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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-0431-15T4

STEVEN D'AGOSTINO,

Plaintiff-Appellant,

v.

CAPITAL ONE and GARY L. MASON,

Defendants-Respondents.

Argued December 7, 2017 — Decided December 18, 2017

Before Judges Haas and Rothstadt.

On appeal from Superior Court of New Jersey,
Law Division, Ocean County, Docket No. DC-
9606-14.

Steven D'Agostino, appellant, argued the cause
pro se.

Brian M. Block argued the cause for respondent
Capital One Bank (Mandelbaum Salsburg, PC,
attorneys; Michael F. Bevacqua, Jr., of
counsel and on the brief; Brian M. Block, on
the brief).

Garland & Mason, LLC, attorneys for respondent
Gary L. Mason (Gary L. Mason, on the brief).

PER CURIAM

Plaintiff Steven D'Agostino appeals from an August 12, 2015 order granting summary judgment to defendant Gary Mason on plaintiff's claim that Mason was not entitled to be paid for legal services he provided to plaintiff. Plaintiff also challenges a March 12, 2015 order granting summary judgment to defendant Capital One Bank (USA) on plaintiff's claims that the bank should not have billed him after plaintiff used his Capital One credit card to pay Mason, and that Capital One defamed him by reporting a delinquency to a credit agency on a different credit card issued by HSBC Bank.¹

On appeal, plaintiff argues the following points:

- I. The trial [c]ourt harmfully erred by granting Capit[a]l One's [motion for summary judgment].
 - A. The trial [c]ourt improperly weighed the evidence.
 - B. Capit[a]l One's cashing of [plaintiff's] "full payment" check constituted accord and satisfaction.
 1. The clause in the Customer Agreement was unenforceable.
 2. Even if the clause in the Customer Agreement was enforceable[,], Capit[a]l One's cashing of [plaintiff's] "full payment" check still constituted accord and satisfaction.

¹ The two orders also dismissed plaintiff's complaint against both defendants.

C. Capit[a]l One is liable for the HSBC judgment and defamation.

II. The trial [c]ourt harmfully erred by granting Mason's [motion for summary judgment].

A. The trial [c]ourt improperly weighed the evidence.

B. The contract was between Mason and [plaintiff].

C. The trial [c]ourt erred in denying motion to amend.

D. The causes of action in the instant matter are based on contract law, not tort (i.e. professional negligence).


E. Even if an [Affidavit of Merit] was needed, [plaintiff] complied with the statute.

III. Request the case be reassigned to a new judge on remand.

We conclude that plaintiff's arguments are without sufficient 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