[Cite as *Luper Neidenthal & Logan v. Unifirst Corp.*, 2015-Ohio-2542.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Luper Neidenthal & Logan,	:	
Plaintiff-Appellee,	:	
v.	:	No. 14AP-934 (C.P.C. No. 14CVH08-8969)
Unifirst Corporation,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 25, 2015

Luper Neidenthal & Logan, *Gregory H. Melick* and *Matthew T. Anderson*, for appellee.

Kohrman Jackson & Krantz, and *Luther L. Liggett, Jr.*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Defendant-appellant, UniFirst Corporation ("UniFirst"), appeals from the decision and entry of the Franklin County Court of Common Pleas denying UniFirst's motion to stay pending arbitration. For the reasons that follow, we affirm the decision of the trial court.

{¶ 2} On August 28, 2014, appellee, Luper Neidenthal & Logan ("LNL"), filed suit in the Franklin County Court of Common Pleas against its former client UniFirst for breach of contract, for unjust enrichment or quantum meruit, for an accounting, and for a declaratory judgment with respect to written fee agreements.

{¶ 3} LNL served as collection counsel for UniFirst. Each individual collection account was governed by a separate written fee agreement. For the most part, UniFirst's matters were handled on a contingent fee basis. (Complaint, ¶ 8, 15, 16.)

{¶ 4} On April 10, 2014, UniFirst changed legal counsel. In doing so, UniFirst directed LNL to transfer approximately 200 open files to the new legal counsel. (Complaint, ¶ 17-18.)

{¶ 5} LNL alleges that UniFirst has refused to pay LNL's attorney fees owed by UniFirst on the transferred contingent fee files. (Complaint, ¶ 25.)

{¶ 6} LNL also claims UniFirst has been unjustly enriched by receiving the benefit of LNL's legal services without having been paid for those services. (Complaint, ¶ 32.)

{¶ 7} UniFirst filed a motion to stay pending arbitration of the fee dispute before the Columbus Bar Association. The Columbus Bar Association, however, declined to become involved because litigation was already pending. The CBA indicated that "[w]e would consider conducting arbitration if both parties in this matter voluntarily agreed to arbitrate the fee dispute or if ordered by the court." (Sept. 26, 2014 CBA Letter.) The CBA went on to delineate limitations of the CBA Fee Arbitration Program, noting that the vast majority of its arbitrations involved small, straightforward fee issues under $5,000, and that the hearings were conducted by volunteer arbitrators and typically lasted no more than two hours. *Id.* The CBA noted that the process is informal, usually does not involve discovery, and the Rules of Evidence and Civil Procedure do not apply. *Id.*

{¶ 8} The CBA suggested that given the limitations of the program and the complexity of the dispute between LNL and UniFirst, the parties might want to consider using a professional arbitrator. Finally, the CBA stated that even if both parties consented to arbitration, the CBA Arbitration Committee may choose to decline the request to arbitrate.

{¶ 9} The trial court found that because the CBA declined to accept the matter for arbitration, there was no pending arbitration and therefore no reason to stay the matter. The trial court also agreed with LNL that arbitration was not mandatory because the dispute was not between attorneys as contemplated by Rule 1.5 of the Ohio Rules of Professional Conduct, but rather solely between LNL and UniFirst in regards to the attorney fees owed arising out of the written fee agreements between LNL and UniFirst. Thus, the trial court denied the motion to stay pending arbitration.

{¶ 10} UniFirst appealed, assigning the following single assignment of error:

> The trial court erred by not staying all litigation during bar association fee arbitration.

{¶ 11} UniFirst characterizes the underlying dispute as one between LNL and new legal counsel over a division of the contingency payments for the transferred files. UniFirst argues that arbitration is therefore mandatory, provides a complete remedy, and avoids litigation in keeping with the Supreme Court of Ohio's public policy. In support of these propositions, UniFirst cites *Shimko v. Lobe,* 103 Ohio St.3d 59, 2004-Ohio-4202.

{¶ 12} In *Shimko,* the Supreme Court of Ohio held that a fee dispute between lawyers in different firms is subject to mandatory, binding arbitration. *Shimko* at ¶ 26. *Shimko* does not, however, stand for the proposition that arbitration is mandatory in a fee dispute between a client and an attorney.

{¶ 13} In *In re Estate of Southard,* 193 Ohio App.3d 590, 2011-Ohio-836 (10th Dist.), this court held that the probate court lacked jurisdiction over a fee sharing dispute between lawyers from different firms who represented an estate in a wrongful death claim.

{¶ 14} The issue then is whether this dispute is between LNL and UniFirst over fees owed under their contingent fee agreement or whether the dispute is between LNL and new legal counsel for UniFirst over a division of the contingent fees paid to new legal counsel on files for which LNL performed services but nothing was collected until after April 10, 2014.

{¶ 15} It is alleged in the complaint that there are separate written fee agreements for each collection matter in dispute. But there is nothing in the record that shows any agreement between LNL and new legal counsel for UniFirst as to a division of fees.

{¶ 16} Rule 1.5 of the Ohio Rules of Professional Conduct provides in pertinent part:

> (e) Lawyers who are not in the same firm may divide fees only if all of the following apply:
>
> (1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the client;
>
> (2) the client has given written consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to

> the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the representation;
>
> (3) except where court approval of the fee division is obtained, the written closing statement in a case involving a contingent fee shall be signed by the client and each lawyer and shall comply with the terms of division (c)(2) of this rule;
>
> (4) the total fee is reasonable.
>
> (f) In cases of a dispute between lawyers arising under this rule, fees shall be divided in accordance with the mediation or arbitration provided by a local bar association. When a local bar association is not available or does not have procedures to resolve fee disputes between lawyers, the dispute shall be referred to the Ohio State Bar Association for mediation or arbitration.

{¶ 17} Even if LNL and new legal counsel disagree over a division of the contingency payments for the transferred files, UniFirst has a contractual responsibility to pay LNL under its contingency fee agreements. There is nothing in the record that indicates there is any type of agreement or fee splitting arrangement between LNL and new legal counsel for UniFirst as to how to divide fees for the transferred files.

{¶ 18} As such, reliance on Rule 1.5 of the Ohio Rules of Professional Conduct and its arbitration requirements is misplaced. Arbitration is not mandatory, the CBA has declined to accept the matter, and there is nothing for the trial court to stay.

{¶ 19} Based on the foregoing, we overrule the single assignment of error and affirm the decision and entry of the trial court.

Judgment affirmed.

KLATT and HORTON, JJ., concur.