2011 PA Super 174

ROBERT A. HUBER, Appellant v. MICHAEL A. ETKIN, Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 3356 EDA 2010

Appeal from the Order Entered November 8, 2010
in the Court of Common Pleas of Philadelphia County
Civil Division at No.: June Term, 2008, No. 4299

BEFORE: BENDER, OLSON, and PLATT*, JJ.

*****Petition for Reargument Filed August 30, 2011*****

OPINION BY PLATT, J: Filed: August 16, 2011

Appellant, Robert A. Huber, appeals from the order granting the post-trial motion of Appellee, Michael A. Etkin, and ordering a new trial.[1] We affirm.

The trial court aptly set forth the facts of this case:

> [The parties] are former law partners in two partnerships: Etkin & Huber, LLP (E&H) and Yankowtiz, Etkin and Huber, LLP (YEH). . . . E&H was formed in 2002 by [Appellant] and [Appellee]. There was no written partnership agreement governing E&H. Pursuant to the oral partnership agreement[,] profits were divided 52% for [Appellee] and 48% for [Appellant]. In October of 2002, YEH was formed by a written partnership

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* Retired Senior Judge assigned to the Superior Court.

[1] We note that Appellant purports to appeal from the court's order and opinion in support thereof entered on November 5, 2010. However, the docket reflects that the order and opinion were filed on November 8, 2010. Accordingly, we will use the latter date when referring to the subject order and opinion. We have amended the caption accordingly.

> agreement providing that Jack A. Yankowitz[2] and the law firm of E&H were each 50% owners. On May 31, 2007, [Appellant] withdrew from E&H and YEH and notified both [Appellee] and Mr. Yankowitz.
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> [Appellant] and [Appellee] sent letters to all E&H and YEH clients, informing them of the dissolution of each partnership. The letters gave clients the choice of selecting which E&H partner they would retain to continue representation. Upon selection, that attorney continued representation. [Clients who selected Appellant executed new contingency fee agreements with him and his new firm.] [Appellant] has been paid a total of $78,000 in pre-dissolution profits from E&H and YEH. No post-dissolution profits have been paid by either party.

(1925(a) Opinion, 12/13/10, at 1-2 (internal quotation marks omitted)).

Appellant commenced this action against Appellee on June 26, 2008, and Appellee filed a counterclaim. At the bench trial, Appellant limited the recovery he sought to "the money that he was owed from the [partnership] assets . . . at the time of dissolution" and Appellee "sought recovery . . . of his partnership percentage of post-dissolution contingent fees recovered by [Appellant] [from their dissolved partnership's open] cases." (Appellee's Brief, at 6, 7).

After the bench trial, the court issued a verdict in favor of Appellant and against Appellee, awarding Appellant $163,902.60 in payments due to him prior to dissolution and denying Appellee's counterclaim for contingent fees Appellant realized after dissolution from the dissolved partnership's open cases. (***See*** Order, 7/01/10, at 1). Appellee filed a motion for post-trial relief, which the trial court granted on November 8, 2010, by ordering a

[2] Mr. Yankowitz was not a party to this action.

new trial. (***See*** Order, 11/08/10, at 1). Appellant timely appealed. The trial court did not order a Rule 1925(b) statement of errors.

Appellant raises five questions for our review:

> A. Whether the trial court erred in granting Appellee's motion for post-trial relief and in ordering a new trial after entering a verdict in favor of Appellant in the amount of $163,902.60 plus interest for the pre-dissolution distributions owed to Appellant and in holding that uncollected contingency fees may not be awarded where there was no written agreement concerning the disposition of contingent fee profits after dissolution?
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> B. Whether the trial court erred in granting Appellee's motion for post-trial relief where the court found as a fact that the parties implicitly agreed to dispose of all profits as of the date of dissolution based upon the surrounding circumstances where the parties arranged for the clients to select the attorney to continue their representation, where new contingency fee agreements for all ongoing representation by the selected attorney and where the profits and costs were to flow exclusively to the selected partner?
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> C. Whether the trial court erred in granting Appellee's motion for post-trial relief and in holding that ***Solo v. Padova*** is not the law of Pennsylvania with respect to unresolved contingency fee cases at the time of dissolution but subsequently resolved?
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> D. Whether the trial court erred in failing to order that at most, Appellee is only entitled to *quantum meruit* from any portion of post-dissolution fees earned by Appellant from the cases which originated at Etkin & Huber and Yankowitz, Etkin and Huber, LLP?
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> E. Whether the trial court erred in failing to deny Appellee's motion for post-trial relief and in failing to dismiss Appellee's claim for post-dissolution fees earned by Appellant where Appellee did not plead an entitlement to any post-dissolution fees based upon *quantum meruit*?

(Appellant's Brief, at 4).

In ***Harman ex rel. Harman v. Borah***, 756 A.2d 1116 (Pa. 2000), our Supreme Court set forth a comprehensive discussion of the standard and scope of review to be applied when reviewing a trial court decision to grant a new trial, providing that:

> [t]rial courts have broad discretion to grant or deny a new trial [and a]lthough all new trial orders are subject to appellate review, it is well-established law that, absent a clear abuse of discretion by the trial court, appellate courts must not interfere with the trial court's authority to grant or deny a new trial.
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> . . .
>
> Each review of a challenge to a new trial order must begin with an analysis of the underlying conduct or omission by the trial court that formed the basis for the motion. . . . The harmless error doctrine underlies every decision to grant or deny a new trial. A new trial is not warranted merely because some irregularity occurred during the trial or another trial judge would have ruled differently; the moving party must demonstrate to the trial court that he or she has suffered prejudice from the mistake.
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> . . . [T]he appellate court must . . . undertake a dual-pronged analysis. . . . First, the appellate court must examine the decision of the trial court that a mistake occurred.
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> At this first stage, the appellate court must apply the correct scope of review, based on the rationale given by the trial court. . . . There is a narrow scope of review: where the trial court articulates a single mistake . . . the appellate court's review is limited in scope to the stated reason, and the appellate court must review that reason under the appropriate standard.
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> . . .
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> The appropriate standard of review also controls this initial layer of analysis. . . . If the mistake concerned an error of law, the [C]ourt will scrutinize for legal error. If there were no mistakes . . . the appellate court must reverse a decision by the trial court to grant a new trial because the trial court cannot

> order a new trial where no error of law or abuse of discretion occurred.
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> If the appellate court agrees with the determination of the trial court that a mistake occurred, it proceeds to the second level of analysis. The appellate court must then determine whether the trial court abused its discretion in ruling on the request for a new trial. . . . An abuse of discretion exists when the trial court has rendered a judgment that is manifestly unreasonable, arbitrary, or capricious, has failed to apply the law, or was motivated by partiality, prejudice, bias, or ill will. A finding by an appellate court that it would have reached a different result than the trial court does not constitute a finding of an abuse of discretion. Where the record adequately supports the trial court's reasons and factual basis, the court did not abuse its discretion.
>
> When determining whether the trial court abused its discretion, the appellate court must confine itself to the scope of review, as set forth in our preceding discussion. If the trial court has provided [a] specific reason[] for its ruling on a request for a new trial, and it is clear that the decision of the trial court is based exclusively on [that] reason[], applying a narrow scope of review, the appellate court may reverse the trial court's decision only if it finds no basis on the record to support [the] reason[]. As a practical matter, a trial court's reference to a finite set of reasons is generally treated as conclusive proof that it would not have ordered a new trial on any other basis. . . .

Harman, ***supra*** at 1122-23 (citations and quotation marks omitted).

Here, the trial court ordered a new trial because:

> [u]pon reflection and consideration of the precedent and reasoning of non-precedential decisions by other courts applying Pennsylvania law, the [c]ourt is now of the opinion that the decision in ***Solo v. Padova***[, 21 Phila. 22 (Pa. C.P. 1990)], was wrongly decided and does not accurately reflect Pennsylvania law. The value of contingent fee cases must be evaluated as an asset of a partnership upon dissolution.

(Order, 11/08/10, at 1).

Accordingly, because the court relied on one reason for its grant of a new trial, our scope of review is limited to addressing only Appellant's third issue: "whether the trial court erred . . . in holding that ***Solo v. Padova*** is not the law of Pennsylvania with respect to unresolved contingency fee cases at the time of dissolution [that are] subsequently resolved[.]" (Appellant's Brief, at 4); ***see also Harman***, ***supra*** at 1123. If the court committed an error of law that prejudiced Appellee, then its grant of a new trial must be affirmed. ***See Harman***, ***supra*** at 1122.

As correctly observed by Appellant, this case is controlled by the Uniform Partnership Act (UPA), 15 Pa.C.S.A. §§ 8301-8365, which applies to all partnerships formed after the UPA's creation. ***See*** 15 Pa.C.S.A. § 8301(b); (***see also*** Appellant's Brief, at 11). The UPA provides that partners stand in a fiduciary relationship to each other. ***See*** 15 Pa.C.S.A. § 8334(a). "Each partner shall . . . share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied and must contribute towards the losses . . . sustained by the partnership, according to his share in the profits." 15 Pa.C.S.A. § 8331(1). When a partner withdraws from a partnership, the partnership is dissolved. ***See*** 15 Pa.C.S.A. § 8353(1)(ii). However, "[o]n dissolution, the partnership is not terminated but continues until the winding up of partnership affairs is completed." 15 Pa.C.S.A. § 8352. "In settling accounts between the partners after dissolution," partners are to contribute the amount necessary

to satisfy the liabilities of the partnership in the absence of any agreements to the contrary, including profits owed to partners. 15 Pa.C.S.A. § 8362(1)(ii), (2)(iv).

Here, Appellant argues that the trial court correctly relied on ***Solo***, ***supra***, in its original decision, resulting in its conclusion that, under the UPA, contingent fees, unrealized at the date of dissolution of the partnership, but later earned, are not subject to distribution. (***See*** Appellant's Brief, at 10; ***see also*** Trial Court Opinion, 7/01/10, at 2-4). We disagree.

In ***Solo***, the court considered the defendants' motion for partial summary judgment on count one of plaintiff's complaint, which sought "an accounting and recovery of certain partnership assets, which include . . . : 1) the fees and reimbursement costs from contingent fee cases pending at the time [of dissolution] . . . ." ***Solo***, ***supra*** at 23. The parties agreed that the UPA controlled the issue of the disputed fees. ***See id.*** at 25. In their motion, the defendants argued that "uncollected contingency fees are not assets which can be awarded by a court." ***Id.*** The ***Solo*** court agreed and concluded that "Pennsylvania law precludes the awarding by a court of uncollected contingent fees . . . ." ***Id.*** at 27.

Preliminarily, we note that this Court is not bound by the decisions of our Common Pleas courts. ***See Branham v. Rohm & Haas Co.***, ___ A.3d ___, 2011 WL 1366494 at *6 (Pa. Super. 2011). Moreover, in support of their position, the defendants in ***Solo*** relied on this Court's decisions in

Beasley v. Beasley, 518 A.2d 545 (Pa. Super. 1986), *appeal denied*, 533 A.2d 90 (Pa. 1987), and ***Lamparski v. Sikov, Lamparski & Woncheck, PC***, 559 A.2d 544 (Pa. Super. 1989), *appeal denied*, 569 A.2d 1368 (Pa. 1990). ***See Solo***, ***supra*** at 25-27. Neither of these cases is instructive on the UPA and its treatment of distribution of partnership contingency fees paid to a prior partner after dissolution, because such analysis was not applicable. ***Beasley***, after analyzing relevant sections of the **Divorce Code**, concluded that "contingent fees [**of a sole proprietorship**] may not be considered to establish present value or good will[, and] may not be considered for the purpose of establishing a basis for an alimony award since they are unascertainable earnings[.]" ***Beasley***, ***supra*** at 557 (emphasis added). ***Lamparski*** was an estate administration case in which this Court, acknowledging that the valuation of a decedent's shares in a corporation must be made at the time of the decedent's death, held that "the [unpaid] fees were not net assets of the corporation as of . . . the date of decedent's death, and . . . that they were properly excluded from the valuation." ***Lamparski***, ***supra*** at 547.

In contrast, the valuation problems that arise in ***Beasley*** and ***Lamparski***, ***supra***, would not arise in a dissolved partnership, since the partnership would not be terminated until all contingency cases are concluded and the winding up has been completed. We note that in the present case, all contingent fee cases had been resolved at the time of trial,

so "the value of these cases is an absolutely known fact." (1925(a) Op., 12/13/10, at 5).

Accordingly, because the ***Solo*** court reached its conclusion based on precedent that is inapplicable to the issue regarding the treatment of dissolved partnership contingency fees realized by a former partner after dissolution under the UPA, we conclude that the trial court correctly found that it erred in its reliance on the holding of ***Solo***.

In its November 8, 2010 opinion granting Appellee's motion for a new trial, the court relied on the non-precedential cases of ***Melenyzer v. Tershel***, No. 99-5200, 2004 WL 5149401 (Pa. C.P. Washington 2004), *affirmed*, 885 A.2d 594 (Pa. Super. 2005) (unpublished memorandum), *appeal denied*, 898 A.2d 1072 (Pa. 2006), and ***LaBrum & Doak, LLP v. Ashdale (In re Labrum & Doak)***, 227 B.R. 391 (Bankr. E.D. Pa. 1998). The court found that these cases directly conflicted with ***Solo***, ***supra*** and that they contained the applicable standard to be applied. (***See*** Trial Ct. Op., 11/08/10, at 3-4). Specifically, the court noted that the ***Melenyzer*** court "concluded that contingent fee cases brought into the firm prior to dissolution were assets of the partnership to be split accordingly." (***Id.*** at 3).

We note that, just as this Court is not bound by the holdings of courts of common pleas, neither are we bound by federal court decisions, other than those of the United States Supreme Court. ***See Branham***, ***supra*** at

*6. However, the analysis employed by the trial court and its resulting conclusion is consistent with that of our Supreme Court in ***Bracht v. Connell***, 170 A. 297 (Pa. 1933), which considered the dissolution and winding up provisions of the UPA where there is no partnership agreement. [3]

Appellee aptly provided the relevant facts of ***Bracht***:

> [T]he parties were partners in a road construction business. At the time the partnership dissolved, there existed a substantial road construction contract that had been procured by two of the partners with partnership funds prior to its dissolution. Following dissolution, the procuring partners "endeavored to appropriate this contract, a partnership asset, to their own use, **which of course they could not do**." [***Bracht***, ***supra***] at 299.

(Appellee's Brief, at 13-14 (emphasis added)).

As explained by our Supreme Court, under the UPA:

> [p]artners stand in a fiduciary relationship to copartners; each is under a duty to act for the benefit of all not to gain individual advantage at the expense or to the detriment of other partners . . . . When a partnership has terminated, for whatever reason or by whatever means, the assets of the partnership must still be handled in accordance with this fiduciary principle.

Bracht, ***supra*** at 299; ***see also*** 15 Pa.C.S.A. § 8334(a).

Accordingly, based on this principle, our Supreme Court held that, although only two of the dissolved partnership's former partners completed

[3] We acknowledge that the ***Bracht*** Court was interpreting the Partnership Act of 1914, not the UPA. However, although the UPA entered into force in 1988, it is modeled after the Uniform Partnership Act of 1914. ***See*** 15 Pa.C.S.A. § 8301. In fact, each provision cited in ***Bracht*** has a parallel in the present Act. ***Compare*** 59 P.S. §§ 59, ***and*** 104, ***with*** 15 Pa.C.S.A. §§ 8334(a), ***and*** 8335(3), (4). Therefore, the analysis remains applicable.

the road construction contract, the profits realized after dissolution were subject to distribution under the UPA. ***Bracht***, ***supra*** at 300.

Specifically, the Court found that:

> While appellants . . . were . . . dealing with a partnership asset[,] they must account to appellee for the value of his interest in that asset in the same manner as a liquidating or surviving partner accounts for unfinished work brought by him to completion after dissolution. . . .
>
> While appellants were not acting in bad faith in this transaction, but were doing what they believed they had every right to do, they were mistaken. The law demands they must faithfully account to appellee; but the law places no greater penalty on them than that they give appellee the value of his interest in that contract, reflected in this case by a proportion of the net profit after a deduction of all proper charges or costs.

Id.

The Court also stated that:

> The result is that the law imposes on the contract a partnership status at dissolution and gives appellee the right at dissolution either to have the contract distributed, that is, lawfully appraised, so that appellee could receive the value of his interest, or, appellee, being denied this, could require appellants to account for his proportion of the profit. ***See*** Partnership Act, ***supra***, § 42 (59 PS § 104).

Id.; ***see also*** 15 Pa.C.S.A. § 8335(3), (4).

The above facts and issues in ***Bracht***, ***supra*** mirror those of the case *sub judice*. The UPA regulates the partnership before us. After dissolution, the dissolved partnership's former partners each individually completed the outstanding client contracts and collected the contingent fees. In performing the contracts, each partner assumed their costs. The clients who elected to

have Appellant complete their cases signed new contingent fee agreements with Appellant. These new contingency fee agreements, together with the rules of professional conduct, would govern the new relationship between counsel and the client, including the fee the client would be obligated to pay new counsel upon recovery. However, the old contingency fee contracts remained the "property" of the former partnership post-dissolution, and therefore the property had to be divided in the same way as it had been pre-dissolution. ***See id.*** at 300.

We recognize that, other than ***Bracht***, ***supra***, there is a dearth of Pennsylvania cases on this issue. Therefore, we look to our sister jurisdictions "for guidance to the degree we find them useful and not incompatible with Pennsylvania law." ***Trach v. Fellin***, 817 A.2d 1102, 1115 (Pa. Super. 2003), *appeal denied sub nom.* ***Trach v. Thrift Drug, Inc.***, 847 A.2d 1288 (Pa. 2004) (citations omitted). In reviewing this jurisprudence, we conclude that it is consistent with the holding reached in ***Bracht***, ***supra***.

For example, ***Murov v. Ades***, 786 N.Y.S.2d 79 (N.Y. App. Div. 2004), involved a law partnership that did not have a written partnership agreement. The appellant therein brought certain contingent fee cases to the firm, after which the parties dissolved the partnership by agreement. With appellee's consent, appellant took all of the above cases after dissolution. At that time, judgments had been entered in the cases, but no money had been collected. Appellee then commenced an action for an

accounting of all post-dissolution fees collected on the judgments and a verdict was entered in appellee's favor. ***See id.*** at 80. In affirming the trial court, the Appellate Division of the New York Supreme Court concluded that:

> [i]n the absence of an agreement to the contrary, pending contingency fee cases of a dissolved partnership are assets subject to distribution. The [subject] cases were handled by the dissolved firm on a contingent fee basis, and are therefore partnership property subject to distribution. . . .
>
> . . . [T]he value to the firm of the uncollected . . . judgments at dissolution must be calculated as the amounts ultimately collected, less the value of any post-dissolution efforts expended by the [appellant].

Id. (citations omitted).

Likewise, in ***Ellerby v. Spiezer***, 485 N.E.2d 413 (Ill. App. 1985), a former partner of a dissolved law partnership sued for an accounting where, after dissolution, the firm realized profits from contingency fee cases. The firm had no agreement for the distribution of post-dissolution profits. The ***Ellerby*** court considered "how, in the absence of an agreement on the subject, the post-dissolution profits from the contingent fee cases should be distributed." ***Id.*** at 415.

The court concluded that the UPA was applicable to the issue and that the "[d]issolution of the partnership did not terminate it; rather the parties . . . remain[ed] partners until the winding up of their partnership affairs [was] completed[,]" and specifically, completion of "the pending cases the partnership had agreed to handle on a contingent fee basis." ***Id.*** at 416. The court further found that "[s]ince there was no showing that the partners

agreed to change the distribution of profits after dissolution . . . the distribution formula in effect at the time of the dissolution remain[ed] in effect." ***Id.*** at 418. Accordingly, "the partners w[ere] entitled to share in the remaining profits in accordance with the terms of the partnership agreement . . . ." ***Id.***; ***see also Resnick v. Kaplan***, 434 A.2d 582, 587 (Md. Spec. App. 1981) ("[I]n the absence of any provision in the partnership document . . . the aggregate of [post-dissolution contingency] fees collected should be allocated according to the percentages specified in the agreement for the distribution of profits and losses."); ***Dwyer v. Nicholson***, 602 N.Y.S.2d 144, 146 (N.Y. App. Div. 1993) ("[C]ontingency fee cases pending in the [law] firm on the date of dissolution constituted partnership assets subject to distribution unless the partners . . . had agreed otherwise."); ***Young v. Delaney***, 647 A.2d 784, 789 (D.C. 1994) ("Profits derived from the completion of legal cases . . . after dissolution of a law partnership are assets of the partnership, subject to distribution after dissolution.") (citation omitted).

Hence, we conclude that the legal principles applied by our sister jurisdictions to this issue mirror the long-standing precedent established by our Supreme Court in ***Bracht***, ***supra***; this fact, while not determinative, does offer guidance. ***See Trach***, ***supra*** at 1115. Therefore, we conclude that the trial court should have relied on the legal principle that contingency fees realized after dissolution of a partnership are subject to distribution

pursuant to each partner's share in the net profits after factoring in all proper charges or costs. ***See Bracht***, ***supra*** at 300; ***see also*** 15 Pa.C.S.A. § 8331(1).

Accordingly, the trial court correctly found that it committed an error of law by applying the holding of ***Solo***, ***supra*** to its original analysis of Appellee's counterclaim. Furthermore, because the legal error affected the outcome of the case, thereby prejudicing Appellee, we conclude that the trial court did not abuse its discretion in ordering a new trial.[4] ***See Harman***, ***supra*** at 1122.

Order affirmed. Case remanded. Jurisdiction relinquished.

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[4] Moreover, we note that Appellant's argument that, because ***Bracht*** was decided in 1933, the more recent Common Pleas case of ***Solo***, ***supra*** is more persuasive, is misplaced. (***See*** Appellant's Brief, at 14). ***Bracht*** is a decision of our Supreme Court that has not been reversed, criticized, or distinguished by any subsequent case and, although it is not a recent decision, it remains binding precedent. ***See Singer v. Dong Sup Cha***, 550 A.2d 791, 792 (Pa. Super. 1988) (concluding that precedent is binding, although not recently decided). Accordingly, where partners do not have an agreement addressing the issue, the holding in ***Bracht*** regarding distribution of fees realized after partnership dissolution remains binding precedent in this Commonwealth.

Equally unavailing is Appellant's suggestion that our Supreme Court's holding in ***Bracht*** is inapplicable to this case because it considered a road construction partnership and not a law practice partnership. (***See*** Appellant's Brief, at 14). Appellant merely asserts that ***Bracht*** is "inapposite." (Appellant's Brief, at 15). However, he fails to develop an argument that the principles of the UPA vary by the type of partnership involved and he fails to support his assertion with any citation to case or statutory law. The principles enunciated in ***Bracht*** are general partnership principles applicable to all partnerships under the UPA in the absence of a partnership agreement. ***See*** 15 Pa.C.S.A. § 8301(b). Accordingly, Appellant's argument fails.

Bender, J., files a Dissenting Opinion.

2011 PA Super 174

ROBERT A. HUBER, Appellant v. MICHAEL A. ETKIN, Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 3356 EDA 2010

Appeal from the Order Entered November 8, 2010
in the Court of Common Pleas of Philadelphia County
Civil Division at No.: June Term, 2008, No. 4299

BEFORE: BENDER, OLSON, and PLATT*, JJ.

DISSENTING OPINION BY BENDER, J.:

I respectfully dissent. Both parties agree that there was no dissolution agreement that established the parties' liability to one another for contingency fees earned after the dissolution of the partnership. At the time of dissolution, each party sent letters to the partnership's clients advising the clients of the law firm's dissolution and of the clients' right to choose the attorney of their choice. For the clients that elected Appellant as their counsel, Appellant executed a new contingency fee agreement. Citing ***Bracht v. Connell***, 170 A. 297 (Pa. 1933), the Majority concludes that "the client contracts remained the 'property' of the former partnership post-dissolution." Majority Slip Opinion at 11. I believe that such a holding would fundamentally undermine a client's right to retain the counsel of his or

* Retired Senior Judge assigned to the Superior Court.

her choice and contravene the established law of this Commonwealth regarding the type of fee to which an attorney is entitled in such a situation. Moreover, because I believe that the Uniform Partnership Act (UPA), 15 Pa.C.S. §§ 8301-8305, can in no way impinge upon the attorney-client relationship, I respectfully dissent.

I begin by registering my disapproval of the Majority's decision not to recognize

> that under Pennsylvania law, a client has the absolute right to terminate the attorney-client relationship regardless of any contractual arrangement between the two parties. A dismissed attorney may have a valid quantum meruit action against the client. Quantum meruit actions against a former client accrue as of the date of the attorney's termination of representation.

Kenis v. Perini Corp., 682 A.2d 845, 849 (Pa. Super. 1996) (citations omitted). Instead of founding its analysis on the attorney-client relationship, the Majority has degraded the client's relationship to that of chattel, explicitly making it the "property" of the former partnership. I conclude that the Majority's espoused legal basis for doing so is unsound.

Bracht, the case upon which the Majority chiefly relies, involved a partnership for carrying on a road construction business. In that case, some of the partners bid on and won a construction project contract without the knowledge of another partner, ostensibly to arrogate profits to themselves that were rightly the property of the partnership. Upon discovering the partners' malfeasance, the excluded partner demanded his share but was rebuffed. What ensued was a dissolution of the partnership and a dispute as

to whether the excluded party was entitled to profits from the contract from which he was excluded since these profits were not realized until after the dissolution of the partnership. As Appellant argues, ***Bracht*** is completely inapposite since it did not involve an attorney-client relationship nor a contingency fee contract, but rather a fixed-fee highway construction project. Such a contract was one that a construction partnership could clearly consider its property because the other party (probably some government entity) was obliged to fulfill its duties under the contract. Whereas in an attorney-client relationship, a client can always terminate a contingent fee arrangement and find another attorney. If the contingent fee clients had done so in the instant case, then the "property" to which the Majority refers would have been reduced to quantum meruit fees.

I conclude that the reasoning that most aptly resolves the matter in this case was enunciated by the Missouri Court of Appeals in ***Welman v. Parker***, 328 S.W.3d 451 (Mo. App. 2011), where, under very similar facts, the court stated:

> Clients are not the 'possession' of anyone, but to the contrary, control who represent them.... The client's files belong to the client, not to the attorney representing the client. The client may direct an attorney or firm to transmit the file to newly retained counsel. . . . [W]here an attorney withdraws from a law firm, it is incumbent on both the attorney and the law firm to inform firm clients of any *material* change in representation and to obtain the clients' informed direction as to how the client wishes its work to be handled. Additionally, the withdrawing attorney and the law firm have a mutual duty toward each other to act in good faith in winding up the firm's business and to act in a

> professional and competent manner in handling the clients' files in accordance with the clients' directions.
>
> ... [B]oth the law firm and the withdrawing partner [are required] to advise the client of this material change in representation and to obtain the client's informed direction as to how the client desires to be represented from that point forward.
>
> ... [T]he decision as to whether the contingent-fee contract remains an asset of the dissolved partnership is solely the decision of the informed client who has the free choice to further engage the services of the former partners, the withdrawing partner—either individually or as a partner in a new partnership—or an entirely different attorney or law firm.
>
> ... [W]e hold that if a law firm is retained by a client on a contingent-fee basis and the client elects to hire a different law firm after the first firm dissolves and before judgment or a settlement has been reached on his or her case, the dissolved law firm is only entitled to recover the reasonable value of the services it provided. This amount cannot exceed the original contracted fee and is payable only upon the occurrence of the contingency. The contingent fee achieved from eventual judgment or settlement is not an asset of the dissolved firm.

Id. at 456-57 (citations and quotation marks omitted).

I am also concerned that the Majority does not acknowledge the difference between a situation where a contingent fee case resulted in a judgment pre-dissolution versus a case where there is not yet a judgment. Clearly, if there is a judgment in a contingent fee case, then the contingency that establishes the amount of the fee has occurred and the fee should then accrue to the partnership, even if it is collected at some later date. I conclude that such a case is distinguishable from the case before us where there was no judgment on the contingent fee cases in question. Thus, I conclude that in the former case, the contingent fee is the property of the

partnership whereas in the latter case, the partnership is only entitled to a fee based on quantum meruit since the contingency has not yet occurred. In this regard, I conclude that ***Murov v. Ades***, 786 N.Y.S.2d 79 (N.Y. App. Div. 2004), one of the primary cases upon which the Majority relies, is inapposite.[1]

Finally, I would note that I do not share the Majority's concern that to hold otherwise would be to encourage rapacious conduct among attorneys. One of the primary skills of an attorney is to establish a person's liabilities and rights in relation to an employer, a spouse, a party in a contract, or, as in this case, a partnership. This entire matter is one that could have been governed by a provision in a written partnership agreement setting forth how contingent fee cases would be handled if the partnership is dissolved, a point which the Majority does not mention.

For the foregoing reasons, I conclude that the trial court erred in granting Appellee's post-trial motion, and therefore, I would reverse the order of the trial court.

[1] In its discussion regarding valuation, the Majority states that "in the present case, all contingent fee cases had been resolved at the time of trial." Majority Slip Opinion at 8. While this is true, the cases had not been resolved at the time of the dissolution of the partnership.