

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

MARK RING,

Appellant

v.

FRANK W. NOCITO, ESQUIRE, JOSEPH  
M. NOCITO, ESQUIRE & THE NOCITO  
LAW OFFICES,

Appellees

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 335 MDA 2013

Appeal from the Order entered January 29, 2013,  
in the Court of Common Pleas of Luzerne County,  
Civil Division, at No(s): 9514-2012

BEFORE: SHOGAN, ALLEN, and MUSMANNO, JJ.

MEMORANDUM BY ALLEN, J.:

**FILED NOVEMBER 22, 2013**

Mark Ring ("Appellant") appeals from the trial court's order granting the preliminary objections filed by Frank W. Nocito, Esquire, Joseph M. Nocito, Esquire, and The Nocito Law Offices, (collectively "Attorneys"). We affirm.

On May 31, 2012, Appellant filed a writ of summons against Attorneys, his former criminal defense team. *See generally* Certified Docket Entries, Case No. 2012-09514. On September 17, 2012, Appellant filed a complaint seeking an accounting of services rendered and the return of unearned fees. *Id.* Attorneys filed preliminary objections on October 5, 2012. *Id.* Appellant filed an amended complaint on October 25, 2012. *Id.* The amended complaint averred that "in the early morning hour of July 4, 2006," Appellant

approached a neighbor with whom he had a longstanding acrimonious relationship “in an effort to resolve their differences.” Appellant’s Amended Complaint, 10/25/12, at 3. A physical altercation ensued, which culminated in Appellant fatally shooting his neighbor. *Id.* at 4. Appellant was arrested that same day and “later charged with an open charge of homicide[.]” *Id.*

Appellant’s girlfriend, Sharon Wojcik, “and her family,” hired Attorneys to represent Appellant. *Id.* at 5. Appellant averred that “[t]he Wojciks initially provided [Attorneys] with a payment...of \$30,000[.]” *Id.* The Wojciks made additional payments of \$867.40 and \$2,240 to a private investigator and a psychiatrist, respectively. *Id.* at 6 and 9. Appellant further averred that on March 15, 2007, “under strong advisement and counseling from [Attorneys],... [Appellant] plead guilty...to one count of third degree murder, for a negotiated sentence of 12-24 years.” *Id.* at 10.

Appellant repeatedly requested from Attorneys “an itemized bill...for the [Attorneys’] services in their representation of [Appellant][.]” *Id.* at 11. In a June 25, 2009 letter, Attorneys indicated to Appellant that “[t]he fee for representation...was a flat fee of thirty thousand (\$30,000) dollars[.]” *Id.* at 12.

Count I of Appellant’s amended complaint requested the equitable relief of having the court “enter a decree ordering that [Attorneys] provide an accounting to [Appellant] of the services provided to [Appellant] and of the hours they reasonably spent.” *Id.* at 13. Under Count II, Appellant averred that “the accounting prayed for in Count I will show the quantum

meruit value of the services provided will be less than the \$30,000 paid to [Attorneys].” *Id.* Appellant further averred that “[Attorneys] owe [Appellant] the difference between \$30,000 and the quantum meruit value of the services provided to [Appellant].” *Id.* at 14.

Attorneys filed preliminary objections to Appellant’s amended complaint. *See generally* Certified Docket Entries, Case No. 2012-09514. Appellant filed a second amended complaint on December 10, 2012. *Id.* In his second amended complaint, Appellant averred that “[i]n Dec[ember] of 2007, Ms. Wojcik orally assigned her rights in her oral contract with [Attorneys] to [Appellant] to recover unearned fees with the understanding that [Appellant] would pay her for all amounts she had paid to the [Attorneys] or at their direction to others.” Appellant’s Second Amended Complaint, 12/10/12, at 1.

Attorneys filed preliminary objections to Appellant’s second amended complaint on December 21, 2012. *See generally* Certified Docket Entries, Case No. 2012-09514. Attorneys’ preliminary objections argued that Appellant “lacked standing to sue [Attorneys],” that Appellant’s second amended complaint should be stricken entirely for lack of specificity, and dismissed for “failure to plead a viable cause of action upon which relief can be granted.” Attorneys’ Preliminary Objections to [Appellant’s] Second Amended Complaint, 12/21/12, at 4. On January 14, 2013, Appellant answered Attorneys’ preliminary objections, and filed a responsive brief on January 15, 2013. *See generally* Certified Docket Entries, Case No. 2012-

09514. On January 29, 2013, the trial court granted Attorneys' preliminary objections to Appellant's second amended complaint. *Id.* Appellant filed a timely notice of appeal on February 19, 2013. *Id.* The trial court did not order compliance with Pa.R.A.P. 1925.

Appellant presents the following issues for our review:

1. Does the Appellant have standing based on his girlfriend's oral assignment of her claims against [Attorneys], to Appellant?
2. Does Appellant adequately plead a claim for an accounting and unjust enrichment?
3. When Appellant's claims were for an accounting and unjust enrichment, and not breach of contract, did the lower court err when it granted the [Attorneys'] preliminary objections because Appellant did not state a claim for breach of contract?

Appellant's Brief at 3.

Our resolution of Appellant's first issue regarding standing is dispositive of this appeal, such that we are not required to reach his remaining issues, and we decline to do so.

In considering a trial court's grant of preliminary objections, our standard of review "is to determine whether the trial court committed an error of law." ***Feingold v. Hendrzak, et al.***, 15 A.3d 937, 941 (Pa. Super. 2011). We are also mindful that:

Preliminary objections in the nature of a demurrer test the legal sufficiency of the complaint. When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom. Preliminary objections which seek the

dismissal of a cause of action should be sustained only in cases where it is clear and free of doubt that the pleader will be unable to prove facts legally sufficient to establish the right of relief. If any doubts exist as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections.

***Id.*, citing *Haun v. Community Health Systems, Inc.***, 14 A.3d 120, 123 (Pa. Super. 2011).

While Appellant posits that he “has standing to file suit against [Attorneys],” we disagree. Appellant’s Brief at 7. Attorneys’ preliminary objections contend that Appellant is not the right party in interest “because there is no written proof that Ms. Wojcik assigned to [Appellant] her rights pursuant to her arrangement with [Appellant].” Attorneys’ Preliminary Objections to [Appellant’s] Second Amended Complaint, 12/21/12, at 4. Even assuming, without deciding, that the assignment between Ms. Wojcik and Appellant is valid, Appellant has not fully paid the consideration for which the assignment was purportedly granted. Appellant averred that “Ms. Wojcik orally assigned her rights in her oral contract with [Attorneys] to [Appellant] to recover unearned fees **with the understanding that [Appellant] would pay her for all amounts she had paid to the [Attorneys] or at their direction to others.**” Appellant’s Second Amended Complaint, 12/10/12, at 1 (emphasis supplied). Therefore, even if valid, according to Appellant’s pleadings, his assignment from Ms. Wojcik has not been perfected.

Further, it is undisputed that Appellant did not enter into a contract with Attorneys regarding his criminal representation, nor did Appellant pay for their services. Appellant seeks to replace Ms. Wojcik as the party in interest by arguing that as Ms. Wojcik's assignee, Appellant "stands in the shoes of the assignor[,]" such that he is "the real party in interest and an action on the assignment must be prosecuted in [the assignee's] name." Appellant's Brief at 8 (internal citations omitted). However, Appellant discounts that Ms. Wojcik herself has no basis to pursue this action against Attorneys.

As Appellant concedes, "an effective assignment is one by which the assignor's rights to performance by the obligor is extinguished **and the assignee acquires a similar right to such performance.**" *Wilcox v. Regester*, 207 A.2d 817, 820 (Pa. 1965) (emphasis supplied). The agreement for Attorneys' representation of Appellant was a flat fee of \$30,000. Appellant does not dispute that such representation occurred. Significantly, Appellant's amended complaint avers:

During [Attorneys'] representation of [Appellant] one or both of [the Attorneys] visited [Appellant] while [Appellant] was incarcerated at Luzerne County Correctional Facility (LCCF) numerous times.

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Throughout [Attorneys'] representation of [Appellant], [Attorneys] appeared individually or together at a Preliminary Hearing on Oct[ober] 4, 2006; formal arraignment by video conference on Nov[ember] 13, 2006; Status Conference in Court on Feb[ruary] 20, 2007; Omnibus Motions Hearing in Court on

Mar[ch] 5, 2007; Guilty Plea Hearing in court on Mar[ch] 15, 2007; Sentencing Hearing in Court on Apr[il] 26, 2007.

Throughout [Attorneys'] representation of [Appellant], [Attorneys] also filed motions or other documents to include Request for Bill of Particulars, filed Nov[ember] 20, 2006; Omnibus Pretrial Motion and Brief and Discovery, filed Dec[ember] 13, 2006; and Guilty Plea colloquy filed Mar[ch] 15, 2007.

Appellant's Amended Complaint, 10/25/12, at 5-6.

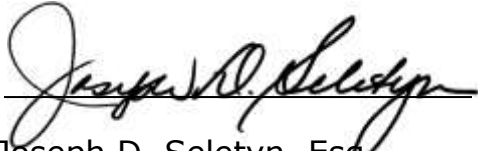
Appellant further indicated that he furnished Attorneys with 148 pages of his "private journal written while incarcerated at LCCF detailing [Appellant's] personal life before the shooting along with defensive strategies and tactics, and other issues to investigate for use at trial." *Id.* at 6. Appellant additionally noted that Attorneys "provided 323 pages of discovery to [Appellant][.]" *Id.* at 8. The foregoing averments were subsequently incorporated in Appellant's second amended complaint "as if fully set forth [t]herein." Appellant's Second Amended Complaint, 12/10/12, at 1. Appellant's complaints similarly reflect that Attorneys' representation of Appellant culminated in Appellant's entry of a guilty plea to one count of third degree murder in exchange for the negotiated sentence of 12 - 24 years. Appellant's Amended Complaint, 10/25/12, at 10; Appellant's Second Amended Complaint, 12/10/12, at 1. Moreover, Appellant specifically argues "that he is not claiming a breach of contract." Appellant's Brief at 7.

Thus, given that Attorneys represented Appellant in exchange for the flat fee of \$30,000, which Ms. Wojcik paid and regarding which Appellant is not claiming a contractual breach, there is no unsatisfied performance owed

to Ms. Wojcik which Appellant has “acquired a similar right to,” which can in turn confer on Appellant the requisite standing to sue Attorneys for an accounting and to recover unearned fees. **See *Employers Insurance of Wassau v. Commonwealth, Department of Transportation***, 865 A.2d 825, 830 (Pa. 2005) (internal citations omitted) (reiterating well settled precept that while “[t]he right to receive money due or to become due is generally assignable...[u]nder the law of assignment, the assignee succeeds to no greater rights than those possessed by the assignor”). Accordingly, finding no error by the trial court, we affirm the trial court’s order granting Attorneys’ preliminary objections.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 11/22/2013