IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

FRANCINE R. SOLOMON	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 2006-09-119
	)	
ERIC EDEN,	)	
	)	
Defendant.	)	

Submitted: May 22, 2008
Decided: September 10, 2008

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DECISION AFTER TRIAL

Francine R. Solomon, Plaintiff (hereinafter after "Solomon") brings this action to recover the sum of $18,500.00 she alleged was loaned to Eric Eden, Defendant (hereinafter referred to as "Eden"). Eden denies the sum demanded and raised several affirmative defenses. Eden first alleged plaintiff's claim is barred by reason of public policy. Secondly, he alleged plaintiff's claim is barred by reason of violation of *Rule 1.8A* of the *Delaware Lawyers' Rules of Professional Conduct*.

Trial was held on plaintiff's claim on May 1, 2008. At conclusion of the trial, the Court reserved decisions and afforded the attorneys an opportunity to provide written submission on the application of the *Delaware Rules of Professional Conduct.*

FACTS

The facts in these proceedings are rather straight forward and uncomplicated. Francine Solomon testified she became acquainted with Eden in her initial capacity as his attorney. She testified that for a period of time, she was a sole practitioner and later joined the firm of Louis Ferrara, Esquire. She testified that she represented Eden as sole practitioner in 1993 and when with Ferrara, Haley, Bevis and Solomon in 1999.

During those times, Solomon testified she represented the defendant off and on, but could not recall the specific dates nor the specific case. When shown the previous discovery material, Solomon testified that in a request for admissions, she did admit that she represented Eden in 2002 and in 2003. She testified that Eden owed money due to circumstances which compelled her to provide him with the loan. The total sum of the loan consisted of three separate checks. As evidence of the loan, Solomon testified Eden signed a note evidencing his obligation to make repayment. She further testified she is unable to recall at this time whether she was currently representing Eden when the loan was made. However, because she was good friends with Eden and realized he had a Master's Degree in social work, she did

not want to see him hurt. As evidence of their relationship, Solomon testified that she and Eric were invited to each other's family functions.

Solomon testified that Eric signed an undated note while they were seated at her kitchen table recognizing his obligation. Solomon asserts that this handwritten note which contains the following language: "I owe Francine Solomon, $18,500.00 as of September 22, 2003, signed by Eric Eden," is evidence of the obligation to repay the amounts stated. Solomon went on to testify that she lent the money to Eden to protect him from a debt which he had incurred. She had knowledge of his financial conditions and did not want to see him damaged.

Solomon testified that without a docket sheet, she could not tell when the money was loaned to Eden, whether he had any active cases with her. Additionally, Solomon testified that there has been no report to the Office of Disciplinary Counsel regarding this matter.

Solomon testified that on May 8, 2005, Hope Eden, wife of the defendant, sent her an email indicating that she was mailing a check as partial payment. The email further stated "With this check, I'm taking out all available credit left at MBNA (or any other line)." She further indicated in the email "I know Eric said $15,000.00, but we didn't realize there wasn't that much available. Pray for a good settlement. He deserves it." (Plaintiff's Exhibit #2)

Solomon testified regarding a series of emails which appear on a single document. In the first email, Solomon testified it was from her to Eden requesting payment of $18,500.00 as soon as possible. The response to the mail, which was

from Hope Eden, the wife of the defendant, indicated that they were sorry they were having a difficult time and have no means to loan you money. The third email on the page, Solomon testified referring to SisterSolo@aol.com she writes: "I am not requesting a loan; I'm requesting that Eric pay me the money he owes me." The final email on this document is from Eden. In this email, Eden maintains that "You, Solomon, gave me gifts. I do not owe you money." (Plaintiff's Exhibit #3).

Solomon testified that in response to this email, she sent a letter to Eden dated July 10, 2006 requesting payment of $18,500.00. She also attached to the letter a copy of the note she represents Eden signed on September 22, 2003. (Plaintiff's Exhibit No. 4). Solomon finally testified she is not aware of investment in any artistic projects, but was aware that Eden was a musician.

On cross-examination, Solomon testified that she could not recall the date in 2003 which the loan for $5,000.00 was made. Further, she testified that the other loan amounts were given prior to 2002. Solomon testified and produced documents that on April 10, 2003, there was a check written in the amount of $1,100.00 to Eric Eden, which is endorsed by him. She also testified and presented documentation of a check written August 11, 2003 payable to Eric Eden in the amount of $4,000.00, which is endorsed. (Plaintiff Ex. #5) Solomon also testified that the other amount, which comes to $13,200.00, must have been loaned in 2002. She testified that she was unable to find the earlier checks and further, is unable to recall when they were issued. Solomon conceded that the note evidencing the loan of $18,300.00 is dated September 22, 2003, which is after the date of the loans.

Solomon testified a third time that she does not recall if she was Eden's attorney when she made the loans. She further testified she did not advise him of the terms of the loan at the time the loans were extended. Additionally, she did not advise Eden to seek outside counsel regarding the loan.

Solomon testified that she is seeking interest only from the date when the action was filed, and not the date of the loan. She further testified on re-direct that the defendant had never disputed the amount of the loan. On re-cross, Solomon stated that she recognized that Eden denies the allegation in his answer to her complaint.

The defense presented no testimony or documents.

DISCUSSION

The testimony and the documents presented during the trial establish Solomon during the period between of 2002 and 2003 provided funds to Eden. There is no testimony or documents in the record which dispute the loans were made, the conditions under which it was presented or the terms thereof. What the Court has before it is an argument by defendant that plaintiff, Solomon has not proven a *prima facie* case of loaning the sum of $18,500.00 To the contrary, however, the Court has before it Plaintiff Exhibit No. 1, which indicates a sum of $18,500.00 was loaned to Eden. The Court further has before it an email of May 8, 2005 indicating repayment was forthcoming of the sums in question. Thus, the question is

whether the series of emails which ends on June 3, 2006 put in dispute the amount owed.

While Solomon is unsure of the specific dates and times the funds were loaned to Eden, it is clear by the checks present in Plaintiff's Exhibit No. 5 that amounts totaling $5,100.00 was made to Eden on April 10, 2003 and August 11, 2003 respectively. Notwithstanding, Eden argues in his post-trial memorandum that Solomon has failed to provide facts that any amounts were loaned. He points to Solomon's failure to specifically recall the dates and times of each amount loaned. This argument goes against the weight of the evidence in the record; therefore, I find it unpersuasive.

The question that remains, however, is whether Solomon is barred from recovery based under the *Delaware Professional Code of Conduct Rule 1.8* which provides in relevant part as follows:

> (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interests adverse to a client unless: (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client, and are fully disclosed, and transmitted in writing to the client in a manner that can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction. . . .

> (e) A lawyer shall not provide financial assistance to a client in connecting with pending or contemplated litigation, except that: (1) a lawyer may advance court costs and expenses of litigation; the repayment of which may be contingent on the outcome of the matter; and (2) the lawyer representing an indigent client may pay court costs and the expense of litigation of behalf of the client.

The commentary to the rule provides, "The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client, learns that the client needs money for unrelated expenses and offers to make a loan to the client."

It is Eden's position that the language of this section, the commentary, and public policy bars Solomon's claim. Additionally, Eden argues that Solomon's failure to inform him to seek outside advice in writing, support his position that Solomon's claim is barred.

While there is no case in Delaware addressing this issue, Eden points the Court to the matter of *Petit-Clair v. Nelson, et al.*, N.J. Super. 782 A.2d 960 (2001). Here, an attorney brought action to foreclose on a mortgage that the corporations' presidents and secretary had executed on their personal note to secure the payment of attorney fees for attorney's representation of the corporations. When considering the application and validity of the transaction that Court held:

> "Any transaction between an attorney and client is subject to close scrutiny and the burden of establishing fairness and equity of the transaction rests upon the attorney . . . Consequently, an otherwise enforceable agreement between an attorney and client is invalid, if it runs afoul of ethical rules governing that relationship . . . In that situation, the lawyer is duty-bound to make sure

> that the client understands that the lawyer's ability to give undivided loyalty may be affected and must explain carefully, clearly, and cogently why independent legal advice is required."

The standard set forth in *Petit-Clair* is reasonable, prudent and outlines the clear policy which is embodied in *Delaware Professional Code of Conduct Rule 1.8*. It balances the substance of the relationship, involving the heightened aspect of reliance, with the need for full disclosure and informed consent. The rule prohibition is premised on the condition that the client must be informed and given opportunity to seek independent advice.

In these proceedings, however, there is no evidence in the record that the amounts sought were not loaned or there was undue advantage taken of Eden. Unlike the situation in *Petit-Clair* where the parties had executed a mortgage in favor of the attorney, the facts reveal here a simple arrangement where the attorney advanced funds evidenced by written checks. Clearly, Solomon's action could be subject to discipline, but the question is whether they bar recovery.

The evidence presented by Solomon in Exhibit #5 reveals two checks were written to Eric Eden for a total sum of $5,100.00. There is no evidence that the checks were not received and cashed by Eden. There are no complex documents which require review or analysis. In light of this record, I find that the amounts represented by the checks are established and there is no basis to prevent recovery. However, as to the additional amounts, Solomon relies upon a handwritten note and her handwritten letter. As an attorney, Solomon bears the responsibility of making sure the transactions meet the test and the spirit of fairness and disclosure. The

handwritten note written after the fact is not sufficient to support a claim beyond the amounts evidenced by the checks.

Accordingly, judgment is entered for Solomon for the amount of $5,100.00 and cost of these proceedings. Post-judgment interest is not awarded.

SO ORDERED this 10th day of September, 2008

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Alex J. Smalls
Chief Judge

Solomon-OP Jul 08