WOOTAN & SAUNDERS, A PROFESSIONAL CORPORATION	*	**NO. 2017-CA-0820**
	*	**COURT OF APPEAL**
VERSUS	*	**FOURTH CIRCUIT**
GLENN E. DIAZ	*	**STATE OF LOUISIANA**

* * * * * * *

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2001-05098, DIVISION "G-11"
Honorable Robin M. Giarrusso, Judge
* * * * * *
Judge Edwin A. Lombard
* * * * * *

(Court composed of Judge Edwin A. Lombard, Judge Paula A. Brown, Judge Dennis R. Bagneris, Pro Tempore)

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AFFIRMED

MARCH 28, 2018

The Appellant, attorney Glenn Diaz, seeks review of the June 13, 2017 judgment of the district court enforcing a fee-splitting agreement between himself and the Appellee, Wootan & Saunders, A Professional Corporation ("WS"), and awarding WS $1,181,250 plus all costs and legal interest from the date of judicial demand. Finding no error, we affirm the judgment of the district court.

Facts and Procedural History

This is a breach of contract case arising from an attorney fee-splitting agreement between the parties in the wrongful death and survival action of Kenneth P. Gowland, D.D.S. ("Dr. Gowland"). Dr. Gowland was a client of WS when he was tragically killed in an automobile collision in May 1992, in St. Bernard Parish at the floodgate near the Plaquemines Parish border.

Dr. Gowland's widow, Connie Gowland ("Mrs. Gowland"), retained WS to open a succession on her husband and to handle an uninsured motorist claim against Dr. Gowland's insurer, State Farm Insurance Company, on behalf of herself and her children (collectively "the Gowland family"). Moreover, from 1992-1993, WS investigated Dr. Gowland's accident by: examining the accident scene; submitting public records requests to the Louisiana Department of Transportation and Development ("DOTD"); videotaping the accident scene; researching applicable laws; conducting strategy meetings with Mrs. Gowland; attempting to identify potentially responsible parties; and developing a theory of the wrongful death case.

During the same time period, WS also performed defense work for various Louisiana states agencies and departments, including the Louisiana Department of Public Safety and Corrections, for which it received payments from the Louisiana Office of Risk Management ("the ORM"), which is an office that handles tort claims brought against state agencies. *See* La. Rev. Stat. 39:1535.

WS was primarily a defense firm that did not handle personal injury and/or road hazard claims, so it vetted various personal injury lawyers to handle the wrongful death and survival claim ("the Gowland Litigation") on behalf of the Gowland family. After meeting with WS attorneys—Guy Wootan and John Saunders—on April 26, 1993, Mr. Diaz was selected to handle the Gowland Litigation. On April 28, 1993, a meeting was held with the parties and Mrs. Gowland at which she and Mr. Diaz signed a "Contingent Fee Contract and Assignment of Interest" and Mr. Diaz signed the fee-splitting agreement ("Fee Agreement") with WS.[1]

The Fee Agreement provided that WS was to receive its portion of the fee in consideration of the work it had already performed and also for continuing to maintain contact with the Gowland family.[2] The Fee Agreement stated in pertinent part:

> Consistent with our discussions, I [Mr. Wootan] have reviewed Article XVI (Rules of Professional Conduct, Louisiana State Bar Association), Rule 1.5, and it appears that your offer to divide part of your contingency fee with the Gowland family with our law firm [WS] is

[1] At the time the Fee Agreement was executed, WS was operating under the name Wootan, Saunders & Markle, A Professional Corporation. Mr. Wootan signed the Fee Agreement on behalf of WS.

[2] WS asserts that it performed 118 hours of work on the Gowland Litigation prior to contracting with Mr. Diaz.

> appropriate considering the extensive time devoted by us to date (including our extensive investigation efforts, numerous client conferences, meetings with attorneys for some defendants and extensive file documentation) and our willingness to assist you by maintaining a continuous line of communications with Mrs. Gowland and her family hereinafter. Based on our legal services and contributions to date in addition to future assistance, you have specifically offered to divide the following part of your Gowland contingent fee interest or agreement with our firm on the following, proportionate basis:
>
> > One-fourth or 25% to our law firm [WS] from your 35% interest in any gross amount received or recovered by [Mr.] Diaz via settlement, compromise, judgment or appeal.
>
> We have advised Mrs. Gowland of your offer to share part of your contingency fee with our firm and she has no objection thereto.
>
> Finally, it is our understanding that you will keep us informed of all developments and copy us with all correspondence, memoranda and pleadings. We will work with and/or maintain direct contact with the Gowland family and thereby assist you in the prosecution of this claim(s) without our firm being directly involved or named in the pleadings.

After the Fee Agreement was signed, WS tendered its files relating to the Gowland Litigation to Mr. Diaz. It is undisputed that WS did not inform Mr. Diaz that it was doing defense work for various state agencies prior to entering into the Fee Agreement. Additionally, by June 1994, WS dissolved, and Messrs. Wootan and Saunders began working at Chaffe McCall, LLP.[3]

The Gowland Litigation eventually went to trial in 1998, resulting in a judgment in the Gowland family's favor against the DOTD. Post-trial, Mr. Diaz

[3] Though no longer a functioning law firm, WS has remained registered as an active corporation with the Louisiana Secretary of State. Furthermore, Mr. Wootan passed away in 1995.

expressed his desire to renegotiate the Fee Agreement with WS, but to no avail. The Gowland Litigation subsequently settled for $13,500,000.

Mr. Diaz issued the settlement proceeds to Mrs. Gowland, withholding monies for cost reimbursement and the attorney's fee. He refused, however, to tender any portion of the contingency fee to WS based upon his ethical concerns about the validity of the Fee Agreement. He maintained that he learned from opposing counsel Daniel Vidrine, who was then an assistant attorney general for the State of Louisiana, that WS had a conflict of interest with the DOTD because WS had represented other agencies of the State of Louisiana. He further asserted that WS failed to perform its obligations under the contract. Having resolved that WS was not entitled to any share of the contingency fee, Mr. Diaz retained and spent the disputed funds. Ultimately, in March 2001, WS filed suit against Mr. Diaz seeking to enforce the Fee Agreement and asserting that Mr. Diaz had breached the same.

During the course of the two-day trial, the district court heard testimony from Mr. Diaz, John Saunders, and WS's ethics expert, Leslie Schiff, Esq. The district court further considered the deposition testimony of Mr. Diaz's witness, Mr. Vidrine. After taking the matter under advisement, the district court issued a judgment on June 13, 2017, awarding WS $1,181,250, plus costs and all legal interest from date of demand.

Mr. Diaz timely filed the instant appeal from the judgment. He raises four assignments of error:

(1) The district court erred in finding that the Fee Agreement was valid and enforceable in view of the concurrent conflict of interest WS had in representing any party in a tort claim against the State of Louisiana;

(2) The district court erred in granting judgment in favor of WS and against Diaz for 25% of the contingency fee earned by Mr. Diaz in litigation in which WS provided no legal work nor assumed any responsibility;

(3) The district court erred in not finding the Fee Agreement void and unenforceable because of fraud in the inducement; and

(4) The district court erred in accepting and relying upon Mr. Schiff's testimony as to his interpretation of the law to be applied to the facts of the case.

Standard of Review

Factual determinations are subject to the manifest error standard of review. *Stobart v. State, Through DOTD*, 617 So.2d 880, 882 (La.1993). Similarly, mixed questions of law and fact are reviewed under the manifestly erroneous standard of review. *Chimneywood Homeowners Ass'n, Inc. v. Eagan Ins. Agency, Inc*., 10-0368, p. 5 (La.App. 4 Cir. 2/2/11), 57 So.3d 1142, 1146 [citations omitted]. In order to reverse a fact finder's determination of fact, an appellate court must find from the record that a reasonable factual basis does not exist for the finding and that the record establishes that the finding is clearly wrong. *Stobart*, 617 So.2d at 882.

"Where one or more legal errors interdict the trial court's fact-finding process, however, the manifest error standard becomes inapplicable, and the appellate court must conduct its own *de novo* review of the record. *Hamp's Const., L.L.C. v. Hous. Auth. of New Orleans*, 10-0816, p. 3 (La.App. 4 Cir. 12/1/10), 52 So.3d 970, 973 (citing *South East Auto Dealers Rental Ass'n, Inc. v. EZ Rent To*

Own, Inc., 07-0599, p. 5 (La.App. 4 Cir. 2/27/08), 980 So.2d 89, 93). A legal error occurs here when a trial court applies incorrect principles of law and such errors are prejudicial. *Id*. Legal errors are prejudicial when they materially affect the outcome and deprive a party of substantial rights. *Id*.

Validity of the Fee Agreement

In his first two assignments of error, Mr. Diaz challenges the district court's determination that the Fee Agreement was valid and enforceable. Mr. Diaz argues in his first assignment of error that the district court committed a legal error in holding that the Fee Agreement was enforceable regardless of whether it violates professional ethical rules. In his second assignment of error, he asserts that the Fee Agreement is invalid and enforceable under Rule 1.5(e) of the Rules of Professional Conduct.

Mr. Diaz maintains that the cases upon which the district court relied in upholding the Fee Agreement, *Hanks v. Columbia Women's & Children's Hosp*., 02-1349 (La.App. 3 Cir. 6/25/03), 865 So.2d 745, and *Rice, Steinberg & Stutin, P.A. v. Cummings, Cummings & Dudenhefer*, 97-1651 (La.App. 4 Cir. 3/18/98) 716 So.2d 8, are inapposite. To determine whether a conflict exists, the court must examine the Rules of Professional Conduct which has full force and effect of substantive law. *In Re: Tutorship of Prop. of Huddleston*, 95-97, p. 12 (La.App. 5 Cir. 4/25/95), 655 So.2d 416, 422.

Mr. Diaz avers that unbeknownst to him WS had a clear conflict of interest in handling any matter against the State of Louisiana because, as Mr. Saunders testified, WS had a contract with the ORM to represent the State of Louisiana. He relies upon fee and expense payment records of the ORM introduced at trial evidencing payments made to WS for legal services it performed for state agencies

from 1991 through 1994. He also relies upon pleadings showing that Messrs. Wootan and Saunders served as "special assistant attorneys general" representing the Louisiana Department of Public Safety and Corrections from January 1992 through November 1993.

WS, he contends, was aware that it was conflicted and could not ethically assist him with the Gowland Litigation. Mr. Diaz avers that the ORM prohibited attorneys from handling matters in its office if the attorneys had any other tort suits pending against the State of Louisiana. He further asserts that Mr. Vidrine, on behalf of his supervisor, informed WS that it could not handle the Gowland Litigation against the DOTD without resigning and returning their State files. Mr. Diaz also relies upon Mr. Saunders' testimony that WS did not provide any legal work against the state, especially after he and Mr. Wootan began working for Chaffe McCall, LLP in June 1994.[4]

According to Mr. Diaz, WS was conflicted by Rule 1.7 of the Professional Rules of Conduct,[5] which prohibits an attorney's representation of clients with a

[4] Mr. Saunders, in correspondence dated January 14, 1999, advised Mr. Diaz that he and Mr. Wootan could not assist him with the Gowland Litigation because his current firm, Chaffe McCall, LLP was representing the State of Louisiana in other road hazard matters and that they "could not ethically render any legal work on the matter." Nevertheless, at trial, Mr. Saunders testified he sent a follow-up letter to Mr. Diaz in April 1999, explaining that he was wrong and that no conflict existed. Also, the record shows that WS introduced an internal memo, which predated the Fee Agreement, stating that WS did not believe that it had a conflict of interest and that Mrs. Gowland was so informed. Mr. Saunders further testified that in the same letter he reiterated that WS's responsibility under the Agreement was to "interface with Connie Gowland and respond to Glenn in any way we could as he might need." He testified that Mr. Diaz expressed that he would handle the legal work in the Gowland Litigation and WS's "future assistance" as stated in the Fee Agreement never included the performance of legal work.

[5] Rule 1.7 provides:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

"concurrent conflict of interest." He contends that WS's expert, Mr. Schiff, admitted that WS's handling the Gowland Litigation against the DOTD was in effect pursuing matters adverse to the State of Louisiana. Thus, WS was precluded from recovering a referral fee in the Gowland Litigation.

We disagree. WS sued Mr. Diaz to enforce the Fee Agreement which it alleged he had breached. A contract constitutes the law between the parties. La. Civ. Code art. 1983. If the words of a contract are clear, unambiguous, and lead to no absurd consequences, the court need not look beyond the contract language to determine the parties' true intent. *See* La. Civil Code Art. 2046. "A contract is considered ambiguous on the issue of intent when it either lacks a provision bearing on that issue, the terms of a written contract are susceptible to more than one interpretation, there is uncertainty or ambiguity as to its provisions, or the intent of the parties cannot be ascertained from the language employed." *Campbell v. Melton,* 01-2578, p. 6 (La. 5/14/02), 817 So. 2d 69, 75 (citing La. Civ. Code art.

> (1) the representation of one client will be directly adverse to another client; or
>
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
>
> (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
>
> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
>
> (2) the representation is not prohibited by law;
>
> (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
>
> (4) each affected client gives informed consent, confirmed in writing.

1848). "The interpretation of unambiguous contractual provisions is a matter of law, which we review under the *de novo* standard." *Landis Const. Co. v. St. Bernard Par.*, 14-0096, p. 5 (La.App. 4 Cir. 10/22/14), 151 So.3d 959, 962–63 [citation omitted].

In *Scurto v. Siegrist*, 598 So.2d 507 (La.App. 1st Cir. 1992), the First Circuit addressed a matter where a retained attorney, Scurto, had entered into a fee agreement with another attorney. Pursuant to the fee agreement, Scurto was required to manage the client and advance costs. Scurto later sued the attorney he contracted with to recover his portion of the contingency fee. The First Circuit found that Scurto was actively and continually involved with the case by frequently communicating with the client, advancing all expenses requested of him and performing legal research as well as attending depositions. *Id*. at 510. The court determined that the attorneys established that the parties were two attorneys from separate firms jointly representing the same client under *Duer & Taylor v. Blanchard, Walker, O'Quin & Roberts,* 354 So.2d 192, 194-195 (La.1978).[6] The First Circuit held that "because the retained attorney had associated, employed, or procured the employment of the other attorney to assist him in handling a case

[6] The Louisiana Supreme Court in *Duer* addressed the division of attorneys' fees where a dispute arose between two law firms that had agreed to associate in a case:

> Where an attorney retained in a case employs or procures the employment of another attorney to assist him, as regards the division of the fee, the agreement constitutes a joint adventure or special partnership. *McCann v. Todd*, 203 La. 631, 14 So.2d 469 (1943). The interest which each attorney possesses under such an agreement is the right to participate in the fund resulting from the payment of the fee by the client. Therefore, a suit by an attorney against another attorney to recover, pursuant to such an agreement, a portion of the fee collected by the latter party from the client is not one for the recovery of attorney's fees, but rather is one for breach of the agreement to share in the fund resulting from the payment of the fee.

Duer, 354 So.2d at 194-195.

involving a contingency fee, the agreement regarding the division of the contingency fee was a joint venture." *Dukes v. Matheny*, 02-0652, p. 4 (La.App. 1 Cir. 2/23/04), 878 So.2d 517, 520 (citing *Scurto*, 598 So.2d at 510).

In upholding the contract, the *Scurto* court further explained that the agreement between the parties was "confected between two professionals and we will not assume the position of dictating to attorneys in a *Duer* situation exactly how much work they need to perform to entitle them to a certain fee." *Scurto*, 598 So.2d at 510 (citing *DeFrancesch v. Hardin*, 510 So.2d 42, 46 (La.App. 1st Cir.1987)); s*ee also Murray v. Harang*, 12-0384, p. 9 (La.App. 4 Cir. 11/28/12) 104 So.3d 694, 699. Moreover, the First Circuit held that in a situation where the parties have contracted to divide a fee, the Rules of Professional Conduct do not prohibit the enforcement of such an agreement and an apportionment of the fee on a quantum meruit basis is not required. *Id*. at 510; *see also Fox v. Heisler*, 03-1964, pp. 9-10 (La.App. 4 Cir. 5/12/04), 874 So.2d 932, 939.[7]

Similarly, we find that the parties in the instant matter were also in a *Duer* situation where they, as knowledgeable professionals, negotiated their division of work and the apportionment of their respective shares of the contingency fee in the Gowland Litigation. Under Louisiana jurisprudence, the Fee Agreement evidences that the parties formed a joint venture where Mr. Diaz agreed to accept 75% of the contingency fee in exchange for handling the brunt of the wrongful death and survival claim and WS would receive 25% of the fee in consideration for the work it had performed prior to Mr. Diaz's involvement and for its continued assistance in maintaining contact with the Gowland family during the Gowland Litigation. The terms of the Fee Agreement are clear and unambiguous with the duties of WS

[7] In *Fox*, we applied *Scurto* in upholding an oral fee-sharing agreement between attorneys.

being set forth several times therein. Thus, the district court did not err in determining that the Rules of Professional Conduct did not prohibit the enforcement of the Fee Agreement at issue.

In his second assignment of error, Mr. Diaz argues that the Fee Agreement is invalid and unenforceable under the version of Rule 1.5(e) of the Rules of Professional Conduct that was in effect at the time the Fee Agreement was executed, which provided that lawyers not of the same firm could only divide a fee if: 1) the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; 2) the client is advised of and does not object to the participation of all the lawyers involved; and 3) the total fee is reasonable.

Mr. Diaz maintains that the division of the fee was disproportionate to the amount of work WS actually performed and responsibility it assumed in the Gowland Litigation. Additionally, he argues that WS's share of the fee, $1,181,250, is unreasonable because it did not perform any work to assist him in bringing the matter to trial. He further contests WS's calculation of the 118 hours of work it performed in the Gowland Litigation, asserting that most of those hours were spent working on the UM claim against State Farm. Lastly, he avers that WS did not present any other evidence showing additional time invested in the Gowland Litigation, especially after Messrs. Wootan and Saunders joined Chaffe McCall, LLP when neither attorney could assist him in ghost writing briefs, paying court costs or expert fees or helping him in other manners.

Mr. Diaz attempts to place this court in the position of weighing the work WS performed under the contract to determine whether it is entitled to a portion of the contingency fee, and if so, to determine what portion of the fee is reasonable as

he believes that 25% is untenable. However, as stated above in our discussion of *Scurto*, supra, the Rules of Professional Conduct do not prohibit the enforcement of a fee-splitting agreement and "we will not assume the position of dictating to attorneys in a *Duer* situation exactly how much work they need to perform to entitle them to a certain fee." Essentially Mr. Diaz seeks to have WS's fee apportioned on a quantum meruit basis, which is not required under *Scurto*. *Scurto* and its progeny should be applied to deter attorneys from using alleged Rules of Professional Conduct violations to preclude attorneys with whom they have contracted from recovering an earned fee.

Additionally, the record supports the district court's factual finding that WS met its obligations under the Fee Agreement based upon the evidence and testimony adduced at trial. The district court heard conflicting testimony from the parties as to what type of assistance WS was obligated to perform. While Mr. Diaz maintains that Mr. Wootan promised that WS would assist with trial preparation, Mr. Saunders testified that WS was only obligated to assist Mr. Diaz by maintaining contact with the Gowland family during the course of the Gowland Litigation. Likewise, as previously discussed, the Fee Agreement specified that WS would assist Mr. Diaz "by maintaining a continuous line of communications with Mrs. Gowland and her family hereinafter."

Correspondence from WS to Mr. Diaz, which Mrs. Gowland was carbon copied on, was introduced at trial showing that WS continuously requested updates on the status of the Gowland Litigation. This evidence supports Mr. Saunders' testimony that WS fulfilled its obligation to maintain contact with the Gowland family during the pendency of the Gowland Litigation. The district court also explained in its Reasons for Judgment that WS offered additional assistance to Mr.

Diaz, such as sending him relevant photographs, tax returns for Dr. and Mrs. Gowland and Louisiana Supreme Court decisions involving the DOTD. Thus, there was a reasonable basis for the district court to conclude that WS upheld its responsibilities under the Fee Agreement. Where there are two permissible views of the evidence, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong. *Stobart*, 617 So.2d at 883. Even if we would have reached a differing conclusion based upon the same facts, we cannot say that the district court erred.

Lastly, we note that Mr. Diaz presents no jurisprudential or statutory support for his position that an alleged violation of the Rules of Professional Conduct can be used to bar an alleged infracting attorney from recovering his or her fee in a breach of contract dispute involving a fee-splitting agreement. Thus, we find that the foregoing assignments of error are without merit.

Fraud in the Inducement

Mr. Diaz's third assignment of error is that the Agreement is void and unenforceable because WS fraudulently induced him into entering the Fee Agreement. He avers he would not have signed the Fee Agreement had WS disclosed that it worked for the State at the time the Fee Agreement was executed and therefore, that it had a conflict of interest in representing Mrs. Gowland against the DOTD. The alleged omission benefitted WS, according to Mr. Diaz, as it was aware that it would be unable to offer "future assistance" to him under the Fee Agreement. Lastly, he asserts that he suffered as a result of WS's failure to assist him with the Gowland Litigation, specifically its failure to contribute to the payment of legal costs and assist him with his workload. Mr. Diaz testified that prior to signing the Fee Agreement Mr. Wootan promised to help write briefs, help

settle the Gowland Litigation, and give other assistance. Mr. Diaz avers that he would not have signed the Fee Agreement had WS disclosed that it had a conflict of interest.

The district court reasoned that a conflict of interest did not exist at the time that the parties executed the Fee Agreement, finding that under *Macmurdo v. Comm'n on Ethics for Pub. Employees*, 486 So.2d 829, 830 (La.App. 1st Cir. 1986), WS's work with other state agencies was not a conflict with its work and interest in the Gowland Litigation against the DOTD, a department for which it never worked.[8] In *Macmurdo*, the Commission on Ethics for Public Employees fined and suspended a former Department of Justice attorney from rendering services to Board of Elementary and Secondary Education ("BESE") under a personal services contract entered into after the attorney had left Department of Justice employment and imposed a fine upon him. On appeal, the First Circuit reversed the Commission's ruling reasoning that the attorney was not precluded, under La. Rev. Stat. 42:1121(B), from entering into a contract with and working for a state agency for which he had not worked previously. *Id*. at 832. We agree with the district court's reasoning that WS did not have a conflict of interest.

The defense of fraudulent inducement is a claim that a party misrepresented the truth either to obtain an unjust advantage or to cause a loss to the other contracting party:

> Regarding the defense of fraudulent inducement, we note that fraud is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. *Ballard's Inc. v. North American Land Development Corporation*, 28,437 (La.App.2d Cir.6/26/96), 677 So.2d 648. Fraud may also

[8] *See* n. 4, supra.

> result from silence or inaction. La. C.C. art. 1953. To prove fraud by silence or inaction, the claimant must show there was a duty to disclose information. *Ballard's Inc.*, supra, citing *Greene v. Gulf Coast Bank*, 593 So.2d 630 (La.1992). Fraud is proved by a preponderance of evidence and may be established by circumstantial evidence. La. C.C. art. 1957.

Hibernia Nat. Bank v. Antonini, 37,836, p. 5 (La.App. 2 Cir. 12/10/03), 862 So.2d 331, 335.

The record reflects that although WS did not have to disclose its contract work with various state agencies, such disclosures were not germane to the Fee Agreement at issue. WS's only responsibilities under the Fee Agreement were to communicate with the Gowland family and keep them abreast of the status of the case, which it did. It was clearly the parties' intention that Mr. Diaz was to solely handle the Gowland Litigation and all the work entailed in bringing the case to trial and/or settlement, as the Fee Agreement did not specify that WS was obligated to fulfill any tasks associated with litigating this matter. Indeed, the primary reason why WS contracted with Mr. Diaz was because he was experienced in road hazard litigation and it was not. WS met its obligations under the Fee Agreement and the alleged misrepresentations by omission were not shown to unjustly benefit WS, nor has Mr. Diaz demonstrated that he suffered a loss or inconvenience in this matter. Moreover, because Mr. Diaz avers that he was fraudulently induced by WS's silence, i.e. its failure to disclose its work with the State, he also had to demonstrate, pursuant to *Hibernia*, supra, that WS had a duty to disclose such information to him. He made no such showing.

Finally, Mr. Diaz's testimony regarding Mr. Wootan's alleged promises of assistance are an attempt by Mr. Diaz to alter the unambiguous terms of the Fee Agreement. "Parol or extrinsic evidence is generally inadmissible to vary the

terms of a written contract unless the written expression of the common intention of the parties is ambiguous." *See Campbell v. Melton*, 01-2578, p. 6 (La. 5/14/02), 817 So.2d 69, 75 (citing *Ortego v. State, Through the Dep't of Trans. & Develop*., 96-1322 (La.2/25/97), 689 So.2d 1358). In consideration of the aforementioned reasons, we find that this assignment of error is without merit.

Error in Accepting Mr. Schiff's Testimony

Lastly, Mr. Diaz contends that the district court erred in accepting expert testimony from Mr. Schiff on the law to be applied to the facts of the case as well as relying upon said testimony. Mr. Diaz asserts that he lodged an objection that expert witnesses may not provide opinions regarding matters of domestic law as distinguished from foreign law on the basis that the Court itself is an expert on matters of domestic law. Although the district court initially granted his motion and indicated Mr. Schiff's testimony could be proffered, the court later changed its mind after Mr. Diaz testified. Mr. Diaz maintains that the district court relied upon Mr. Schiff's testimony that the Rules of Professional Conduct had not been breached in making its ruling. The district court alone, he argues, should have considered the facts of the case and applied those facts to the law without relying on Mr. Schiff's opinion.

A review of the trial transcript shows that as a result of Mr. Diaz testifying about "getting advisory opinions," namely from Chief Disciplinary Counsel, Charles Plattsmier, the district court determined that Mr. Diaz "opened the door" and allowed Mr. Schiff to testify as an expert in the field of ethical professional conduct.[9] Mr. Schiff testified that he formed his opinion of whether a conflict of

[9] Mr. Diaz testified that via a phone call to the Chief Disciplinary Counsel, Charles Plattsmier, he inquired about a hypothetical situation similar to the one at issue, and in turn he received an advisory opinion from Mr. Plattsmier indicating that WS had violated the Rules of Professional

interest existed based upon his research and did not consider any caselaw upon which Mr. Diaz relied. He opined that WS did not have a conflict of interest in the Gowland Litigation. He further testified that the Fee Agreement was proper and that the assistance that WS provided in maintaining contact with the Gowland Family was both valuable and essential to the Gowland Litigation.

A trial court is "afforded wide discretion in determining whether expert testimony should be admitted." *Boudreaux v. Bollinger Shipyard*, 15-1345, p. 15 (La.App. 4 Cir. 6/22/16), 197 So.3d 761, 770–71 [citation omitted]. We do not find that the district court abused its discretion in allowing Mr. Schiff to testify as to the law he believed supported his opinions in response to Mr. Diaz's testimony.

Nevertheless, we recognize that some circuits have held that an attorney proffered as an expert in a specific legal area cannot testify as to his or her opinion of Louisiana law:

> . . .where an attorney is proffered to the trial court as an expert in a particular area of law, various Louisiana Courts of Appeal . . . have adopted a jurisprudential rule that experts may not provide opinions regarding domestic (i.e., Louisiana) law. . . . The rationale for this rule is that the judge, being trained in the law, is the ultimate arbiter of what the law is, and that to consider other legal opinions as to an interpretation of the law would be, if not in actuality, at least in perception, an abrogation of the judge's responsibility.

Par. of Jefferson v. Hous. Auth. of Jefferson Par., 17-272, p. 6 (La.App. 5 Cir. 12/13/17), 234 So.3d 207, 212 [citations omitted]. In consideration of the holding of the Fifth Circuit, we further find that even if it the district court did err in allowing Mr. Schiff to testify, this was harmless error. This district court conducted a bench trial where it was able to determine for itself what the

Conduct. Mr. Plattsmier testified that he did not recall this exchange and that it is against the policy of the Office of Disciplinary Counsel to issue ethics advisory opinions.

applicable law was and how to apply it. The district court's Reasons for Judgment reflect that the court did not allow its role in interpreting and applying the law to be usurped. *Id*. Thus, we find that this assignment of error is without merit.

DECREE

For the foregoing reasons, the June 13, 2017 judgment in favor of Wootan and Saunders, A Professional Corporation, is affirmed.

AFFIRMED