

SEP 26 2023

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY S. HARVEY, JR.  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA CIVIL TRIAL DIVISION  
TRIAL DIVISION-CIVIL

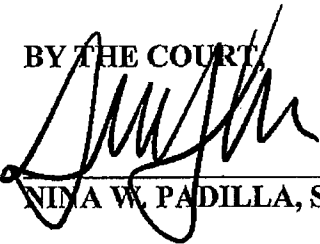
GREENBLATT PIERCE FUNT & : September Term 2020  
FORES, LLC, :  
 :  
Plaintiff, : No. 1437  
 :  
v. :  
THOMAS MORE MARRONE and : COMMERCE PROGRAM  
MOREMARRONE LLC, :  
 :  
Defendants. : Control Nos. 22102785/22102832

ORDER

AND NOW, this 26<sup>th</sup> day of September 2023, upon consideration of the Motions for Summary Judgment of Defendant Thomas More Marrone and MoreMarrone LLC (cn 22102785) and Plaintiff Greenblatt Pierce Funt & Fores, LLC's (cn 22102832), Responses in Opposition, Replies and in accord with the attached Opinion, it hereby is **ORDERED** that the Motions for Summary Judgment are **Granted in part and Denied in part** as follows:

- 1. Counts I (breach of contract), II (breach of the duty of good faith and fair dealings), III (breach of fiduciary duty), and VI (conversion) are Dismissed.
- 2. Plaintiff did not forfeit its right to share in the Smiley Attorney Fee and Cost Award. The claims in Counts IV (*quantum meruit*) and V (unjust enrichment) shall proceed to trial.
- 3. Count VII (declaratory judgment) for breach of the Operating Agreement is dismissed. The claims for unjust enrichment and *quantum meruit* shall proceed to trial.
- 4. Count VIII (permanent injunction) is dismissed as moot.
- 5. Defendants' Counterclaim for breach of contract is dismissed.

BY THE COURT,

  
NINA W. PADILLA, S.J.

200901437-Greenblatt Pierce Funt



20090143700128

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION-CIVIL**

GREENBLATT PIERCE FUNT & FORES, LLC,	:	September Term 2020
	:	
Plaintiff,	:	No. 1437
	:	
v.	:	
THOMAS MORE MARRONE and MOREMARRONE LLC,	:	COMMERCE PROGRAM
	:	
Defendants.	:	Control Nos. 22102785/22102832

**OPINION**

Plaintiff Greenblatt Pierce Funt & Fores, LLC (GPFF) filed this action seeking its share of attorney fees and costs in an action captioned *Bobbi-Jo Smiley, Amber Blow, Kelsey Turner v. E.I. De Pont De Nemours and Company and Adecco U.S. A. Inc.*, 12-cv-0238 (“Smiley Action”) from Defendants Thomas More Marrone (“Marrone”) and MoreMarrone, LLC (collectively “Marrone Defendants”). Presently before the Court are the parties’ Motions for Summary Judgment. For the reasons discussed below, the Motions for Summary Judgment are granted in part and denied in part.

**BACKGROUND**

**I. Parties**

GPFF<sup>1</sup> is a law firm with offices located in Philadelphia.<sup>2</sup> At all times relevant hereto, Patricia V. Pierce, Esquire (“Pierce”) was a member of GPFF but she is not a party to this action.<sup>3</sup> Defendant Thomas More Marrone (“Marrone”) is an attorney licensed to practice law in the

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<sup>1</sup> GPFF, formerly known as Greenblatt, Pierce, Engle, Funt and Flores, LLC, merged with Weir & Partners LLP effective January 1, 2022.

<sup>2</sup> Defendants’ Motion for Summary Judgment and Plaintiff’s response ¶2.

<sup>3</sup> Id. at ¶ 3.

Commonwealth of Pennsylvania.<sup>4</sup> Defendant MoreMarrone LLC is a limited liability company formed by Marrone.<sup>5</sup>

### **I. The Smiley Action**

In August 2012, Bobbie Jo Smiley (“Smiley”) retained Pierce to represent her in a sexual harassment case against her employer. Smiley recommended Pierce to her coworkers, Kelsey Turner and Amber Blow, who also retained Pierce to represent them in their sexual harassment claims against the same employer. During their discussions, Smiley told Pierce about a wage issue with her employer.<sup>6</sup> Thereafter, Marrone and Caroselli Beachler McTiernan & Conboy LLC (“CBMC”) were retained by Smiley and other similarly situated persons to file a class action complaint on their behalf against their employer.<sup>7</sup> The Smiley Action Complaint was filed in November 2012 in the Middle District of Pennsylvania captioned *Bobbi-Jo Smiley, Amber Blow, Kelsey Turner v. E.I. De Pont De Nemours and Company and Adecco U.S. A. Inc.*, 12-cv-0238 (“Smiley Action”).<sup>8</sup>

On April 30, 2013, Pierce sent an email to Marrone at CBMC regarding sharing legal fees in the Smiley Action. Ms. Peirce wrote as follows:

I am writing to confirm our agreement that our two firms will split any fees recovered on a 50/50 basis on each of these cases [Smiley Action and Star Career Academy] instead of the 60/40 arrangement we have had in the past.<sup>9</sup>

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<sup>4</sup> Id. at ¶1.

<sup>5</sup> Plaintiff’s Motion for Summary Judgment ¶ 11 and Defendants’ Response. Defendants’ Motion for Summary Judgment ¶ 24 and Plaintiff’s Response.

<sup>6</sup> Plaintiff’s Motion for Summary Judgment and Defendants’ Response ¶¶12-14.

<sup>7</sup> Defendants’ Motion for Summary Judgment and Plaintiff’s Response ¶10.

<sup>8</sup> Exhibit “J” to Plaintiff’s Motion for Summary Judgment – Smiley Action Complaint.

<sup>9</sup> See Exhibit “4” to Defendants’ Motion for Summary Judgment- Email dated April 30, 2013 from Pierce to Marrone.

Marrone replied and confirmed this agreement.<sup>10</sup>

## II. Marrone becomes a Member of GPF

In September 2013, Marrone left CBMC and joined GPF as a member of that law firm and signed a Memorandum of Understanding (“Operating Agreement”) on September 23, 2013.<sup>11</sup> The Operating Agreement outlines the capitalization of GPF, the ownership of GPF, compensation of the members, death or disability of a member, the removal of a member, and the dissolution of the firm. Additionally, the Operating Agreement adds Marrone as a member of the firm.<sup>12</sup> The Operating Agreement provides in pertinent part as follows:

### IV. Compensation of the Members:

#### A. Draw

Financial Compensation of the Members- Based on the contribution and experience of each member, (sic) the financial compensation/draw for the members is determined as follows:

...

Thomas Marrone’s compensation will be determined as follows:

...

3) On contingent fee cases that Mr. Marrone originates and on which he acts as lead counsel for GPF without major assistance from Ms. Pierce, he will receive (redacted) of the fees earned on any fee earned by the firm of less than (redacted) and (redacted) of any fee earned by the firm of (redacted) or more. If Mr. Marrone in his sole discretion appoints Ms. Pierce to act as co-counsel on a case he originates which generates a fee to the firm of (redacted) or more, then the fees earned shall be split as follows: (redacted) percent to Mr. Marrone, (redacted) percent to the firm

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<sup>10</sup> Id.

<sup>11</sup> Defendants’ Motion for Summary Judgment and Plaintiff’s Response in Opposition ¶ 15. Plaintiff’s Motion for Summary Judgment and Defendants’ Motion for Summary Judgment ¶ 23. See also, Exhibit “7” to Defendants’ Motion for Summary Judgment and Exhibit “K” to Plaintiff’s Motion for Summary Judgment.

<sup>12</sup> See also, Exhibit “7” to Defendants’ Motion for Summary Judgment and Exhibit “K” to Plaintiff’s Motion for Summary Judgment.

and (redacted) percent to Ms. Pierce. Should Ms. Pierce and Mr. Marrone co-counsel a case in which the fee to the firm is less than (redacted) then in that event the fee split shall be as follows: (redacted) to Mr. Marrone and the remainder to the firm. Ms. Pierce and Mr. Greenblatt will then decide, in their discretion, the amount of bonus to be paid to Mr. Marrone. ....<sup>13</sup>

The Operating Agreement does not address division of fees and cases once a member is removed or departs the firm.

### **III. Marrone is asked to leave GPFf.**

In November 2015, Marrone was informed that his employment with GPFf would be terminated effective December 31, 2015.<sup>14</sup> On or about December 1, 2015, Marrone formed MoreMarrone, LLC.<sup>15</sup> As required by the Operating Agreement, Marrone sold back his ownership interest in GPFf and in return received his capital contribution made when he joined GPFf.<sup>16</sup> After Marrone left GPFf, Pierce and Marrone continued to work on the Smiley Action as co-counsel and GPFf incurred costs for the Smiley Action.<sup>17</sup>

On November 5, 2014, the Court in the Smiley Action granted summary judgment in favor of the defendant employer and against the Smiley Plaintiffs.<sup>18</sup> This decision was appealed to the Third Circuit Court of Appeals which reversed the decision of the District Court and remanded the Smiley Action back to the Middle District for further proceedings.<sup>19</sup> Defendants in the Smiley

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<sup>13</sup> Id.

<sup>14</sup> Plaintiff's Motion for Summary Judgment and Defendants' Response ¶ 30.

<sup>15</sup> Defendants' Motion for Summary Judgment and Plaintiff's Response in Opposition ¶ 24.

<sup>16</sup> Plaintiff's Motion for Summary Judgment and Defendants' Response ¶ 30.

<sup>17</sup> Id. ¶ 31.

<sup>18</sup> Defendants' Motion for Summary Judgment and Plaintiff's Response in Opposition ¶ 30.

<sup>19</sup> Id. ¶ 32.

Action filed a Petition for *Writ of Certiorari* in the Supreme Court of the United States which was denied on June 28, 2018.<sup>20</sup>

#### **V. Withdrawal of Pierce**

In July 2018, Pierce contacted Smiley and informed her that she could no longer work with Marrone.<sup>21</sup> Pierce informed Smiley that she wanted to continue to represent Smiley and the others but that the clients had the option to choose who they wanted to proceed with the action.<sup>22</sup> After discussing the matter with the other plaintiffs, Smiley informed Pierce that the Plaintiffs wanted Marrone to represent them in the Smiley Action.<sup>23</sup>

On August 7, 2018, GPFf notified Marrone that it asserted a charging lien over the proceeds of any recovery in the Smiley Action by settlement or otherwise, for fees and costs incurred by GPFf arising from its engagement as counsel for Plaintiffs in the Smiley Action.<sup>24</sup> Additionally, on August 8, 2018, GPFf filed a motion to withdraw as counsel to the plaintiffs in the Smiley Action which was granted by the Court on September 4, 2018.<sup>25</sup>

#### **VI. Post GPFf Withdrawal**

In July 2018, Marrone invited David Cohen, Esquire from Stephan Zouras, LLC to be his co-counsel in the Smiley Action.<sup>26</sup> Mr. Cohen entered his appearance in the Smiley Action. In

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<sup>20</sup> Defendants' Motion for Summary Judgment and Plaintiff's Response in Opposition ¶¶ 33, 35.

<sup>21</sup> Defendants' Motion for Summary Judgment and Plaintiff's Response in Opposition ¶ 36.

<sup>22</sup> *Id.* ¶ 37.

<sup>23</sup> Exhibit "H" to Plaintiff's Motion for Summary Judgment, Smiley Deposition p. 103.

<sup>24</sup> Exhibit "A" to Plaintiff's Motion for Summary Judgment, Amended Complaint Exhibit "C" Charging lien letter to Marrone from Pierce dated August 7, 2018.

<sup>25</sup> Defendants' Motion for Summary Judgment and Plaintiff's Response in Opposition ¶ 45.

<sup>26</sup> Plaintiff's Motion for Summary Judgment and Defendants' Response ¶ 41. Stephan Zouras, Esquire also sued Marrone for his share of attorney fees and costs in the Smiley Action. This action was

April 2020, the Smiley Action was resolved by settlement.<sup>27</sup> On June 9, 2020, GPFf moved to intervene in the Smiley Action to enforce its charging lien for fees, costs, and expenses against a portion of the settlement fund allocated to attorney's fees and costs as stated in the Class/Collective Action Settlement Agreement entered by the parties in the Smiley Action. The Motion to Intervene was denied without prejudice.<sup>28</sup> On October 2, 2020, the Court approved the settlement of the Smiley Action and approved attorney fees in the amount of \$1,750,000 and cost reimbursements of \$43,423.<sup>29</sup> The District Court in its order did not award legal fees or costs to GPFf.

On September 24, 2020, GPFf filed a Complaint against the Marrone Defendants asserting claims for breach of contract, breach of the duty of good faith and fair dealing, breach of fiduciary duty, unjust enrichment, and conversion. The Complaint also sought injunctive and declaratory relief. On September 25, 2020, GPFf filed a Petition for Preliminary Injunction and Special Injunction. On October 15, 2020, the Marrone Defendants filed their Answer with New Matter to the Complaint. On October 19, 2020, the Marrone Defendants filed their Answer to GPFf's Petition for Preliminary Injunction and Special Injunction. On November 4, 2020, GPFf filed its reply. On November 20, 2020, the Court issued an order directing the Marrone Defendants to establish and fund an escrow account in the amount of \$397,818.84, representing the Marrone Defendants' calculation of GPFf's loadstar of 638 hours and costs of \$37,698.

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filed in the United States District Court for the Middle District of Pennsylvania. On April 28, 2023, the Court granted in part and denied in part the parties' cross motions for summary judgment, denying Marrone's motion for summary judgment on the *quantum meruit* and unjust enrichment claims. See, *Stephan Zouras LLP v. Marrone*, 2023 WL 4143439 (April 28, 2023).

<sup>27</sup> Plaintiff's Motion for Summary Judgment and Defendants' Response ¶ 46.

<sup>28</sup> Exhibit "5" to Defendants' Response to Plaintiff's Motion for Summary Judgment and Exhibit "11" to Defendants' motion for Summary Judgment.

<sup>29</sup> Plaintiff's Motion for Summary Judgment and Defendants' Response ¶ 54.

On September 16, 2021, the Marrone Defendants filed a Motion for Judgment on the Pleadings. GPFf filed a response to the Motion for Judgment on the Pleadings and also requested leave to amend the Complaint. On December 7, 2021, the Court granted GPFf leave to amend the Complaint. The Amended Complaint was filed on December 10, 2021. The Marrone Defendants filed their Answer and New Matter to the Amended Complaint and also asserted Counterclaims for breach of contract and unjust enrichment. On June 9, 2022, the Counterclaim for unjust enrichment was dismissed by the Court on Preliminary Objections. The Motion for Judgment on the Pleadings was subsequently denied as moot. The parties have now filed cross motions for summary judgment which are ripe for disposition.

## DISCUSSION

### **I. GPFf's claim for Breach of Contract is dismissed<sup>30</sup> and the Marrone Defendants' counterclaim for breach of contract is also dismissed.**

In Count I of the Amended Complaint, GPFf purports to state a claim for breach of contract. A successful cause of action for breach of contract requires a plaintiff to demonstrate: (1) the existence of a contract between plaintiff and defendant, including its essential terms; (2) a breach of a duty imposed by the contract; and (3) damages resulting from a breach of that duty.<sup>31</sup> Here, there is no evidence of a contract between GPFf and Marrone regarding the sharing of attorney fees and costs in the Smiley Action after Marrone departed GPFf.

The record is clear that at the time of Marrone's departure from GPFf, Marrone and GPFf did not enter into a written agreement with respect to sharing any prospective award of legal fees or costs in the Smiley Action.<sup>32</sup> While the parties did attempt to negotiate an agreement with respect

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<sup>30</sup> Additionally, the parallel claim for declaratory relief is also dismissed in Count VI.

<sup>31</sup> *Reeves v. Middletown Athletic Ass'n*, 866 A.2d 1115, 1125 (Pa. Super. 2004).

<sup>32</sup> Defendant's answer with new matter par 148 and answer to new matter at 148.



to the Smiley Action, the parties could not come to a meeting of the minds as to how the fees should be distributed and shared.<sup>33</sup> Additionally, while Pierce testified that she and Marrone discussed continuing to represent the Smiley clients as they had in the past, i.e. using the Operating Agreement, there is no evidence that Marrone assented to this proposal. <sup>34</sup> “Absent a manifestation of an intent to be bound ... negotiations concerning the terms of a possible future contract do not result in an enforceable agreement.”<sup>35</sup>

Consequently, GPFf’s reliance upon the Operating Agreement and any alleged continuing obligation by Marrone to be governed by this Agreement post departure is misplaced. The Operating Agreement solely addresses the duties and obligations between GPFf and Marrone with respect to fees while Marrone was a member of GPFf. For instance, the Operating Agreement sets forth Marrone’s compensation as a member of GPFf and states that Marrone’s compensation is based in part on whether Pierce appoints Marrone as co-counsel, who originates the case which generates the fee and then a splitting of the fee generated based on the amount of the fee. <sup>36</sup> However, once Marrone departed GPFf, the Operating Agreement ceased to control the parties’

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<sup>33</sup> Exhibit “8” to Defendants’ Motion for Summary Judgment - Pierce deposition p. 36 L. 10-24 - p. 37 L1-22.

<sup>34</sup> Id. Pierce dep p. 106-108.

<sup>35</sup> *Gasbarre Products, Inc. v. Smith*, 270 A.3d 1209, 1218 (Pa. Super. 2022), citing *Philmar Mid-Atlantic, Inc. v. York Street Associates II*, 389 Pa. Super. 297, 566 A.2d 1253, 1255 (1989).

<sup>36</sup> See, Exhibit “7” to Defendants’ Motion for Summary Judgment and Exhibit “K” to Plaintiff’s Motion for Summary Judgment- Operating Agreement pg. 5. GPFf relies upon Pierce’s compensation structure as the “contract” that Marrone allegedly breached. This provision provides in part as follows:

On contingent fee cases that Ms. Pierce originates and on which she acts as lead counsel for GPEFF without major assistance from Mr. Marrone, she will receive.....If Ms. Pierce in her sole discretion appoints Mr. Marrone to act as co-counsel on a case she originates which generates a fee to the firm of \$500,000 or more, then the fees earned shall be split as follows: forty (40%) percent to the firm and twenty (20%) percent to Mr. Marrone.

relationship. Hence, Marrone cannot be found to have breached the Operating Agreement. Defendants' Motion for Summary Judgment on the Breach of Contract Claim is Granted and Plaintiff's Motion for Summary Judgment on the Breach of Contract Claim is Denied.<sup>37</sup>

The Marrone Defendants' counterclaim for breach of contract is also dismissed. The Marrone Defendants filed a counterclaim against GPFf for breach of the Operating Agreement. Specifically, the Marrone Defendants allege that GPFf breached the Operating Agreement by failing to pay Marrone his annual bonus, draw, and other compensation pursuant to the Operating Agreement. This claim for breach of contract fails as GPFf's duty to pay Marrone a draw, bonus or other compensation did not continue post Marrone's departure from the firm. As Marrone left the firm in December 2015, any compensation obligations pursuant to the Operating Agreement ended as well.<sup>38</sup> Since there is no evidence that GPFf did not pay Marrone pursuant to the Operating Agreement while Marrone was a member of GPFf, the counterclaim for breach of contract fails. Consequently, GPFf's Motion for Summary Judgment to Marrone's counterclaim for breach of contract is granted and Marrone Defendants' Motion for Summary Judgment is denied.

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<sup>37</sup> In Count II of the Amended Complaint, GPFf also purports to state a claim for breach of the covenant of good faith and fair dealing. Breach of the covenant of good faith and fair dealing is nothing more than a breach of contract claim, and separate causes of action cannot be maintained for each, even in the alternative. See, *Murphy v. Duquesne University of Holy Ghost*, 565 Pa. 571, 777 A.2d 418 fn 11 (Pa. 2001). See also, *JHE, Inc. v. Southeastern Pennsylvania Transp. Authority*, 2002 WL 1018941, at \*7 (Pa.Com.Pl. 2002). Accordingly, GPFf's claim for breach of the covenant of good faith and fair dealing in the Operating Agreement is dismissed. Defendants' Motion for Summary Judgment is granted and Plaintiff's Motion for Summary Judgment is denied.

<sup>38</sup> "If GPFf's breach of contract claim is dismissed on the basis that its "Compensation" provision ceased to be effective upon Marrone's termination, the Marrone Defendants agree that Marrone's breach of counterclaim would be rendered moot." See Marrone Defendants response in opposition to GPFf's Motion for Summary Judgment, p. 20.

**II. GPFJ did not forfeit its right to claim unjust enrichment and *quantum meruit* for attorney fees and costs in the Smiley Action.** <sup>39</sup>

In Counts IV and V of the Amended Complaint, respectively, GPFJ purports to state claims for *quantum meruit* and unjust enrichment with respect to the attorney fees and cost award in the Smiley Action.<sup>40</sup> The Marrone Defendants argue that these respective claims should be dismissed because GPFJ forfeited its right to recover any fees and costs in the Smiley Action when it voluntarily withdrew from representing the plaintiffs in the Smiley Action before any contingency occurred and before the case settled.

A client has the absolute right to terminate an attorney-client relationship, regardless of any contractual arrangement between it and counsel.<sup>41</sup> Upon a client's termination of an attorney-client relationship prior to the occurrence of the contingency set forth in a fee agreement, the client is not relieved of his or her obligation to compensate the attorney for services rendered until the time of termination.<sup>42</sup> In such situations, the terminated attorney generally has a claim in *quantum meruit* to recover their fees.<sup>43</sup> However, attorneys forfeit their

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<sup>39</sup> The parallel claim for declaratory relief for *quantum meruit* and unjust enrichment survives summary judgment. GPFJ has asserted a charging lien against the Smiley Attorney fee and cost award. Equitable principles govern whether a charging lien is enforceable. See, *Smith v. Hemphill*, 180 A.3d 773, 776 (Pa. Super. 2018) citing *Molitoris v. Woods*, 422 Pa. Super. 1, 618 A.2d 9854, 992 n. 7 (1002).

<sup>40</sup> Pennsylvania courts have sometimes distinguished between *quantum meruit* and unjust enrichment. See, e.g., *Artisan Builders, Inc. v. Jang*, 271 A.3d 889, 892-94 (Pa. Super. 2022) (explaining that *quantum meruit* is a separate form of action to recover the reasonable value of services rendered...., While the remedy of *quantum meruit* provides for restitution based on the reasonable value of services performed or provided, unjust enrichment requires the defendant to pay to the plaintiff the value of the benefit conferred.).

<sup>41</sup> *Kelly v. Vennare*, 2016 WL 1062819 \*9 (Pa. Super. 2016) quoting *Kenis v. Perini Corp.*, 682 A.2d 845, 849 (Pa. Super. 1996).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* citing *Hiscott and Robinson v. King*, 626 A.2d 1235, 1237, 426 Pa. Super. 338, 343-44 (Pa. Super. 1993).

rights to compensation if they voluntarily and unjustifiably withdraw prior to the completion of a case.<sup>44</sup> Complete forfeiture is warranted only when an attorney's clear and serious violation of a duty to a client is found to have destroyed the client-lawyer relationship and by consequence the attorney's claim to compensation.<sup>45</sup> Forfeiture, however, serves no purpose when the relationship terminates as a consequence of events beyond the attorney's reasonable control such as the act of a third party.<sup>46</sup>

Here, forfeiture is not appropriate. While GPFf filed a motion seeking leave to withdraw as counsel for the Smiley Plaintiffs, the withdrawal was not "voluntary". Smiley terminated Pierce by deciding and selecting Marrone to represent her and the other plaintiffs in the Smiley Action. Given the Smiley Plaintiff's decision, Peirce was terminated and had no choice but to seek leave to withdrawal as counsel.<sup>47</sup> Pierce filed a motion seeking leave to withdrawal which was granted by the Court and asserted a charging lien in the event of a recovery or settlement. Pierce's initiation of the conversation with Smiley is hardly enough to support a claim that Pierce voluntary withdrew or abandoned the clients.<sup>48</sup> There is no evidence that Pierce did anything criminal<sup>49</sup>, was

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<sup>44</sup> *Eisenberg v. General Motors Acceptance Corp.*, 761 F. Supp. 20 (E. D. Pa. 1991).

<sup>45</sup> *For example, see*, Restatement (Third) of The Law Governing Lawyers, §§37 (2000) Partial or Complete Forfeiture of a Lawyer's Compensation, comments a, c and d. See also, *International Materials v. Sun Corp.* 824 S.W. 2d 890 (Mo. 1992).

<sup>46</sup> *Id.*

<sup>47</sup> Marrone argues that as matter of class action rules and case law, the Smiley Class Representative was legally incapable of firing Pierce and GPFf from the Smiley Action. While that may be true, here, Pierce filed a motion with the Court seeking leave to withdraw which the Court granted, presumably taking into consideration the well being of all the class members in prosecuting the Class Action.

<sup>48</sup> Additionally, whether Pierce sought leave to withdraw in other matters in which Pierce and Marrone were cocounseling is not evidence in favor of forfeiture in this action as the circumstances in those matters is not before the court.

<sup>49</sup> *Holland v. Kerns*, 822 F. Supp. 1161 (1993).

suspended or disbarred<sup>50</sup> or performed an act that was willfully blameworthy to warrant forfeiture<sup>51</sup>. Pierce was terminated by the clients.<sup>52</sup> The Marrone Defendants' Motion for Summary Judgment is Denied.<sup>53</sup>

With respect to the merits of the claims, whether GPFF is entitled to *quantum meruit* or the value of the benefit conferred upon the Marrone Defendants, a question of fact exists which precludes the entry of summary judgment. As such, the parties' respective motions for summary judgment are denied.

### **III. Count III alleging Breach of Fiduciary Duty also fails.**

In Count III of the amended complaint, GPFF purports to state a claim for breach of fiduciary duty. It is well-established that, to prevail on a breach of fiduciary duty claim, GPFF is required to prove: the existence of a fiduciary relationship between GPFF and Marrone, that Marrone negligently or intentionally failed to act in good faith and solely for GPFF's benefit, and that GPFF suffered an injury caused by Marrone's breach of his fiduciary duty."<sup>54</sup> GPFF argues that because

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<sup>50</sup> *Pearson v. Tanner*, 513 Fed. Appx. 152 (2013), cf. *Eisenberg v. General Motors Acceptance Corp.*, 761 F. Supp. 20 (E. D. Pa. 1991).

<sup>51</sup> Restatement (Third) of the Law Governing Lawyers § 37 (2000).

<sup>52</sup> Since Pierce was terminated and leave to withdraw was granted by the Court, there is no need to consider whether Pierce was justified in withdrawing as counsel.

<sup>53</sup> The Marrone Defendants also argue that GPFF may not assert claims for *quantum meruit* and unjust enrichment because an Operating Agreement exists between the parties. As this Court has already found, while there is an Agreement, that Agreement does not address whether Marrone is required to pay a share of the Smiley attorney and cost award to GPFF. This finding does not preclude GPFF from proceeding with its claims for quantum meruit and unjust enrichment.

<sup>54</sup> *Rosenbaum and Associates, P.C. v. Scheff*, 2022 WL 15065527 at \*7 (Pa. Super. 2022) citing *Snyder v. Crusader Servicing Corp.*, 231 A.3d 20, 31 (Pa. Super. 2020) (citations and footnote omitted; emphasis added).

the Smiley Action was not completed when Marrone was asked to leave the firm, the existence of “unfinished business” creates a fiduciary duty owed to the firm by Marrone. In support of this argument, GPFF relies upon *Ruby v. Abington Memorial Hospital*, 50 A.3d 128 (2012). *Ruby*, however, is distinguishable from the case at hand.

In *Ruby*, the Superior Court, relying upon the Uniform Partnership Act (“UPA”), found that when a partner leaves and joins another firm, the firm to which the attorney moves takes the representation of any of his clients “subject to” the terms of any agreements he had with his previous partners. The fiduciary duties in *Ruby* which GPFF alleges exist here arise under the UPA and only between partners. This duty under the UPA has no application here where Marrone was not a partner in GPFF.<sup>55</sup> Additionally, the *Ruby* decision is further distinguishable from the case herein as its holding is based exclusively upon the fiduciary duty owed by a *departing partner* to their former law firm during a winding up process of a *dissolving partnership*. These circumstances are absent in this case. Since Marrone was not a partner at GPFF, and since GPFF was not subject to a winding up process at the time of Marrone’s departure, the Smiley Action does not constitute “unfinished business” imposing upon Marrone a fiduciary duty with respect to GPFF upon his departure from the firm. Consequently, because there is no evidence of a fiduciary duty, Defendants’ Motion for Summary Judgment to Count III is granted and Plaintiff’s Motion for Summary Judgment is denied.

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<sup>55</sup> *Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.*, 137 A.3d 1247, 1258, 635 Pa. 427, 444–45 (Pa., 2016), citing *See* 15 Pa.C.S. § 8334(a) (providing that “[e]very partner must account to the partnership for any benefit and hold as trustee for it any profits ...”).

### III. The Claim for Conversion fails.

In Count V of the amended complaint, GPFf purports to state a claim for conversion. Conversion is a tort by which the defendant deprives the plaintiff of their right to a chattel or interferes with the plaintiff's use or possession of a chattel without the plaintiff's consent and without lawful justification. <sup>56</sup> "A plaintiff has a cause of action in conversion if he or she had actual or constructive possession of a chattel at the time of the alleged conversion." <sup>57</sup> Money may be the subject of conversion. <sup>58</sup> Referral fees, once they have been received, may be the subject of a conversion. <sup>59</sup> However, the failure to pay a debt is not conversion. <sup>60</sup>

Here, a claim for conversion does not lie against the Marrone Defendants. GPFf argues that it is entitled to a share of the Smiley Fee award based on the work performed on the file prior to Pierce's withdrawal and the costs it expended in the action. Because a dispute exists with respect to the money that is owed to GPFf, its share of the fee for the services it performed and reimbursement for costs expended, a claim for conversion does not exist. A failure to pay a debt, payment for work and reimbursement for costs, is not conversion. Based on the foregoing, the

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<sup>56</sup> *Pittsburgh Const. Co. v. Griffith*, 834 A.2d 572, 581 (Pa. Super. 2003), citing *Chrysler Credit Corporation v. Smith*, 434 Pa. Super. 429, 643 A.2d 1098, 1100 (1994), *appeal denied*, 539 Pa. 664, 652 A.2d 834 (1994).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* citing *Francis J. Bernhardt, III, P.C. v. Needleman*, 705 A.2d 875, 878 (Pa. Super. 1997) quoting *Shonberger v. Oswell*, 365 Pa. Super. 481, 530 A.2d 112, 114 (1987).

<sup>59</sup> *Id.*

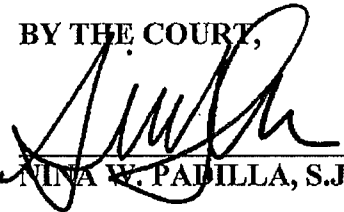
<sup>60</sup> *Id.*

claim for conversion fails and Defendants' Motion for Summary Judgment is granted and Plaintiff's Motion for Summary Judgment is denied. <sup>61</sup>

### CONCLUSION

Based on the foregoing, the Motions for Summary Judgment are granted in part and denied in part as set forth in this Court's Order.

BY THE COURT,



NINA W. PADILLA, S.J.

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<sup>61</sup> With respect to the claim for permanent injunction in count VIII, the claim is moot as monies have been placed in escrow per the Court's order on the Motion for Preliminary and Special Injunction. Defendants' Motion for Summary Judgment is granted.