

THE LAW OFFICE OF RAJEH A. SAADEH, L.L.C., Plaintiff(s)-Appellant, v. CESAR URVINA GALLEGOS, AKA GIOVANI URBINA, Defendant(s)-Respondent.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-252-24 <u>CIVIL ACTION</u> On appeal from: SUPERIOR COURT OF NEW JERSEY LAW DIVISION SOMERSET COUNTY DOCKET NO. SOM-L-879-24 Sat below: Hon. Kevin M. Shanahan, A.J.S.C.
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**APPELLATE BRIEF & APPENDIX ON BEHALF OF
PLAINTIFF-APPELLANT,
THE LAW OFFICE OF RAJEH A. SAADEH, L.L.C.**

Cynthia L. Dubell – 301122019
The Law Office of Rajeh A. Saadeh, L.L.C.
1200 Route 22 East, Suite 2000
Bridgewater, New Jersey 08807-2943
Phone: (908) 864-7884
Fax: (908) 301-6202
Email: **cdubell@rajehsaadeh.com**

On the brief:
Cynthia L. Dubell - 301122019

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PRELIMINARY STATEMENT

In this action filed by a law firm seeking judgment for an unpaid Fee Arbitration Award, the trial court refused to award any of Plaintiff's contractually-obligated attorney fees, as outlined in its signed, written retainer agreement. The trial court did so despite submission of a certification of services by Plaintiff's counsel and a trial brief outlining the requisite authority and analysis. Additionally, the trial court did not make any findings as to the reasonableness of Plaintiff's fees, stating instead: "Well, counsel, I sat on a District Fee Arbitration Committee for years, and I'm not aware of any provision [...] in which an attorney gets attorney's fees for turning that determination into a judgment after 30 days." (T 4:16 to 4:23)

As a result, Plaintiff will not recoup any of said contractual, collection-related attorney fees, contrary to the plain language of the retainer agreement signed by Defendant, unless and until the trial court's determination is reversed and the matter is remanded for submission of an updated certification of services and entry of an award of attorney fees.

**RELEVANT PROCEDURAL HISTORY &
STATEMENT OF RELEVANT FACTS¹**

This is an appeal of the trial court’s decision with regard to the request of Plaintiff-Appellant, The Law Office of Rajeh A. Saadeh, L.L.C. (heretofore and hereinafter referred to as “Plaintiff”), for judgment against Defendant for “the costs of collection including for professional time expended by attorneys in [Plaintiff] and reasonable expenses[,]” pursuant to the retainer agreement between Plaintiff and Defendant. (Pa11).

On or about December 5, 2022, Defendant signed a retainer agreement hiring Plaintiff in connection with a non-litigation pension matter. (Pa10-13). Said retainer agreement states, in Paragraph C: “If we utilize any legal process to collect any amount outstanding, [Plaintiff] will be entitled to recover the costs of collection, including for professional time expended by attorneys in and outside of [Plaintiff], and reasonable expenses, including but not limited to court, service and execution costs.” (Pa11). Defendant signed said retainer agreement. (Pa13).

On or about June 21, 2023, Defendant received a Fee Arbitration Pre-Action Notice from Plaintiff. (Pa15). Fee arbitration took place on January 8, 2024. (Pa30). On May 29, 2024, the Fee Arbitration Committee issued an

¹ The Procedural History and Statement of Facts are presented together for the appellate court's convenience and to avoid repetition.

Arbitration Determination requiring Defendant to pay Plaintiff the amount of \$2,369.00 within thirty (30) days for services rendered by Plaintiff on behalf of Defendant in connection with the matters in which Plaintiff was engaged (not for the costs of collection, which is outside of the limited jurisdiction of the Fee Arbitration Committee). (Pa28-39). Defendant did not pay Plaintiff said amount within thirty (30) days. (Pa3).

After at least thirty (30) days had elapsed since the Arbitration Determination, Plaintiff filed a Verified Complaint and Order to Show Cause against Defendant in the Superior Court of New Jersey, Law Division, Somerset County, seeking 1) reduction of the Arbitration Award of \$2,369.00 to judgment against Defendant and in favor of Plaintiff; and 2) a judgment against Defendant and in favor of Plaintiff for “the costs of collection including a reasonable allowance for professional time expended by attorneys in [Plaintiff] and reasonable expenses[,]” pursuant to the retainer agreement(s) between Plaintiff and Defendant, upon submission of a certification of services by Plaintiff. (Pa2-39).

On July 10, 2024, the trial court granted Plaintiff’s Order to Show Cause and scheduled a return date for August 12, 2024. (Pa40-44). On August 12, 2024, the trial court conducted oral argument. (T1-13). The trial court granted Plaintiff’s request to enter judgment against Defendant in the amount of

\$2,369.00, but denied Plaintiff's request for attorney fees and costs of collection efforts and without making any findings as to the reasonableness of the fee, despite Plaintiff submitting a certification of services and letter brief and arguing for such award at the hearing. (Pa1, Pa51-65; T10:1 to 12:12). This appeal follows.

LEGAL ARGUMENT

I. CONTRACTUALLY, PLAINTIFF IS ENTITLED TO "COSTS OF COLLECTION INCLUDING FOR PROFESSIONAL TIME EXPENDED BY ATTORNEYS IN [PLAINTIFF] AND REASONABLE EXPENSES" FROM DEFENDANT. (Pa12)

Law

A "right or remedy resulting from a breach of contract is the recovery of monetary damages that resulted from the breach." Vosough v. Kierce, 437 N.J. Super. 218, 243 (App. Div. 2014). The traditional model for breach of contract damages permits a prevailing party to recover "compensatory damages for such losses as may fairly be considered to have arisen naturally from the [other party]'s breach of contract," or "such damages as may reasonably be supposed to have been contemplated by both parties, at the time they made the contract, as the probable result of the breach of such contract." Model Jury Charges (Civil), 8.45.

Attorney fees are recoverable in limited circumstances, including when it is payable per a contract. N. Bergen Rex Transp. v. Trailer Leasing Co., 158 N.J. 561, 569-70 (1999). “Agreements between attorneys and clients concerning the client-lawyer relationship generally are enforceable, provided the agreements satisfy both the general requirements for contracts and the special requirements for professional ethics.” Cohen v. Radio-Electronics Officers Union, 146 N.J. 140, 155 (1996) (citation omitted).

Agreements between an attorney and a client are construed “as a reasonable person in the circumstances of the client would have construed it.” Id. at 156 (citing Restatement (Third) of the Law Governing Lawyers § 18 (2000)). From the contract, courts are to “discern and implement the intentions of the parties.” Quinn v. Quinn, 225 N.J. 34, 45 (2016).

Courts are not permitted to rewrite or revise agreements where the parties’ intent is clear, nor can the court present a contract “better than or different from the agreement they struck between themselves.” Ibid. “Thus, when the intent of the parties is plain and the language is clear and unambiguous, a court must enforce the agreement as written, unless doing so would lead to an absurd result.” Ibid.

Finally, our appellate courts have upheld the right for attorneys to receive an award of attorney fees and costs for collection efforts after a Fee Arbitration

determination has been entered. In the matter of Hrycak v. Kiernan, 367 N.J. Super. 237, 240-41 (App. Div. 2004), the appellate court reversed and remanded the trial court, finding that an attorney is entitled to fees for the time expended in his collection efforts related to the parties' retainer agreement. Agreements between attorneys and their clients are generally enforceable as long as they are fair and reasonable. Id. at 240.

Application

Defendant signed and therefore assented to a retainer agreement setting forth expenses and fees for which he is responsible, including fees for any collection efforts by Plaintiff.

Per the retainer agreement, as a matter of contract, Plaintiff seeks and is entitled to attorney fees incurred in connection with the fee arbitration proceeding itself, and after Plaintiff sought court intervention to reduce the Arbitration Award to judgment, as Defendant failed to remit any portion of the award despite participating in fee arbitration.

Plaintiff performed its obligations pursuant to the retainer agreement, and Defendant breached said retainer agreement by failing to pay the fees he agreed and was later ordered to pay pursuant to the Arbitration Award. Plaintiff's request for attorney fees is therefore a form of damages related to Defendant's breach of contract, which was expressly contemplated by the parties at the time

of contract formation, and is not a traditional attorney fee award that is purely discretionary, *see* R. 5:5-4(c) (allowing for an award of attorney fees in a family action by “the court in its discretion”), permissive, *see* N.J.S.A. 10:5-27.1 (allowing attorney fees to be awarded to a prevailing plaintiff in a Law Against Discrimination matter), or mandatory, *see* N.J.S.A. 56:8-19 (requiring an award of attorney fees to a plaintiff prevailing under the Consumer Fraud Act). Instead, the attorney fees Plaintiff seeks and is entitled to under the retainer agreement are actually a form of contractual damages and are therefore not subject to any ordinary attorney fee analysis. The retainer agreement says the fees incurred in connection with collection are recoverable, and the law requires that said agreement be respected and enforced.

Instead of doing so, the trial court arbitrarily summarily denied Plaintiff’s request for attorney fees and costs with no further explanation or findings placed on the record. The trial court did so despite Plaintiff’s application which included brief argument to protect the record for appeal (T4:8 to 4:15 and T11:7 to 12:7), a certification of services from Plaintiff’s counsel (Pa53-56), and analysis of the law via a letter brief on the issue (Pa57-59)². Said actions by the

² Per R. 2:6-1(a)(2), inclusion of the Trial Court Brief is required here, as the question of whether Plaintiff raised adequate authority to support the award of attorney fees below is germane to the appeal as to whether the Trial Court improperly denied Plaintiff an attorney fee award.

trial court fail to respect that Defendant expressly consented, in a contract, to responsibility for “costs of collection including a reasonable allowance for professional time expended by attorneys in the firm and reasonable expenses” in executing the retainer agreement. Fee arbitration, as well as court actions to obtain and enforce judgments, amount to “legal process to collect any amount outstanding,” as outlined in said agreement (Pa11). The language in the retainer agreement is clear and unambiguous, and Defendant is contractually responsible for the costs associated with collection efforts by the attorney, including counsel fees incurred by attorneys in the firm. The trial court was obligated to respect and honor that deal, and it failed to do so.

The factual basis contained within the Hrycak decision is nearly identical to the facts underlying this matter. Hrycak involved an attorney who went to fee arbitration against a former client and obtained an arbitration award, for which the former client only remitted partial payment. 367 N.J. Super at 238-40. The attorney then filed suit to collect the remainder of the Arbitration Award from the former client and was successful, but the trial court denied his request for \$450.00 in contractual attorney fees. Id. at 239-40. The retainer agreement between the attorney and his former client stated:

Should attorney bring suit against client for fees due under this agreement, and after the requisite pre-action notice required by Rules Governing the Courts of New Jersey, client shall be

responsible for all fees and attorney[']s fees with a minimum of \$450.00 attorney's fees for the filing of same.

Id. at 239.

The Hrycak panel reversed the trial court's denial of the contractually obligated attorney fees, finding this was a matter in which the attorney sought fees for actual time expended which was contemplated in the retainer agreement. Id. at 241. The Hrycak panel distinguished prior appellate decisions, finding opposite to those in a "case where the retainer penalizes the client for a fixed percentage of the fees owed if the attorney is forced to file suit to collect." Id. at 240. Ultimately, the Hrycak panel held:

[a]n arbitration committee has already determined the reasonable value of Hrycak's services and that he was owed money. After arbitration, when [Defendant] refused to honor his obligation, Hrycak was forced [to] take the matter to the Law Division to perfect his rights. For Hrycak's reasonable time and effort in seeking his fee, especially where the balance awarded was unjustifiably withheld, we see no reason why he should be denied compensation for additional work required in enforcing the award as covered by the retainer agreement.

[Id. at 241.]

Here, essentially the same thing has happened. Defendant failed to pay his bill with Plaintiff, and sought Fee Arbitration. The Fee Arbitration panel determined that Defendant owed Plaintiff \$2,369.00, and required payment within thirty (30) days. When Defendant failed to pay, Plaintiff filed suit in the

Law Division against Defendant, seeking the unpaid award from the Fee Arbitration panel, as well as the costs of collection.

However, the trial court improperly failed to grant Plaintiff's requested relief for attorney fees incurred during the collection process. In fact, the trial court even went so far as to state: "Well, counsel, I sat on a District Fee Arbitration Committee for years, and I'm not aware of any provision [...] in which an attorney gets attorney's fees for turning that determination into a judgment after 30 days" (T 4:16 to 4:23), despite a December 11, 2023, appellate court decision reversing the same judge on the same issue involving the same Plaintiff. *See The Law Office of Rajeh A. Saadeh, LLC, v. Lankamer, unpublished opinion*, A-0271-22, Appellate Division, Superior Court of New Jersey (2023) (Pa78-85), on appeal from SOM-L-749-22, Judge Kevin M. Shanahan, A.J.S.C. A copy of the eCourts Case Summary for such matter, which showing that the judge is the same, is included within Plaintiff's Appendix. (Pa86-88)

In light of the foregoing, the trial court's denial of attorney fees and costs without any consideration of the factors for awarding such fees, and despite the submission of a certification of services from Plaintiff's counsel and letter brief on the issue, was in error and must be reversed.

CONCLUSION

Because the trial court failed to enforce the express terms of the retainer agreement signed by Defendant, we respectfully request that the Appellate Division reverse the attorney fee decision in the judgment and remand the matter to the trial court to grant Plaintiff attorney fees upon Plaintiff's counsel's submission of a certification of services.

Respectfully Submitted,
THE LAW OFFICE OF RAJEH A. SAADEH, L.L.C.
Attorneys for **Plaintiff-Appellant**



Cynthia L. Dubell