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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3479-21

SNYDER SARNO D'ANIELLO
MACERI & DACOSTA LLC,

Plaintiff-Respondent,

v.

ANDREW RUSSELL,

Defendant-Appellant.

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Submitted April 26, 2023 – Decided July 27, 2023

Before Judges Mayer and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-8303-20.

Asatrian Law Group, LLC, attorneys for appellant (Martin V. Asatrian, of counsel and on the brief).

Maitlin Maitlin Goodgold Brass & Bennett, attorneys for respondent (Jonathan S. Goodgold, of counsel and on the brief).

PER CURIAM

This case arises from unpaid legal fees. Defendant Andrew Russell appeals from the June 10, 2022 Law Division order granting summary judgment to plaintiff law firm, Snyder Sarno D'Aniello Maceri & DaCosta LLC. In light of the record and governing principles, we affirm.

I.

On October 25, 2018, the parties signed a retainer agreement (Agreement) for plaintiff to represent defendant in connection with his matrimonial family matter. The Agreement specified Angelo Sarno would be responsible for the management of the case and Julie R. Katz would also be involved.

Plaintiff's fees for services were expressly stated in the Agreement. The Agreement likewise provided defendant was "responsible for the payment of all legal expenses and costs promptly upon the issuance of invoices to [defendant]." Further, all bills for legal fees, costs, and expenses were due upon receipt and would be paid from the retainer until it was exhausted. Finally, the Agreement detailed defendant's responsibilities, including payment for plaintiff's efforts to collect any unpaid fees, stating:

> You shall also be responsible for attorneys [sic] fees in the amount of 33⅓ % of the outstanding balance and costs incurred related to any motion to be relieved as your counsel and/or you shall be responsible for attorneys [sic] fees in the amount of 33⅓ % of the outstanding balance of legal fees owed to the firm and

> costs incurred in the collection of your outstanding fees owed to the firm.

Pursuant to the Agreement, defendant received monthly invoices with detailed descriptions of services rendered and the amounts charged. Dissatisfied with the quality of the legal services rendered, defendant terminated plaintiff on June 18, 2020.

In August 2020, plaintiff sent defendant a fee arbitration pre-action notice stating he had outstanding invoices for legal services in the amount of $33,565.01. The notice informed defendant he had the right to pursue fee arbitration within thirty days of receipt of the pre-action notice. Defendant did not pursue fee arbitration.

In December 2020, well after the expiration of the thirty-day period, plaintiff filed a complaint in the Law Division seeking to recover its unpaid legal fees, contractual interest and attorney's fees, and costs. Defendant filed an answer and asserted a counterclaim for legal malpractice. However, defendant did not file an affidavit of merit in support of his counterclaim.

After the close of the initial discovery period, plaintiff filed a motion for summary judgment and dismissal of defendant's counterclaim. After hearing oral argument, on September 29, 2021, the judge denied plaintiff's motion for

summary judgment and granted the motion to dismiss defendant's counterclaims because plaintiff had not filed an affidavit of merit.

The same day, the trial judge issued a case management order (CMO) reopening and extending discovery until January 27, 2022. The CMO directed the completion of written discovery by October 20, 2021 and depositions by November 20, 2021.

In December 2021, plaintiff again moved for summary judgment. In January 2022, defendant opposed the motion, arguing discovery was incomplete and Sarno had not yet been deposed. On January 4, 2022, defense counsel noticed the deposition of Sarno for February 4, 2022, well beyond the court-imposed deadlines. Defendant also claimed the responsiveness and attentiveness to defendant's concerns as well as the quality of plaintiff's representation was deficient.

Following oral argument on April 8, 2022, the judge reserved decision. The judge also issued another CMO. The judge reopened discovery and ordered defendant to provide responses with specific objections to plaintiff's interrogatories by April 28, 2022 and plaintiff's depositions to be completed by May 15, 2022.

Thereafter, on June 10, 2022, the trial judge granted plaintiff's motion for summary judgment accompanied by a statement of reasons. The judge concluded "[d]efendant ha[d] made no attempt to establish a case of legal malpractice." She stated defendant produced no expert in support of his legal malpractice claim. Moreover, defendant "failed to produce any evidence of a genuine disputed fact," did not "rebut the inferences made by [plaintiff]," and did not "attempt to establish a claim of legal malpractice." The judge noted defendant had not propounded written discovery or conducted depositions despite repeated court extensions of discovery. Lastly, the judge concluded defendant failed to "argue the merits of the retainer agreement" because he failed to "itemize[] any disputed facts, services, or billings, []or present[] any expert analysis to support [his] claims."

II.

On appeal, defendant argues the trial court erred by granting summary judgment when discovery was incomplete and there existed genuine and material facts in dispute. We reject defendant's arguments.

We review a motion for summary judgment de novo, applying the same standard used by the trial court. Samolyk v. Berthe, 251 N.J. 73, 78 (2022); Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). We consider

"whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). A reviewing court's task is to determine whether (1) there exists any genuine issue of material fact and (2) the moving party is entitled to judgment as a matter of law. Id. at 528-29 (citing Rule 4:46-2). A dispute is genuine only if the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, require submission of the issue to the trier of fact. R. 4:46-2(c).

"If there is no genuine issue of material fact, [this court] must then 'decide whether the trial court correctly interpreted the law.'" DepoLink Ct. Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (citations omitted). We review issues of law de novo and accord no deference to the trial judge's conclusions. Nicholas v. Mynster, 213 N.J. 463, 478 (2013).

"As between attorney and client, their [retainer] agreement ordinarily controls unless it is overreaching or is violative of basic principles of fair dealing or the services performed were not reasonable or necessary." Gruhin & Gruhin,

P.A. v. Brown, 338 N.J. Super. 276, 281 (App. Div. 2001) (citing Cohen v. Radio-Electronics Officers Union, 146 N.J. 140, 155 (1996)).

Here, defendant did not dispute the reasonableness of the legal fees. We agree with the motion judge that defendant "failed to produce any evidence of a genuine disputed fact," and did not "rebut the inferences made by [plaintiff]." As stated by the judge, defendant failed to "argue the merits of the retainer agreement" because he failed to "itemize[] any disputed facts, services, or billings, []or present[] any expert analysis to support [his] claims." Nor did defendant present any evidence that the Agreement did not meet the standards governing retainer agreements. Since defendant failed to rebut the fairness and reasonableness of the legal bills and produced no expert to challenge the charges, defendant neither sustained his claim nor rebutted the enforceability of the agreement. Alpert, Goldberg, Butler, Norton & Weiss, P.C. v. Quinn, 410 N.J. Super. 510, 538-39 (App. Div. 2009).

Additionally, we are not persuaded by defendant's contention that disputed issues of material fact existed regarding the quality of the legal services rendered. We have held expert testimony is required to opine as to the competency of the firm's representation. See Brach, Eichler, Rosenberg, Silver, Bernstein, Hammer & Gladstone, P.C. v. Ezekwo, 345 N.J. Super. 1, 11-15

(App. Div. 2001), abrogated on other grounds by Quinn, 410 N.J. Super. at 544. Defendant's "'[c]onclusory and self-serving assertions'" contained in his certification, alleging deficiencies in plaintiff's representation, were "'insufficient to overcome the motion.'" Sullivan v. Port Auth. of N.Y. & N.J., 449 N.J. Super. 276, 283 (App. Div. 2017) (quoting Puder v. Buechel, 183 N.J. 428, 440-41 (2005)). "[W]hen the evidence 'is so one-sided that one party must prevail as a matter of law,' the trial court should not hesitate to grant summary judgment." Brill, 142 N.J. at 540 (citation omitted) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)). Therefore, we are satisfied the judge appropriately concluded defendant did not "attempt to establish legal malpractice."

Lastly, we find no merit to defendant's argument that discovery was incomplete. Generally, summary judgment is not appropriate where discovery on material issues is not complete. Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 193 (1988). However, after discovery was reopened twice, defendant failed to complete depositions within the court-ordered discovery period. Moreover, the record shows defendant repeatedly caused unreasonable delays throughout discovery. In sum, we find no basis to conclude the judge erred in

finding discovery was complete and therefore we are satisfied the judge correctly granted plaintiff's summary judgment motion.

To the extent we have not considered any of defendant's remaining arguments, we deem them to be without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION