

Pennsylvania, an additional \$5,000 to petition for Allocatur in the Supreme Court, \$7,500 to investigate a civil suit against Plaintiff's prior counsel, and \$1,500 for costs.

(Philadelphia Bar Association Fee Dispute Committee Letter Dated 9/28/05). At some point in time, Plaintiff became unsatisfied with Bradley's legal services provided under the fee agreement. Both Plaintiff and Bradley agreed to submit this dispute to the Philadelphia Bar Association Fee Dispute Committee. (Preliminary Objections, Exhibit 2). The Agreement to Submit to Common Law Arbitration specifically states that by submitting to the procedures of the Fee Disputes Committee of the Philadelphia Bar Association one agrees "[t]hat the final award of the Committee shall be final and binding on the parties hereto and shall have the force and effect of a verdict by jury."

(Preliminary Objections, Exhibit 2). On September 28, 2005, the arbitration panel awarded a verdict in favor of Bradley and against Plaintiff. (Preliminary Objections, Exhibit 3).

Plaintiff then petitioned this Court for leave to proceed In Forma Pauperis. By Order dated September 19, 2006 Plaintiff was granted In Forma Pauperis status. (See Docket).

Plaintiff then filed a Complaint on October 23, 2006. (See Docket). In his Complaint, Plaintiff alleges that Bradley breach his expressed contract with Plaintiff because he did not file a complaint for legal malpractice against his previous attorney. (Complaint, ¶4-5). Bradley filed Preliminary Objections on November 16, 2006 and on December 19, 2006, this Court granted Bradley's preliminary objections and dismiss Plaintiff's Complaint.

On January 19, 2007 Plaintiff filed his Notice of Appeal with the Superior Court and issued his Statement of Matters accordingly.

The sole issue on appeal is whether this Court committed an abuse of discretion or error of law in granting Bradley's preliminary objections to Plaintiff's Complaint.

LEGAL ANALYSIS

The Superior Court's standard of review mandates that on an appeal from an order sustaining preliminary objections which would result in the dismissal of suit, that they accept as true all well-pleaded material facts set forth in the Appellant[s] complaint and all reasonable inferences which may be drawn from those facts. *Reardon v. Allegheny College*, 2007 PA Super 160, 926 A.2d 477, 480 (2007). Where, as here, upholding sustained preliminary objections would result in the dismissal of an action; we may do so only in cases that are clear and free from doubt. *Id.* To be clear and free from doubt that dismissal is appropriate, it must appear with certainty that the law would not permit recovery by the plaintiff upon the facts averred. *Id.* Any doubt should be resolved by a refusal to sustain the objections. *Id.*

This Court found that because Plaintiff voluntarily entered into an agreement to submit to Common Law Arbitration on the merits of this case, he is therefore bound by the award of arbitrators as though the decision was rendered in a court of law.

In Pennsylvania, our Courts' decisions have been governed by two basic propositions: (1) arbitration agreements are to be strictly construed and . . . such agreements should not be extended by implication and (2) when the parties agree to

arbitration in a clear and unmistakable manner, then every reasonable effort will be made to favor such agreements. *Dickler v. Shearson Lehman Hutton, Inc.*, 408 Pa. Super. 286, 596 A.2d 860, 863 (1991). See also *Emmaus Mun. Auth. v. Eltz*, 416 Pa. 123, 125, 204 A.2d 926, 927 (1964); *Hassler v. Columbia Gas Transmission Corp.*, 318 Pa. Super. 302, 307, 464 A.2d 1354, 1356 (1983).

It is clear that a common law arbitration award is binding and may not be set aside absent a clear showing that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused rendition of an unjust and equitable or unconscionable award. 42 P.A.C.S.A. § 7341.

Both Bradley and Plaintiff signed a Philadelphia Bar Association agreement to submit their fee dispute to common law arbitration. (Preliminary Objections, Exhibit 2). Subsection (a) of this agreement clearly states, “That the final award of the Committee shall be final and binding on the parties hereto and shall have the force and effect of a verdict by jury.” On January 31, 2005 the arbitration hearing was held. (Preliminary Objections, Exhibit 3). The issue at the hearing was whether Bradley earned the \$24,000 fee that was paid to him by Plaintiff for various legal services. (Preliminary Objections, Exhibit 3). The arbitration panel was advised that \$10,000 was paid for an appeal to Superior Court of Plaintiff’s criminal case, \$5,000 to petition for Allocatur, \$7,500 to investigate a civil suit against Plaintiff’s prior counsel and \$1,500 for costs. (Preliminary Objections, Exhibit 3). By letter dated September 28, 2005, the Chairman for the Fee Dispute Committee issued a ruling by the arbitration panel that found that Bradley fully earned the legal fee and that no refund was due to Plaintiff. (Preliminary Objections, Exhibit 3). The award of the arbitrators included the consideration of Plaintiff’s claim

that Bradley was going to investigate the possibility of a legal malpractice claim against his former attorney. As such the issue had been litigated and the parties are bound by the decision of the arbitration panel. The Plaintiff is therefore precluded from bringing the same action before the Court of Common Pleas.

In addition to finding that Plaintiff is bound by the finding of the arbitration panel, this Court also found that the Plaintiff failed to prove that Bradley breached the terms of his contract with Plaintiff by not filing a claim against Plaintiff's former attorney.

Three elements are necessary to plead properly a cause of action for breach of contract in Pennsylvania: "(1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract and (3) resultant damages." *Williams*, 750 A.2d at 884, (quoting *Corestates Bank Nat'l. Assn. v. Cutillo*, 1999 PA Super 14, 723 A.2d 1053, 1058 (Pa.Super. 1999)).

Plaintiff's Complaint fails to properly substantiate that the definitive terms of his contract he had with Bradley. Plaintiff also does not attach a contract to his Complaint, which is fundamental in establishing a basis for a breach of contract claim against Bradley. Pa.R.C.P. 1019 specifically states:

(h) When any claim or defense is based upon an agreement, the pleading shall state specifically if the agreement is oral or written.

Note: If the agreement is in writing, it must be attached to the pleading. See subdivision (i) of this rule.

(i) When any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance in writing.

In *Williams v. Nationwide Mut. Ins. Co.*, 750 A.2d 881, 2000 PA Super 110 (2000), our Superior Court sustained defendant's preliminary objections and dismissed plaintiffs' breach of contract claims, where plaintiffs failed to plead sufficient facts in their Complaint to establish any contractual duty on the part of defendant, and failed to attach pertinent parts of their alleged contract to the Complaint.

The major issue in this contract action is whether the \$7,500 legal fee that was paid to Bradley was to *investigate* a legal malpractice action against Plaintiff's prior counsel, or to *file* a legal malpractice action. (emphasis added). Plaintiff having not attached the contract itself to the Complaint, prohibits the Court from determining the definitive terms of the contract and whether any breach had occurred.

In Plaintiff's Complaint, he alleges that Bradley breached the contract because he paid Plaintiff \$7,500 to file a legal malpractice action against his former attorney. Specifically, the Complaint states defendant stated to Plaintiff: "In any event, we will file a meritorious calm against the attorney after reading all of the notes and evidence." (Complaint, ¶5). According to this statement, Plaintiff would have the Court believe that the terms of the retainer agreement (also know as the contract in this case) required Bradley to file a Complaint regardless of what the investigation results were. In a complete contradiction of that position, the arbitration panel was advised that Bradley was paid \$7,500 *to investigate a possible civil suit* against prior counsel. (Preliminary Objections, Exhibit 3, ¶2). (emphasis added).

Specifically the findings of the arbitration panel state:

The evidence presented by the petitioner, Mr. Morris, through his submissions and through the testimony of his father, indicated that, from his perspective, Mr. Bradley had agreed to represent him in connection with an

appeal of criminal case in the City and County of Philadelphia. According to the petitioner, then was housed at SCI Rockview, Mr. Bradley was paid \$10,000.00 for an appeal to the Superior Court of Pennsylvania, an additional \$5,000.00 to petition for Allocatur in the Supreme Court, \$7,500 to investigate a civil suit against prior counsel, and 1,500.00 for costs associated with printing, photocopying, and travel. (Preliminary Objections, Exhibit 3, ¶2). (emphasis added).

Under Plaintiff's theory of liability, he would require Bradley to file a lawsuit even though a reasonable investigation showed that no merit existed to the claim. Under the actual language of the contract all that is required is the completion of a reasonable investigation into a potential malpractice claim against Plaintiff's former counsel. There is no complaint by defendant that Bradley did not conduct the investigation, only the complaint with the outcome of the investigation, which was that Bradley did not find any grounds to bring such an action. This finding triggered Bradley's duty under the Rules of Professional Conduct. Under the rules, if no merit to the legal malpractice claim is found, Bradley would be prohibited from filing a frivolous cause of action against Plaintiff's former counsel. According to Pennsylvania Rule of Professional Conduct 3.1, "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous...."

As a result, Plaintiff's claim for breach of contract would fail as a matter of law because he does not support his claim with the contract alleged and his allegation of breach of duty would require his attorney to violate the Rules of Professional Conduct. Therefore, the alleged duty does not legally exist and the alleged obligation under that duty is not legally enforceable.

CONCLUSION

In light of the foregoing analysis, this Court believes that it properly granted preliminary objections of Defendant Bradley, thereby dismissing the case, and respectfully requests that it be affirmed by the Court above.

BY THE COURT:

ALLAN L. TERESHKO, J.

10/17/07

DATE

cc:
Warren Morris, Appellant
Methuselah Z.O. Bradley, IV., Esq. Appellee