Reus v Tilp
2015 NY Slip Op 32025(U)
October 29, 2015
Supreme Court, New York County
Docket Number: 115995/2010
Judge: Saliann Scarpulla

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 39

----------X

ALEXANDER REUS,

Plaintiff,

-against-

ANDREAS TILP

Defendant.

----------X

DECISION/ORDER

Index No. 115995/2010
Motion Seq. Nos. 005, 006

HON. SALIANN SCARPULLA, J.:

In this action between two former law partners, plaintiff Alexander Reus moves for summary judgment on his first and second causes of action in the second amended complaint and dismissing defendant Andreas W. Tilp's counterclaims (motion seq. 005). Tilp separately moves for summary judgment dismissing the complaint, dismissing Reus' fourteenth affirmative defense, and for summary judgment on his counterclaims (motion seq. 006). The two motions are consolidated for disposition.

Reus and Tilp are attorneys that formed a Florida law firm in 2004, which later became known as TILP LLP ("the Firm"). Reus and Tilp's business plan for the Firm was to represent banks and financial institutions from Germany and Europe as plaintiffs in securities litigation commenced in the United States.

Reus and Tilp are both citizens of Germany. Reus is a member of the Florida and New York bars, and Tilp is admitted to practice law in Germany. By mutual agreement, Tilp owned a 51% interest in the Firm, and Reus owned a 49% interest. Reus and Tilp split the Firm's profits and expenses equally. Reus acted as managing partner of the

Firm's Miami office. Reus and Tilp also maintained their own separate law firms, DRRT and TILP Rechtsanwaltsgesellschaft mbH, respectively.

Reus and Tilp attracted numerous clients, including a German bank, Deka Bank Deutsche Girozentrale and its affiliates ("Deka"). The Firm partnered with several U.S. law firms, including Murray Frank & Sailer, Labaton Sucharow & Rudolph LLP, and Grant & Eisenhofer, P.A., in pursuing private and class actions against companies such as General Motors and Royal Dutch Shell.

Beginning in late 2005, the partnership between Reus and Tilp deteriorated. On June 28, 2006, Tilp dismissed Reus from the Firm. Several weeks later, the parties entered into an August 8, 2006 settlement agreement that governed how any legal fees earned from the Firm's current matters would be shared between Reus and Tilp ("the Settlement Agreement). Under the Settlement Agreement, the parties agreed that any contingency fees later earned on the Firm's current cases would be split evenly between Tilp and Reus. A list of the Firm's current cases was attached to the Settlement Agreement.

On June 15, 2011, Reus commenced this action seeking a declaration, *inter alia*, that: (1) the agreement to form the Firm is void because Tilp was never admitted to practice in Florida; (2) all past legal fees paid to Tilp were made pursuant to an improper fee-splitting arrangement; and (3) Reus is prohibited from paying any further legal fees to Tilp, including contingency fees generated from settlements of the Firm's General Motors and Royal Dutch Shell matters. Reus seeks an order compelling Tilp to disgorge any legal fees paid to him, and enjoining Reus from paying any further legal fees to Tilp.

In the alternative, Reus seeks a declaration that Tilp received full payment for his share of legal fees from the General Motors settlement, and that all legal fees that Reus received in connection with his work in establishing a Dutch foundation to enter into a settlement with Royal Dutch Shell belong solely to him. Lastly, Reus asserts an unjust enrichment claim to recover all legal fees that Tilp received, including fees from the General Motors matter.

Tilp asserts five counterclaims. Specifically, Tilp alleges that: (1) Reus failed to pay him $986,212.50 from the General Motors matter (first counterclaim); (2) Reus failed to pay him $2,500,000 from the Royal Dutch Shell matter (second counterclaim); (3) Reus owes him an accounting of all fees that were collected and covered by the Settlement Agreement (third counterclaim); (4) Reus breached the implied covenant of good faith and fair dealing by failing to pay the proper amount of legal fees to Tilp (fourth counterclaim); and (5) Reus fraudulently misrepresented the amount of work he performed and the amount of legal fees that he earned from the General Motors matter (fifth counterclaim). Both Reus and Tilp now move for summary judgment.

Discussion

I. Reus' Motion for Summary Judgment

A. First Cause of Action for Declaratory Judgment, Injunction, and Disgorgement

Reus argues that his agreement to form the Firm and share legal fees with Tilp is void because Tilp is a non-lawyer under Rule 4-5.4 of the Florida Rules of Professional Conduct ("Florida Rules"). In opposition, Tilp contends that his ownership interest in the

Firm and his fee sharing agreement with Reus are lawful under Rule 4-8.6(c) and Florida common law.

Rule 4-5.4 of the Florida Rules of Professional Conduct, entitled "Professional Independence of a Lawyer," addresses whether a lawyer may share fees or form a partnership with a non-lawyer. Under Rule 4-5.4(a), a lawyer may not share legal fees with a non-lawyer, except under certain circumstances such as when a lawyer pays bonuses to a non-lawyer employee for work performed, or shares court-awarded fees with a pro bono legal services organization. A lawyer is also prohibited from forming a law firm partnership/entity with a non-lawyer. Rule 4-5.4(c), (e).

Upon an examination of the Florida Rules, I find that Tilp is not a "non-lawyer" prohibited from forming a partnership or sharing legal fees with Reus.[1] Contrary to Reus' assertion, the Florida Rules permit a Florida attorney (such as Reus) to form a law firm partnership and share fees with a lawyer admitted in another jurisdiction (such as Tilp). Comment to Rule 4-8.6 expressly states: "[t]his rule permits members of The Florida Bar to engage in the practice of law with lawyers licensed to practice elsewhere in an authorized business entity organized under the laws of another jurisdiction and qualified under the laws of Florida (or vice-versa), but nothing in this rule is intended to affect the ability of non-members of The Florida Bar to practice law in Florida."

---

[1] Reus submits affidavits from Professor Anthony Alfieri who offers opinions on Florida law. I do not consider these affidavits because expert testimony on issues of law are generally inadmissible. *People v. Lurie*, 249 A.D.2d 119, 122 (1st Dep't 1998). To the extent that Reus seeks a declaration under New York law, I do not address New York law because it is inapplicable here.

Reus argues that Rule 4-8.6(c) prohibits Tilp from serving as a partner of a Florida firm because he is not licensed to practice in Florida. However, Rule 8.6(c) does not require a partner of a Florida firm to be licensed in Florida, unless he is practicing law in Florida. Specifically, Rule 4-8.6(c) states: "[n]o person may serve as a partner, manager, director or executive officer of an authorized business entity that is engaged in the practice of law in Florida unless such person is legally qualified to render legal services in this state."

If I were to accept Reus' interpretation of Rule 4-8.6(c), the rule would be contrary to its commentary, which makes clear that a lawyer from another jurisdiction may be a partner of a Florida law firm, and is not required to be licensed in Florida unless he practices law in Florida. *The Florida Bar v. Savitt*, 363 So.2d 559, 561 (Fla. 1978) (finding that members of a Florida firm may "give legal advice on the law of jurisdictions other than Florida to non-Florida clients . . . provided that matters of Florida law, if any are handled by members of The Florida Bar"); *Chandris, S.A. v. Yanakakis*, 668 So.2d 180, 184 (Fla. 1995). Here, there is no dispute that Tilp never practiced law in Florida, and that neither the General Motors matter nor the Royal Dutch Shell matter were litigated in Florida.

Reus also argues that his agreement to share legal fees with Tilp violated Rule 4-1.5(g), which governs fee divisions between lawyers at different firms. Rule 4-1.5(g) is inapplicable here because Reus and Tilp's agreement to share fees was made as members of the same firm.

Because Reus fails to demonstrate that Tilp's interest in the Firm, or the fee sharing arrangement under the Settlement Agreement violate the Florida Rules of Professional Conduct, I deny Reus' motion for summary judgment on his first cause of action for a declaratory judgment, an injunction, and order of disgorgement. In cases where "a court resolves the merits of a declaratory judgment action against the plaintiff, the proper course is not to dismiss the complaint, but rather to issue a declaration in favor of the defendants." *Maurizzio v. Lumbermens Mut. Cas. Co.*, 73 N.Y.2d 951, 954 (1989); *Hunter v. Seneca Insurance Co., Inc.*, 114 A.D.3d 556, 556 (1st Dep't 2014). Tilp is therefore entitled to a declaration that his ownership interest in the Firm and his fee sharing arrangement with Reus under the Settlement Agreement are valid.

B. Second Cause of Action for Declaratory Judgment

Reus moves for summary judgment on his second cause of action for a declaration that: (1) Tilp received full payment for the General Motors settlement; and (2) that all fees from the Dutch foundation settlement with Royal Dutch Shell belong to Reus. In addition, Reus moves for summary judgment dismissing Tilp's corresponding counterclaims related to the General Motors and the Royal Dutch Shell matters.

General Motors

In early 2006, the Firm represented two Deka entities in a securities action commenced against General Motors in Detroit, Michigan. The two Deka entities were designated as lead plaintiffs, and Murray, Frank, & Sailer ("MFS") served as lead counsel. The Firm partnered with MFS to represent the Deka entities in the General Motors Action. In 2007, Labaton Sucharow & Rudolph LLP was added as co-lead

counsel, and Grant & Eisenhofer later replaced MFS as co-lead counsel. In October 2008, the General Motors action settled for $303 million dollars.

As co-lead counsel, Grant & Eisenhofer received $15,172,500 in legal fees from the settlement of the General Motors action. After the settlement, Grant & Eisenhofer forwarded two payments to Reus: a first wire transfer of $3,034,500 and a second wire transfer of $1,972,425.

Reus split a portion of the first wire transfer with Tilp. Before splitting the first payment, Reus asked Tilp if he could deduct $600,000 as compensation for services that he performed on the General Motors matter ("the lodestar payment"). Tilp agreed. Reus made the deduction and split the remaining $2,434,500, with Reus and Tilp each receiving $1,217,250. As to the second wire transfer, Reus never informed Tilp about receiving this payment.

Reus argues that he is entitled to a declaration that Tilp received his full share of fees from General Motors matter. First, Reus argues that Tilp is not entitled to receive any portion of the second wire transfer payment because Grant & Eisenhofer made this payment to him as a bonus. In an affidavit, Jay Eisenhofer from Grant & Eisenhofer states that Reus was entitled to 20% of the fees that were paid to his firm for the General Motors matter (the first wire transfer), and that the second wire transfer was paid to Reus as a separate bonus. Eisenhofer states that this "additional bonus . . . was in no way related to the General Motors case itself even though for convenience we calculated it as 13% of the General Motors fee." Further, he states that "[p]aying Reus the additional money was strictly my idea; Reus did not request it or expect it."

Reus makes a *prima facie* showing that the second wire transfer was a separate bonus unrelated to the General Motors settlement. However, Tilp raises an issue of fact as to whether Reus received this payment in connection with the General Motors settlement. Tilp submits a copy of a March 26, 2009 letter that Eisenhofer wrote to Reus' attorney Gary S. Redish, in which Eisenhofer states that "we paid Alex [Reus] 33 1/3% of Grant & Eisenhofer's fee in this case rather than the 20% we typically pay him." At his deposition, Reus testified that he directed Grant & Eisenhofer to make two separate payments to him. Based on the evidence in the record, an issue of fact exists as to whether the second wire transfer was paid to Reus as legal fees for the General Motors matter, which would make that payment subject to fee sharing under the Settlement Agreement.

Second, Reus contends that he is entitled to keep the $600,000 lodestar payment that he deducted from the first wire transfer because Tilp agreed that these funds were full and final payment for the General Motors matter. Although Reus makes a *prima facie* showing that Tilp agreed to deduct the lodestar payment, Tilp raises an issue of fact as to whether Reus was entitled to deduct $600,000 for services he performed. The invoices that purportedly support Reus' deduction reveal that a significant amount of work was performed by the Firm prior to the execution of the Settlement Agreement.

Because issues of fact exist regarding the second wire transfer and the lodestar payment, I deny Reus' motion for summary judgment on his second cause of action with respect to the General Motors matter. Further, I deny Reus' motion for summary judgment dismissing Tilp's first, fourth, and fifth counterclaims that seek to recover half

of the second wire transfer payment ($986,212.50) and half of the lodestar payment ($300,000).

Royal Dutch Shell

In January 2004, several class actions were filed against Royal Dutch Petroleum Company and The Shell Petroleum Limited (collectively "RDS") in the United States District Court of New Jersey, Case No. 04-374 (JWB) ("the RDS Class Action").[2] The proposed class included U.S. investors who bought RDS shares on the U.S. securities markets, as well as non-U.S. investors who bought RDS shares on non-U.S. securities markets. In a decision appointing the lead plaintiff, the federal judge observed that the court may lack subject matter jurisdiction over the claims of non-U.S. investors, and these investors could potentially be eliminated from the class because a judgment rendered in that forum might be incapable of serving their interests.

In 2006, Deka and Frankfurt Trust filed a private action against Royal Dutch Shell in the United States District Court of New Jersey (Case No. 06-00067), which was an opt-out action from the RDS Class Action ("the Opt-Out Action"). The Firm, together with MFS, served as counsel for Deka and Frankfurt Trust. The Opt-Out Action was a current case covered by the Settlement Agreement.

In addition to Deka and Frankfurt Trust, other non-U.S. investors commenced opt-out actions from the RDS Class Action. After Reus and Tilp executed the Settlement

---

[2] Royal Dutch Petroleum Company's actual name is Koninklijke Nederlandsche Petroleum Maatschappij.

Agreement, Grant & Eisenhofer and Reus' own firm, DRRT, eventually represented all non-U.S. investors who opted out of the RDS Class Action.

In light of the federal judge's opinion that jurisdiction may be lacking over the claims of non U.S. investors, RDS' counsel approached Grant & Eisenhofer to discuss a legal mechanism that would allow RDS to enter into a settlement with non-U.S. investors who purchased RDS common stock on exchanges outside the United States. RDS and Grant & Eisenhofer determined that a Dutch foundation could represent non-U.S. investors and enter into a settlement with RDS. A Dutch foundation was then formed that would be capable of representing non-U.S. investors ("the Foundation"). On April 11, 2007, the Foundation signed a retainer agreement with Grant & Eisenhofer, with respect to its claims against RDS ("the Foundation matter").

RDS and Grant & Eisenhofer negotiated a settlement agreement with the Foundation. The settlement was conditioned on approval by the Dutch court and the federal court's determination that it lacked jurisdiction over the claims of non-U.S. investors. After settlement, Grant & Eisenhofer received $45 million in attorney's fees from the Foundation matter, and $5 million of those fees was distributed to Reus.

Reus argues that he is entitled to a declaration that all fees that he received from the Foundation matter belong to him. In addition, Reus seeks dismissal of Tilp's second counterclaim for $2,500,000, which represents half of the fees that Reus received from Grant & Eisenhofer.

Reus asserts that Tilp is not entitled to any fees from his representation of the Foundation because it is not a current client or a current case covered by the Settlement

Agreement. Reus also contends that the Foundation matter was not a continuation of the Opt-Out Action. In opposition, Tilp argues that the Foundation matter was directly related to the Opt-Out Action, and that any legal fees earned by Reus from the Foundation matter are subject to fee sharing under the Settlement Agreement.

The Settlement Agreement states that if Reus "takes any action that causes the client of a TILP PLLC Current Case to remove such case from TILP PLLC . . . that Reus shall pay Tilp an amount equal to fifty (50%) of any fees." In the joint statement of undisputed facts, the parties stated that Reus filed a timely claim on Deka's behalf with the claims administrator of the Foundation settlement fund, and that Tilp filed a timely claim on Frankfurt Trust's behalf. In his affidavit, Reus explains that Deka retained him to file this claim, and Frankfurt Trust engaged Tilp to file a proof of claim on its behalf. Based on these submissions, I conclude that Reus and Tilp both treated the claims filed by Deka and Frankfurt Trust with the claims administrator for the Foundation settlement fund as new representations not covered by the Settlement Agreement, and that neither of them seek any legal fees from the other with respect to these claims.

Further, Reus demonstrates that the Foundation was not a current client with a current case covered by the Settlement Agreement. The Foundation matter covered the settlement of many investors' claims, beyond those of the Firm's clients, Deka and Frankfurt Trust. Accordingly, I grant Reus' motion for summary judgment on his second cause of action with respect to the fees that he earned from the Foundation matter. In accordance with my decision, I further grant dismissal of Tilp's second counterclaim to recover fees from the Foundation matter.

Accounting

In his third counterclaim, Tilp seeks an accounting of all fees covered by the Settlement Agreement. Reus does not set forth any argument in support of dismissing this counterclaim. Therefore, I deny Reus' motion for summary judgment dismissing the third counterclaim for an accounting.

II. Tilp's Motion for Summary Judgment

Tilp moves for summary judgment dismissing Reus' first cause of action, and Reus' fourteenth affirmative defense that Tilp's claims are barred because he is a non-lawyer under the Florida Rules. For the reasons set forth above, I grant this portion of Tilp's motion and, as set forth above, issue a declaration in Tip's favor.

Tilp also seeks summary judgment on his counterclaims. With respect to his first, fourth, and fifth counterclaims to recover half of the second wire transfer payment ($986,212.50) and half of the lodestar payment ($300,000) from the General Motors matter, as discussed above, issues of fact exist as to whether Reus received the second wire transfer in connection with the General Motors matter or as a separate bonus payment, and whether he is entitled to retain the lodestar payment.

As to Tilp's second counterclaim for $2,500,000 in legal fees from the Foundation matter, I deny this portion of his motion in accordance with my decision to grant summary judgment in Reus' favor with respect to those fees.

Finally, in the third counterclaim, Tilp seeks an accounting of all amounts that Reus received which are covered by the Settlement Agreement and subject to fee sharing with Tilp. I grant Tilp's motion for summary judgment on his third counterclaim for an

accounting. Tilp demonstrated that the existence of a partnership with Reus, and that Reus failed to provide an accounting of all of the fees that he collected that are covered by the Settlement Agreement. *Adams v. Cutner & Rathkopf*, 238 A.D.2d 234, 241 (1st Dep't 1997).

In accordance with the foregoing, it is

ORDERED that the branch of plaintiff Alexander Reus' motion for summary judgment on the first cause of action for a declaratory judgment, injunction, and order of disgorgement is denied; and it is further

ADJUDGED AND DECLARED that Tilp's ownership interest in the Firm and his fee sharing arrangement with Reus under the Settlement Agreement are valid; and it is further

ORDERED that the branch of plaintiff Alexander Reus' motion for summary judgment on the second cause of action for a declaratory judgment with respect to the General Motors matter is denied; and it is further

ORDERED that the branch of plaintiff Alexander Reus' motion for summary judgment on the second cause of action for a declaratory judgment with respect to the Foundation matter is granted; and it is further

ADJUDGED and DECLARED that all fees that Reus received from Grant & Eisenhofer, P.A. in connection with the Foundation matter belong solely to him and are not subject to any fee-splitting with Tilp under the Settlement Agreement; and it is further

ORDERED that the branch of plaintiff Alexander Reus' motion for summary judgment dismissing Tilp's counterclaims is granted only to the extent that the second

counterclaim for legal fees from the Foundation matter is dismissed, and otherwise denied; and it is further

ORDERED that the branch of defendant Andreas Tilp's motion for summary judgment dismissing plaintiff Alexander Reus' first cause of action for a declaratory judgment, injunction, and order of disgorgement is granted to the extent that a declaratory judgment is issued in his favor; and it is further

ORDERED that the branch of defendant Andreas Tilp's motion for summary judgment dismissing plaintiff Alexander Reus' fourteenth affirmative defense is granted; and it is further

ORDERED that the branch of defendant Andreas Tilp's motion for summary judgment dismissing plaintiff Alexander Reus' second cause of action for a declaratory judgment with respect to the General Motors matter is denied; and it is further

ORDERED that the branch of defendant Andreas Tilp's motion for summary judgment dismissing plaintiff Alexander Reus' second cause of action for a declaratory judgment with respect to the Foundation matter is denied; and it is further

ORDERED that the branch of defendant Andreas Tilp's motion for summary judgment on his counterclaims is granted only with respect to the third counterclaim for an accounting; and it is further

ORDERED that a Special Referee shall be designated to hear and report to this Court on the issue of an accounting of all amounts that Reus received from the Current Cases List attached to the Settlement Agreement, except that, in the event of and upon the filing of a stipulation of the parties, as permitted by CPLR § 4317, the Special Referee, or

another person designated by the parties to serve as referee, shall determine the aforesaid issue; and it is further

ORDERED that counsel for plaintiff Alexander Reus shall, within 30 days from the date of this order, serve a copy of the order with notice of entry, together with a completed Information Sheet, upon the Special Referee Clerk in the Motion Support Office in Rm. 119 at 60 Centre Street, who is directed to place this matter on the calendar of the Special Referee's Part (Part 50R) for the earliest convenient date; and it is further

ORDERED that plaintiff Alexander Reus' second cause of action for a declaratory judgment with respect to General Motors is severed and shall continue; and it is further

ORDERED that the defendant Andreas Tilp's first, fourth, and fifth counterclaims are severed and shall continue; and it is further

ORDERED that counsel are directed to appear for a pre-trial conference at 60 Centre Street, Room 208, on January 13, 2016 at 2:15pm.

This constitutes the decision and order of the Court.

DATE : 10/29/15

SCARPULLA, SALIANN, JSC