SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3280-14T2

DIANA PENG, AS ADMINISTRATRIX OF THE ESTATE OF ALFRED T.C. PENG, TZULI HSU, JOSEPH HUANG, STEPHEN HUANG, PEN FA LEE and VERONICA WAN, AS ADMINISTRATRIX OF THE ESTATE OF CHEE C. WAN,

Plaintiffs-Respondents,

v.

LAW OFFICE OF FENG LI,

Defendant,

and

FENG LI,

Defendant-Appellant.

Argued November 2, 2016 – Decided March 29, 2017

Before Judges Accurso and Manahan.[1]

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[1] Hon. Carol E. Higbee participated in the panel before whom this case was argued. The opinion was not approved for filing prior to Judge Higbee's death on January 3, 2017. Pursuant to R. 2:12-2(b), "Appeals shall be decided by panels of 2 judges designated by the presiding judge of the part except when the presiding judge determines that an appeal should be determined by a panel of 3 judges." The presiding judge has determined that this appeal shall be decided by two judges.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-7564-09.

Feng Li, appellant, argued the cause pro se.

Willard C. Shih argued the cause for respondents (Wilentz, Goldman & Spitzer, P.A., attorneys; Mr. Shih, of counsel and on the brief).

PER CURIAM

Defendant Feng Li, a disbarred New Jersey attorney, appeals from a final judgment in favor of plaintiffs, former clients of Li's, finding him liable for the return of $1,040,421.46 he misappropriated and wired out of the country in violation of a temporary restraining order entered by the Law Division. Li claims the Law Division was without jurisdiction to adjudicate the fee dispute, which arose over the proceeds of litigation conducted in New York State court, and erred in according collateral estoppel effect to the New Jersey Supreme Court's finding that Li's written fee agreement with plaintiffs did not authorize him to take the funds. Finding no error, we affirm.

Although the procedural history of the several related actions arising out of this dispute is lengthy, the essential facts are undisputed. We summarize only so much as necessary to give context to our decision. In 2005, Li substituted in as counsel for plaintiffs in a fraud and breach of fiduciary duty

case that had languished for fifteen years in State court in New York. Li, then a young, inexperienced lawyer with no trial experience, had plaintiffs sign a contingent fee agreement he found on the internet. The agreement, drafted in accordance with New Jersey Court Rules for personal injury actions, provided Li would receive a contingent fee on a sliding scale based on the total recovery, less costs and prejudgment interest.

Li recovered an aggregate judgment on behalf of plaintiffs of approximately $1.3 million which, with prejudgment interest rose to over $3.4 million. Shortly after entry of that judgment, the trial judge entered an order directing defendants' counsel to transfer $500,000 he had been holding (the Rabine funds) to Li in trust for his clients. Li successfully defended the judgment on appeal. In August 2009, he received the $3.5 million the defendants had posted with the New York court pending appeal, bringing the total he held in trust for plaintiffs to slightly over $4 million.

A dispute immediately arose between plaintiffs and Li over distribution of the funds. Li took the position, notwithstanding the terms of the retainer agreement, that he was entitled under New York law to one-third of the total recovery, including prejudgment interest, and should thus receive a fee of

between $1.2 and $1.3 million. Plaintiffs sought to hold Li to his retainer agreement.[2] They also objected to the inclusion of the Rabine funds, which they claim represented net proceeds from the sale of a commercial property a dozen years before Li's involvement, not part of the litigation.

Notwithstanding his clients' position, Li calculated his fee on the entire judgment and the Rabine funds and issued four checks from his trust account, made payable to his children, totaling over $1.2 million. Those checks were deposited into accounts controlled by his wife on behalf of their children. Li also issued checks to the plaintiffs for what he deemed to be the net proceeds.

On September 11, 2009, plaintiffs instituted suit in the Law Division in Middlesex County asserting that Li was entitled to a fee of only $326,642.47. On September 15, plaintiffs applied for an order to show cause temporarily restraining Li from disbursing any funds pending the return date. Li filed papers opposing the application on September 17, and the same

[2] The Special Ethics Master who presided over Li's disciplinary hearing found plaintiffs expected to pay Li one-third of any recovery, that being the agreement they had with the New York firm Li succeeded. After entry of the $3.4 million judgment and a review of the retainer agreement, however, plaintiffs "decided to benefit by the mistaken graduated scale and preclusion of lawyers fee on the interest awarded."

day sued plaintiffs in New York. Judge Francis entered the temporary restraining order on September 23, and plaintiffs' counsel immediately served it on Li by telefax. On September 24, Li caused the $1.2 million previously deposited in his children's accounts to be wired to China to satisfy a pre-existing debt.

On the October 2 return date of the order to show cause, Li told Judge Francis that he had distributed the entire proceeds of the judgment, including his fee, before entry of the temporary restraining order.[3] Judge Francis rejected Li's arguments that New Jersey lacked jurisdiction over the dispute. The judge instead restrained further disbursements of the proceeds of the judgment, directed Li to return his fee to his trust account and ordered that he provide an accounting to plaintiffs' counsel within ten days. The judge issued an order memorializing those directives and denying Li's cross-motion to dismiss for lack of personal and subject matter jurisdiction and

[3] The decision of the Disciplinary Review Board states the wire transfers occurred on September 23, 2009. Bank statements included in the appendix reflect the transfers having been made on September 24, 2009. Although we rely on the documents in the appendix for the date of the transfer, and thus conclude Li transferred funds in violation of the temporary restraining order, that finding is not material to our decision.

to change venue to Morris County on October 15, 2009. Li did not appeal that order.

A judge in Westchester County rejected Li's arguments that New York had exclusive jurisdiction over the fee dispute and stayed the New York suit pending resolution of the first-filed New Jersey action. Li appealed, and the appellate court denied his motion to enjoin plaintiffs from litigating in New Jersey while the appeal remained pending. A subsequent suit Li filed in Queens County seeking the same relief requested in the Westchester County action was dismissed.

Following the New York appellate court's denial of his motion to enjoin plaintiffs from pursuing this action, Li filed for bankruptcy in New Jersey in January 2010. Plaintiffs filed an adversary proceeding in January 2011, contending the debt to them was non-dischargable.

While that matter was pending, the Office of Attorney Ethics took up the grievance plaintiffs filed against Li. Following the filing of a formal complaint, a special master was appointed who held four days of hearings in 2012. Li was at all times represented by experienced counsel. Following the conclusion of the testimony, the special master submitted a twenty-three-page report recommending Li's disbarment. The special master concluded by clear and convincing evidence that

Li "knowing there was a dispute regarding the quantum of his fee, improperly transferred funds held in trust for the clients to his children" and failed to provide an accounting to his clients. The special master also concluded that Li "knowingly misappropriated the $516,854.40" constituting the Rabine funds, and made "false representations and failed to list the monies he took from his trust account and gave to his infant children" in his Chapter 7 bankruptcy petition.

Following oral argument, the Disciplinary Review Board conducted a de novo review of the record and agreed with the special master's findings. Specifically, the Disciplinary Review Board concluded

> the record clearly and convincingly demonstrates that [Li] knowingly misappropriated his clients' funds when he arranged to have approximately $1.2 million dollars deposited into bank accounts in his children's names and later used those funds to pay his personal debts. Although [Li] claimed that the funds were due to him as legal fees for the [New York] litigation, [Li] failed to establish that he held a reasonable belief of entitlement to those funds.
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> Both before and during the disciplinary proceedings, [Li] asserted that he was entitled to the fees that he took. He maintained that the fee arrangement that he had prepared was erroneous and that he should have drafted an agreement in

> accordance with New York law, which permits attorneys to include prejudgment interest received by their clients when calculating their legal fees. In addition, he claimed that, because the judge in New York had given [the defendant] credit for the Rabine funds as partial payment of the judgment, he was entitled to a percentage of those monies as part of the total recovery.
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> In essence, [Li] pretended that he had entered into a fee agreement completely different from the one that his clients had signed. He calculated his fees based on this non-existent fee agreement. His clients, however, had the right to require that he comply with the express provisions of the agreement that he had prepared. If he believed that the agreement did not accurately reflect that parties' intent, his remedy was to bring the dispute before an appropriate forum for resolution, not to engage in self-help. Indeed, the fee arrangement itself provided that [Li] could apply to the court for a fee award if the recovery exceeded $2 million. Simply put, we find that [Li's] belief that he could take his fees in accordance with an imagined fee agreement was far from reasonable.

Finding that Li "knowingly misappropriated" a portion of the New York judgment plaintiffs received and the Rabine funds, four members of the Disciplinary Review Board voted for disbarment. Three members dissented seeking a suspension of either three months or one year.

Upon receipt of the Disciplinary Review Board's recommendation and following its own independent review of the matter, the New Jersey Supreme Court found

> (1) the written fee agreement with [Li's] clients did not authorize the $1.2 million fee [Li] took, (2) [Li] wrote to his clients suggesting that he would charge additional fees and potentially inform authorities about alleged misrepresentations at trial unless the clients abandoned their challenge to his fee, and (3) [Li] deliberately deposited the unauthorized fee in his children's bank accounts and wired the funds for his personal use to China, where they could not be retrieved, after he had been sued.

Based on those findings "and others made by the Disciplinary Review Board that [Li] lacked a reasonable, good-faith belief of entitlement to the disputed funds and that his use of the contested funds therefore constituted a knowing misappropriation of client funds," the Supreme Court disbarred Li on May 22, 2013.

On December 16, 2013, the bankruptcy court denied Li a discharge of plaintiffs' debt, finding Li "knowingly and fraudulently" made a false oath or account based on "[t]he omissions, inaccuracies and misstatements on the debtor's schedules and in the debtor's statement of financial affairs." It further declared Li's debt to plaintiffs non-dischargable based on his embezzlement of their funds. In making the latter

finding, the bankruptcy court accorded collateral estoppel effect to the Supreme Court's finding that Li knowingly misappropriated plaintiffs' funds resulting in his disbarment.

The district court affirmed the decision of the bankruptcy court in its entirety. Li v. Peng, 516 B.R. 26, 30 (D.N.J. 2014). Judge Wolfson specifically rejected Li's claims that the bankruptcy court erred in applying the doctrine of collateral estoppel. Id. at 42.

Judge Wolfson found the issue decided in the disciplinary proceeding, that the parties' written fee agreement did not authorize the $1.2 million fee Li took, thus resulting in his knowing misappropriation of client funds, was identical to the issue before the bankruptcy court. Id. at 43. The judge found that issue was actually litigated in Li's disciplinary proceeding, and was obviously essential to the Supreme Court's final judgment on the merits permanently disbarring Li from the practice of law in this State. Id. at 44-47. Because the Supreme Court determined the fee issue against Li in the disciplinary proceeding, collateral estoppel barred Li's relitigation of that issue in the later bankruptcy proceeding. Id. at 47. See Wildoner v. Borough of Ramsey, 316 N.J. Super. 487, 506 (App. Div. 1998), rev'd on other grounds, 162 N.J. 375 (2000). The Third Circuit affirmed, In re Feng Li, 610 F. App'x

126, 130 (3d Cir. 2015), and the United States Supreme Court denied Li's petition for certiorari, Feng Li v. Peng, ___ U.S. ___, 136 S. Ct. 1189, 194 L.Ed. 2d 203 (2016).

Following Li's disbarment and the district court's affirmance of the bankruptcy court's decision denying Li's discharge, plaintiffs reactivated their Law Division action and moved for summary judgment. Li opposed the motion, again arguing that the Law Division lacked jurisdiction over the controversy, New Jersey law and ethics rules were irrelevant to the dispute, and that he was entitled to the fees he took.

After hearing oral argument, Judge Bergman entered summary judgment for plaintiffs in the sum of $903,879.92 plus costs and prejudgment interest. The judge rejected Li's claims as to jurisdiction, noting Judge Francis considered and resolved that issue in 2009. Further, the judge noted that multiple federal and State courts in New York and New Jersey had previously determined that jurisdiction was proper in New Jersey. The judge also noted Li met with plaintiffs in New Jersey and the retainer agreement was entered into here, where at least one of the plaintiffs, as well as Li, lived at the time suit was filed.

With respect to Li's claims that he was entitled under New York law to calculate his fee on the entire judgment, including the Rabine funds, the judge found Li was collaterally estopped

from relitigating that issue, which the New Jersey Supreme Court had already decided against him. Referring to the Supreme Court's decision disbarring Li, based on the facts found by the Disciplinary Review Board, the judge stated:

> [W]hat [the Disciplinary Review Board is] basically saying is your fee agreement, as written, called for you to exclude interest from the calculation of your fee . . . and you're arguing that it doesn't apply, that that provision that you inserted in there parallel to the rule on torts doesn't apply to your case and they're saying yes, it does, because other requirements of the Rules of Professional Conduct required you to give them an accurate fee agreement and give them a comprehensible fee agreement, and explain it to them, none of which you did, which they find.
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> So the Supreme Court is ratifying the findings of fact of the Disciplinary Review Board that you did not have a reasonable or good faith belief to take the funds let alone an actual right to do so . . . .

Judge Bergman concluded thus there was already "a judgment as to liability."

> There is a judgment by the Supreme Court that you misappropriated . . . this 1.2 million dollars that you took and . . . the only thing [the Court] hadn't decided [was] that of the 1.2 million dollars that you took what . . . were you entitled to take . . . . The numbers are not in dispute. We know what the original judgment is. We know what the pre-judgment interest is. We know what the Rabine trust is, and

> we know that the Rabine trust was not included in your retainer agreement.

The judge concluded:

> So the only issue that was not decided by the Supreme Court was the arithmetic. And on a motion for summary judgment, courts are entitled to perform arithmetic valuations if there are no facts in dispute . . . . [Y]ou're arguing that the facts in dispute are whether or not you're entitled to pre-judgment interest on the Rabine funds. The answer is unequivocally no.
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> And whether or not . . . you're entitled to a fee on the pre-judgment interest[,] and the answer to that is clearly no by the [Disciplinary Review Board] and the Supreme Court.
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> The others have dealt with other issues, but that's what's binding on me. And I think it is clear from my review of the record and from the discourse we've had here today that there is no issue of material fact.

Following the entry of final judgment, which including prejudgment interest and costs totaled $1,040,421.46, Li filed this appeal, raising the following issues:

> POINT I
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> STATE OF NEW JERSEY HAS NO JURISDICTION.
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> (A) STATE OF NEW JERSEY HAS NO SUBJECT MATTER AND GEOGRAPHIC JURISDICTION.
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> (B) STATE OF NEW JERSEY HAS NO PERSONAL JURISDICTION.

POINT II

THE CONTINGENCY FEE AGREEMENT IS GOVERNED BY NEW YORK LAW. HOWEVER, EVEN IF NEW JERSEY LAW APPLIES (WHICH IT DOES NOT), THE INTEREST IS ALLOWED UNDER NEW JERSEY LAW AS PART OF HIS ATTORNEY FEE.

(A) NEW YORK LAW GOVERNS THE ATTORNEY/ CLIENTS FEE DISPUTE AND NEW YORK LAW ALLOW[S] [AN] ATTORNEY TO HAVE JUDGMENT INTEREST AS PART OF HIS ATTORNEY FEE.

(B) EVEN IF NEW JERSEY LAW APPLIED (WHICH IT DOES NOT), THE SUPREME COURT OF NEW JERSEY MADE IT CLEAR THAT ATTORNEY IS ALLOWED TO SHARE THE JUDGMENT INTEREST AS THE MATTER IS A "BUSINESS TORT" ACTION.

(C) NEW JERSEY LAW IS CLEAR THAT NEW JERSEY PERSONAL INJURY AGREEMENTS DO NOT APPLY TO PROCEEDINGS OUTSIDE OF THE STATE OF NEW JERSEY.

POINT III

NEW YORK SUPREME COURT DETERMINED THAT THE "RABINE"/SHLP FUND ARE PART OF THE FINAL JUDGMENT. NEW JERSEY COURTS CANNOT OVERTURN THE NEW YORK JUDGMENT AND MUST GIVE A FULL FAITH AND CREDIT TO THE NEW YORK COURT JUDGMENT AND DECISION.

(A) THE RABINE/SHLP FUNDS ARE AWARDED TO ALFRED PENG, PEN FA LEE, JOSEPH HUANG, AND STEVEN HUANG ONLY BY THE FINAL JUDGMENT OF THE SUPREME COURT OF NEW YORK.

POINT IV

ETHIC[S] PROCEEDING[S] CANNOT BE USED AS COLLATERAL ESTOPPEL TO RENDER A JUDGMENT BECAUSE FENG LI NEVER HAD A "FULL AND FAIR" OPPORTUNITY TO LITIGATE THE ATTORNEY/CLIENTS

CONTRACT FEE DISPUTE DURING THE NEW JERSEY ETHICS PROCEEDINGS.

(A) AD HOMINEM ATTACK ON FENG LI IS IRRELEVENT.

(B) RECORD IN TOTAL SUPPORTS DEFENDANTS AND PREVENTS SUMMARY JUDGMENT.

Having reviewed the record and considered Li's arguments and the applicable law, we are convinced that none of these arguments is of sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). Contrary to Li's repeated assertions, all of these arguments have already been considered and rejected many times over. Every one of the New York and New Jersey courts to have considered Li's contentions agrees New Jersey has jurisdiction to resolve this fee dispute arising out of an attorney/client relationship forged in New Jersey by a New Jersey lawyer, notwithstanding the case for which defendant was retained was pending in New York.

We likewise agree with the Law Division, the Bankruptcy Court, the United States District Court for the District of New Jersey and the Third Circuit that Li is collaterally estopped from relitigating the issues the New Jersey Supreme Court has already finally decided - that the written fee agreement between the parties "did not authorize the $1.2 million fee [Li] took," he "lacked a reasonable, good-faith belief of entitlement to the

disputed funds and that his use of the contested funds therefore constituted a knowing misappropriation of client funds." Not only has Li been provided a full and fair opportunity to litigate those issues through three levels of disciplinary proceedings, see In re Logan, 70 N.J. 222, 229-30 (1976), he is reprising the same arguments made to our Supreme Court, which rejected them. Accordingly, those issues are simply no longer open for debate. See Lombardi v. Masso, 207 N.J. 517, 539-40 (2011).

Because jurisdiction is patent, there is no dispute over the calculation of the judgment, and our Supreme Court has already determined that Li knowingly misappropriated plaintiffs' funds, we affirm the judgment of the Law Division.

Affirmed.