

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Cecil & Geiser, LLP formerly	:	
The Plymale Partnership, LLP,	:	
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	No. 12AP-398
	:	(C.P.C. No. 09CVH-05-6776)
Ronald E. Plymale et al.,	:	
	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	
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D E C I S I O N

Rendered on December 11, 2012

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*Cooper & Elliott, LLC, Rex H. Elliott and Charles H. Cooper, Jr., for appellant.*

*John M. Alton & Co., LPA, and John M. Alton, for appellees.*

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APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Cecil & Geiser, LLP ("Cecil & Geiser") is appealing from the judgment of the Franklin County Court of Common Pleas which granted them \$201,649.06 plus pre- and post-judgment interest from Ronald E. Plymale ("Plymale"). It assigns three errors for our consideration:

1. The Trial Court erred in its Journal Entry Granting Summary Judgment to Defendants on Remaining Claims, filed March 27, 2012, by finding the License Agreement was not a valid and enforceable contract under the Ohio Rules of Professional Conduct.

2. The Trial Court erred in its Journal Entry Granting Summary Judgment to Defendants on Remaining Claims, filed March 27, 2012, by finding Plymale could use the Ohio Rules of Professional Conduct as a shield against liability for his intentional breach of the License Agreement.

3. The Trial Court erred in its Journal Entry Granting Summary Judgment to Defendants on Remaining Claims, filed March 27, 2012, by finding the Ohio Rules of Professional Conduct provided Plymale & Dingus a privilege to interfere with the License Agreement.

{¶ 2} Plymale was a member of The Plymale Partnership, LLP ("Plymale Partnership"). The firm spent large sums advertising legal services it provided. Plymale decided to leave the firm and relocate to Florida. The other members of the Plymale Partnership agreed to pay him large sums of money for his interest in the LLP and for the continued use of the Plymale name. The parties entered into a license agreement.

{¶ 3} For years, Plymale did not practice law in the state of Ohio, but eventually did return and resume the practice of law in Ohio. When he did so, he demanded that the Plymale Partnership stop using his name. This led to the establishment of Cecil & Geiser, allowing the principals in that firm to continue their high volume personal injury practice.

{¶ 4} Cecil & Geiser sued Plymale and his new firm alleging a number of theories of recovery. After a somewhat contentious litigation process, the trial court granted a judgment against Plymale, but not against the new law firm with which he practiced, Plymale & Dingus, LLC ("Plymale & Dingus").

{¶ 5} Both Cecil & Geiser and Plymale appealed. This first appeal resulted in several parts of the trial court's judgment being affirmed, including the judgment for \$201,649.06 plus interest. The first appellate panel assigned to the case remanded the case to the trial court for it to address the enforceability of the license agreement entered into by the parties in light of the Ohio Rules of Professional Conduct, which allowed Plymale to return to Ohio to practice law and allowed him the exclusive right to the use of his name if he did so.

{¶ 6} The trial court found in favor of Plymale on the issues related to the license agreement *vis a vis* the Ohio Rules of Professional Conduct. That finding led to the

current appeal and the assignments of error set forth above. Because of the degree to which the assignments of error overlap, we will initially address them together.

{¶ 7} The practice of law in Ohio is governed by the Supreme Court of Ohio. The Supreme Court has enacted the Ohio Rules of Professional Conduct to give guidance to attorneys practicing law in Ohio and to provide clarity to attorneys engaged in that practice.

{¶ 8} The Supreme Court amends these rules from time to time and attorneys are expected to respect those rules at all times. The rules are always subject to an extensive window of public discussion before any amendment takes place or takes effect.

{¶ 9} Just as private contracts are executed in the context of binding state and federal statutes, contracts between lawyers are executed in the context of the Ohio Rules of Professional Conduct. In lay terms, the Ohio Rules of Professional Conduct trump any terms of an agreement between or among lawyers. Lawyers are on notice that if they wish to continue practicing law in Ohio, they must abide by the Ohio Rules of Professional Conduct. The lawyers in the dispute here are and were on notice of that ongoing obligation.

{¶ 10} With that preface, we now turn to the individual assignments of error.

{¶ 11} The third assignment of error discusses only the trial court's decision with respect to Plymale & Dingus. Plymale & Dingus did not exist when the license agreement was entered into by Plymale and the Plymale Partnership. Plymale & Dingus was not a party to that agreement and is not bound by that agreement. We see no basis for overturning the trial court's finding that Plymale & Dingus, as opposed to Plymale personally, is not liable on a theory based upon the license agreement.

{¶ 12} The third assignment of error is overruled.

{¶ 13} The second assignment of error questions Plymale's right to invoke the Ohio Rules of Professional Conduct to justify his return to Ohio to practice law and resume his Ohio practice in his own name. There is no suggestion that Plymale violated the Ohio Rules of Professional Conduct. He had the right to use those rules to his benefit, as indeed can the members of Cecil & Geiser. The fact that the Ohio Rules of Professional Conduct allowed him to do what he did cannot be a basis for financial liability, independent of other theories of liability.

{¶ 14} The second assignment of error is overruled.

{¶ 15} A more detailed analysis is required for the first assignment of error.

Counsel for Cecil & Geiser sets forth three issues for our review:

1. The License Agreement is Valid and Enforceable Under Ohio Rule of Professional Conduct 5.6.
2. The License Agreement would be Valid and Enforceable Under Ohio Rule of Professional Conduct 1.17.
3. The License Agreement is Valid and Enforceable Under Ohio Rule of Professional Conduct 7.5.

{¶ 16} We will address these issues individually. Ohio Prof.Cond.R. 5.6 reads:

A lawyer shall not participate in offering or making either of the following:

- (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement;
- (b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a claim or controversy.

{¶ 17} Counsel for Cecil & Geiser emphasizes the phrase "except an agreement concerning benefits upon retirement" in arguing that the license agreement does not conflict with the Ohio Rules of Professional Conduct. The argument does not fit the facts of this case.

{¶ 18} Plymale never stopped practicing law completely. He always maintained his Ohio license to practice law and apparently continued to practice law in Florida where he was also licensed.

{¶ 19} Further, nothing in the Ohio Rules of Professional Conduct prevents a lawyer from resuming the practice of law after a span of years. The trial court correctly noted that the license agreement was not a true retirement plan, but more like a covenant not to compete.

{¶ 20} Finally, an attorney cannot be required to permanently retire, short of disciplinary proceedings which take his or her license to practice law. In today's financial

world, even lawyers who intend to retire may find that a return to the practice of law is mandated by financial reality.

{¶ 21} The trial court did not err as to its treatment of this issue.

{¶ 22} In his second argument under this assignment of error, counsel for Cecil & Geiser asserts that Prof.Cond.R. 1.17 enables the license agreement here to be enforced.

{¶ 23} The rule addressed the sale of a law practice. Prof.Cond.R. 1.17(a) reads:

Subject to the provisions of this rule, a lawyer or law firm may sell or purchase a law practice, including the good will of the practice. The law practice shall be sold in its entirety, except where a conflict of interest is present that prevents the transfer of representation of a client or class of clients. This rule shall not permit the sale or purchase of a law practice where the purchasing lawyer is buying the practice for the sole or primary purpose of reselling the practice to another lawyer or law firm.

(Emphasis deleted.)

{¶ 24} The rule goes on to set forth a laundry list of requirements for both the buying attorneys and the selling attorneys, including written letters to all the firm's clients.

{¶ 25} The license agreement here was not a sale of a law practice. It was an attempt to allow the Plymale Partnership the ability to go forward using the Plymale name. It was, in fact, a license to use the Plymale name. The trial court correctly addressed this issue also.

{¶ 26} Prof.Cond.R. 7.5 reads:

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under the name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation or association, legal clinic, limited liability company, or limited liability partnership shall contain symbols indicating the nature of the organization as required by Gov. Bar R. III. If otherwise lawful, a firm may use as, or continue to include in, its name the name or names of one or more deceased or

retired members of the firm or of a predecessor firm in a continuing line of succession.

(b) a law firm with offices in more than one jurisdiction that lists attorneys associated with the firm shall indicate the jurisdictional limitations on those not licensed to practice in Ohio.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

(Emphasis deleted.)

{¶ 27} The applicability of this rule also hinges upon the idea that Plymale retired from the practice of law. As discussed earlier, he did not. He at most discontinued practicing in the state of Ohio for a period of time, but continued practicing law in Florida as in-house counsel for a business. Again, the trial court properly addressed this issue.

{¶ 28} In summary, the trial court properly addressed all three issues presented in the first assignment of error. The first assignment of error is therefore overruled.

{¶ 29} All three assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas is affirmed.

*Judgment affirmed.*

SADLER and FRENCH, JJ., concur.

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