SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0786-15T1

OBERMAYER REBMANN MAXWELL & HIPPEL, LLP,

Plaintiff-Respondent,

v.

BRIAN KLEIMAN and RIVKA BASYA KLEIMAN, h/w and STEVEN KLEIMAN and RIVKA CHAYA KLEIMAN, h/w,

Defendants-Appellants,

and

HAPPY DAYS ADULT HEALTHCARE, LLC, and NEW HORIZONS BEHAVIORAL HEALTHCARE CENTERS, LLC,

Defendants.

Argued November 10, 2016 – Decided May 19, 2017

Before Judges Alvarez, Accurso[1] and Manahan.

---

[1] Hon. Carol E. Higbee was a member of the panel before whom this cases was argued. The opinion was not approved for filing prior to Judge Higbee's death on January 3, 2017. Judge Accurso did not participate in oral argument. Counsel have agreed to the substitution of Judge Accurso, her participation in the decision and to waive reargument.

On appeal from Superior Court of New Jersey, Law Division, Camden County, Docket No. L-2848-12.

Benjamin Folkman argued the cause for appellant (Folkman Law Offices, P.C., attorneys; Lauren M. Law, of counsel and on the brief).

Matthew A. Green argued the cause for respondent (Obermayer Rebmann Maxwell & Hippel, LLP, attorneys; Mr. Green and Michelle Ringel, on the brief).

PER CURIAM

Defendants Brian and Rivka Basya Kleiman and Steven and Rivka Chaya Kleiman appeal from the trial court's denial of a motion seeking reconsideration of the denial of their post-trial motion for set-off against the jury verdict in favor of plaintiff Obermayer Rebmann Maxwell & Hippel, LLP for legal fees and costs.[2] As we can find no factual or legal basis for their argument, we affirm.

The essential facts are easily summarized. Obermayer sued defendants and the limited liability companies they control,

[2] Defendants' chief issue on appeal related to the judge striking language from the verdict sheet whereby the jury directed that payment of the sum it awarded on one file was "deferred until settlement" of another. After the second matter settled during the pendency of this appeal, defendants advised, in their reply brief, they were no longer "seeking reversal of the [t]rial [c]ourt's [order on reconsideration], as it applies to the elimination of the deferral, as that issue is now moot." Accordingly, we confine our discussion to the single issue remaining.

Happy Days Adult Healthcare, LLC, and New Horizons Behavorial Healthcare Centers, LLC, for unpaid fees and costs for services Obermayer rendered to defendants in nine different matters between 2009 and 2012. Obermayer prosecuted the case on theories of breach of contract and quantum meruit. The jury returned a verdict in favor of Obermayer in quantum meruit on five of the nine files, totaling $191,456.11.

During deliberations, the jurors raised a question regarding question eleven on the verdict sheet, which asked them to "[i]temize the reasonable value of the legal services that Obermayer provided and the costs and expenses it incurred on each of the following matters," listing each of the files for which the firm claimed a balance due and owing. The question read: "Clarification of question #11[.] Are we itemizing what we (jurors) thinks [sic] the Kleiman[s] owe to Obermayer?" Counsel for both parties agreed with the court that the answer should be "yes." Accordingly, the court instructed the jurors, "the answer is yes, so long as you've answered yes to questions eight, nine, and ten first."[3]

[3] Questions eight, nine and ten required the jury to answer whether Obermayer had proved each of the elements of a quantum meruit claim. We note the transcript of the court's exchange with the jury with regard to this question was provided to the panel at our request following oral argument.

As part of their motion for judgment notwithstanding the verdict, defendants argued they had already paid Obermayer fees but "the jury was not instructed to net out the award." Specifically, defendants claimed they paid Obermayer $207,000 before being sued, to which they maintained the firm was not entitled because the jury found no contract between the parties. Defendants claimed they were thus due a set-off or credit for those monies against the quantum meruit award.

The judge denied the motion, finding there was ample evidence in the record to support the jury's verdict. See Starkey v. Estate of Nicolaysen, 172 N.J. 60, 67-69 (2002). The judge noted Obermayer had taken pains to present testimony explaining the amount billed on each matter, the payments received from defendants and how each payment had been applied, with the resulting balance due on each file. The judge found the award, in which the jury awarded specific sums on five of the nine files for which fees were sought, tracked the invoices on those files in evidence. He concluded, "the jury took the payments into account that the Kleimans had made since the award is for the amount that Obermayer was requesting on the invoices on those matters that took those payments into consideration."

Following entry of the judgment, the individual defendants moved for reconsideration, arguing the "jury was not asked to

determine the amount of money which [d]efendants owed Obermayer, nor was it asked to consider the money already paid to Obermayer and to calculate an award based on that." Contending that based on the jury verdict, defendants had no contractual obligation to have paid the $207,000 they tendered between 2009 and 2012, they argued those monies should be set-off against the award. The court denied the motion, finding the argument "simply a rehashing of the same positions the individual Kleimans advanced in their Motion for Judgment Notwithstanding the Verdict." See D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990).

Defendants appeal, reprising the same argument made to the trial court in almost identical language, that "as a matter of law the [d]efendants had no contractual obligation to pay the approximately $207,159.43, which it [sic] had done between 2009 and 2012." Thus, they reason that "[i]f the value of all legal services rendered by Obermayer is $191,456.11, then the $207,159.43 should be applied as a set-off or credit."

Defendants' argument takes up no more than one page of their merits brief and is devoid of any authority. See 700 Highway 33 LLC v. Pollio, 421 N.J. Super. 231, 238 (App. Div. 2011) (noting the requirement that parties make "an adequate legal argument" in support of their claims); State v. Hild, 148 N.J. Super. 294, 296 (App. Div. 1977) ("Despite the fact that

independent research by the court is, to a greater or lesser extent, the invariable rule, the parties may not escape their initial obligation to justify their positions by specific reference to legal authority."). The argument rests on nothing more than the wording of question eleven and their speculation, belied by a comparison of the invoices admitted in evidence, that the jury failed to have credited them with their prior payments.

Defendants do not suggest they objected to the verdict sheet, and they have not provided us with the transcript of any charge conference or the judge's instructions to the jury, thus precluding us from ascertaining whether they advocated for or acquiesced in the question on the verdict sheet they complain of now.[4] See State v. A.R., 213 N.J. 542, 561 (2013) (noting trial errors that "were induced, encouraged or acquiesced in or consented to by defense counsel ordinarily are not a basis for reversal on appeal" under the invited-error doctrine) (quotation omitted).

[4] Indeed, the only trial transcript we have been provided was the one we requested at oral argument. Thus we have no way of evaluating the accuracy of the representations of either party regarding the proofs at trial, no way to assess the verdict sheet in light of the charge and no way to ascertain how the verdict sheet was crafted. See R. 2:5-3(a)(b); R. 5-4(a); see also Cipala v. Lincoln Tech. Inst., 179 N.J. 45, 54-55 (2004).

Defendants have failed to demonstrate the verdict sheet was "misleading, confusing, or ambiguous," see Sons of Thunder v. Borden, Inc., 148 N.J. 396, 418 (1997), especially in light of the question the jury posed and the Obermayer invoices in evidence. They have certainly provided us no basis on which to conclude the jury failed to credit them with their prior payments. Accordingly, we have no basis to conclude the judge erred in determining the evidence, together with the legitimate inferences, could sustain the judgment in Obermayer's favor, see R. 4:40-2(b); Newmark-Shortino v. Buna, 427 N.J. Super. 285, 313 (App. Div. 2012), certif. denied, 213 N.J. 45 (2013), or abused his discretion in denying their motion for reconsideration, see Cummings v. Bahr, 295 N.J. Super. 374, 389 (App. Div. 1996).

Affirmed.