[Cite as *Maxim Ents., Inc. v. Haley*, 2009-Ohio-5541.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

MAXIM ENTERPRISES, INC.	C. A. No. 24666
Appellees	
v.	APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
STEPHEN T. HALEY, et al.	
Appellants	CASE No. CV 2008 07 5093

DECISION AND JOURNAL ENTRY

Dated: October 21, 2009

WHITMORE, Judge.

{¶1} Defendant-Appellant, Stephen Haley, appeals from the judgment of the Summit County Court of Common Pleas. This Court affirms.

I

{¶2} Haley entered into multiple assignment agreements with various subcontractors and their respective entities whereby he agreed to pursue any contractual, statutory, or tort claims they might have against Maxim Enterprises, Inc. ("Maxim"), S2K, Inc., dba "Bargainlocks.com," and Steven Maxim, the president of both companies. While not an attorney, Haley previously had succeeded in obtaining accounts receivable claims from an unrelated company, litigating the claims, and sharing the judgment or settlement he received with the company. Haley and the subcontractors agreed that in exchange for the assignment of their claims, Haley would share fifty percent of any recovery he obtained with the subcontractors after first deducting his litigation expenses from the amount recovered. While it is not entirely

clear, it appears that one of Maxim's subcontractors informed Maxim of the arrangement that it had made with Haley and gave Maxim a copy of Haley's assignment agreement.

{¶3} On July 18, 2008, Maxim filed suit against Haley and the subcontractors with whom he entered into assignment agreements. The complaint contained numerous counts, but the counts relevant to this appeal were for declaratory judgment and injunctive relief. Specifically, Maxim sought: (1) a declaration that any of its subcontractors' purported assignments to Haley were invalid pursuant to the anti-assignment provisions in Maxim's subcontractor agreements; and (2) to enjoin Haley from litigating the purported assignments. The subcontractors retained counsel and filed separate answers, which contained several counterclaims against Maxim. Haley filed his answer pro se. Haley's answer included a third-party complaint, naming Steven Maxim and numerous affiliates of Maxim as third-party defendants, and a counterclaim. Haley directed the first ten counts in his counterclaim towards Maxim and its affiliates. Haley brought these counts as the assignee of any claims that the subcontractors might have against Maxim and its affiliates. Consequently, the counts paralleled the counterclaims that the subcontractors brought directly against Maxim through their retained counsel. The eleventh and twelfth counts in Haley's counterclaim were directed at Robert Simon, one of the subcontractors. Those counts alleged that Simon disclosed the terms of his assignment agreement with Haley to Maxim in contravention of the agreement and thereby entered into a civil conspiracy with Maxim for their mutual financial benefit.

{¶4} On January 2, 2009, Maxim filed a motion to strike Haley's answer, third-party complaint, and counterclaim as being in violation of R.C. 4705.01. Maxim argued that Haley's attempt to litigate the subcontractors' claims against Maxim for a fee under the color of assignment constituted the unauthorized practice of law. Subsequently, the majority of the third-

party defendants filed their own motions to strike Haley's pleadings on the same basis. On February 13, 2009, the trial court held a hearing on the motions to strike. On February 18, 2009, the court struck Haley's third-party complaint and the first ten counts of Haley's counterclaim because they amounted to the unauthorized practice of law.[1]

{¶5} Haley now appeals from the trial court's judgment and raises two assignments of error for our review. For ease of analysis, we consolidate the assignments of error.

II

Assignment of Error Number One

> "THE TRIAL COURT ERRORED (sic) AS A MATTER OF LAW BY STRIKING APPELLANT-DEFENDANT HALEY'S COUNTERCLAIM AND THIRD-PARTY COMPLAINTS FILED AS A RESULT OF ASSIGNMENTS TO HALEY OF THE CLAIMS WHICH SERVE AS A BASIS FOR THE COUNTERCLAIM AND THIRD-PARTY COMPLAINTS RESULTING IN HALEY BECOMING THE REAL PARTY IN INTEREST AS A RESULT OF THE ASSIGNMENTS REQUIRING THE CLAIMS TO BE BROUGHT IN HALEY'S NAME PURSUANT TO CIV.R. 17(A)."

Assignment of Error Number Two

> "DOES THE TRIAL COURT ERROR AS A MATTER OF LAW IN STRIKING APPELLANT-DEFENDANT HALEY'S REQUEST FOR DECLARATORY JUDGMENT FOUND IN HALEY'S COUNTERCLAIM AND THIRD-PARTY COMPLAINT WHEN HALEY HAD STATUTORY STANDING PURSUANT TO R.C. 2721.12(A) AND R.C. 2721.03[.]"

{¶6} In his first assignment of error, Haley argues that the trial court erred by striking his third-party complaint and counterclaim because his pursuit of the claims contained in those pleadings did not amount to the unauthorized practice of law. Specifically, Haley argues that he properly purchased the subcontractors' claims through assignment and pursued the claims in his

[1] The record reflects that on February 12, 2009 Haley attempted to dismiss "the seventh count of [his] counterclaim and third-party complaints as well as to [several] third-party defendants" pursuant to Civ.R. 41(A)(1)(a). Because Civ.R. 41(A)(1) only provides for the dismissal of all

own name. In his second assignment of error, Haley further argues that, at the very least, the trial court should have left intact the declaratory judgment count of his third-party complaint and counterclaim because he had standing to pursue such a claim as a "person interested under a *** written contract."

{¶7} Civ.R. 12(F) permits a trial court, upon a party's timely motion or upon its own initiative, to strike "from any pleading any insufficient claim or defense[.]" "Such a decision will not be reversed on appeal absent an abuse of discretion." *Kasapis v. High Point Furniture Co., Inc.*, 9th Dist. Nos. 22758 & 22762, 2006-Ohio-255, at ¶25, quoting *Akron v. Thrower* (Apr. 4, 2001), 9th Dist. No. 20270, at *3. Abuse of discretion connotes more than simply an error in judgment; the court must act in an unreasonable, arbitrary, or unconscionable manner. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶8} R.C. 4705.01 provides, in relevant part, as follows:

> "No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which the person is not a party concerned *** by using or subscribing the person's own name *** unless the person has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules."

"The practice of law includes 'the preparation of pleadings and other papers incident to action[s] and special proceedings and the management of such actions and proceedings *** before judges and courts.'" *In re Jerdine*, 8th Dist. No. 91172, 2008-Ohio-1928, at ¶5, quoting *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, paragraph one of the syllabus. A court has the authority to strike filings from the record when they are filed in contravention of R.C. 4705.01. *Talarek v. M.E.Z., Inc.* (Sept. 10, 1998), 9th Dist. No. 98CA007088, at *1.

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claims or counterclaims, however, Haley's attempted partial dismissal had no legal effect. *Ningard v. Shin-Etsu Silicones of Am., Inc.*, 9th Dist. No. 24524, 2009-Ohio-3171, at ¶7.

{¶9} Haley filed his third-party complaint and counts one through ten of his counterclaim based on assignments between himself and the subcontractors. The trial court determined that Haley's separate arrangements with the subcontractors amounted to "sham assignment[s] for the purpose of allowing a non-lawyer to pursue a lawsuit for another." Haley argues that the assignments were not a sham and that, because he purchased the subcontractors' claims through assignment, he had a right to litigate the claims pro se. He argues that he was not engaged in the unauthorized practice of law because the claims he pursued and the only interests he represented were his own.

{¶10} Haley testified about the agreements he made with the subcontractors at the hearing the trial court held on February 13, 2009. Haley testified that: (1) he initiated claims against Maxim and its affiliates as a result of the agreements he entered into with the subcontractors; (2) the agreements purported to assign him any contractual, statutory, or tort claims the subcontractors possessed against Maxim and its affiliates; (3) he did not pay the subcontractors any amount of money or otherwise compensate them in exchange for their claims; (4) the agreements entitled him to 50% of any recovery he received and entitled the subcontractors to the remaining 50% of the recovery; and (5) the agreement obligated him to incur the litigation expenses for pursuing the claims, but provided that the expenses would be deducted from any recovery received before the recovery was split 50/50. Although Haley did not use the exact same assignment agreement with each of the subcontractors, Haley testified that he did not believe there were any material differences between the agreements with regard to the foregoing compensatory arrangement.

{¶11} Haley's own testimony reveals that he essentially entered into a contingency fee arrangement with the subcontractors. A contingent fee is a "fee charged for a lawyer's services

only if the lawsuit is successful or is favorably settled out of court [and] *** [is] usu[ually] calculated as a percentage of the client's net recovery[.]" Black's Law Dictionary (8th Ed. 2004) 338. Pursuant to the agreements he executed with the subcontractors, Haley would receive compensation only in the event that he succeeded in obtaining a recovery against Maxim and/or its affiliates. Haley's compensation would be a percentage of any net recovery (the amount remaining after he reimbursed himself for the litigation expenses he incurred). If Haley did not succeed in obtaining a recovery, neither he, nor the subcontractors would receive any money or other compensation as a result of their arrangement and Haley would be out the litigation expenses. This arrangement is the very essence of a contingency fee arrangement. See, e.g., *In re Stillwell* (Apr. 10, 2000), 12th Dist. No. CA99-06-112, at *1; *Gaier v. Midwestern Group* (1991), 76 Ohio App.3d 334, 336.

{¶12} A non-lawyer may not litigate on behalf of another person to represent that person's separate and distinct interest. Such behavior constitutes the unauthorized practice of law. *Grenga v. Bank One, N.A.*, 7th Dist. No. 04 MA 94, 2005-Ohio-4474, at ¶39; *Heath v. Teich*, 10th Dist. No. 06AP-1018, 2007-Ohio-2529, at ¶11. Moreover, a person who is not authorized to practice law may not attempt to evade this prohibition by litigating on behalf of another under the guise of assignment. *Toledo Bar Ass'n v. Ishler* (1975), 44 Ohio St.2d 204, 206-07. Haley never had a relationship with or otherwise interacted with Maxim or any of its affiliates so as to give Haley a claim of his own against them. The subcontractors' claims were the only link between Haley, Maxim, and its affiliates. Haley did not, however, purchase the claims outright or hire an attorney to litigate the claims. Instead, he entered into a contingency fee arrangement with the subcontractors and attempted to litigate their separate and distinct claims himself, under the guise of assignment. Because such an arrangement constitutes the

unauthorized practice of law, the trial court did not err in striking Haley's third-party complaint and the first ten counts of his counterclaim. Haley's assignments of error lack merit.

III

{¶13} Haley's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

CARR, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

STEPHEN T. HALEY, pro se, Appellant.

DARREN W. DEHAVEN, MATTHEW FORTADO, and ROBERT F. MCNAMARA, Attorneys at Law, for Appellee.

TIMOTHY T. BRICK, Attorney at Law, for Appellee.

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