lawsuit.

¶ 17 It is questionable whether interposing tortious interference claims was the proper manner in which to seek redress. BJB, however, did not raise any issue concerning the theory of recovery asserted and, therefore, any objection has been forfeited. Ill. Sup. Ct. R. 341(h)(7). Regardless of the title given to the claims asserted, it is clear that Ring performed services and that BJB's conduct resulted in it not being paid. The jury heard all of the evidence and found that Ring was entitled to compensation. Ultimately we conclude that there was no specific reversible error committed by the trial court that BJB has raised, and that the jury's verdict should stand.

¶ 18 We also find that the trial court did not err when it declined to sanction BJB for alleged discovery abuses. A trial court may impose sanctions upon any party who unreasonably fails to comply with the Supreme Court Rules governing discovery. *Stringer v. Packaging Corp. of*

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America, 351 Ill. App. 3d 1135, 1138 (2004). An order of sanctions should aim to insure both full discovery and a trial on the merits, and should be imposed when it is apparent that a party has willfully disregarded the authority of the court. *Sander v. Dow Chemical Co.*, 166 Ill. 2d 48, 69 (1995). The decision of whether to impose sanctions is within the discretion of the trial court and will not be disturbed absent an abuse of that discretion. *Hartnett v. Stack*, 241 Ill. App. 3d 157, 172 (1993). In this case, both parties interposed frivolous objections during the course of discovery and during depositions. Ring eventually obtained all of the discovery needed to pursue its claims at trial. The trial judge was intimately familiar with the parties and the dispute as a whole and determined that sanctions were not warranted. Based on the record before us, we find no abuse of discretion in the trial judge's decision to deny Ring's request for sanctions.

¶ 19

CONCLUSION

¶ 20 Based on the foregoing, we affirm trial court's decision to enter judgment on the jury's verdict in favor of Ring in the amount of \$62,500.

¶ 21 Affirmed.