2015 IL App (1st) 140639-U

FOURTH DIVISION
August 13, 2015

No. 1-14-0639

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

WASHINGTON MUTUAL BANK, FA, f/k/a Washington Mutual Loans, Inc., Successor in Interest to Homeside Lending, Plaintiff-Appellee, v. RICHARD P. SWIERK, a/k/a Richard P. Swierk, United States of America-Secretary of Housing and Urban Development, Defendants.	)	Appeal from the Circuit Court of Cook County. No. 04 CH 15442
ZANE D. SMITH & ASSOCIATES, LTD., Appellant.	)	The Honorable Moshe Jacobius, Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Howse and Cobbs concurred in the judgment.

ORDER

HELD: Trial court's decision to reduce an attorney's recoverable fee to $1,000 was proper in light of its reasoned and appropriate conclusion that the original attorney-client

contingency fee agreement related to the recovery of a foreclosure sale surplus was unreasonable under the circumstances presented.

¶ 1 Appellant Zane D. Smith & Associates, Ltd. (Smith) appeals from a trial court order reducing his attorney fees to a set sum of $1,000. Smith contends that the trial court's fee award was against the manifest weight of the evidence, asserting error both in the court's finding that the original fee agreement was unreasonable and in its reliance on *Crown Mortgage Co. v. Young*, 2013 IL App (1st) 122363.

¶ 2 For their part, neither defendants Richard P. Swierk, a/k/a Richard P. Swierk, United States of America-Secretary of Housing and Urban Development (Swierk) nor plaintiff-appellee Washington Mutual Bank, FA f/k/a Washington Mutual Loans, Inc., Successor in Interest to Homeside Lending (Washington Mutual) have filed briefs in this matter. Accordingly, we consider this appeal on appellant's brief only, pursuant to *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Washington Mutual filed a complaint against Swierk to foreclose a mortgage on property he owned at 4312 Lancrest Drive in Alsip, Illinois. Following the foreclosure, the property was sold pursuant to a sheriff's sale in 2005, resulting in a surplus of $29,616.25. The surplus, as held by the Cook County Clerk's Office, went unclaimed and remained undistributed for several years.

¶ 5 In September 2013, Swierk and Smith came into contact with each other with respect to the surplus and had a meeting in Smith's law office. Prior to the establishment of any attorney-client relationship, Smith informed Swierk that he had a right to collect the surplus. Smith also offered to recover it on Swierk's behalf. At the conclusion of that meeting, Swierk entered into a

written contingency fee agreement with Smith whereupon Swierk agreed to pay Smith a fee equal to 25% of the gross amount Smith recovered for him with respect to the surplus. In addition, the agreement stated that Smith had advised Swierk that Swierk may recover the surplus on his own without the services of an attorney by either filling out a fill-in-the-blank motion or by seeking assistance from the Cook County courthouse help desk free of charge; that Swierk chose to engage Smith as his attorney in this matter despite his ability to pursue the matter without one; and that Swierk had the opportunity to ask questions of Smith regarding recovery of the surplus and to freely negotiate the fee reached.

¶ 6 In November 2013, Smith appeared in court on Swierk's behalf and filed a motion to release the surplus. The trial court held a hearing on this motion, whereupon it questioned Swierk about his understanding of the matter at hand. During this questioning, Swierk testified that he is a sheet metal worker whose highest level of education was vocational school. When the court asked him how he came into contact with Smith, Swierk provided various answers. At first, he stated that he did not know about the surplus but then found out about it "[j]ust searching around and people were saying" that he should have money in the house after his foreclosure. Then, Swierk stated he "kind of went online and found out" about it, and later, following the court's mention of "Abandon Properties," Swierk stated he "[c]ould have" heard about it from there. Swierk further explained that, once he found out about the surplus, he contacted Smith. Yet, he later admitted he was "not sure how [he] went all about it." Eventually, however, he told the court that he heard about the surplus via Abandon Properties. He recounted that someone named Mia from Abandon Properties told him over the telephone that she would look into the

existence of a surplus, and that Abandon Properties then sent him "letters" informing him that there was such a surplus, that he had a right to it, and that he could either recover it on his own or obtain an attorney. When the trial court asked him again specifically how he came into contact with Smith, Swierk stated that Mia referred him to Smith.

¶ 7 In further questioning him, the trial court asked Swierk if, while going through this process of attempting to recover the surplus, he could "figure out how to go to court and get a copy of [his] court file." Swierk responded, "[n]ot really, no," that he "didn't know how to really pursue it," and that he came to believe hiring Smith "would be the easiest." The court inquired if Swierk was aware that the court had a free-of-charge help desk to assist claimants in these cases and whether anyone involved herein had ever told him that. Swierk responded, "[n]o," but then also averred that Smith told him this during their consultation in his office "[i]n so many words" when Smith told him that he (Swierk) could go to the court "and do it on [his] own." The court then asked Swierk if Smith told him how long the process would take. Swierk responded, "[n]ot in so many words, maybe three months, four months." The court also asked Swierk if he felt at all confused about any of this, and Swierk averred that he did not. Following an objection by Smith, the court explained to Swierk that it was not trying to confuse him, but only seeking from him an explanation as to why he would give someone a quarter of his money when he could have easily obtained all of the surplus on his own and free of charge. Swierk responded that he "need[s] the money actually sooner than later."

¶ 8 The trial court ended its questioning of Swierk and stated it believed "that it is unconscionable for an attorney to ask for 25 percent." It also noted that "apparently," short of a

representative relationship, there was some sort of connection between Smith and Abandon Properties. Responding that he would not otherwise argue with the court, Smith insisted for the record that he has no association with Abandon Properties. The court then referred to *Crown Mortgage Co. v. Young*, 2013 IL App (1st) 122363, and, while noting some factual distinctions between that case and the instant matter, explained that what occurred here and the resulting contingency fee agreement between Smith and Swierk was "unconscionable and improper and illegal." The court stated that it believed "not all information was disclosed to" Swierk, particularly that all he had to do to obtain the surplus was to take "five minutes" and fill out a "piece of paper" at the court's self-help desk, that he would not have to pay anyone anything, and that he would have obtained the entire surplus for himself. The court further stated that in these situations, people like Swierk "are not sophisticated," "not well educated," "confused," "lost," and "very vulnerable." The court made clear that it did not have any problem with awarding Smith a "reasonable amount" for his services, but that "to glom onto somebody's money, 25 percent" in these types of matters is "unconscionable."

¶ 9 At this point, and upon his request, the trial court allowed Smith to make a statement for the record. Smith began to question Swierk, whereupon Swierk affirmatively responded that Smith had advised him that he (Swierk) could obtain the surplus on his own without an attorney by either filing a fill-in-the-blank motion or by getting free help from the court; that, upon Smith's calculations, he (Swierk) chose to engage Smith to recover the surplus despite his option to do so on his own; and that he and Smith freely discussed and negotiated the fee in the retainer agreement which he (Swierk) voluntarily signed. Following this exchange, Smith ended his

discussion with the court.

¶ 10 At the conclusion of the hearing, the court again spoke to Swierk to ensure that he understood the ruling. Smith asked the court to make clear for the record that his request for 25% of the recovered surplus pursuant to the fee agreement was denied, as was his additional request to have his name placed on the proceeds check. The court reviewed trial court administrative order 2003-03 for Smith, who immediately acknowledged that the court had already "referred to it *** the last time I was up before you." The court continued to explain the administrative order, which states that orders granting surplus funds will name and be sent to the petitioner only and not the petitioner's attorney, and informed Smith, as "[w]e went through this last time," it would not mail the check to him or include his name on it.

¶ 11 In its final comments, the court again stated that it did "not agree that [Smith] should have the 25 percent take on [Swierk's] hard earned money," declaring it unconscionable. Accordingly, the court issued a final order granting the motion to turn over the surplus of $29,616.25, plus accrued interest, to Swierk, but reducing Smith's fee to $1,000, which the court found to be reasonable based on the record before it.

¶ 12 ANALYSIS

¶ 13 On appeal, Smith contends that the trial court erred in finding a 25% contingency attorney fee for the recovery of a foreclosure sale surplus unreasonable. He asserts that, given the facts of this cause, including that the trial court "misrepresent[ed] the costs associated with recovering" the surplus; that but for him, Swierk would not have even know about, let alone recovered, the surplus; and that he "took the time, consistent with the duties of an attorney" to meet with Swierk

and explain to him this process, the trial court's decision "is in direct contradiction and against the manifest weight" of the evidence. He further asserts that the trial court's reliance on *Crown Mortgage* is misplaced because it is "facially distinct from the case at bar." We disagree.

¶ 14 Contingency fee agreements have long been a point of review for our courts. This is because there are varying principles at play in these contract situations. Generally, contingency fee agreements are enforceable as valid at the time of their formation. See *In re Estate of Sass*, 246 Ill. App. 3d 610, 614 (1993); accord *In re Doyle*, 144 Ill. 2d 451, 463 (1991). After all, these agreements center around an attorney's compensation for professional services rendered, and parties to these agreements, after freely negotiating such services in exchange for payment and reaching a clear and unambiguous expression of their mutual intents, should be able to have their agreements honored. See, *e.g.*, *Guerrant v. Roth*, 334 Ill. App. 3d 259 (2002). At the same time, however, as our courts have recognized, attorneys and their clients generally do not have equal bargaining power in contingency fee agreement situations. See *Guerrant*, 334 Ill. App. 3d at 266. The reality is, clients are more than usually at the vulnerable end of these agreements and "consequently need protection from the courts." *Guerrant*, 334 Ill. App. 3d at 266.

¶ 15 As a result of these debating concerns, our courts have made the following clear: the reasonableness of contingency fee agreements "are subject to the scrutiny of the courts." *Doyle*, 144 Ill. 2d at 463. Accordingly, while the typical contingency fee agreement may be valid at the time it is formed, our courts still have a duty "to safeguard the public from the *collection* of an excessive fee." *Doyle*, 144 Ill. 2d at 463 (emphasis in original); accord *Guerrant*, 334 Ill. App. 3d at 267; *Sass*, 246 Ill. App. 3d at 614 ("courts are authorized to evaluate contingency fee

arrangements to insure that they are reasonable and do not result in an excessive fee"). Contingency fee arrangements, then, are always subject to court supervision and courts have the "inherent power" to supervise them. *Guerrant*, 334 Ill. App. 3d at 266-67; accord *Doyle*, 144 Ill. 2d at 463; *Bernier v. Burris*, 113 Ill. 2d 219, 250 (1986); *In re Teichner*, 104 Ill. 2d 150, 160-61 (1984); *Pocius v. Halvorsen*, 30 Ill. 2d 73, 83 (1963). We further note that, when problems arise, including concerns over reasonableness, a contingency fee agreement is to be strictly construed against the attorney who drafted it. See *Guerrant*, 334 Ill. App. 3d at 267; see also *Teichner*, 104 Ill. 2d at 160. And, significantly, the attorney retains the burden to prove that his fee is reasonable. See *Sass*, 246 Ill. App. 3d at 615-16.

¶ 16 In the instant cause, Smith insists the manifest weight of the evidence demonstrates that, not only was he forthcoming in negotiating his contingency fee agreement with Swierk who voluntarily signed it and chose to employ him, but also that he clearly explained to Swierk all his options with respect to recovering the surplus including that he could do so, and how he could do so, without being represented by an attorney. Smith then goes on to extol the virtues of his representation of Swierk, including that he was considerate enough to take the time and inform Swierk about the surplus at no cost, that Swierk most likely never would have known about the surplus otherwise, and that he took on the responsibilities of assisting Swierk in recovering the surplus so that Swierk would not have to "take time off of work, incur informational costs, and other personal costs" to recover it. Essentially, Smith seeks enforcement of his 25% agreed-to contingency fee, which would yield him approximately $7,404 for his work done in recovering Swierk's surplus, plus interest.

¶ 17 Smith points us, and rightfully so, to Illinois Rule of Professional Conduct 1.5(a), which prohibits an attorney from charging an unreasonable fee. See Ill. R. Prof. Conduct (2010) R. 1.5(a) (eff. Jan. 1, 2010). It is this rule that governs the determination of the fee's reasonableness and presents the following factors to be considered:

> "(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) whether the fee is fixed or contingent." Ill. R. Prof. Conduct (2010) R. 1.5(a) (eff. Jan. 1, 2010).

See also *Young v. Alden Gardens of Waterford, LLC*, 2015 IL App (1st) 131887, ¶ 102, quoting *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978, 984 (1987) (in determining whether reasonable fee is sought, courts assess a number of factors, including " 'the skill and standing of the attorneys, the nature of the case, the novelty and/or difficulty of the issues and work involved, the importance of the matter, the degree of responsibility required, the usual and

customary charges for comparable services, the benefit to the client [citation], and whether there is a reasonable connection between the fees and the amount involved in the litigation' ").

¶ 18 Based upon our review of the facts of the instant cause and in light of the dictated factors we are to consider, we agree with the trial court that the 25% contingency fee agreement Smith charged Swierk was unreasonable.

¶ 19 Smith never presented the trial court here, nor our court on appeal, with any sort of specifics reflecting factors involving the time and labor required of his work in obtaining the surplus, the fee customarily charged, his experience and abilities in performing these services, etc. Conversely, from what we gather in the record, the facts support a conclusion opposite the picture Smith paints. Swierk's matter was open and shut: there was a foreclosure, a surplus resulted, and there was never any dispute that the surplus belonged to Swierk. Clearly, then, any work on this case would have been "short and sweet," and far from the actual filing of any lawsuit by Smith on Swierk's behalf. As the record shows, Smith met once with Swierk, prepared an unopposed motion and presented it in court, with the foregone conclusion on behalf of all involved, including the trial court, that it would be granted in Swierk's favor and the surplus would be released to him. This did not involve a novel or difficult legal issue, and certainly not a matter that would preclude Smith from other employment in the meantime. Nor was it one, as indicated in the record, that required Smith to maintain a lengthy or detailed professional relationship with Swierk by any means. To allow Smith a recovery of 25% of Swierk's surplus–over $7,400–for such minimal work is inherently unconscionable. See, *e.g.*, *Teichner*, 104 Ill. 2d 150 (where claim was not disputed and it was paid in routine manner,

attorney's contingency fee of 25 %, or approximately $7,000, charged to recover insurance proceeds was excessive and unconscionable); *Sass*, 246 Ill. App. 3d 610 (where attorneys spent short time working on case, never filed lawsuit, did not exhibit any special skill or experience and presented no evidence that they needed to turn away other business, trial court's entry of fees at less than amount agreed to in contingency fee agreement was proper).

¶ 20 Smith's assertions that the trial court somehow "misrepresent[ed] the costs associated with recovering" the surplus and that its reasoning is "in direct contradiction and against the manifest weight of the facts" are meritless. To the contrary, the trial court considered numerous facts in its decision and the record fully supports its conclusion with respect to what occurred here and its ultimate reasoning. The trial court questioned Swierk personally as to how he came to enter into the contingency fee agreement with Smith. From our review of the record, Swierk's answers were, at best, equivocal. At first, he stated that he had found out about the surplus on his own, through other people telling him he potentially had some money left in his foreclosed home. However, he then stated that he found out about it online. Later, upon the court's mention of Abandon Properties, Swierk stated he could have heard about the surplus from there and then contacted Smith, then admitted he was "not sure" how he found out and came in contact with Smith, and then changed his answer a third time to explain that he had found out the surplus from Abandon Properties. In his explanation, Swierk recounted that he spoke to a woman named Mia from Abandon Properties over the telephone who told him she would look into the matter for him, which was followed by letters confirming the surplus' existence. Swierk then testified that, with specific respect to the resulting attorney-client relationship, it was Mia from Abandon

Properties who referred Swierk directly to Smith to recover the surplus.

¶ 21 Upon further questioning of the court, Swierk went on to admit that, during this entire process, he "didn't know how to really pursue" his recovery of the surplus on his own. While later averring that he may have been informed of some principles, he initially told the trial court that he did not know how to go to court to get a copy of his file, he did not know there was a free-of-charge help desk to assist him, and he did not know how long the recovery process would take. Swierk subsequently explained that Smith only told him these things "[i]n so many words" after they had met in Smith's office and, when asked pointedly by the trial court why he would give someone a quarter of his money when he could have easily obtained it all on his own free of charge, Swierk admitted he came to believe hiring Smith "would be easiest" and that he needed the money "sooner than later."

¶ 22 These facts were key for the trial court here, and we find them to be equally important in our determination as well. Smith writes in his brief on appeal that "[t]he current case is not one in which an unsophisticated consumer was taken advantage of by an entrepreneurial lawyer." Based on the exchanges had in this record, we wholly disagree. Swierk, a sheet metal worker whose highest education was vocational training, can hardly be said to be, as Smith characterizes him, "a well-informed consumer" in this cause who, uninfluenced in any manner, decided to pay 25% of approximately $30,000, money to which he was entitled in its entirety, in return for the minimal services Smith provided him. Question after question asked by the trial court to Swierk made clear that Swierk was not properly informed of the process and, more importantly, of his options in obtaining his surplus and, if he was, he certainly did not understand them. Admittedly,

after meeting with Smith, Swierk told the court that he still did "[n]ot really" know how to pursue his claim and that, while Smith had informed him he could recover the surplus on his own, he only explained how to do it and how long it would take "[i]n so many words." Add to this Swierk's financial situation, which required him to have the surplus "sooner than later" and clearly influencing his decision, and this is a prime example of that "unsophisticated consumer *** taken advantage of by an entrepreneurial lawyer" that Smith desperately seeks to sweep under the proverbial rug here.

¶ 23 What we find even more interesting is the trial court's exchange with Smith himself. While it provides more mystery than fact, what is clear from it is that this was not Smith's first time in this particular courtroom before this particular trial judge in relation to this particular legal subject matter of surplus recovery. Before issuing its decision, Smith asked the trial court whether his request for 25% of the recovered surplus would be denied; once the court told him it would be, he raised an issue about having his name placed on Swierk's proceeds check and having that check mailed to him rather than to Swierk. The trial court then began to review its administrative order with regard to this, whereupon Smith interrupted the court to say he already knew about it because the court had "referred to it *** the last time I was up before you." The court finished explaining the rule and sought to verify that Smith understood it, and Smith again acknowledged that he and the court had gone "through this last time." In addition, the court also made reference to some sort of connection, short of a representative relationship and, perhaps, a veiled one, between Smith and Abandon Properties.

¶ 24 Now, while Smith denied any connection with Abandon Properties and there is nothing

more in this respect in the record, there are inferences here we cannot ignore and implications we cannot deny. Combined with Swierk's exchange with the trial court, there is obviously something going on regarding attorney Smith, contingency fee agreements, county foreclosure surpluses, and those who, as the trial court empathized, "are not sophisticated," "not well educated," "confused," "lost," and "very vulnerable."

¶ 25 The principles we wish to espouse here have already been declared, in a clear, direct and informative manner, in *Crown Mortgage Company v. Young*, 2013 IL App (1st) 122363 (Delort, J., specially concurring). It is this case on which the trial court relied when reducing Smith's fees to a set sum of $1,000, and it is this case that Smith on appeal insists is distinguishable and inapplicable to the cause at hand. However, while the facts in *Crown Mortgage* may not be the same as those of the instant cause, its reasoning and, in particular, its matter-of-fact special concurrence, are directly on point.

¶ 26 In *Crown Mortgage*, following a 2004 foreclosure of the defendant's mortgage on her home and a judicial sale, a $14,000 surplus resulted which went unclaimed for several years. In 2012, a company called Unclaimed Funds Unit, LLC filed a petition for turnover of the surplus, asserting that the defendant had assigned her interest in those funds to it pursuant to an agreement wherein Unclaimed had promised to give her $50 plus half of the surplus. When Unclaimed's petition appeared before the trial court–the same trial judge as that in the instant cause–the court warned that this agreement raised serious issues of unconscionability. At a subsequent hearing, the trial court questioned the defendant, who revealed that while she had contacted Unclaimed following her receipt of a letter identifying the surplus which she did not

even know existed, and while she agreed to split the money with Unclaimed for its assistance, Unclaimed never told her that she could obtain the money on her own. She further detailed how Unclaimed sent a notary to her home with papers for her signature, how she did not know anything about a court help desk, and how she believed Unclaimed was working as her attorney because it had notified her of her entitlement to the surplus. The trial court declared the agreement, which would have entitled Unclaimed to $7,000, to be unconscionable, denied Unclaimed's petition and informed the defendant that she could go to the help desk to claim her entire surplus by herself. See *Crown Mortgage*, 2013 IL App (1st) 122363, ¶¶ 2-4.

¶ 27 On appeal, we wholeheartedly affirmed the trial court's decision. Briefly, we discussed the concepts of procedural and substantive unconscionability and found both types to have been prevalent in the agreement between Unclaimed and the defendant. Procedurally, we focused on several aspects of the agreement's formation, including the disparity in bargaining power, understanding and knowledge of the situation, as well as the defendant's status as a widow with limited education and means, and the impact of all this on the meaningful negotiation of the agreement's terms. See *Crown Mortgage*, 2013 IL App (1st) 122363, ¶ 8. Substantively, we noted that the agreement would have the defendant pay Unclaimed $7,000 for a service she could have obtained for free, a "gaping cost-price disparity" that could not be reasonably explained. See *Crown Mortgage*, 2013 IL App (1st) 122363, ¶ 9. Combined together, these supported our view that the trial court properly found the agreement between Unclaimed and the defendant to be unconscionable and, thus, unenforceable. See *Crown Mortgage*, 2013 IL App (1st) 122363, ¶ 9.

¶ 28 Taking the time to expound upon this in relation to his experience with foreclosure cases at the trial court level, our colleague Justice Delort wrote a most meaningful special concurrence that provides relevant information which has long been common knowledge among our courts but which has long been held private within the confines of these institutions. Within this, Justice Delort explained the basic workings of the chancery division of the circuit court of Cook County, including how it is staffed and that it is governed by a detailed set of administrative rules and standing orders–rules and orders meant to "help protect the interest of disadvantaged homeowners" and "address scams perpetrated by individuals seeking to take advantage" of them. *Crown Mortgage*, 2013 IL App (1st) 122363, ¶¶ 16. As Justice Delort noted, one of these rules, General Administrative Order 2003-03–the very one addressed by the trial court to Smith in the instant cause and, clearly, with him in other court matters in addition to this one–was adopted precisely to address problems stemming from judicial sales of foreclosed property which generate surplus funds that go unclaimed by mortgagors. See *Crown Mortgage*, 2013 IL App (1st) 122363, ¶ 17. The concern was people combing through court files to find surplus cases and trying to claim the surplus and, later, companies doing the same by tracking down the mortgagor and entering into a contingency fee agreement to return his own money to him. See *Crown Mortgage*, 2013 IL App (1st) 122363, ¶ 17. Justice Delort further detailed "[t]he herculean efforts of the judges, court staff, and county agencies to inform mortgagors of their ability to claim surplus funds" on their own, with these causes specially reserved for the courtroom of the presiding justice himself so that they can be carefully reviewed and the "general integrity of the process" ensured. *Crown Mortgage*, 2013 IL App (1st) 122363, ¶¶ 19-20.

¶ 29 Just as the majority had found, Justice Delort concluded that the presiding trial judge's questioning about the circumstances leading to the contingency fee agreement in *Crown Mortgage* was what was proper and necessary in light of these rules and orders and the concerns they were meant to address. See *Crown Mortgage*, 2013 IL App (1st) 122363, ¶¶ 17, 21. And, in attempting to balance the right to contract with the relevant, and only rising, foreclosure concerns expressed, Justice Delort reasoned, "[w]hile contract law is structured to ensure that parties receive the benefit of their bargain, our opinion finds that the law can only stretch so far." *Crown Mortgage*, 2013 IL App (1st) 122363, ¶ 21.

¶ 30 The law can only stretch so far in the instant cause as well. We are mindful that the circumstances present before us involve contingency fee agreements and attorney-client relationships and not, as in *Crown Mortgage*, a third-party asset recovery company. But, the principles are nonetheless critical and applicable, especially in light of the apparent subtext here. Swierk had a considerable surplus fund available to him. He responded to a telephone call from Mia at Abandon Properties who told him she would research this for him, and then to letters confirming its existence. Any unsophisticated and financially vulnerable person in this position would certainly be lured into accepting whatever that company promoted, including a direct referral to Smith: an educated attorney more than familiar with these situations who could navigate foreclosure court simply while quickly and easily recovering that free money for him–all for only 25% of what is eventually recovered. The presiding justice of the chancery division warned Smith about this on previous occasions, and it rightfully did so again here. To have Swierk sign away and give up a quarter of his own money for a service he could have received

for free, to the tune of over $7,400 for work done that was nowhere near worth that value, was, as the trial court found, unreasonable in this context.

¶ 31 Therefore, we hold that the trial court did not err in finding that a 25% contingency attorney fee for the recovery of a foreclosure sale surplus was unconscionable nor in limiting the appropriate fee to $1,000 under the circumstances.

¶ 32 CONCLUSION

¶ 33 Accordingly, for all the foregoing reasons, we affirm.

¶ 34 Affirmed.