No. 129599

In the
Supreme Court of Illinois

ANDREW W. LEVENFELD AND ASSOCIATES, LTD.
and STEPHEN J. SCHLEGEL, LTD.,

Plaintiffs-Appellants,

v.

MAUREEN V. O'BRIEN and DANIEL P. O'BRIEN III,

Defendants-Appellees.

On Leave to Appeal from the Illinois Appellate Court
First Judicial District, No. 1-21-1638.
There Heard on Appeal from the Circuit Court of Cook County,
County Department, Chancery Division, No. 17 CH 15055.
The Honorable **Cecilia A. Horan**, Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFFS-APPELLANTS

JEREMY N. BOEDER
TRIBLER ORPETT & MEYER, P.C.
225 West Washington Street
Suite 2550
Chicago, Illinois 60606
(312) 201-6400
jnboeder@tribler.com

Counsel for Plaintiffs-Appellants
Andrew W. Levenfeld and Associates,
Ltd. And *Stephen J. Schlegel, Ltd.*

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NATURE OF THE CASE

This lawsuit involves a quantum meruit claim by two law firms, Stephen J. Schlegel, Ltd. and Andrew W. Levenfeld and Associates, Ltd. (together, "Plaintiffs"), by which they seek to recover the value of legal services provided to their former clients, Maureen V. O'Brien and Daniel P. O'Brien III (together, "Defendants"). Following a bench trial, Judge Cecilia A. Horan of the Circuit Court of Cook County rendered judgment in Plaintiffs' favor in the amount of $1,692,390.60.[1] In *Andrew W. Levenfeld & Associates, Ltd. v. O'Brien*, 2023 IL App (1st) 211638, the Appellate Court for the First Judicial District reversed the judgment in Plaintiffs' favor and remanded to the trial court to render a new award.[2]

ISSUES PRESENTED FOR REVIEW

1. Whether the Appellate Court erred in holding that the failure to obtain client consent to a fee sharing agreement between two law firms jointly representing a client renders a fee agreement entered into between both law firms and the client void *ab initio* and unenforceable as a matter of law.

[1] A copy of the trial court's Trial Memorandum and Order is included in the Appendix. (A.1-A.15.)

[2] A copy of the Appellate Court's opinion is included in the Appendix. (A.16-A.37)

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2. Whether the Appellate Court erred in holding that the failure to obtain client consent to a fee-split between two law firms jointly representing clients automatically precludes a trial court from considering the contingency rate agreed to between the clients and both law firms and memorialized in a written Attorney-Client Fee Agreement when rendering an award in *quantum meruit* for the reasonable value of legal services rendered.

STATEMENT OF FACTS

I. FACTUAL OVERVIEW

The instant lawsuit proceeded to a bench trial at which Judge Cecilia Horan heard five days of evidence, including the testimony of principals of both Plaintiff law firms, an associate attorney, a legal assistant, both Defendants, and retained expert witnesses for both Plaintiffs and Defendants. (R193-R2053.)[3] Below is a summary of the evidence adduced at trial.

A. Plaintiffs, Stephen J. Schlegel, Ltd. and Andrew W. Levenfeld and Associates, Ltd.

Plaintiffs are two law firms that represented Defendants in efforts to monetize Defendants' interests in various family assets. (C5332-C5334.) Attorneys Stephen J. Schlegel ("Schlegel") and Andrew W. Levenfeld

[3] Citations herein to pages within the Common Law Record begin with the letter "C". Citations to pages within the Report of Proceedings begin with the letter "R."

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("Levenfeld") are principals in their respective eponymous law firms; Schlegel has been licensed to practice law since 1969 and Levenfeld since 1973. (C1744-C1745, C5332; R293-R294.)

Schlegel's practice focuses on litigation, including litigating complex property, casualty, business and estate disputes. (R296.) His achievements include prosecuting civil claims in connection with the Richard Speck murders and serving as court-appointed lead counsel in the Agent Orange litigation. (R298-R299.)

Levenfeld has focused his nearly fifty years of practice on business and corporate work, business disputes, and other litigation, including contested probate work and real estate and mechanic lien litigation. (R1201.) His achievements include writing the Bangladeshi constitution and drafting a proposed constitution for Belarus. (R1201- R1202.)

B. Defendants, Maureen O'Brien and Daniel P. O'Brien III

Defendants Maureen V. O'Brien ("Maureen") and Daniel P. O'Brien III ("Dan") are two members of an O'Brien family that was involved in highly contentious legal proceedings among family members relating to family wealth, businesses and properties. (C1745, C5332.) Maureen was a daughter of Daniel P. O'Brien Sr. ("Dan Sr.") and Mary D. O'Brien ("Mary"), both deceased. (Id.) Dan is Maureen's nephew and a grandson of Dan Sr. and Mary. (Id.)

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C. Defendants' Family Assets and Family Disputes

During their lifetimes, Dan Sr. and Mary had accumulated a large number of properties and businesses, including parcels of real estate, nursing homes, restaurants and bars, as well as a golf course, a hotel, a storage business and fast food franchises. (R308.) They had six children: Margaret ("Peggy"), Maureen, Dan Jr., Patricia, Kathleen and Peter. (R312.)

Dan Sr. died in 2012. (R309.) After Dan Sr.'s death, Mary exercised a power of appointment to take the assets held in his trust and to transfer them into her trust. (R312.) Mary died within a year after Dan Sr. (R309.)

After Dan Sr. and Mary died, Maureen and Dan each held 25% interests in the family assets, valued in the tens of millions of dollars and held and controlled via a complex structure of estates, trusts and corporate entities, including a large number of limited liability companies, limited partnerships and a general partnership. (R. R306-R207, R308-R309, R326; C5332- C5333.) Ownership of the family assets was vested largely outside of the estates, but control over the entities that held the assets was vested in the estates, which Peggy and her husband, Richard Schulze ("Richard") controlled. (R315-R316.) Had the estates closed, control would have poured over into the trusts that Peggy also controlled as trustee. (R315-R316.) As a result, Peggy and her husband, Richard, had almost absolute control over the family assets, including in making distributions therefrom. (R306-R309.)

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D. Defendants' Need for Legal Representation

Before Defendants retained Plaintiffs, Peggy and Richard used their control over the family assets to freeze out Defendants from receiving any monetary benefit therefrom. (C5333.) Although Defendants had previously obtained income via their interests in the family assets, by the summer of 2015 Maureen and Dan were receiving no income via their respective 25% ownership interests in the family assets. (R323, R1574.)

Defendants had little or no other means of income or support and needed money to survive. (C5333, R323-R324.) Maureen's residence in Chicago had been foreclosed upon. (R324.) She had exhausted her 401(k) and had dwindling income from her real estate practice. (R1573.) She had health issues and outstanding medical bills. (R1581.) Dan had been reliant on income from family businesses but his income from those businesses had stopped and he was unable to pay judgments entered against him. (R323-324.) He had made a total of about $3,000-$4,000 between 2014 and 2016, all from selling items on eBay. (R1642.) He had no other income. (R1646.) He had only about $20,000-$30,000 in the bank. (R1646.) Neither Dan nor Maureen had the ability to pay their own bills. (R324.) Both sought to retain lawyers in order to monetize their interests in the family assets. (C5333, R1594.)

E. Defendants' Initial Communications with Plaintiffs

Maureen initially reached out to Schlegel in the summer of 2015 to consult with him about potentially representing her and possibly Dan

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regarding their family disputes. (R299.) Before an attorney-client agreement was signed on October 29, 2015, Schlegel told Dan and Maureen that he would not represent them unless they agreed that Levenfeld would serve as his co-counsel and thereby jointly represent them. (R1575, R332, R1656.) At trial, Maureen recalled that Levenfeld's involvement was a precondition to an attorney-client relationship, but could not recall whether this was discussed until they entered into the attorney-client agreement. (R1575-R1576.)

F. Risks of Engagement from Plaintiffs' Perspective

As a result of Defendants' illiquid condition, Defendants could not pay a retainer and would have been unable to pay legal fees if they had been charged and invoiced on a monthly basis. (C5333, R1238-R1239, R1586.) The parties stipulated at trial that Dan was unable to pay legal fees had they been charged and invoiced on a monthly basis. (C5333.) Both Dan and Maureen were receiving no income and had considerable debts. (R323-R324, R331-R332; R1570 R1573-R1574, R1642, R1646.) Maureen testified that she knew that the engagement would involve a significant amount of time by the law firms. (C4797-C4799; R1540.)

Under a contingency fee arrangement, Plaintiffs would risk zero recovery. (R1253.) Defendants each had undisputed 25% minority interests in the trusts, estates and other family asset vehicles but they had no control, leading to significant roadblocks to a monetary recovery. (R326, R1252-R1252.) Peggy was managing the estates and trusts and preferred paying her own son or other people such that there would be no net revenue paid to the

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equity owners. (R326.) Because the properties were being managed such that there was no net revenue and the properties were not being sold by the management, there were no revenues available to provide for income to any equity owner, including Dan and Maureen; the only way to monetize their interests would be to obtain relief from a court. (R327.) A court would not necessarily afford them relief; to do so, it would have to overturn the decisions made by Dan Sr. and Mary, who were ostensibly competent people, and it would also have to conclude that Dan and Maureen were being taken advantage of such that a legal remedy was needed. (R327-R328.) The court would either have to remove Peggy from control or compel the assets to be sold so that the beneficiaries could receive cash value. (R328.)

A further challenge was that in order to try to establish a basis for the foregoing, the lawyers would have to get access to the records regarding the family assets, which Peggy had prevented Dan and Maureen from accessing; only with the benefit of supporting information could they pursue claims of mismanagement and damages. (R349.)

Moreover, although probate estates were open relative to both Dan Sr. and Mary, the estates owned only a very small percentage of the family assets, so actions directed at the business entities in which the assets were held would have to be brought via suits for partition or to liquidate the business entities in chancery. (R340, R345.)

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If Plaintiffs were unsuccessful in their efforts to compel Peggy to make a distribution or settle, Defendants would continue to own equity in properties without receiving any revenues or income via their interests – they would be in the same position that they were in when they first came to Plaintiffs. (R341, R579.)

G. Parties' Negotiation of Attorney-Client Agreement

Plaintiffs discussed with Defendants how the lawyers could get paid given that Defendants were unable to pay a retainer or an hourly fee. (R1248.) In light of Defendants' inability to pay an hourly fee, Schlegel initially considered asking for a contingency fee of 25 to 30%, which he found to be usual and customary. (R339.) Plaintiffs and Defendants discussed a contingency arrangement and what would be an appropriate rate. (R1248.) Before entering into the attorney-client fee agreement, most of the discussions between Plaintiffs and Defendants were about the contingency clause, including what they each believed would be an appropriate rate. (R1248, R1583.)

Plaintiffs ultimately proposed a flat 15% contingency, (R339-R340, R875, R1248, R1250), which they memorialized in a proposed written attorney-client fee agreement. (R735-736; C5522-C5523.)

Defendants called Plaintiffs soon after receiving the proposed agreement, for the sole purpose of re-negotiating the contingency fee provision. (R1513-R1514, R1584, R1663.) According to Dan, he was trying to negotiate to "save [him]self 5 percent." (R1513-R1514.) Dan proposed, and Maureen agreed,

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that the contingency should call for 15% of the amount recovered up to $10,000,000 and 10% of the amount recovered in excess of $10,000,000. (R340, R1514-R1515.) After a brief phone discussion, Levenfeld and Schlegel agreed to Dan's proposal and sent a revised version of the proposed agreement containing the negotiated contingency rate. (R340, R1515, R1664; C4797-C4798.)

During the period of negotiation neither Dan nor Maureen ever expressed any confusion about the terms of what came to be the written agreement. (R341-R342.) When the written agreement was proposed to Dan and Maureen, neither of them expressed any confusion about the terms. (R342.) The only question that either Dan or Maureen had asked of Plaintiffs relative to the engagement agreement was their request, discussed above, to reduce the 15% flat contingency fee to 10% on any amounts recovered in excess of $10,000,000. (R342.)

H. Terms of Attorney-Client Agreement

The parties came to terms on an attorney-client agreement on October 29, 2015. (C1745-C1746.) The written attorney-client agreement was executed on the same day. (C5333, C5335-C5336.) The agreement provided, in pertinent part, that: "the total fees to be charged shall be … 15% of the first $10,000,000 and 10% of any additional value of the assets recovered for the clients." (C5335-C5336, C1745-C1746.)

The parties structured the engagement as a joint representation such that Levenfeld and Schlegel – and their respective law firms – each had direct

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professional obligations to the clients. (R344.) Before the attorney-client agreement was signed, Plaintiffs explained to Maureen and Dan that there would be lawyers from two different firms representing them. (R344.)

The attorney-client fee agreement did not identify how any contingency fee would be split between the two Plaintiff law firms, nor did any other writing provided to Defendants. (C5333.) However, Maureen and Dan knew that the Plaintiff law firms would be splitting fees; the way in which fees were split was not a significant issue to Maureen as she was going to be paying lawyers and it did not matter where her money went. (R539, R546.) Dan testified that he understood that Levenfeld and Schlegel were practicing in different firms and it did not particularly matter to him how fees would be split between the two firms. (R1502-R1503.)

Both Dan and Maureen were aware that they could go to either of Levenfeld or Schlegel if they had questions. (R347.) In fact, both Defendants called each of the lawyers from time to time. (R347.) Defendants testified that they understood that both lawyers would be representing both Defendants and that both lawyers would be responsible for the representation. (R1503, R1547, R1591.) Neither Defendant ever expressed any concern, displeasure or question about the nature of the arrangement in that there would be two firms representing them. (R344.)

I. Litigation: Strategy and Implementation

Defendants ultimately represented Plaintiffs over the course of approximately nineteen months and in nine pieces of litigation. (C1746-

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C1747, C4472-C4796.) Their time records reflect over 3,000 hours spent working on Defendants' behalf, including time spent by principals of both law firms, by an associate attorney, and by a legal assistant/paralegal. (C4235-C4353.)

Plaintiffs took various actions in probate court. The estates were being administered independently, which meant that the administrators and executors did not have to file reports or inventories, so Plaintiffs took action to convert the proceedings to supervised administrations, where they would also seek to remove the executors for mismanagement if they could establish grounds to do so. (R340-R341, R346-R347.) The probate court ultimately granted Plaintiffs' motion and terminated the independent administration, thereby turning both into supervised administrations, through which Plaintiffs succeeded in compelling the estate to produce books and records. (R347-R348.)

Plaintiffs filed petitions to remove Peggy and Richard as executor/co-executors of the estates and appealed the denial of the same. (C4472-C4477, C4766-C4780; R358, R557, R564.)

Plaintiffs filed a citation to recover assets (the "Citation") against Peggy's son, Jim West ("West"), in an effort to obtain discovery and possibly demonstrate that West had assets that belonged to the estates. (R562; R1210-R1211.) By doing so, they hoped to not only recover assets for the estates, but to put pressure on Peggy to settle. (Id.) Through the Citation, Plaintiffs obtained discovery from both Peggy and West. (R1211.)

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Plaintiffs also pursued claims on Defendants' behalf in chancery court. After being in pleadings disputes for a year, the parties engaged in document discovery. (R362, R368-R369.) Over Peggy's objections, Plaintiffs succeeded in obtaining a large volume of documents in discovery. (R329, R361.) They obtained over 10,000 documents including tax returns, checking account information and other data relating to 20-30 business entities, which they stored in approximately 30 file boxes as well as in electronic storage. (R363.)

To process and analyze the considerable amounts of document discovery, one of Schlegel's associate attorneys, Diola Xhaferri, and a paralegal/legal assistant, Hilary Rushe, sometimes along with Maureen and Dan, reviewed, organized, analyzed and summarized the documents as they came in. (R361.) This organization, including Rushe's creation of summaries and a chronology as part of a 118-page binder, was an ongoing process essential to their strategy. (R364-R366). Through their analysis, Plaintiffs learned more about how the family assets were held and specifically how the family interests were structured through various limited liability companies and limited partnerships. (R361-R362.) They also learned that Peggy was paying her son, West, a large sum of money to manage certain family assets. (Id.)

Plaintiffs also actively defended retaliatory claims that Peggy and Richard had filed against Dan and Maureen. (R361-R363.) Peggy filed various lawsuits against Dan and Maureen in Berrien County, Michigan. (C4472-C4796) Because Dan and Maureen could not afford to hire counsel in Michigan,

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Schlegel found and paid Michigan-licensed lawyers who appeared on Defendants' behalf. (R372-R373; C4472-C4796.) Plaintiffs also appeared in and actively defended lawsuits that Peggy's husband, Richard, filed in federal court seeking to recover legal fees that he had paid on Defendants' behalf relative to other legal matters. (R564; C4781-C4785.)

J. Communications Between Plaintiffs and Defendants Throughout Engagement

Both Dan and Levenfeld testified that Levenfeld had numerous communications with Dan and Maureen over the course of the representation, including at least weekly phone calls with Dan. (R1208-R1209; R1503.) Dan acknowledged that the lawyers and clients would also communicate via email and at meetings that occurred once to twice a month. (R1677.) If there was a development in the matters, either Levenfeld or Schlegel would update both clients. (R1209-R1210.)

K. Settlement Negotiations

When Defendants hired Plaintiffs, Defendants had never received a settlement offer from Peggy. (R620.) However, during the course of Plaintiffs' representation of Defendants, a number of settlement offers and demands were exchanged between Peggy's counsel and Plaintiffs, as counsel for Defendants. (C5334.)

Early in the engagement, Dan received a settlement offer of around $5,000,000 to $6,000,000 – he thought that Peggy was trying to buy him off cheap and rejected the proposal. (R375.) Peggy then made a second offer—for

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$6,000,000—to Dan, alone, which he also rejected. (R375-R378; C4204-4206.) Plaintiffs also met with Peggy's counsel and engaged in unsuccessful settlement negotiations primarily structured around a potential transfer of family-owned real estate to Maureen and Dan. (R378- R379.)

About a year into the engagement, in September of 2016, Peggy made a settlement offer of $12,000,000 to Dan and Maureen. (R380; C4207.) Defendants rejected the offer. (R380-R381.)

On April 5, 2017, Plaintiffs issued a settlement demand on Defendants' behalf in the amount of $18,300,000. (R381-R390; C4208-4209.) Peggy responded on April 11, 2017, with a counteroffer of $15,440,000. (R382-R383, R1214-R1215; C4210-4211, C6091-6092.) In the offer letter, Peggy's counsel referred to the gap in settlement negotiations as having "closed significantly." (R1215; C4210-4211; C6091-6092.) He also referred to the offer as the "final counterproposal" and requested a response by "the close of business Thursday," April 14, 2017. (R1424-R1426; C4210-4211, C6091-6092.)

Plaintiffs promptly sent the settlement offer to Defendants, who rejected it, at least in part based on Maureen's disappointment that the offer would require her to vacate her home on Kluver Road in New Buffalo, Michigan, which was a family asset under Peggy's control. (R393; R1215-R1217.)

On April 18, 2017, Plaintiffs recommended that Defendants make a counter-demand, expressing urgency in doing so. (R394-R395, R1219-R1221; C4213-4216.) Plaintiffs sent Defendants a proposed counter-demand letter

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that day. (C4213-C4216; R384-385). The next day, Defendants approved the counter-demand and it was promptly sent to Peggy's counsel. (R1219-R1221; C4217-4218.) There, they demanded $17,106,662. (R1222; C4217-C4218.) Under the terms of their counter-demand, Peggy would be permitted to purchase the Kluver Road home for $350,000, which Plaintiffs knew was important to Maureen. (R386; C4217-C4218.)

On May 1, 2017, Peggy responded to the $17,106,662 demand. (R387; C4221-C4222.) Peggy increased her offer from $15,440,000 to $16,250,000 but refused to make an accommodation to Maureen regarding the Kluver Road home. (R387; C4221-C4222, C5334.)

Plaintiffs promptly sent Peggy's offer to Defendants; later that day, Maureen responded that she would not agree a settlement that required her to vacate the Kluver Road home. (C6072-C6076; R631-R633.) Schlegel promptly responded that a decision needed to be made as to whether to "accept, reject or counter the proposal." (C6072-C6076; R619-R621.) He suggested that they should agree to the $16,250,000 figure but counter-demand and ask for the Kluver Road home in addition. (R388- R389.)

Defendants never gave Plaintiffs the authority to respond to Peggy's May 1, 2017, offer. (R1377.) On May 10, 2017, Peggy's lawyer communicated that all offers were withdrawn. (R1377; C5334, C6090.)

On May 15, 2017, Plaintiffs again proposed to Defendants that they should make a counter-demand. (R1508-R1509.) Plaintiffs sent Defendants a

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proposed counter-demand letter that would seek $16,750,000 and Maureen would have option to purchase the Kluver Road home. (R1419-R1422, R1509-R1510; C4230-4233.) Dan and Maureen never approved the issuance of this demand. (R1422, R1510; R390.)

Before Defendants fired Plaintiffs on May 25, 2017, Levenfeld continued to have informal settlement discussions with Peggy's lawyer, including discussing how they could reach a resolution that would keep Maureen in her Kluver Road home. (R1378, R1382.)

L. Defendants Fire Plaintiffs

Defendants terminated Plaintiffs as their lawyers on May 25, 2017. (C5334.)

M. Defendants' Retention of New Counsel and Settlement

On or about June 30, 2017, Dan engaged the law firm of Gardiner Koch Weissberg & Wrona ("GKWW") to represent him in connection with the matters that Plaintiffs had previously handled. (C5334.) On or about July 5, 2017, Maureen engaged GKWW for the same purpose. (C5334.)

Following Defendants' hiring of GKWW to replace Plaintiffs, Levenfeld and Schlegel cooperated with Defendants' new lawyers. (R395.) With the assistance of GKWW, Defendants settled with Peggy about two weeks after Maureen retained the new law firm. (C5334.) On July 21, 2017, a term sheet memorializing the general terms of the settlement agreement was executed. (C5334.) Under the terms of the settlement, Dan and Maureen would receive

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total consideration in the amount of $16,850,000, to be split evenly between the two. (R. 1490, R1532.)

To Dan and Maureen's knowledge, before settling their claims GKWW never did any legal work other than engaging in settlement negotiations and performing related due diligence on Defendants' behalf. (R1492-1493, R1499-R1500, R1533- R1534.) GKWW did not appear for either Defendant in any of the eight pieces of then-pending trial-court-level litigation prior to settlement. (C4478-C4796.) Defendants paid GKWW a $500,000 flat fee. (R1685; C5334.)

Defendants never paid Plaintiffs for either their legal services or costs advanced by Plaintiffs. (C1749, C5334.)

When Defendants refused to pay Plaintiffs for the value of the Plaintiff's legal work and further refused to reimburse Plaintiffs for legal expenses incurred in the representation, Defendants sued under a *quantum meruit* theory. (C1743-C1754, C5334.)

N. Expert Testimony

In addition to the evidence summarized above, both parties presented expert testimony at trial. Plaintiffs' expert, John Brooks, is a trusts and estates litigator with Foley & Lardner where he charges clients a minimum of $870/hour, which he testified is consistent with the rates charged by other lawyers at similar firms for such work when billed on an hourly basis. (R1009, R1065.) Brooks testified that the contingency fee structure agreed to between Plaintiffs and Defendants is reasonable and consistent with the usual and customary charges for like matters. (R1055-R1056.) He relied on

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the fact that the contingency rate was negotiated between Plaintiffs and Defendants; that a rate of 15% of the first $10,000,000 recovered and 10% of any additional amount is "very reasonable" within the practice of complex trusts, estates and business litigation, where lawyers will sometimes use the one-third rate that is common in many types of litigation; and that there was no guarantee of success – even if successful, it could have taken many years to obtain a favorable outcome. (R1055-R1056.)

Brooks also testified that Plaintiffs' work benefited Defendants in that it gave them the leverage necessary to settle for $16,850,000. (R1057-R1058.) He further opined that Levenfeld and Schlegel were experienced, skilled and highly qualified lawyers, (R1055), and that Plaintiffs' work entailed performing considerable work over a significant amount of time, (R1054-R1055), and explained how the underlying litigation was complex, novel and difficult. (R1035-R1037, R1053-R1054).

II. THE TRIAL COURT JUDGMENT

At the conclusion of the bench trial conducted before Judge Horan, on November 19, 2021, the trial court issued a 15-page Trial Memorandum and Order. (C6277-C6291.) There, the trial court made detailed findings, including that Defendants benefited from Plaintiffs' work, that Plaintiffs were entitled to recovery in *quantum meruit*, that Plaintiffs' violation of Rule 1.5(e) was "technical" in nature and therefore did not preclude or limit Plaintiffs' recovery in *quantum meruit*, and that an application of the

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quantum meruit factors entitled Defendants to an award of $1,692,390.60. (Id.)

The trial court calculated this figure by applying the agreed-to contingency rate to the settlement achieved shortly after Plaintiffs' discharge, adding a small amount of unreimbursed costs, and subtracting the $500,000 flat-fee paid to successor counsel. (Id.)

Defendants appealed.

III. The Appellate Court Opinion

On March 16, 2020, the Appellate Court issued an opinion affirming the trial court's judgment in part, reversing the judgment in part, and remanding to the trial court for further proceedings. ¶¶ 56-58.[4] The Appellate Court reached three separate holdings in rendering its opinion.

First, and as a premise for its second holding, the Appellate Court held that a violation of Rule 1.5(e) by failing to obtain client consent to a fee-sharing agreement between lawyers renders "unlawful" and "unenforceable *ab initio*" a fee agreement entered into between lawyers and clients. ¶ 44. In reaching this conclusion, the Appellate Court relied upon *Donald W. Fohrman & Associates, Ltd. v. Mark D. Alberts, P.C.*, 2014 IL App (1st) 123351, ¶ 44, in stating that "strict compliance with Rule 1.5 is mandatory." ¶ 44.

[4] Citations beginning "¶" or "¶¶" are to paragraphs of the Appellate Court's opinion.

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Second, after having concluded that a violation of the fee-splitting provision in Rule 1.5(e) renders an attorney-client fee agreement unenforceable *ab initio*, the Appellate Court held that although a recovery in *quantum meruit* may be permitted despite a Rule 1.5(e) violation, the trial court, sitting as a court of equity and finder of fact, was prohibited from assessing a reasonable fee under a *quantum meruit* theory by reference to the contingency rate agreed to between the parties and memorialized in the attorney-client fee agreement. ¶¶ 39-45.

In reaching the foregoing conclusion, the Appellate Court relied primarily on the out-of-state decision in *Chambers v. Kay*, 56 P.3d 645, 647-48, 655-59 (Cal. 2002), in which the California Supreme Court rejected a lawyer's attempt to recover from another lawyer "the entire fee provided for in the fee-sharing agreement [with the other lawyer] as a proper *quantum meruit* determination" where the fee-sharing agreement between lawyers violated an ethics rule "substantially like Rule 1.5(e)." ¶¶ 41-42 (quoting *Chambers*, 56 P.3d at 658). The Appellate Court cited to language in *Chambers* in which the California court stated that it "perceive[d] no legal or policy justification for finding that the fee the parties negotiated without the client's consent furnishes a proper basis for a *quantum meruit* award in this case." ¶ 659 (quoting *Chambers*, 56 P.3d at 658.) The Appellate Court found the analysis in *Chambers* to be "consistent with Illinois law, which is clear that strict

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compliance with Rule 1.5 is mandatory." ¶ 44 (citing *Fohrman,* 2014 IL App (1st) 123351, ¶ 44).

The Appellate Court acknowledged that Illinois courts have "routinely awarded" lawyers recoveries in *quantum meruit* by reference to contingent fee rates agreed to between lawyers and clients where the clients fired their lawyers shortly before settlements were reached, referencing this Court's opinion in *Rhoades v. Norfolk & Western Ry. Co.*, 78 Ill. 2d 217, 230 (1979), appellate court decisions in *DeLapaz v. SelectBuild Construction, Inc.*, 394 Ill. App. 3d 969, 973-74 (1st Dist. 2009); *Wegner v. Arnold*, 305 Ill. App. 3d 689, 693 (2d Dist. 1999); and *Whalen v. Shear*, 190 Ill. App. 3d 84, 87 (3d Dist. 1989); and the Seventh Circuit decision in *Dobbs v. DePuy Orthopaedics, Inc.*, 885 F.3d 455, 459 (7th Cir. 2018). ¶ 44. However, the Appellate Court found the foregoing cases to be distinguishable based on its conclusion that here, unlike in those cases, the contingency fee agreement between Plaintiffs and Defendants "was unenforceable *ab initio* because it violated Rule 1.5(e)." ¶ 44.

Although the Appellate Court held that the trial court lacked the power to assess a reasonable fee by reference to the contingency fee agreement negotiated between Plaintiffs and Defendants, in a third holding the Appellate Court concluded that the evidence presented at trial supported the trial court's finding that Plaintiffs' legal work conferred a benefit upon

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Defendants and that Plaintiffs were therefore entitled to recover the reasonable value of their legal work in *quantum meruit*. ¶¶47-51.

The Appellate Court remanded the case to the trial court to render an award in *quantum meruit* "based on the relevant factors involved in determining the reasonable value of services rendered." ¶ 56.

STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal pursuant to Supreme Court Rules 301 and 315. On November 19, 2021, the trial court entered an order entering judgment in favor of Plaintiffs and against Defendants. Defendants filed original and amended Notices of Appeal on December 17, 2021. The Illinois Appellate Court, First Judicial District, Fourth Division, issued its opinion on March 16, 2023. A petition for rehearing was not filed. On April 20, 2023, Plaintiffs filed a timely petition for leave to appeal within 35 days of the Appellate Court's March 16, 2020, opinion. On September 27, 2023, this Court granted Plaintiffs' petition.

STANDARD OF REVIEW

When a trial court makes a ruling as to a reasonable fee to be awarded to a lawyer based on a fee petition heard by the trial court, the appellate court will review that decision for an abuse of discretion. *See, e.g.*, *Vandenberg v.*

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RQM, LLC, 2020 IL App (1st) 190544, ¶ 27, appeal denied, 159 N.E.3d 966 (Ill. 2020). However, a different standard applies here, as this case did not involve a lawyer's fee petition. Because this appeal stems from a judgment rendered following a bench trial, the trial court's finding should be reversed only if it is against the manifest weight of the evidence.

Unlike the discretion afforded a trial court in ruling on a fee petition, the fact finding of the trial court at a bench trial will not be disturbed unless it is against the manifest weight of the evidence. *Jameson Real Estate, LLC v. Ahmed*, 2018 IL App (1st) 171534, ¶ 59. "In a civil trial, the necessity of legal services performed and the reasonableness of the amount charged are questions of fact [and] the trial judge, sitting as the trier of fact, decides these issues based on the weight of the competent evidence." *Wildman, Harrold, Allen & Dixon v. Gaylord*, 317 Ill. App. 3d 590, 599 (1st Dist. 2000) (internal citations omitted). As such, when "determining the reasonableness of attorney fees in a bench trial, the trial judge sits as the trier of fact and does not exercise 'broad discretionary powers.' " *Id.* at 598. For this reason, "a trial judge cannot abuse his discretion by determining that attorney fees are reasonable in a civil trial on the merits because 'discretion has nothing to do with the issue.' " *Id.* (quoting *Buckner v. Causey*, 311 Ill. App. 3d 139, 142 (1st Dist. 1999). Rather, the trial court's findings, including its finding as to what constituted a reasonable fee, shall not be disturbed unless they are against the manifest weight of the evidence. *Id.* at 595-99.

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In *Wildman*, the court explicitly rejected both parties' contention that the findings of a trial judge sitting as trier of fact in determining the reasonableness of legal fees to be awarded should be reviewed for an abuse of discretion. *Id.* at 595-99. The court pointed out that although findings in fee petition cases are within the sound discretion of the trial court, the same standard should not be applied to review findings of a trial judge sitting as the trier of fact in a bench trial. *Id.* at 597. Rather, the court employed a "manifest weight of the evidence" standard in reviewing a judgment following a bench trial. *Id.* at 597-99.

"A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002). This standard affords great deference to the trial court as the trial court is in a superior position to determine and weigh the credibility of the witnesses, to observe their demeanor, and to resolve conflicts in their testimony. *Jameson*, 2018 IL App (1st) 171534, ¶ 59. Under the manifest weight standard, the reviewing court may not reweigh the evidence or make an independent determination of the facts. *Id.* at ¶ 59.

"When contradictory testimony that could support conflicting conclusions is given at a bench trial, an appellate court will not disturb the trial court's factual findings based on that testimony unless a contrary finding is clearly

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apparent." *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 859 (1st Dist. 2008).

The Appellate Court incorrectly applied a *de novo* standard of review. The Appellate Court wrote that "[w]hether a particular remedy is precluded as a matter of law is an issue we review *de novo*." ¶ 34 (citing *Edward Atkins, M.D., S.C. v. Robbins, Salomon & Patt, Ltd.*, 2018 IL App (1st) 161961, ¶ 57). But in ruling that the trial court could not consider the contingency rate in render an award in quantum meruit, the Appellate Court did not consider whether the remedy—quantum meruit—was precluded by law.

The trial court did address the question whether recovery in quantum meruit should be precluded by law, but Defendants did not appeal the trial court's ruling on this issue and it was not addressed by the Appellate Court. Defendants argued in the trial court that Plaintiffs' failure to comply with the fee-splitting provision of Rule 1.5(e) should bar Plaintiffs' ability to recover in quantum meruit. (C6281-823; A.5-A.7.) The trial court rejected this argument. (Id.) In its opinion, the Appellate Court correctly noted that "Defendants do not argue that the rule violation in this case was so egregious as to preclude the award of a reasonable fee via quantum meruit." ¶ 39.

ARGUMENT

In vacating the judgment entered by the trial court, the Appellate Court erred in two respects, each of which merits reversal.

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First, the Appellate Court improperly premised its ruling on the idea that an attorney-client fee agreement is rendered void and unenforceable *ab initio* where lawyers fail to obtain client consent to a fee-sharing agreement. Although Illinois law has long held that such a failure renders the fee-sharing agreement itself unenforceable, and although Illinois law would support the conclusion that terms of the fee-sharing agreement should not be given effect via a quantum meruit claim, neither Illinois law nor public policy support the Appellate Court's ruling.

Second, the Appellate Court's ruling improperly usurps the trial court's role as both a court of equity and finder of fact, best positioned to fashion a fair and reasonable remedy. By holding that a trial court charged with determining a reasonable fee may not even consider the parties' own agreement as to what would constitute a reasonable fee, the Appellate Court created a broad rule of universal application that is entirely disconnected from the equities of any given case. As discussed in greater detail below, this Court should reverse the Appellate Court's opinion and affirm the judgment entered by the trial court.

A client may terminate his or her attorney at any time, either with or without cause. *In re Estate of Callahan*, 144 Ill.2d 32, 37 (1991). When clients terminate their counsel before a recovery is made, the contingency fee agreement between lawyer and client is likewise terminated and rendered unenforceable. *Will v. Northwestern Univ.*, 378 Ill. App. 3d 280, 303 (1st Dist.

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2007). The discharged attorney is entitled to be paid a reasonable fee on a quantum meruit basis for the legal work performed prior to termination. *Rhoades v. Norfolk & Western Ry. Co.*, 78 Ill. 2d at 230.

Quantum meruit means, "literally, 'as much as he deserves.'" F*irst National Bank v. Malpractice Research, Inc.*, 179 Ill. 2d 353, 365 (1997) (quoting *Romanek-Golub & Co. v. Anvan Hotel Corp.*, 168 Ill. App. 3d 1031, 1041 (1st Dist. 1998)). "Quantum meruit is based on the implied promise of a recipient of services to pay for those services which are of value to him." *Callahan*, 144 Ill. 2d 32 at 40. It "is an equitable remedy [citation], which allows the circuit court to use its broad discretion in arriving at what it determines to be the reasonable value of the discharged attorney's services." *Seiden Law Group, P.C. v. Segal*, 2021 IL App (1st) 200877, ¶ 29.

In awarding fees under a quantum meruit theory, courts often consider the following factors: (1) the time and labor required; (2) the attorney's skill and standing; (3) the nature of the cause and the difficulty of the issues involved, including the amount at issue; (4) the novelty and difficulty of the subject matter; (5) the attorney's degree of responsibility in managing the case; (6) the usual and customary charge for that type of work in the community; and (7) the benefits resulting to the client (the "*Callahan*" factors). *Callahan*, 144 Ill. 2d at 44. *See also*, Ill. R. Prof. Conduct 1.5(a) (eff. Jan. 1, 2010).

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Courts of equity are not required to consider only the foregoing factors when assessing the reasonable value of legal services in a quantum meruit analysis; rather, courts have been encouraged to consider what the attorneys and clients considered fair and reasonable at the outset of the engagement.

Following this Court's opinion in *Rhoades v. Norfolk & Western Ry. Co.*, 78 Ill. 2d 217, 230 (1979), courts of equity have long been permitted to award as quantum meruit damages the entire contingent fee of a lawyer who has done most of the work in a case but is discharged shortly before a settlement is reached. *See, e.g., DeLapaz*, 394 Ill. App. 3d at 975 (affirming award of 30% contingency fee less fees due to successor counsel on quantum meruit basis to firm that "performed the bulk of the work prior to discharge based on the amount and nature of the work performed."); *Wegner*, 305 Ill. App. 3d at 694-96 (reversing trial court award of less than discharged lawyer's one-third contingency rate where successor lawyer settled client's case shortly after original lawyer's discharge); *Whalen*, 190 Ill. App. 3d at 86-87 (affirming award in amount of full one-third contingency rate on quantum meruit basis where the amount offered and ultimately accepted in settlement was "attributable to the efforts primarily if not exclusively of the discharged attorney").

In *Rhoades*, this Court cited favorably to a decision of the California Supreme Court in explaining that "a finding that the entire contract fee is the reasonable value of services rendered" serves the dual objectives of both

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"protect[ing] the client's right to discharge the attorney and also acknowledg[ing] the attorney's right to fair compensation for work performed." *Rhoades*, 78 Ill. 2d at 230 (citing *Fracasse v. Brent*, 6 Cal.3d 784, 100 Cal.Rptr. 385, 494 P.2d 9 (1972)).

For the reasons discussed above, courts of equity sitting as triers of fact have been permitted to look to the parties' own agreed contingency rate structure when assessing the reasonable value of legal services provided by lawyers discharged shortly before settlement. Here, the trial court, sitting as both a court of equity and finder of fact, was best positioned to fashion a fair, equitable outcome under the circumstances. The trial court found the reasonable value of Plaintiffs' services by reference to the contingency fee only after engaging in a careful analysis of each of the "*Callahan*" factors, including finding that "[Defendants] handled the cases from their inception through termination, expended significant resources in representing their clients over months and years, and there were no significant changes in the pre-termination settlement offer terms to the posttermination acceptance terms," and only after "taking into account Defendants' own views as to what would be fair and reasonable at the outset of the engagement" in the form of the contingency fee structure. (C6289-91; A.13-A.15.)

The Appellate Court erred when it substituted its judgment for that of the trial court, thereby usurping the trial court's role as both a court of equity and as finder of fact. In holding that the trial court erred in finding a

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reasonable fee by reference to the contingency rate agreed to by the parties, the Appellate Court engaged in a two-step analysis. First, the court concluded that Plaintiffs' violation of Rule 1.5(e)[5] of the Illinois Rules of Professional Conduct of 2010 ("Rule 1.5" and, generally, the "Rules" or a "Rule") rendered the attorney-client fee agreement "void *ab initio*" in its entirety, including the contingency fee structure set forth therein. ¶ 44. Second, the Appellate Court held that because the attorney-client fee agreement was void *ab initio*, the trial court was precluded as a matter of law from considering the contingency rate set forth therein. ¶¶ 39-45.

As discussed below, the Appellate Court erred in each step of its analysis. Each error independently merits reversal of the Appellate Court's opinion and affirmance of the judgment entered by the trial court.

I. The Appellate Court Erred in Deeming the Entirety of an Attorney-Client Fee Agreement Void *Ab Initio* and Unenforceable Based on a Failure to Disclose a Fee Split in Violation of Rule 1.5(e)

The Appellate Court erred in deeming the entirety of an attorney-client fee agreement—including not only any fee-splitting provisions but that portion of the agreement that set forth a fee structure that complies with the requirements of Rule 1.5(a) and Rule 1.5(d)(2)—void *ab initio* and

[5] Rule 1.5 was adopted on July 1, 2009, effective January 1, 2010, and was then amended on March 1, 2023, with an effective date of July 1, 2023. The new version of Rule 1.5 moves what was previously subsection (e) to subsection (f). The language of what was previously Rule 1.5(e) and is now Rule 1.5(f) was not affected by the amendment. References herein to Rule 1.5(e) are to the version of the Rule effective January 1, 2010.

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unenforceable based on a failure to disclose a fee split in violation of the fee-splitting provisions in Rule 1.5(e). The new rule adopted by the Appellate Court is without precedent and serves to undermine public policy by rendering unenforceable fair, reasonable fee agreements negotiated between attorneys and their clients.

Rule 1.5(a) provides that attorneys may not charge unreasonable fees and sets forth a list of eight factors that should be considered in determining the reasonableness of a fee. Ill. R. Prof. Conduct 1.5(a) (eff. Jan. 1, 2010); *Wildman*, 317 Ill. App. 3d at 601. The Rule 1.5(a) factors closely parallel the seven "*Callahan*" factors applicable to quantum meruit claims involving legal fees, *see Callahan*, 144 Ill. 2d at 41, and were addressed in that context by the trial court in rendering judgment. (C6289-91; A.13-A.15.) The trial court found that all such factors, as well as Defendants' own belief that the agreed contingency rate was fair and reasonable, supported an award by reference to the agreed contingency rate. (Id.)

With some exceptions not applicable here, Rule 1.5(d)(2)[6] provides that legal fees may be contingent upon the outcome of the legal matter and sets forth certain requirements for charging contingency fees, including that the

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[6] Rule 1.5 was adopted on July 1, 2009, effective January 1, 2010. The Rule was amended on March 1, 2023, with an effective date of July 1, 2023. The new version of Rule 1.5 moves what was previously subsection (c) to subsection (d)(2). The substance of what was previously Rule 1.5(c) and is now Rule 1.5(d)(2) was not affected by the amendment. References herein to Rule 1.5(d)(2) are to the current version of the Rule, effective July 1, 2023.

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method by which such a fee is to be determined, such as the percentage payable to the lawyer, must be set forth in a writing signed by the client. Ill. R. Prof. Conduct 1.5(d)(2) (effective Jan. 1, 2010).

In this case, there was no dispute that the attorney-client contingency fee agreement between Plaintiffs and Defendants complied with Rule 1.5(d)(2). The agreement was signed by both Maureen and Dan and clearly sets forth the contingency rate, as follows:

> The total fees to be charged shall be either 15 % of the first $10,000,000 and 10% of any additional value of the assets recovered for the clients, or the amount of charges made for time expended, whichever is greater. The term "assets recovered' shall mean the fair market value of any property, real, personal, or inchoate, transferred from the Estates or businesses in which Clients currently own percentage interests, to the ownership of the Clients or either of them. (C5333, C5335.)

Although Plaintiffs complied with Rule 1.5(a) and Rule 1.5(d)(2) in charging and disclosing a reasonable contingency fee, their failure to disclose a fee-split between the two Plaintiff firms violated Rule 1.5(e), which relates to fee-splitting between firms.

Rule 1.5(e) provides that a division of a fee between lawyers who are not in the same firm may be made only if:

> (1) the division is in proportion to the services performed by each lawyer, or if the primary service performed by one lawyer is the referral of the client to another lawyer and each lawyer assumes joint financial responsibility for the representation;
>
> (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and
>
> (3) the total fee is reasonable.

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Ill. R. Prof. Conduct 1.5(e) (eff. Jan. 1, 2010).

On summary judgment and again at trial, Defendants asked the trial court to bar Plaintiffs' recovery due to the admitted violation of Rule 1.5(e). Under Illinois law, an attorney may be required to forfeit some or all of the attorney's compensation for a matter when the attorney has engaged in a "clear and serious violation of duty to a client[.]" Restatement (Third) of the Law Governing Lawyers ("Restatement") §37 (2000). "Whether a quantum meruit recovery is barred should depend on the egregiousness of the particular conduct involved[,]" and is a "matter for the trial court to determine in its discretion." *Much Shelist Freed Denenberg & Ament, P.C. v. Lison*, 297 Ill. App. 3d 375, 381-82 (1st Dist. 1998) (citations omitted). The question of whether an attorney's conduct warrants forfeiture of "recovery in quantum meruit is a matter committed to the discretion of the trial court." *Anderson v. Anchor Org. for Health Maint.*, 274 Ill. App. 3d 1001, 1007 (1st Dist. 1995). *See also, Much Shelist,* 297 Ill. App. 3d at 382 (declining to bar recovery in quantum meruit despite a "technical" violation of Rule 1.5 for failure to obtain a client signature on a fee agreement and noting that "[w]hether an attorney acted egregiously should be a matter for the trial court to determine in its discretion.").

On summary judgment and again at trial, the trial court declined to bar or otherwise limit Plaintiffs' recovery due to what the trial court found was a

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"technical" violation of the Rules that was neither egregious nor prejudicial to Defendants or the administration of justice. (C6282.)

As the trial court also found, (C6283), Defendants knew that Plaintiffs were two different firms and that Plaintiffs would share fees but did not care how fees would be split between the two. (R344, R347, R1503, R1547, R1591.) Defendants also knew both that lawyers at both Plaintiff law firms would be responsible for handling their legal matters, (id.), and that Schlegel would not represent them unless Levenfeld – principal of the other Plaintiff law firm – would join him in representing Defendants, (R332, R1575, R1656). During the engagement, Defendants communicated regularly with the principals of both Plaintiffs regarding their legal issues. (R1208-R1209, R1503.) Defendants suffered no harm as a result of the failure to comply with the strict terms of Rule 1.5(e).

As the trial court ruled, "Defendants have failed to meet their burden of demonstrating Plaintiffs' violation of Rule 1.5 was sufficiently egregious to preclude quantum meruit recovery or that such recovery would be prejudicial to Defendants or the administration of justice." (C6283.) Defendants did not appeal the trial court's findings or ruling on these points. See ¶ 39 ("Defendants do not argue that the rule violation in this case was so egregious as to preclude the award of a reasonable fee via quantum meruit.").

Although the trial court applied longstanding Illinois precedent in considering whether the egregiousness and effect of the ethical violation should

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bar or otherwise limit Plaintiffs' ability to recover in quantum meruit, and although Defendants did not challenge the trial court's findings or conclusion on that point, the Appellate Court fashioned a new rule under which it reversed the trial court's award based on the ethical violation, anyway.

The Appellate Court erred in holding that the failure to obtain client consent to a fee-splitting arrangement between two firms jointly representing a client renders the attorney-client fee agreement negotiated between lawyers and their clients unenforceable as a matter of law. The Appellate Court's holding finds no support in precedent and runs counter to established public policy.

Illinois law has long stood for the proposition that lawyers' failure to obtain client consent to a fee-splitting agreement in violation of Rule 1.5(e) renders the fee-splitting agreement between lawyers unenforceable. *See, e.g., Naughton v. Pfaff*, 2016 IL App (2d) 150360, ¶ 1; *Fohrman*, 2014 IL App (1st) 123351, ¶ 1; *Daniel v. Aon Corp.*, 2011 IL App (1st) 101508, ¶ 22; *Thompson v. Hiter*, 356 Ill. App. 3d 574, 590 (1st Dist. 2005); *Schniederjon v. Krupa*, 162 Ill. App. 3d 192 (5th Dist. 1987). However, prior to the Appellate Court's opinion in this case, no published Illinois decision stood for the proposition that a violation of Rule 1.5(e) for failure to disclose a fee-splitting arrangement would also automatically render the otherwise fair, reasonable and ethical fee agreement between lawyer and client void and unenforceable *ab initio*.

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The Appellate Court's opinion takes a rule based on sound legal footing—a fee-splitting agreement that itself violates Rule 1.5(e) should be unenforceable both in fact and in effect—and extends it beyond its rational and logical purpose. The Appellate Court's opinion will have absurd, unintended and unfair consequences. Clients will refuse to pay fair and reasonable legal fees to which they agreed at the outset of engagements as they seek to utilize technical violations of ethical rules to avoid their own responsibilities. Trial courts, unable to even consider agreements between attorneys and their clients, will be compelled to render fee awards inconsistent with attorneys' and clients' reasonable expectations.

As noted above, it has long been held that a fee-splitting agreement between lawyers will be unenforceable as a matter of law if it violates Rule 1.5(e)'s requirement that the terms of the fee-splitting arrangement must be agreed to by the client and memorialized in writing. Public policy strongly supports such a rule. However, the Appellate Court's extension of the foregoing to invalidate attorney-client fee agreements—those fee agreements negotiated between and agreed-to by attorneys and their clients—finds no such support in public policy. In fact, the Appellate Court's rule undermines the public policy of this state.

Rule 1.5(e) " 'embod[ies] this state's public policy of placing the rights of clients above and beyond any lawyers' remedies in seeking to enforce' fee-sharing arrangements.'" *Fohrman*, 2014 IL App (1st) 123351, ¶ 35 (quoting

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Romanek, 324 Ill. App. 3d at 399). Rule 1.5(e) is "designed to protect the client," and, thus, for any fee-sharing arrangement to be enforceable, "the attorneys involved in the agreement must strictly comply with Rule 1.5(e)." *Ferris, Thompson, & Zweig, Ltd. v. Esposito*, 2016 IL App (2d) 151148, ¶11, aff'd, 2017 IL 121297.

Rule 1.5(e)'s requirement that lawyers must obtain client consent to a fee-sharing arrangement, including the proportion by which the lawyers will share in the total fee, serves to protect clients in multiple respects. Requiring client consent to fee-sharing arrangements ensures that clients, rather than lawyers, decide who will be responsible for the representation. *Id.* at ¶ 38 (Rule 1.5(e) "require[s] disclosure of [fee-sharing agreements] in order to preserve a client's right to be represented by the attorney of his or her choosing.") By requiring clients to consent to the fee-split between the lawyers, clients have control over not only which lawyers have responsibility for handling their legal matters, but to what degree. *See Phillips v. Joyce*, 169 Ill. App. 3d 520, 529 (1st Dist. 1988) (holding that the predecessor to Rule 1.5(e) "lead[s] to greater accountability," "protect[s] the client from unearned or excessive fees" and "ensures that the attorney will have the incentive to use his best efforts to resolve the case"). The disclosure requirement contained within Rule 1.5(e) also "protects the client from unearned or excessive fees" such that "[n]o attorney whom the client has not retained will

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be entitled to payment from the client via a secret deal with the client's attorney." *Id.*

By rendering undisclosed fee-sharing arrangements unenforceable, attorneys have a strong incentive to ensure that clients are aware of the roles played by each lawyer, whether acting as referring and handling lawyer, as equal co-counsel, or in some other relationship. Otherwise, they risk forfeiting a fee in whole or in part. And in such cases, the "punishment fits the crime," as the undisclosed fee-sharing agreement is itself rendered unenforceable without otherwise affecting the attorney-client relationship.

The aforementioned public policies are furthered not only by a rule requiring client consent to fee-sharing agreements, but by causing deficient fee-sharing agreements—those to which the clients have not consented and of which the clients may not even be aware—to be unenforceable as a matter of law, either in contract or in principle, via the doctrine of quantum meruit. *See, e.g., Naughton*, 2016 IL App (2d) 150360, ¶ 64 (discussing public policy basis for invalidating and rendering unenforceable fee-sharing agreements that violate Rule 1.5(e)); *Schniederjon*, 162 Ill. App. 3d 192, 195 (same). *See also*, *Chambers v. Kay*, 56 P.3d 645, 658 (Cal. 2002) (holding that where failure to disclose fee-split to client rendered fee-sharing agreement between attorneys unenforceable in contract, failure to disclose fee split also precludes lawyer from recovering from co-counsel in quantum meruit.)

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But the same public policy considerations do not support the proposition that a deficient fee-sharing agreement should render unenforceable an otherwise fair, reasonable and valid attorney-client fee agreement—an agreement of which the client is not only aware, but to which the client has explicitly and expressly agreed. Rather, precluding the enforcement of a negotiated, fair and reasonable fee agreement between attorney and client only serves to undermine strong public policy interests.

In Illinois, public policy strongly favors the freedom to contract. *Holstein v. Grossman*, 246 Ill. App. 3d 719, 726 (1st Dist. 1993), opinion supplemented on denial of reh'g (July 6, 1993). As with the parties to any other contract, lawyers and their clients should be able to freely negotiate fair and reasonable fee structures that best suit the needs and interests of both lawyers and clients.

If a fair and reasonable fee structure negotiated between lawyer and client at arm's length and in good faith is automatically rendered unenforceable due to an ethical violation entirely unrelated to the fairness of the agreed fee structure, clients will be incentivized to refuse to pay negotiated legal fees, very likely resulting in frequent litigation and increased costs to be borne by the lawyers, their clients, the court system and the public. Lawyers who are concerned about the ability to enforce reasonable fee structures in attorney-client fee agreements will be incentivized to pass along that risk to the consumers – their clients – by charging higher fees to offset

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the possibility that agreed fees will be reduced or denied or that the lawyers will have to engage in litigation before getting paid.

Further, there is no reason to render unenforceable the entirety of an attorney-client fee agreement because one aspect of the engagement – the lawyers' agreement to share fees between them – is unenforceable as against public policy. It is already the case that, in Illinois, courts will not enforce contract terms that violate public policy. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill.2d 460, 482 (1998) (citing *American Federation of State, County & Municipal Employees v. Department of Central Management Services*, 173 Ill.2d 299, 317-18 (1996); and *Beneficial Development Corp. v. City of Highland Park*, 161 Ill.2d 321, 330-31 (1994)). It is entirely consistent with this rule to deem unenforceable, either in contract or in quantum meruit, fee-sharing agreements that fail to comply with the fee-sharing requirements set forth in Rule 1.5(e). It is also entirely consistent with this rule to deem unenforceable attorney-client fee agreements that call for an unreasonable fee in violation of Rule 1.5(a), which provides that legal fees shall be "reasonable" and sets forth factors by which the reasonableness standard shall be judged. Ill. R. Prof. Conduct 1.5(a) (eff. Jan. 1, 2010). But it is inconsistent with this rule to render unenforceable contract terms that do not themselves violate public policy, including that portion of an attorney-client fee agreement that sets forth a fee structure consistent with the reasonableness requirements of Rule 1.5(a).

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Before the Appellate Court rendered its decision, no previous published opinion in this state stood for the proposition that clients should be able to avoid paying an agreed-upon fee—a fee that the clients not only agreed to, but which complies in every respect with Rule 1.5(a) and Rule 1.5(d)(2)—solely because the lawyers failed to obtain client consent to manner by which the total agreed fee would be divided between the lawyers.

But the law of this state does support a proposition contrary to the Appellate Court's new rule. A client is responsible for paying the entire agreed contingency fee regardless of a violation of the fee-splitting provisions of Rule 1.5(e). *See Bennett v. GlaxoSmithKline LLC*, 2020 IL App (5th) 180281. In *Bennett*, an original attorney, Johnson, represented a large set of clients in "bundled" litigation against a medication manufacturer under a 40% contingency fee agreement. *Id.* at ¶¶ 1, 5, 6, 39. The original attorney, Johnson, later brought on co-counsel, Baum, to assist. The two entered into a fee-sharing agreement by which they would split the total contingency fee between them. *Id.* at ¶ 10. Although the two lawyers memorialized their arrangement between themselves, they did not but obtain client consent to their arrangement. *Id.*

Eventually, the relationship between Baum and Johnson broke down, at least in part due to disputes over fees relative to a set of clients referred to as the "JLF" plaintiffs. *Id.* When the clients' claims eventually settled, Johnson claimed entitlement to the full 40% contingency, but the trial court ordered

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that a portion of the total legal fee be held in the court's registry, in part pending resolution of Baum's claim to a portion of the total fee under his fee-sharing agreement with Johnson. *Id.* at ¶¶ 37, 39. Via a motion for summary judgment, Johnson objected to Baum's claim under the fee-sharing agreement and urged the court to distribute the remainder of the full contingency fee to him. *Id.* at ¶ 39. The fee dispute eventually proceeded to hearing, at which the court awarded Baum a portion of the legal fees held in the court's registry and ordered the remainder paid to Johnson. *Id.* at ¶ 46.

Johnson appealed, arguing that Baum was entitled to no portion of the total legal fee because the fee-sharing agreement between Baum and Johnson violated Rule 1.5(e). *Id.* at ¶ 49. The appellate court agreed with Johnson, holding that the Rule 1.5(e) violation rendered the fee-sharing agreement unenforceable as against public policy and reversing the trial court order awarding Baum a portion of the sum held in the court's registry pending resolution of his fee claim. *Id.* at ¶ 56. Notably, rather than ordering that share of the clients' recovery held in the court's registry paid to the clients themselves, the appellate court ordered that portion of the clients' recovery paid to Johnson, effectively enforcing the 40% contingency fee agreement even though both Johnson and Baum had violated Rule 1.5(e) in failing to obtain client consent to a fee-sharing agreement that the court held was unenforceable. *Id.* at ¶ 60. The appellate court noted that, in ordering that portion of the funds to be remitted to Johnson, "we are not excusing

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Johnson's inaction. We are simply upholding the public policy to protect the interests of the clients above the remedies of the attorneys." *Id.* at ¶ 60.

Bennett stands for the proposition, as discussed above, that although public policy interests require rendering unenforceable fee-sharing agreements that violate the fee-splitting provisions in Rule 1.5(e), the violation should not result in a fair, reasonable and agreed fee structure set forth in an attorney-client fee agreement also being rendered void *ab initio* and unenforceable on public policy grounds or otherwise.

Here, the Appellate Court erred in holding that the attorney-client contingency fee agreement between Plaintiffs and Defendants was unenforceable *ab initio*, although the fee structure set forth therein complied in all respects with Rule 1.5, as it called for a reasonable total fee in accord with Rule 1.5(a) and the contingent nature of the fee structure was properly documented and agreed to by the clients as set forth in Rule 1.5(d)(2).

The Appellate Court reversed the judgment in Plaintiffs' favor premised solely upon a conclusion that the attorney-client fee agreement—an agreement that was not even enforced in this quantum meruit case—was void *ab initio* and unenforceable in its entirety, including the contingency fee structure contained therein, due solely to Plaintiffs' failure to obtain client consent to a fee-splitting arrangement. For the reasons set forth above, the Appellate Court erred in holding that the attorney-client fee agreement was

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void *ab initio*; therefore, this Court should reverse the Appellate Court's ruling on this point and affirm the judgment entered by the trial court.

II. The Appellate Court Erred in Divesting the Trial Court of Its Equitable and Fact-Finding Powers to Assess the Reasonable Value of Legal Services Under a Quantum Meruit Analysis.

A trial court of equity called upon to assess a reasonable fee should be encouraged to consider a fee structure that the lawyers and clients believed was fair and reasonable, especially where the fee structure also comports with Rule 1.5(a) and Rule 1.5(d)(2). Although a fee calculated by reference to such an agreed fee structure may not always be warranted, the trial court is in the best position to make such a decision. This is because the trial court can engage in a "close observation of the attorney's work and [has a] deeper understanding of the skill and time required in the case." *Serpico v. Spinelli*, 2013 IL App (1st) 120898, ¶ 16 (citation omitted). A trial court "may also use the knowledge it has acquired in the discharge of professional duties to value legal services rendered" and rely on other evidence presented at trial in determining whether the fees requested are reasonable. *Johns v. Klecan*, 198 Ill. App. 3d 1013, 1022 (1st Dist. 1990).

Here, the Appellate Court erred in holding that the failure to obtain client consent to a fee-sharing agreement between two lawyers jointly representing a client renders the attorney-client fee agreement unenforceable and thereby precludes the trial court from considering the contingency rate agreed to between the clients and both law firms as a basis for rendering an award in

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quantum meruit. The Appellate Court's ruling improperly divests the trial court of its equitable and fact-finding powers in favor of a broad rule unrelated to the facts of each individual case.

The Appellate Court justified its holding based on a conclusion that the parties' beliefs were memorialized in an attorney-client fee agreement that violated the ethical rules. In reaching this conclusion, the Appellate Court's relied on the California decision in *Chambers v. Kay*, 56 P.3d 645. The Appellate Court's reliance on *Chambers* is misplaced.

Chambers stands for the proposition that a trial court may not render an award in *quantum meruit* by reference to a fee-splitting structure agreed to between lawyers but unethical and unenforceable because it was never disclosed to the clients. *Id.* at 658. There, one lawyer sought to recover from another lawyer under their own fee-splitting agreement, which was unethical and unenforceable because it was not disclosed to the client. *Id.* at 657-658. The fee-splitting agreement itself violated the ethical rules, rendering it unjust to permit an award by reference to that very fee-splitting agreement, either in breach of contract or *quantum meruit*. *Id.*

In its opinion, the Appellate Court found compelling language in *Chambers* in which the California court stated that it "perceive[d] no legal or policy justification for finding that the fee the parties negotiated without the client's consent furnishes a proper basis for a *quantum meruit* award in this

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case." ¶ 659 (quoting *Chambers*, 56 P.3d at 658.) But the Appellate Court failed to recognize a critical distinction between this case and *Chambers*.

In *Chambers*, the court held that there was no justification for awarding a lawyer a split of a fee by reference to a fee-splitting arrangement negotiated between lawyers without the client's knowledge or consent, in violation of the rules of ethics. In this case, unlike in *Chambers*, the trial court awarded the lawyers a fee not by reference to the undisclosed fee-splitting arrangement between lawyers but by reference to a disclosed, negotiated, and agreed contingency fee structure. The contingency fee structure was not unethical in any way.

Here, as the trial court found after addressing the seven "*Callahan*" factors and considering "Defendants' own views as to what would be fair and reasonable at the outset of the engagement," a reasonable fee should be assessed by reference to the agreed contingency fee structure. (C6290-C6290.) That contingency fee structure was negotiated and agreed to in compliance with Rule 1.5(d)(2). It also complied with the reasonableness requirements of Rule 1.5(a). The trial court found the contingency structure to be reasonable only after hearing expert testimony that the agreed contingency fee structure—15% of the first $10,000,000 recovered and 10% of any excess—was well within the range of reasonable, usual and customary charges for like services. (R1055-R1056.) In fact, Plaintiffs' expert opined that a one-third rate—about three times higher than the negotiated rate—would

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have been consistent with usual and customary charges. (R1055-R1056.) Schlegel similarly opined that a rate of 25%-30% would have been consistent with usual and customary charges for similar legal work. (R339.)

Unlike the fee-splitting structure at issue in *Chambers*, the contingency fee structure in this case was itself in no way undisclosed, unconsented-to, or unethical.

As discussed above, in considering the contingency fee structure that the parties found to be fair and reasonable, the trial court acted in accord with this Court's opinion in *Rhoades*, 78 Ill. 2d 217. As set forth in *Rhoades*, there are legal and public policy grounds for permitting a trial court to assess a reasonable fee in *quantum meruit* by reference to the "contract fee" agreed to by the parties. (C6290-C6291.)

The Appellate Court's opinion improperly removed from the province of the trial court the decision whether to consider, and what weight to afford, testimony and other evidence regarding the parties' own beliefs as to what would constitute a reasonable fee, where that fee structure was in no way unethical and, in fact, comported with fair, reasonable, usual and customary fees for like services. For this reason, the Appellate Court erred in holding that a trial court of equity may not consider a fee structure agreed to by lawyers and clients, reasonable under Rule 1.5(a), and properly documented under Rule 1.5(d)(2), when assessing a reasonable fee in quantum meruit.

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Therefore, this Court should reverse the Appellate Court's ruling on this point and affirm the judgment entered by the trial court.

CONCLUSION

For all of the foregoing reasons, Plaintiffs-Petitioners Andrew W. Levenfeld and Associates, Ltd., and Stephen J. Schlegel, Ltd., respectfully request that this Court reverse the opinion and judgment of the Appellate Court insofar as it reverses the judgment of the trial court and affirm the judgment of the trial court entered on November 19, 2021, or, in the exercise of supervisory authority, vacate that portion of the Appellate Court's opinion and judgment reversing the trial court's judgment and remand to the Appellate Court for further proceedings.

Respectfully submitted,

/s/ Jeremy N. Boeder
One of the Attorneys for Plaintiffs-Appellants Andrew W. Levenfeld and Associates, Ltd., and Stephen J. Schlegel, Ltd.

Jeremy N. Boeder
TRIBLER, ORPETT & MEYER, P.C.
225 West Washington Street
Suite 2550
Chicago, Illinois 60606
(312) 201-6400
jnboeder@tribler.com

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b) and Rule 315(h). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), contains 48 pages.

/s/ Jeremy N. Boeder
Jeremy N. Boeder

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APPENDIX

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

ANDREW W. LEVENFELD AND ASSOCIATES, LTD. and STEPHEN J. SCHLEGEL, LTD., Plaintiffs,	)	
v.	)	No. 2017 CH 15055
MAUREEN V. O'BRIEN and DANIEL P. O'BRIEN III, Defendants.	)	

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TRIAL MEMORANDUM AND ORDER

This matter comes to be heard for ruling on the issues presented at the trial of this matter.

I. Introduction

Plaintiffs, Stephen J. Schlegel, Ltd., and Andrew W. Levenfeld and Associates, Ltd., are both Illinois professional corporations engaged in the practice of law in Chicago, Illinois. Stephen J. Schlegel ("Schlegel"), an attorney licensed to practice law in Illinois since 1969, is the owner of Stephen J. Schlegel, Ltd. Andrew W. Levenfeld ("Levenfeld"), an attorney licensed to practice law in Illinois since 1973, is the owner of Andrew W. Levenfeld and Associates, Ltd. Defendants, Maureen V. O'Brien ("Maureen") and Daniel P. O'Brien III ("Dan"), are two of several members of an O'Brien family involved in legal proceedings among family members relating to family wealth, businesses and properties.

Plaintiffs' Second Amended Verified Complaint seeks an award sounding in *quantum meruit* for attorneys' fees for time expended in representing Defendants in connection with their efforts to monetize their interests in various O'Brien family trusts and estates. Defendants deny that Plaintiffs are entitled to fees due to the fact that they terminated Plaintiffs prior to any recovery in accordance with the terms of the parties' contingency fee agreement ("CFA"); furthermore, they have filed affirmative defenses in which they claim Plaintiffs are precluded from recovery because, first, Plaintiffs failed to disclose to them the manner in which fees would be shared in violation of Rule 1.5 of the Illinois Rules of Professional Conduct ("Rule 1.5"); second, Plaintiffs unduly influenced Defendants to enter into the CFA; and, third, Plaintiffs have unclean hands for various reasons discussed more fully below.

The issues which must be resolved are the following:

1. Whether Plaintiffs have proved entitlement to attorneys' fees in *quantum meruit*;
2. Whether Plaintiffs' admitted violation of Rule 1.5 precludes recovery of attorneys' fees;
3. Whether the facts support Defendants' affirmative defense of undue influence;

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4. Whether the facts support Defendants' affirmative defense of unclean hands; and,
5. The amount of Plaintiffs' entitlement to fees in *quantum meruit* recovery, if any.

A bench trial proceeded on May 17 – 20 and June 11, 2021. The Court has considered the evidence presented, the arguments made, and the law on these issues, and hereby finds as follows:

II. Findings of Fact

Maureen is a daughter of Daniel P. O'Brien Sr. ("Dan Sr.") and Mary D. O'Brien ("Mary"), both deceased. Dan is a grandson of Dan Sr. and Mary. Maureen is Dan's aunt. During their lifetimes, Dan Sr. and Mary accumulated a large number of properties and businesses. Dan Sr. died in 2012 and Mary died in 2013. Dan Sr. and Mary had complex estate plans, and each passed away leaving estates and various trusts. Margaret ("Peggy"), another daughter of Dan Sr. and Mary, was the sole executor of Dan Sr.'s estate. Maureen, Peggy, and Peggy's husband, Richard Schultz ("Richard") were the executors of Mary's estate.

At all relevant times, there were four equal ownership interests in the family assets of 25% each held by Maureen, Dan, Peggy and the two sons of another child of Dan Sr. and Mary (12.5% each, but considered one interest-holder for simplicity, here). The four interest-holders did not have equal control over the assets. Rather, Peggy and Richard had almost absolute control, including control over distributions. Although Maureen and Dan had previously received an income from their interests in the family assets, by the summer of 2015, Peggy, acting for the estates and trusts, refused to pay Maureen and Dan any income and refused to buy their interests for anything approaching their value as estimated by Defendants. [1]

Maureen and Dan sought legal counsel from Schlegel in order to monetize their interests in the family assets. Maureen first met with Schlegel in July 2015. At that meeting, she provided him with a large bag of documents and later provided him with additional documents. During this time, he reviewed thousands of documents provided by Maureen and examined court files in order to understand the relationships of the parties and the disputes. Due to the complexity of the issues, Schlegel told Maureen and Dan he would not accept the case unless Levenfeld, an estates and trusts attorney, would agree to work on the matter with him, to which they agreed.

Schlegel and Levenfeld understood prior to accepting the assignment that the total net value of the family assets was between $40 million and $80 million. The assets were valued at $52 million for tax purposes. This valuation was performed by Maureen, who is a real estate broker.

Neither Maureen nor Dan had the ability to pay ongoing legal fees and both had substantial debt. On October 29, 2015, Plaintiffs and Defendants entered into the CFA. The relevant portions of the CFA state:

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[1] In the context of this and all related litigation, the Court understands that Peggy was acting with authority from and as a representative of the family estates and trusts.

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> Clients agree to pay minimum attorneys fees calculated at an hourly rate of $300 per hour for Andrew W. Levenfeld's and/or Stephen J. Schlegel's time, $250 per hour for associate attorney time, and $85 per hour for paralegal or paraprofessional time . . .
>
> Periodically and on request at any reasonable time, the attorneys will generate invoices for fees and expenses . . .
>
> The minimum fee to be charged in any event for time spent prior hereto, and hereafter shall be the sum of $30,000.
>
> The total fees to be charged shall be either 15% of the first $10,000,000 and 10% of any additional value of the assets recovered for the clients, or the amount of charges made for time expended, whichever is greater . . . .
>
> Any party hereto may terminate this agreement upon reasonable advance notice.

During the period of their engagement, Plaintiffs were responsible for handling Defendants' legal matters over multiple pieces of litigation, including actions in the probate and chancery divisions in the Circuit Court of Cook County, in the U.S. District Court for the Northern District of Illinois, in the First District Appellate Court, and in Berrien County, Michigan. Plaintiffs represented the O'Briens as plaintiffs, and also as defendants, in what has been characterized as retaliatory litigation initiated by Peggy. They developed and implemented a strategy that included having Maureen resign as a co-executor, actions to remove Peggy and her husband as executors, petitions to convert the estates from independent administration to supervised administration, actions seeking to partition the family assets for distribution, and a petition to recover assets against Peggy's son, who, it was alleged, improperly received assets belonging to the estates.

Plaintiffs were successful in having Maureen resign as co-executor and terminating the independent administration of the estates, thereby turning them into supervised administrations. The court denied Plaintiffs' petition to remove Peggy and Richard as co-executors of the estates, which was affirmed on appeal. Significant motion practice and exchange of discovery ensued in the partition actions, and, ultimately, some or all of the claims were dismissed. The petition to recover assets against Peggy's son was still pending when Plaintiffs were terminated.

At the time of Plaintiffs' engagement, there had never been a settlement offer from Peggy. Shortly after the engagement, Dan received two offers of between $5 and $6 million, which he rejected. Dan testified that at an unspecified time, Plaintiffs made a demand of $40 million on behalf of both Defendants. In September 2016, Defendants received an offer totaling $13.3 million, which they rejected. On April 5, 2017, Defendants issued a demand of $18.3 million. Peggy responded on April 11th with a "final" counter-offer of $15.44 million, and requested a response by the close of business on April 14th. Maureen and Dan did not accept the offer, but on April 17th, they sent a demand totaling $17,106,662, that included a provision allowing Maureen to purchase the home in which she resided, and for which the title was held by one of the trusts. On May 1st, Peggy responded with an offer totaling $16,250,000, with no provision that Maureen could keep the

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home. On May 8th, Plaintiffs provided Defendants with their recommended demand totaling $16,750,000. Defendants did not authorize Plaintiffs to issue the proposed demand. When Defendants did not respond to their May 1st offer by May 10th, Peggy withdrew all offers. On May 25th, in an email from Defendants' new attorneys, Defendants advised Schlegel and Levenfeld that their engagement was terminated.

On July 21, 2017, Defendants accepted $16,850,000 in settlement. The O'Briens agreed to pay their new attorneys a flat fee of $500,000 to settle the case.

III. Legal Discussion and Conclusions of Law

A. Plaintiffs Entitlement to Attorneys' Fees in *Quantum Meruit*

Quantum meruit means, literally, "as much as he deserves." *First National Bank v. Malpractice Research, Inc.*, 179 Ill. 2d 353, 365 (1997). *Quantum meruit* is an equitable theory under which a party can obtain restitution for the unjust enrichment of another, permitting a plaintiff to recover the value of the work performed even if the plaintiff cannot recover under a contract. *Patrick Engineering, Inc. v. City of Naperville*, 2011 IL App (2d) 100695, ¶ 47.

Quantum meruit relief is founded on the implied promise of a recipient who received services of value to pay for those services, and relief is available when the equities demand in light of the specific circumstances. *Barry Mogul & Associates*, 267 Ill. App. 3d 742, 749-50 (2d Dist. 1994). As such, "*quantum meruit* is based on the implied promise of a recipient of services to pay for those services which are of value to him." *In re Estate of Callahan*, 144 Ill. 2d 32, 40 (1991). In other words, *quantum meruit* relief "is available when one party has benefitted from the services of another under circumstances which, according to the dictates of equity and good conscience, he ought not to retain such benefit." *Barry Mogul & Associates*, 267 Ill. App. 3d at 750.

To state a claim for *quantum meruit*, a plaintiff must present facts showing that: (1) the plaintiff performed a service to benefit the defendant; (2) the plaintiff performed that service non-gratuitously; (3) defendant accepted the service; and, (4) no contract existed to prescribe payment of the service. *Owen Wagener & Co. v. U.S. Bank*, 297 Ill. App. 3d 1045 (1st Dist. 1998).

Defendants do not seem to dispute that the second, third and fourth factors for *quantum meruit* recovery have been met here: although the CFA was not effective after its termination, its very existence proves that Plaintiffs intended to perform legal services non-gratuitously; Defendants accepted those services and authorized Plaintiffs to act on their behalf in multiple pieces of litigation and during settlement negotiations with Peggy's attorneys; and, it has been stipulated that Defendants terminated Plaintiffs' engagement on May 25, 2017, before settlement was reached, and thus, the terms of the CFA are not effective to prescribe payment of the legal services rendered. Defendants' argue only that Plaintiffs' efforts did not confer a benefit on Defendants.

This argument is contrary to the evidence in the record. During the period of their engagement, Plaintiffs reviewed thousands of documents, formulated a litigation strategy, and engaged in multiple lawsuits on Defendants' behalf, including in state and federal court cases. Defendants argue that certain of Plaintiffs' litigation tactics failed; however, global success on the matters

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undertaken is not the yardstick by which a benefit conferred should be measured in this case. When they retained Plaintiffs, the O'Briens were receiving no benefit whatsoever from their combined 50% interest in the family assets. Over the next 19 months, Plaintiffs obtained progressively larger settlement offers, and three weeks before they were terminated, on May 1, 2017, Peggy offered to settle for $16,250,000.

Defendants argue that instead of conferring a benefit, Plaintiffs harmed the O'Briens because their "back-of-the-napkin" estimation of the value of the estates and trusts anchored the O'Briens into a settlement range that was far below the fair market value of their interests in the assets. While Defendants did adduce evidence that Plaintiffs did not retain a professional to perform a valuation of the assets, they presented no affirmative evidence supporting their theory that the settlement amount they accepted was significantly below the fair market value of their interests.[2] This argument is purely speculative.

Less than two months after Plaintiffs were terminated, Defendants accepted $16,850,000 in settlement. The ultimate settlement amount was clearly based in significant part on the pressure Plaintiffs brought to bear on Peggy though their litigation efforts. Defendants have presented no alternative theory for why Peggy eventually agreed to settle. There is simply no merit in Defendants' claim that they did not receive a valuable benefit from Plaintiffs' work. Plaintiffs have proved they are entitled to recovery in *quantum meruit.*

B. Defendants' Affirmative Defenses

Defendants sought to prove at trial that their affirmative defenses of violation of Rule 1.5, undue influence and unclean hands defeat Plaintiffs' right to recovery in *quantum meruit.*

1. Plaintiffs' Admitted Violation of Rule 1.5

The O'Briens argue that Plaintiffs are not entitled to recovery in *quantum meruit* because they failed to disclose in writing how they would divide the contingency fee in violation of Rule 1.5. They argue Rule 1.5 must be strictly construed and acts as a total bar to recovery in *quantum meruit.*

Rule 1.5(e) governs the fees that attorneys may charge their clients. Subsection (e) addresses the division of fees between lawyers who are not in the same firm and sets out the requirements that attorneys must follow:

> (e) A division of a fee between lawyers who are not in the same firm may be made only if:

[2] Defendants now reject Maureen's $56 million valuation of the assets. (See Defendants' Closing Argument, pp. 11-12.)

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(1) the division is in proportion to the services performed by each lawyer, or if the primary service performed by one lawyer is the referral of the client to another lawyer and each lawyer assumes joint financial responsibility for the representation;

(2) the client agrees to the arrangement, *including the share each lawyer will receive, and the agreement is confirmed in writing*; and

(3) the total fee is reasonable.

Ill. R. Prof'l Conduct, R. 1.5(e) (emphasis added).

Plaintiffs do not dispute that they violated Rule 1.5 by failing to include language in the CFA explaining how they would divide fees; however, they argue their violation is a technical and non-prejudicial one.

Defendants previously moved for summary judgment on the issue of whether a violation of Rule 1.5 precludes recovery under a *quantum meruit* theory as a matter of law. In its December 9, 2019 Memorandum Opinion, the Court (Judge Sanjay Tailor) thoroughly analyzed cases which discuss whether *quantum meruit* recovery is allowed despite a violation of the Rules of Professional Conduct, and concluded, first, that failure to strictly comply with Rule 1.5 does not foreclose an attorney's right to recovery in *quantum meruit*, but that the relative considerations are the egregiousness of the violation and any resulting prejudice to the client or the administration of justice; and second, that under the facts as then presented, Plaintiffs' admitted violation was neither egregious, nor prejudiced the Defendants or the administration of justice. The Court denied Defendants' motion for summary judgment.[3]

The Court finds the reasoning contained in the December 9, 2019 Memorandum Opinion to be legally sound and holds that under the circumstances present here, a technical violation of the Rule will not bar recovery, but that the Court should consider the egregiousness of the violation and any resulting prejudice to the clients or the administration of justice in determining whether a violation of Rule 1.5 precludes *quantum meruit* recovery.

Consistent with their argument that they need show nothing more than a technical violation of the rule to preclude *quantum meruit* recovery, and notwithstanding the Court's ruling on their summary judgment motion, at trial Defendants failed to present any evidence at all tending to show that the violation was egregious or prejudicial to them or to the administration of justice.

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[3] Defendants argue the cases cited in the December 9, 2019 Memorandum Opinion are no longer controlling authority for the application of Rule 1.5(e) to attorneys' fee agreements since the decision in *Donald Fohrman & Assocs., Ltd. v. Mark D. Alberts, P.C.*, 2014 IL App (1st) 123351. This argument was previously considered and rejected by the Court. (*See* Memorandum Opinion, December 9, 2019, pp. 3-4.)

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Plaintiffs, on the other hand, elicited testimony from Defendants showing that they understood they were being represented by lawyers at two different firms and both lawyers would be responsible for handling their legal matters. They understood that Schlegel would not accept their case unless Levenfeld agreed to jointly represent them. Each Defendant communicated with each Plaintiff regarding the matters undertaken by the Plaintiffs. Importantly, both Maureen and Dan testified they understood both attorneys would be compensated and it did not particularly matter to them how the fees were being shared. Moreover, the CFA was admitted into evidence and, although ineffective since termination, it demonstrates the relationship between the parties. The CFA was signed by both Defendants and clearly identifies that both Plaintiffs would render legal services to both Defendants, and that both attorneys expected to be compensated by Defendants.

Defendants have failed to meet their burden of demonstrating Plaintiffs' violation of Rule 1.5 was sufficiently egregious to preclude *quantum meruit* recovery or that such recovery would be prejudicial to Defendants or the administration of justice.

2. Defendants' Affirmative Defense of Undue Influence

Defendants argue that Plaintiffs exercised undue influence in the negotiation of the CFA and should therefore be barred from recovering in *quantum meruit*.

According to Defendants, an attorney-client relationship existed between Plaintiffs and Defendants prior to the execution of the CFA on October 29, 2015, which created a fiduciary relationship between the parties, and by virtue of the fiduciary relationship, Plaintiffs were obligated to advise Defendants to seek independent legal counsel prior to entering into the CFA.

As demonstrated by the Illinois Pattern Instructions, undue influence is an affirmative defense to contract enforcement. See I.P.I. 700(II)(E) & (II)(E)(2); see also *In re Marriage of Pagano*, 154 Ill. 2d 174, 186 (1992). A presumption of undue influence arises when an attorney enters into a contract or agreement with a client after the attorney-client relationship is created and the attorney benefits from the contract or agreement. *Id.* Successfully rebutting the presumption will result in the court upholding the terms of the contract, while failure to successfully rebut the presumption will result in the court setting aside the contract. *See. e.g, id.*; *Bruzas v. Richardson*, 408 Ill. App. 3d 98, 104 (1st Dist. 2011)(where plaintiff's successful rebuttal of the presumption of undue influence by her attorneys in a fee dispute resulted in the court upholding the oral fee agreement).

It is undisputed that the CFA was terminated by Defendants. Plaintiffs are not seeking damages under the CFA. Accordingly, there is no contract or agreement to which Defendants' affirmative defense of undue influence can attach. Undue influence is not a defense to a claim in *quantum meruit*.

Moreover, the affirmative defense of undue influence, here, requires the existence of an attorney-client relationship between Plaintiffs and Defendants at the time of execution of the CFA.

Both Defendants testified they believed Schlegel was their attorney at the time of the first meeting between Schlegel and Maureen in July 2015. In support of this claim, Defendants presented

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evidence that Schlegel kept a record of his time spent on the matter prior to the time the CFA was executed, and introduced into evidence an October 26, 2015 email from Maureen to her former attorney, Cliff Holm, with a copy to Schlegel, in which Maureen identified Schlegel as her attorney, a statement to which Schlegel did not object.

An attorney-client relationship arises only when both the attorney and the client consent to its formation. *Kensington's Wine Auctioneers and Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 13 (1st Dist. 2009), (citing *Wildey v. Paulsen*, 385 Ill. App. 3d 305, 311 (1st Dist. 2008). A client must manifest his authorization for an attorney to act on his behalf and the attorney must indicate his acceptance of the authorization to represent the client's interests. *Kehoe v. Saltarelli*, 337 Ill. App. 3d 669, 676 (1st Dist. 2003) (citing *Torres v. Divis*, 144 Ill. App. 3d 958, 963 (2d Dist. 1986)). Defendants have offered no evidence demonstrating that Plaintiffs agreed to undertake their representation, engaged in litigation activity, corresponded with counsel for the other O'Brien family members, provided legal advice, or acted in any other way which could be construed as holding themselves out as counsel for Defendants prior to execution of the CFA.

Moreover, Defendants' purported belief that there was such a relationship as of their initial meeting, as testified by them at trial, is belied by their own testimony. At trial, Maureen was asked the following questions and gave the following answers:

Q. Okay. And what did you discuss in that initial meeting?

A. I brought [Schlegel] some files, told him what the situation was, and wanted to know if he could help us.

Q. What did he say after you had this initial meeting?

A. He was going to review and get back to me. And we had - - I don't recall how many meetings, a few more meetings. And he finally said he could take us on as long as . . . Drew Levenfeld was also on.

Q. Okay. Do you recall when it was that Mr. Schlegel told you that he would take you on as a client as long as Drew Levenfeld would also be working on your matters?

A. I believe it was some time over the summer in our meetings.

Q. Okay. Do you have a specific recollection if it was before or after the fee agreement was signed?

A. I don't.

(Trial Transcript, May 20 2021, P.M., pp. 93-94.)

Similarly, Dan was asked the following questions and gave the following answers:

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Q. You testified earlier that you considered Mr. Levenfeld and Mr. Schlegel and their first to be your attorneys on the first encounter. Do you recall your testimony there?

A. Yes.

* * * * *

Q. Isn't it true that you spoke with Mr. Schlegel on one or two occasions before you hired him?

A. Several occasions, yes.

Q. So in other words, you didn't just hire them on your first encounter, correct?

A. Correct.

(Trial Transcript, May 20, 2021, P.M., pp 207-08.)

Illinois Rule of Professional Conduct 1.18 contemplates that "a person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client." Ill. R. Prof'l Conduct, R.1.8. The consultation meetings between Schlegel and Defendants were no different than any other pre-engagement consultation in which an attorney must analyze several factors in deciding whether to accept a case.

The evidence fails to support the argument that Plaintiffs proposed and executed the CFA as fiduciaries of Defendants. Absent such a relationship, Plaintiffs were under no legal or ethical obligation to advise Defendants to seek legal counsel prior to entering into the CFA.

3. Defendants' Affirmative Defense of Unclean Hands

Defendants argue that various courses of action by Plaintiffs amounted to unclean hands which preclude them from recovery. These courses of action generally include the following: entering into the CFA as fiduciaries of Defendants, or with knowledge of the value of the assets, or with knowledge of Dan's misunderstanding of the terms of the CFA; recommending that Maureen resign as co-executor of the relevant family estates; unethical billing practices; and, misrepresentations in verified pleadings.

The doctrine of unclean hands bars equitable relief when the party seeking that relief is guilty of misconduct in connection with the subject matter of the litigation. *Thomson Learning, Inc. v. Olympia Properties, LLC*, 365 Ill. App. 3d 621, 634 (2d Dist. 2006). The doctrine is intended to prevent a party from taking advantage of its wrong. *Id.* To allege the defense of unclean hands, the defendant must plead and prove: 1) misconduct by the plaintiff that amounts to fraud or bad faith; 2) made toward the defendant; and, 3) related to the subject matter of the litigation. *See id.; State Bank of Geneva v. Sorenson*, 167 Ill. App. 3d 674, 680 (2d Dist. 1988); *Illinois Power Co. v. Latham*, 15 Ill. App. 3d 156, 167-68, 303 N.E.2d 448 (5th Dist. 1973).

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a. Entering into the CFA as Fiduciaries of Defendants, or With Knowledge of the Value of the Assets, or With Knowledge of Dan's Misunderstanding of the Terms of the CFA

It is well-settled that "the doctrine [of unclean hands] is unavailable where the act giving rise to the defense does not directly involve the transaction which is the subject of the litigation." *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 60 (1st 2009). As stated above, the parties agree that the CFA was terminated. Plaintiffs are not seeking recovery under the CFA, but are seeking recovery under the equitable doctrine of *quantum meruit*. The claims of misconduct as they relate to the CFA are immaterial to this claim.

Even if the Court considers the conduct in question, the evidence presented at trial does not support a finding that Plaintiffs engaged in misconduct that amounts to fraud or bad faith.

i. Negotiating and Entering the CFA as Purported Fiduciaries

For the reasons stated above, there was no attorney-client relationship between Plaintiffs and Defendants prior to the execution of the CFA. Thus, Plaintiffs did not negotiate and enter the CFA as fiduciaries of Defendants.

ii. Entering the CFA With Knowledge of the Value of the Estate Assets

Defendants argue that even absent an attorney-client relationship, the very existence of a contingency fee arrangement under the circumstances here, where Plaintiffs bore no risk and were virtually guaranteed a windfall without expending substantial time and effort, demonstrates bad faith.

Defendants point to the fact that Plaintiffs were aware that Maureen and Dan were the legal owners of 50% percent of the estates and trusts, which were valued in the tens of millions of dollars, and argue their undertaking was a simple matter of negotiation. Defendants' argument, however, ignores that control of the assets was vested in other family members, Peggy and Richard, who were hostile to Maureen's and Dan's interests, refused to pay any revenues earned to them, and refused to sell any portion of the assets for distribution of the proceeds to the equity owners.

Plaintiffs testified that they performed substantial work on behalf of Defendants, discussed more fully above, including reviewing, analyzing and organizing a massive volume of documents, creating and implementing litigation strategy, and representing the O'Briens in litigation as both plaintiffs and defendants in lawsuits pending in Illinois state and federal courts, and in Michigan.

The evidence further demonstrates there was no guaranty of success at the outset. Schlegel testified that the goal was to convince the court that Maureen and Dan were being frozen out of all information and operations, and that Peggy and Richard were mismanaging and diverting the assets. Plaintiffs were not successful in having Peggy and Richard removed as executors of both

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estates in a probate action. Defendants, themselves, claim Plaintiffs had no success in their various endeavors in support of their argument that they received no benefit from Plaintiff's representation, but this argument undercuts their claim that monetizing Defendants' interests in the estates and trusts was a simple matter. If Plaintiffs were unsuccessful in their efforts to compel a distribution or settlement, the O'Briens would simply continue to own equity in assets with no corresponding revenue or income. They would be in the same position they were in before they retained Plaintiffs. The evidence fails to support Defendants' claim that Plaintiffs bore no risk and were virtually guaranteed a windfall without expending substantial effort.

iii. Entering the CFA With Knowledge of Dan's Misunderstanding of the Terms

The terms of the CFA provide that Plaintiffs would be entitled to 15% of the first $10 million dollars recovered <u>and</u> 10% of any amount recovered in excess of $10 million. Levenfeld testified that he initially proposed a 15% recovery across the board, and Dan negotiated that the contingency fee would drop to 10% only on recovery over $10 million. Dan testified that Levenfeld first proposed a 10% contingency on recovery up to $10 million and 15% on any recovery above $10 million, and that he negotiated a switch of the percentages to 15% contingency on recovery up to $10 million and 10% on recovery above $10 million.

Dan testified that at the time he signed the CFA, he felt his share of the estates would be worth more than $10 million dollars, and he believed the CFA provided that Plaintiffs would be entitled to 15% of the first $10 million recovered, <u>or</u> 10% of any amount recovered in excess of $10 million. In other words, he believed that if any recovery exceeded $10 million, he would only have to pay 10% as a contingency.

The testimony on this issue is in conflict. There was no documentary evidence presented supporting either version of the facts. Importantly, the plain language of the CFA clearly and unambiguously uses the coordinating conjunction "and," indicating a dependent relationship with the words or phrase that came before it: "The total fees to be charged shall be either 15% of the first $10,000,000 <u>and</u> 10% of any additional value of the asset recovered for the clients, or the amount of charges made for time expended, whichever is greater . . . ." (Emphasis added.)

All parties testified Defendants had an opportunity to review the CFA before they signed it. Schlegel testified that neither Dan nor Maureen expressed confusion about the terms of the CFA. There is no claim Maureen was confused by the contingency term, and she testified that she agreed to the proposed modification suggested by Dan. There is no evidence Plaintiffs had knowledge Dan had any misunderstanding or confusion about the terms of the CFA.

The Court holds that Defendants have failed to meet their burden of demonstrating misconduct by the plaintiff that amounts to fraud or bad faith in entering the CFA.

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b. Recommending that Maureen Resign as Co-Executor of the Relevant Family Estates

Defendants argue that Plaintiffs demonstrated unclean hands when they recommended that Maureen resign as co-executor of Mary's estate so that they could preserve their ability to collect the contingency fee. Under Defendants' theory, if Maureen had remained co-executor and Plaintiffs attempted to petition the probate or chancery courts for fees, the contingency terms would never have been awarded.

It is undisputed that Maureen was receiving no benefit from acting as co-executor. She testified she was a minority executor and was being frozen out of any active participation in the administration of the estate by Peggy and Richard. Although she had previously been paid for work as co-executor, she was no longer being paid and no longer able to do work for which she could be compensated. Schlegel testified that Maureen had no ability to obtain documents or compel accountings, and she was exposed to potential liability for actions taken by her co-executors. He explained that although Maureen could theoretically have shielded herself from liability by dissenting, she could not dissent because she had no knowledge as to what actions Peggy and Richard were taking. Maureen's resignation allowed her to assert claims that the estate was being mismanaged without implicating her as co-executor through her own allegations.

Schlegel's trial testimony on this issue was credible and undisputed, and supports Plaintiffs' claim that their recommendation that Maureen resign as co-executor was based on considered legal strategy and not on an improper motive.

c. Unethical Billing Practices

Defendants contend that Plaintiffs acted with unclean hands in various ways relating to their billing practices. However, it is undisputed that Defendants were never issued a bill, nor did Plaintiffs ever tender a record of their time to Defendants with the expectation that Plaintiffs would pay for their time. There can be no billing impropriety when there was no billing at all.

d. Misrepresentations in Verified Pleadings

Defendants argue that Plaintiffs made allegations in verified pleadings that they knew to be untrue, namely, that Defendants terminated Plaintiffs while a settlement offer was pending,[4] which is evidence of their unclean hands. However, any such misrepresentation to the Court occurred post-termination, at a time the Plaintiffs and Defendants were adverse to each other, and such misrepresentation cannot support a claim for unclean hands. Misconduct by litigants of the type

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[4] In reliance on *Vandenberg v. RQM, LLC,* 2020 IL App (1st) 190544, Defendants argue that whether an offer was pending at termination is relevant to a court's determination as to the significance of the terms of the fee agreement—particularly a contingency term—in a *quantum meruit* analysis.

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described by Defendants is addressed by Illinois Supreme Court Rule 137, and Defendants may make any appropriate motion in accordance with court rules.

In summary, Defendants have failed to prove Plaintiffs acted with unclean hands.

C. *Quantum Meruit* Recovery

In awarding *quantum meruit* fees, courts consider the following factors: (1) the attorney's skill and standing; (2) the time and labor required; (3) the nature of the cause and the difficulty of the issues involved, including the amount at issue; (4) the novelty and difficulty of the subject matter; (5) the attorney's degree of responsibility in managing the case; (6) the usual and customary charge for that type of work in the community; and (7) the benefits resulting to the client. *In re Estate of Callahan*, 144 Ill. 2d 32, 44 (1991).

What follows is the Court's application of these factors to the evidence presented at trial:

1. Attorneys' Skill and Standing

It is undisputed that attorneys Levenfeld and Schlegel are highly qualified and skilled attorneys who have each been in practice and in good standing in the Illinois bar for more than 40 years. Schlegel's practice focuses on litigation, and Levenfeld's practice focuses on estates and financial planning.

2. Time and Labor Required

Plaintiffs' time records reflect that attorneys Levenfeld, Schlegel and Schlegel's staff, including an attorney and a volunteer helper, spent in excess of 3000 hours (excluding post-termination billing) working on Defendants' behalf over approximately 19 months.

3. Nature of the Cause, the Difficulty of the Issues Involved, Including the Amount at Issue

The complexity of this matter has been addressed, above, but, in summary, Plaintiffs were hired for the purpose of utilizing the court system to attempt to compel the conversion of percentage interests in family assets into cash, a difficult prospect where the controlling legal documents—the wills, trusts, partnership agreements and operating agreements—called for no such thing, where no net income was distributed to Defendants, and where Peggy had no obligation to purchase or redeem Defendants' 25% interests. Plaintiffs understood the value of the family assets to be in the tens of millions of dollars.

4. Novelty and Difficulty of the Subject Matter

The issues involved in this matter required expertise in federal and state court litigation and estate and trust expertise. Schegel, a litigator, expressed to Defendants that he would not accept the

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assignment unless Levenfeld, an attorney with estates and trusts expertise, would agree to get involved.

5. Attorneys' Degree of Responsibility in Managing the Case

Plaintiffs were responsible for the entirety of the underlying legal matters until the date of their termination, although they hired local counsel to represent Defendants in Michigan.

6. Usual and Customary Charge for That Type of Work in the Community

Schlegel testified that his usual and customary rate for complex litigated matters at that time was $450 to $600 per hour, and he charged $250 per hour for associates and $85 per hour for paralegals and paraprofessionals. Levenfeld did not testify as to his normal hourly rate.

7. Benefits Resulting to the Client

As discussed above, as a direct result of Plaintiffs' work, Defendants received all, or nearly all, of the leverage needed to consummate a $16,850,000 settlement.

Plaintiffs argue their recovery should be calculated by reference to the CFA. They claim the fee structure is important because it reflects the parties' own views as to what would be fair and reasonable at the outset of the engagement. They reason that the contingency structure would allow Defendants to hire lawyers without any obligation to pay legal fees until the conclusion of the engagement, while also affording Plaintiffs the opportunity for a potentially significant recovery of their own, which was necessary to counter the considerable risk that they were undertaking.

Defendants do not set forth an alternative method of calculating fees under a *quantum meruit* analysis, but argue any *quantum meruit* recovery should be precluded based on the alleged harm caused to the O'Briens throughout the representation. For the reasons stated above, the Court rejects this argument.

The Court is persuaded by the cases of *Will v. Northwestern Univ.*, 378 Ill. App. 3d 280 (1st Dist. 2007); *Wegner v. Arnold*, 305 Ill. App. 3d 689 (2d Dist. 1999); and *In re Estate of Kelso v. Bueke*, 2018 IL App (3d) 170161. In each of those cases, the courts found that the entire contingency fee amounted to a reasonable fee even though the contingency fee contracts had been terminated. In those cases, like here, the discharged attorneys handled the cases from their inception through termination, expended significant resources in representing their clients over months and years, and there were no significant changes in the pre-termination settlement offer terms to the post-termination acceptance terms. In those cases, like here, the attorneys were fired shortly before settlement and the results obtained were substantially attributable to their efforts. In reliance upon the Illinois Supreme Court case of *Rhoades v. Norfolk & Western Ry. Co.*, 78 Ill. 2d 217, the *Wegner* court reasoned, "In cases in which an attorney who has done much work is fired immediately before settlement is reached, the factors involved in determining a reasonable fee

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would justify a finding that the entire contract fee is the reasonable value of services rendered." *Wegner*, 305 Ill. App. 3d at 693; see also *Will*, 378 Ill. App. 3d at 304.

The Defendants elicited testimony from Schlegel and his colleagues which calls into question whether the hours recorded by the firm were accurate and whether they inappropriately expected to receive payment for work performed by a volunteer. This is immaterial, first, because Defendants raised these issues to substantiate their unclean hands affirmative defense (as addressed above) and not for the purpose of arguing how attorney hours should be calculated for *quantum meruit* recovery, and second, because the award is not based on recorded hours.

Defendants also call to the Court's attention that there was no settlement offer pending at the time Plaintiffs were discharged. This fact is inconsequential. Both Schlegel and Levenfeld testified that the settlement negotiations included a fair amount of posturing, demands and offers were made and withdrawn with regularity, and both sides effectively understood that settlement discussions were ongoing. This position is borne out by the fact that settlement occurred with new counsel for Defendants very shortly after Plaintiffs were terminated in an amount that can only be understood to have been based cumulatively upon Plaintiffs' negotiations.

Considering the *quantum meruit* factors identified above, and taking into account Defendants' own views as to what would be fair and reasonable at the outset of the engagement, the Count finds that the amount of the contingency fee is a reasonable fee.

The reasonable fee, thus, amounts to $2,185,000: $1.5 million dollars (15% of $10 million dollars), plus $685,000 (10% of 6,850,000). The amount of $500,000 paid to the subsequent attorneys for work performed by them is deducted from the reasonable fee. It was stipulated by the parties that Plaintiffs incurred $7,390.60 in expenses. Thus, the Court finds that Plaintiffs are entitled to an award in *quantum meruit* in the amount of $1,692,390.60.

IV. Conclusion

For the reasons stated above, the Court enters judgment in favor of Plaintiffs and against Defendants in the amount of $1,692,390.60.

This matter is continued to the previously set status date of November 23, 2021, at 9:30 a.m. by Zoom videoconference, at which time the parties may address any remaining issues.

ENTER:

/s/ Cecilia A. Horan No. 2186

Judge Cecilia A. Horan
NOV 19 2021
Circuit Court - 2186

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2023 IL App (1st) 211638

No. 1-21-1638

Opinion filed March 16, 2023

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

ANDREW W. LEVENFELD AND ASSOCIATES, LTD.,	)	Appeal from the
and STEPHEN J. SCHLEGEL, LTD.,	)	Circuit Court of
	)	Cook County.
Plaintiffs-Appellees,	)	
	)	No. 17 CH 15055
v.	)	
	)	
MAUREEN V. O'BRIEN and DANIEL P. O'BRIEN III,	)	Honorable
	)	Cecilia A. Horan,
Defendants-Appellants.	)	Judge, presiding.

PRESIDING JUSTICE LAMPKIN delivered the judgment of the court, with opinion.
Justices Hoffman and Martin concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiffs, two law firms, sued former clients, defendants Maureen O'Brien (Maureen) and Daniel O'Brien III (Dan), to recover attorney fees on the basis of *quantum meruit* for plaintiffs' services in an estate dispute. Plaintiffs contended, *inter alia*, that they were entitled to recover the value of their legal services with reference to their contingency fee agreement with defendants because defendants fired plaintiffs only two months before defendants, represented by new counsel, settled their dispute with the other estate holders under terms similar to those negotiated by plaintiffs prior to their dismissal. However, the parties' contingency fee agreement failed to

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specify how the plaintiffs would split the contingency fee, an omission that violates Illinois Rules of Professional Conduct of 2010 Rule 1.5(e) (eff. Jan. 1, 2010).

¶ 2 The trial court found that plaintiffs were entitled to a reasonable fee and that the reasonable fee in this case was the contingency fee agreed upon by the parties, minus the amount defendants paid successor counsel.

¶ 3 On appeal, defendants argue that the trial court erred (1) as a matter of law by basing plaintiffs' *quantum meruit* award on the contingency fee specified in a fee agreement that was unlawful and unenforceable because it violated Rule 1.5(e); (2) by finding that plaintiffs' services conferred a benefit on defendants; and (3) by finding that the reasonable value of plaintiffs' services was $1,692,390.60.

¶ 4 For the reasons that follow, we reverse the trial court's determination that the amount of the contingency fee was a reasonable fee for plaintiffs' services. However, we affirm the trial court's decision that plaintiffs' services conferred a benefit on defendants. We remand this cause for further proceedings on the reasonable value of plaintiffs' services.

¶ 5 I. BACKGROUND

¶ 6 Stephen Schlegel is an attorney licensed to practice law in Illinois since 1969 and the owner of plaintiff, Stephen J. Schlegel, Ltd. Andrew Levenfeld is an attorney licensed to practice law in Illinois since 1973 and the owner of plaintiff, Andrew W. Levenfeld and Associates, Ltd.

¶ 7 Defendant Maureen is the daughter of Daniel O'Brien Sr. (Dan Sr.), who died in 2012, and Mary O'Brien (Mary), who died in 2013. Defendant Dan is the grandson of Dan Sr. and Mary. Both Dan Sr. and Mary had complex estate plans including a large number of properties and businesses. Defendants each owned a 25% interest in the cumulative O'Brien estate. Margaret

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Schulze (Peggy), who is also a daughter of Dan Sr. and Mary, similarly owned a 25% interest in the estate assets. The final 25% of the O'Brien estate was owned by two sons of another of Dan Sr. and Mary's children.

¶ 8 Peggy was the sole executor of Dan Sr.'s estate. Peggy, her husband Richard Schulze (Richard), and Maureen were co-executors of Mary's estate. Accordingly, Peggy and Richard had almost complete control over the assets of the cumulative estate. By the summer of 2015, defendants were not receiving any income or other distributions from their interests in the estates. They sought legal counsel from Schlegel to monetize their interests in the estate assets. Because the case was complex, Schlegel informed them that he would accept the case only if Levenfeld also worked on it. Defendants agreed.

¶ 9 Neither defendant had the ability to pay ongoing legal fees, and each had substantial debt. While defendants had undisputed interests in the estate assets, it was uncertain whether they would ultimately be able to monetize those interests. Based on these circumstances, plaintiffs initially proposed a flat 15% contingency fee on any recovery. Defendants countered that the contingency fee should be 15% of the first $10 million recovered and 10% of any recovery above $10 million. Plaintiffs agreed. The relevant part of the agreement stated:

> "Clients agree to pay minimum attorneys fees calculable at an hourly rate of $300 per hour for [Levenfeld's] or [Schlegel's] time, $250 per hour for associate attorney time, and $85 per hour for paralegal or paraprofessional time.
>
> * * *

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> The total fees to be charged shall be either 15% of the first $10,000,000 and 10% of any additional value of the assets recovered for the clients, or the amount of charges made for time expended, whichever is greater."

¶ 10 The agreement was finalized on October 29, 2015. Over the next 19 months, Levenfeld, Schlegel, Diola Xhaferri (an associate at Schlegel's firm), and nonattorney Hilary Rushe worked approximately 3000 hours on defendants' case. The work spanned multiple pieces of litigation, including actions in the probate and chancery divisions of the circuit court of Cook County, the United States District Court for the Northern District of Illinois, the First District Appellate Court, and in Berrien County, Michigan.

¶ 11 After several settlement offers and counteroffers had been proposed, Peggy, in May 2017, responded with an offer totaling $16.25 million that required Maureen to vacate her home, which was an estate asset. Peggy later withdrew her offer on May 10, 2017. Plaintiffs had recommended that a demand be made for $16.75 million with a provision for Maureen to remain in her home, but defendants did not authorize this demand. On May 25, 2017, defendants, in an e-mail from their new attorneys, terminated plaintiffs' representation. On July 21, 2017, defendants accepted a settlement for $16.85 million. Maureen was also allowed to stay in her home. Defendants paid successor counsel a flat fee of $500,000.

¶ 12 Plaintiffs sued defendants, relying on a theory of *quantum meruit* to recover attorney fees. Defendants moved for summary judgment, arguing, *inter alia*, that plaintiffs could not collect attorney fees because the attorney-client agreement violated Illinois Rules of Professional Conduct of 2010 Rule 1.5(e) (eff. Jan. 1, 2010) since Schlegel and Levenfeld failed to specify how they would divide the expected contingency fee.

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¶ 13 The trial court denied the motion for summary judgment, finding that the Rule 1.5(e) violation was "not egregious, did not prejudice [defendants], and did not affect the administration of justice or public good." The trial court also recognized defendants' failure to dispute that they discharged plaintiffs after plaintiffs had expended 3000 hours in nine lawsuits over 19 months; that plaintiffs had secured a $16.25 million settlement offer; and that defendants almost immediately settled the case for between $16 million and $17 million while paying new counsel a flat rate. The trial court ultimately rejected defendants' argument as an attempt, unsupported by case law, to use public policy as a sword for personal gain.

¶ 14 At trial, Schlegel testified that Maureen approached him in the summer of 2015 about potentially representing her in connection with ongoing disputes concerning her family's properties, estates, and trusts. Schlegel reviewed thousands of documents and related court files to understand the parties and potential disputes. He learned that defendants were equity owners in the estates and trusts of Dan Sr. and Mary, who had accumulated a large number of properties and businesses, including nursing homes, restaurants, bars, a golf course, hotel, storage business, and a fast-food franchise. The assets were held in trusts, limited liability companies, limited partnerships, and one general partnership. Peggy was the sole executor of Dan Sr.'s estate. Peggy, Richard, and Maureen were each co-executors of Mary's estate. Peggy and Richard were married, which meant Peggy had nearly full control of each estate's assets.

¶ 15 When Maureen and Dan approached Schlegel, they were not receiving any income from their 25% shares in the estate assets. Neither was able to pay their bills at the time. Schlegel testified that the entire set of estate assets had an estimated value of $40 to $80 million dollars. The assets had been valued at $52 million for tax purposes. Schlegel testified that while Maureen

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and Dan each had an undisputed interest in the estate assets, "huge roadblocks" prevented them from receiving any recovery on their interests. For example, Peggy could have continued to exclude defendants from any revenues. Also, if assets were not producing revenue and Peggy opted not to sell the assets, there would be no income to provide to anyone. Finally, the only way to monetize defendants' interests in the assets would be to convince a court to overturn the decisions of Dan Sr. and Mary, who had opted to place control primarily in Peggy's hands.

¶ 16 Schlegel testified that he introduced Levenfeld to defendants prior to entering into the retainer agreement. Schlegel explained that he would only represent defendants with Levenfeld's help. Schlegel had a strong background in chancery litigation, and Levenfeld had a strong background in estate administration issues. Schlegel testified that he made it clear to defendants that two lawyers from two different firms would be representing them. Schlegel agreed that the retainer agreement did not indicate how the fees would be split between the two firms. Schlegel explained that the fee split was unknown until it became clear later what work and how much each firm did. Schlegel testified that, at that point, the fee split would be determined based on time spent on the case and expertise.

¶ 17 The parties entered into the agreement on October 29, 2015. Schlegel explained that this was a contingency fee agreement that provided for compensation of 15% of the first $10 million recovered and 10% of any amount recovered over $10 million plus reasonable and necessary costs. The agreement also included what Schlegel described as a "disaster clause." The clause would only be implicated if the time spent on the case was more costly than the recovery under the contingency fee provision. Schlegel testified that the hourly rate structure was a "minimum fee" that constituted a "rough overhead reimbursement level." The provision was a "fallback" to cover

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the attorneys' overhead if the case went on for a long period with no liquidation of defendants' interests. Schlegel felt the parties' agreement was "[m]ost reasonable."

¶ 18 Schlegel explained that the initial strategy was to file lawsuits to gather records and discovery. Plaintiffs also succeeded in having the estates changed from independent to supervised administrations. This required the executors to file reports and inventories with the courts, which would allow for the potential to remove executors for mismanagement. Plaintiffs also had Maureen resign as co-executor of Mary's estate so that Maureen could accuse the other co-executors, Peggy and Richard, of mismanagement, without the potential conflict of interest. Schlegel discussed various lawsuits that were brought both on behalf of defendants and against them by Richard and Peggy. Schlegel explained that plaintiffs brought lawsuits to put pressure on Richard and Peggy to resolve the parties' issues. Schlegel also recognized that some litigation was unsuccessful, such as attempts to remove Peggy and Richard as co-executors. Plaintiffs also were unsuccessful in appealing those decisions, with one appeal being dismissed for lack of jurisdiction and one appeal being affirmed on the merits. Other lawsuits remained pending up to the time plaintiffs were terminated.

¶ 19 Schlegel and Levenfeld both testified to the progression of the settlement negotiations. No offers had been received prior to plaintiffs' representation. In November 2015, Richard and Peggy offered Dan $6 million for his 25% interest. Dan rejected that offer. The parties then attempted to negotiate by divvying up the various pieces of real estate, but no deal came to fruition that way. In September 2016, Peggy made defendants an offer of $12 million, which defendants rejected. In April 2017, plaintiffs made a demand for $18.3 million. Peggy responded with an offer of $15.44 million. Defendants rejected that offer and authorized plaintiffs to make a demand of $17,106,000.

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This demand also included a provision for Maureen to stay in her current residence, which was an asset of the estate. On May 1, 2017, Peggy made a proposal to settle for $16.25 million, with a provision that Maureen vacate her current residence. Defendants did not authorize plaintiffs to take any further action. On May 10, 2017, Peggy's attorney withdrew all offers. Plaintiffs then recommended making a demand of $16.75 million with a provision that Maureen could purchase her current residence for $350,000. Then, on May 25, 2017, defendants terminated plaintiffs. Defendants had retained new counsel and settled the case for $16.85 million on July 21, 2017. Defendants paid successor counsel a flat fee of $500,000.

¶ 20 Rushe testified that she did administrative work for Schlegel on this case. She had a bachelor's degree from the University College Dublin where she studied business and law. Schlegel testified that Rushe was a "clerical assistant" who performed "some analytical" and "organizational tasks," which included preparing and organizing documents received in discovery. Rushe had no formal training as a paralegal. She considered herself a volunteer because she was not issued a paycheck for the time she spent working for Schlegel. However, Schlegel had sponsored Rushe for numerous handball tournaments, which meant that he covered the entrance fee and costs associated with attending the tournaments. Rushe agreed that each of her 173 time entries was for seven hours. She testified that she worked at least seven hours on each of those days and sometimes longer.

¶ 21 Both parties presented expert witnesses. Plaintiffs presented John Brooks, a licensed attorney since 1989. Brooks had practiced for most of his career in trusts and estates. He had conducted many lectures and seminars on contested trusts and estates, was the general editor of a periodical and handbook on trusts and estates, and had received numerous awards as a lawyer.

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¶ 22 Brooks's ultimate opinion was that a reasonable fee could be calculated by reference to the underlying contingent fee agreement. He described the case as "very complex" because the assets at issue involved "80 properties" and "a number of LLPs and LLCs in Illinois, Indiana, and Michigan." The O'Briens were also a litigious family. Success in the case would be "very difficult" because defendants did not have much leverage over the estates, trusts, and properties involved. Defendants desired cash, but Peggy and Richard, who had control over the assets, had no obligation to liquidate the assets. There was ultimately "no guarantee of any outcome" for defendants. Neither defendant had funds to hire an attorney, and they owed money to prior attorneys.

¶ 23 Brooks testified that both Levenfeld and Schlegel were highly qualified attorneys, they spent around 3000 hours over 19 months on the case, and ultimately achieved a "very good result." Brooks also referenced the demand plaintiffs proposed defendants make, which was "almost identical" to what defendants settled for less than 60 days after discharging plaintiffs. Brooks testified that the percentage agreed to was reasonable based on the circumstances. He based his testimony regarding a reasonable fee on the *quantum meruit* factors from case law and Rule 1.5, along with his personal experience. The number he reached as a reasonable fee was $2,132,390.60, which represented the contingency fee provision applied to the final offer plaintiffs procured on behalf of defendants of $16.25 million.

¶ 24 Defendants presented attorney David Feinberg, who practiced in the area of trusts and estates for about 14 years. Feinberg ultimately concluded that plaintiffs were not entitled to any relief under *quantum meruit* because they mishandled the case. To support his conclusion, Feinberg discussed plaintiffs' alleged (1) unclean hands, (2) undue influence, (3) Rule 1.5(e) violation, (4) lack of a negotiation strategy, and (5) lack of a litigation strategy. Feinberg testified

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that it was unreasonable to use a contingency fee structure in a case where defendants' inheritance was uncontested. The contingency fee structure was also inappropriate based on the size of the uncontested interests, estimated to be in the tens of millions of dollars. Feinberg testified that there were other ways to structure the fee agreement without using a contingency provision, such as payment of an hourly rate at a later date and with interest or late fees. Feinberg had never seen a contingency provision in a case where the client had an uncontested percentage interest in an estate.

¶ 25 Feinberg also testified regarding Maureen's initial role as co-executor of Mary's estate. Feinberg explained that representing Maureen as both co-executor and beneficiary posed a potential conflict of interest. Feinberg thought it was a mistake to advise Maureen to resign as a co-executor because she lost several benefits, including leverage and visibility in the court process, access to the estate's records, and the right to recover legal fees related to her actions as co-executor. Feinberg also testified about what he considered litigation failures. Specifically, he noted that plaintiffs missed filing deadlines, requested continuances and failed to advance the case, and put defendants in an unfavorable bargaining position by failing to obtain independent valuations of the estate assets.

¶ 26 Both defendants also testified. Dan testified that he understood that both Levenfeld and Schlegel would be representing both defendants and that Levenfeld and Schlegel were attorneys in different firms. Dan was not particularly concerned about how the attorneys would split the fee. Dan explained that his financial situation was "pretty bad" when he hired plaintiffs. Dan had not had a "formal job" since 2014 and had resorted to selling items on eBay during plaintiffs' representation. Dan testified that it was "very disheartening" when Peggy withdrew all settlement offers. In Dan's view, that was the "last straw" as far as continuing with plaintiffs' representation.

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¶ 27 Maureen similarly testified that she understood that Levenfeld and Schlegel would be representing both defendants and would be responsible for the legal matters in the case. Maureen "assumed" that Levenfeld and Schlegel would split the fee at the end of the case and thought how they split the fee was insignificant. Maureen agreed that the case was likely to "involve a significant amount of time." She testified that in the months leading up to the agreement with plaintiffs, her finances were "dwindling." She and Dan were "cut off financially" by Peggy and were receiving no income from the estate or other businesses. Neither Maureen nor Dan was able to pay a retainer or any money up front. Maureen testified that she was "devastated" when Peggy withdrew all settlement offers. Maureen felt that plaintiffs were not getting anything accomplished. She would not authorize any new demands because she had "lost faith" in plaintiffs.

¶ 28 On November 19, 2021, the trial court found that defendants benefited from plaintiffs' legal services and rejected many of defendants' arguments about plaintiffs' alleged errors during the representation. The court found that it was appropriate to have Maureen resign as co-executor because she was receiving no benefit through the position and her resignation allowed her to assert claims against the estate. The court found the move was "based on considered legal strategy and not on an improper motive." The court also rejected defendants' argument that the Rule 1.5(e) violation should bar recovery because the evidence did not show that prejudice resulted to either defendants or the administration of justice. The trial court noted that defendants knew both Levenfeld and Schlegel substantively represented them, each defendant communicated with each plaintiff about the representation, and defendants expressly testified that they knew each plaintiff would be compensated and did not particularly care how the fees would be shared.

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¶ 29 The trial court ruled that plaintiffs were entitled to an award in *quantum meruit* for $1,692,390.60. The court calculated the award by using the parties' contingency fee agreement: $1.5 million (15% of the first $10 million) plus $685,000 (10% of $6.85 million) plus $7390.60 (expenses) minus $500,000 (amount paid to subsequent attorneys). In reaching this award, the court analyzed each of the seven factors courts consider in awarding *quantum meruit* fees, considered defendants' own views as to what was fair and reasonable at the outset of the engagement, and found that the amount of the contingency fee was a reasonable fee. The court likened this case to those where the discharged attorneys handled the case from inception to termination and expended significant resources in representing their clients over months and years, and where the posttermination acceptance terms did not change significantly from the terms of the pretermination settlement offer.

¶ 30 Defendants timely appealed.

¶ 31 II. ANALYSIS

¶ 32 Defendants argue that the trial court erred (1) as a matter of law by basing plaintiff's *quantum meruit* award on the contingency fee specified in a contract that was illegal and unenforceable because it violated Rule 1.5(e); (2) by finding that plaintiffs' services conferred a benefit on defendants; and (3) by finding that the reasonable value of plaintiffs' services was $1,692,390.60 because plaintiffs failed to prove the reasonable value of their services where nearly half the number of billable hours was billed by a volunteer helper.

¶ 33 A. Basis of *Quantum Meruit* Award

¶ 34 The first issue is whether a trial court can award a reasonable fee via a *quantum meruit* claim with reference to a contingency fee agreement that violated Illinois Rules of Professional

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Conduct of 2010 Rule 1.5(e) (eff. Jan. 1, 2010) by failing to state how the two law firms would split the contingency fee. Whether a particular remedy is precluded as a matter of law is an issue we review *de novo*. See *Edward Atkins, M.D., S.C. v. Robbins, Salomon & Patt, Ltd.*, 2018 IL App (1st) 161961, ¶ 57.

¶ 35 Plaintiffs sought attorney fees through a claim of *quantum meruit*, which "is an equitable remedy [citation], which allows the circuit court to use its broad discretion in arriving at what it determines to be the reasonable value of the discharged attorney's services." *Seiden Law Group, P.C. v. Segal*, 2021 IL App (1st) 200877, ¶ 29. *Quantum meruit*, which means "as much as he deserves," is a term "used to describe the extent of liability on a 'quasi-contract,' *i.e.*, a contract implied in law." (Internal quotation marks omitted.) *Schroeder v. Sullivan*, 2018 IL App (1st) 163210, ¶ 46. "A quasi-contract, or contract implied in law, is one where there is no actual agreement between the parties, but nonetheless a duty is imposed to prevent injustice." *Id.* "As such, claims sounding in *quantum meruit* are predicated upon the reasonable value of the services performed." *Id.* In determining an appropriate fee for the reasonable value of the services performed, a court considers

> "the time and labor required, the attorney's skill and standing, the nature of the cause, the novelty and difficulty of the subject matter, the attorney's degree of responsibility in managing the case, the usual and customary charge for that type of work in the community, and the benefits resulting to the client." *Wegner v. Arnold*, 305 Ill. App. 3d 689, 693 (1999).

¶ 36 Rule 1.5 governs the fees attorneys can collect and controls the situation in this case because Schlegel and Levenfeld, lawyers in different firms, sought to divide the contingency fee. Rule 1.5(e) provides:

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"(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer, or if the primary service performed by one lawyer is the referral of the client to another lawyer and each lawyer assumes joint financial responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable." Ill. R. Prof'l Conduct (2010) R. 1.5(e) (eff. Jan. 1, 2010).

¶ 37 Plaintiffs concede that their contingent fee agreement with defendants violated Rule 1.5(e) because it did not specify the share of the fee each lawyer would receive. Plaintiffs nevertheless argue that the trial court did not err in ordering a recovery consistent with the contingency provision in the parties' agreement because the parties agreed to the contingency rate and plaintiffs' omission in the agreement about splitting the fee was not prejudicial to defendants or the administration of justice and was not egregious.

¶ 38 Rule 1.5 "embod[ies] this state's public policy of placing the rights of clients above and beyond any lawyer's remedies in seeking to enforce fee-sharing arrangements." *Romanek v. Connelly*, 324 Ill. App. 3d 393, 399 (2001). An attorney's violation of Rule 1.5 renders a fee agreement unenforceable. *Donald W. Fohrman & Associates, Ltd. v. Marc D. Alberts, P.C.*, 2014 IL App (1st) 123351, ¶¶ 33, 56. Strict compliance with Rule 1.5 is mandatory for any claim seeking fees under a fee-sharing agreement. See *id.* ¶ 41. However, violations of the Illinois Rules of

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Professional Conduct, standing alone, do not preclude an award of fees on a *quantum meruit* basis. "Whether *quantum meruit* recovery is barred should depend on the egregiousness of the particular conduct involved." *Much Shelist Freed Denenberg & Ament, P.C. v. Lison*, 297 Ill. App. 3d 375, 381 (1998). Our supreme court has similarly declined to impose an absolute bar on recovery even where an attorney breaches a fiduciary duty to a client. See *In re Marriage of Pagano*, 154 Ill. 2d 174, 190 (1992).

¶ 39 Defendants do not argue that the rule violation in this case was so egregious as to preclude the award of a reasonable fee via *quantum meruit*. Instead, defendants argue that the trial court erred when it stated that it was awarding plaintiffs' fee on a *quantum meruit* basis but also based that award on the parties' contingency fee provision, which was unenforceable due to plaintiffs' violation of Rule 1.5(e). Defendants argue that by awarding attorney fees by reference to the contingency fee provision, "the circuit court effectively enforced an unlawful agreement that all parties agreed violated the Illinois Rules of Professional Conduct." Defendants continue that the court's reasoning, labeling the error as "technical" and nonprejudicial, is "directly contrary to well-established Illinois law and public policy."

¶ 40 Defendants cite *Fohrman*, 2014 IL App (1st) 123351, ¶ 56, for the proposition that a fee agreement that violates Rule 1.5 is against public policy and may not be enforced. There, Fohrman, an attorney, would refer cases to Alberts, another attorney. *Id.* ¶ 3. The attorneys had an oral agreement on how the fees would be shared. *Id.* However, the corresponding agreements between Alberts and the respective clients did not disclose how the fees would be shared. *Id.* ¶ 36. When Fohrman attempted to enforce the oral agreement against Alberts, the circuit court granted Alberts's motion to dismiss. *Id.* ¶ 1. On appeal, this court affirmed, holding that "Rule 1.5(e)

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requires strict compliance and, in the absence of strict compliance with Rule 1.5(e)," Fohrman could not recover under the oral agreement for referral fees. *Id.* ¶ 44.

¶ 41 Recognizing that no post-*Fohrman* opinion of this court has addressed plaintiffs' contention that an attorney's recovery in *quantum meruit* can be based on a contingency fee specified in an unlawful fee agreement, defendants cite a California case, *Chambers v. Kay*, 56 P.3d 645 (Cal. 2002), which has rejected plaintiffs' contention. In *Chambers*, attorney Kay brought in attorney Chambers, who was an attorney in a separate law firm, to assist in a sexual harassment case. *Id.* at 647. After working on the case for a period, Kay relieved Chambers of his duties. *Id.* at 648. The attorneys independently agreed to a fee division in the case, and the client was informed of the agreed-to fee division; however, the attorneys never sought or obtained the client's written consent to the fee division. *Id.* When the case was ultimately tried to verdict, Kay received his attorney fees and refused to pay Chambers the fees set forth in their fee division agreement. *Id.* Instead, Kay offered to pay Chambers for his work on an hourly basis. *Id.* Chambers sued Kay for breach of contract or, in the alternative, recovery in *quantum meruit*. *Id.* On appeal to the California Supreme Court, Chambers argued that the fee-splitting rule violation did not render the attorney fee agreement unenforceable or, in the alternative, the court was free, despite the unenforceable agreement, "to award the entire fee provided for in the fee-sharing agreement as a proper *quantum meruit* determination." *Id.* at 658.

¶ 42 The California Supreme Court concluded that the agreement was unenforceable based on a violation of an ethics rule substantially like Rule 1.5(e) because the client did not consent in writing to the fee division and the court would not aid counsel in violating that rule, which helped ensure that clients were not charged unwarranted fees and promoted respect and confidence in the legal profession. *Id.* at 655. On the *quantum meruit* claim, the court rejected Chambers's attempt

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to collect fees in line with the attorneys' agreement. *Id.* at 658. The court rejected Chambers's contention that, despite "the absence of the required written client consent, he should be allowed to accomplish indirectly a division of fees[, *i.e.*, the enforcement of an unlawful contract,] under the guise of a *quantum meruit* claim." *Id.* The court concluded that it could "perceive no legal or policy justification for finding that the fee the parties negotiated without the client's consent furnishes a proper basis for a *quantum meruit* award in this case." *Id.* The court noted that Chambers "could have protected his interests, and at the same time fulfilled the beneficial purposes of the rule and acted in [the client's] best interests" by complying with the rule. *Id.* at 659.

¶ 43 Plaintiffs attempt to distinguish *Chambers* by arguing that its holding is limited to situations involving lawyers attempting to recover from one another based on the terms of fee-splitting agreements that were not disclosed to clients in violation of Rule 1.5(e). According to plaintiffs, neither *Chambers* nor Illinois law stand for the proposition that the lawyers' failures to disclose their fee-splitting agreements precludes them from recovering reasonable fees from the clients based on or with reference to the underlying fee-splitting agreements. Plaintiffs' argument lacks merit. The purpose of Rule 1.5(e) is to protect the client, so it certainly applies to situations where an attorney seeks to recover fees against a client on the basis of *quantum meruit* just as it applies to disputes between attorneys trying to enforce their undisclosed fee-splitting agreements.

¶ 44 We find the analysis in *Chambers* consistent with Illinois law, which is clear that strict compliance with Rule 1.5 is mandatory (see *Fohrman*, 2014 IL App (1st) 123351, ¶ 44). Allowing an attorney to skirt the rule's requirements and indirectly enforce an unlawful fee agreement through *quantum meruit* recovery would lead to an unjust and absurd result and render the rule superfluous. See *Ferris, Thompson, & Zweig, Ltd. v. Esposito*, 2016 IL App (2d) 151148, ¶¶ 9, 41. Nevertheless, plaintiffs argue that Illinois courts have routinely awarded as *quantum meruit*

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damages the entire contingent fee to a lawyer who did most of the work in a case but was discharged shortly before a settlement was reached. To support this proposition, plaintiffs cite *Rhoades v. Norfolk & Western Ry. Co.*, 78 Ill. 2d 217, 230 (1979), which cites *Fracasse v. Brent*, 494 P.2d 9, 14 (Cal. 1972), for the proposition that "in cases in which an attorney who has done much work is fired immediately before a settlement is reached, the factors involved in determining a reasonable fee would justify a finding that the entire contract fee is the reasonable value of services rendered." Accord *DeLapaz v. Selectbuild Construction, Inc.*, 394 Ill. App. 3d 969, 973-74 (2009); *Wegner*, 305 Ill. App. 3d at 693; *Whalen v. Shear*, 190 Ill. App. 3d 84, 87 (1989); *Dobbs v. DePuy Orthopaedics, Inc.*, 885 F.3d 455, 459 (7th Cir. 2018). Plaintiffs' reliance on these cases is misplaced because they involved situations where the clients fired counsel *and* the underlying contingency fee agreements were not voidable based on a violation of the Rules of Professional Conduct. Here, in contrast, the contingency fee agreement was unenforceable *ab initio* because it violated Rule 1.5(e).

¶ 45 Based on the foregoing discussion, we conclude that the trial court erred by awarding plaintiffs as a *quantum meruit* award an amount equal to a negotiated contingency fee in a contract that violates Rule 1.5(e).

¶ 46 B. Benefit of Services

¶ 47 Next, we address whether plaintiffs' services provided a benefit to defendants.

¶ 48 "To recover under a *quantum meruit* theory, a plaintiff must prove that (1) it performed a service to benefit the defendant, (2) it did not perform the service gratuitously, (3) defendant accepted the service, and (4) no contract existed to prescribe payment for the service." *Archon Construction Co. v. U.S. Shelter, L.L.C.*, 2017 IL App (1st) 153409, ¶ 31. We will uphold a trial

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court's finding that a plaintiff has met its burden unless that decision is against the manifest weight of the evidence. *Rohter v. Passarella*, 246 Ill. App. 3d 860, 865 (1993). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Best v. Best*, 223 Ill. 2d 342, 350 (2006).

¶ 49 Defendants only challenge the first element, arguing that plaintiffs' services provided no benefit to defendants. The trial court found that both plaintiffs' efforts and results benefitted defendants. The trial court found that plaintiffs "reviewed thousands of documents, formulated a litigation strategy, and engaged in multiple lawsuits on [d]efendants' behalf, including in state and federal court cases." Those litigation efforts in turn put pressure on Peggy to ultimately settle the case for $16.85 million. The trial court noted that defendants were receiving "no benefit whatsoever" from their combined 50% interest in the estate when they hired plaintiffs. Over the next 19 months, plaintiffs obtained progressively larger settlement offers culminating in a $16.25 million offer three weeks before defendants fired plaintiffs. Less than two months later, defendants settled for $16.85 million, a number "clearly based in significant part" on plaintiffs' efforts.

¶ 50 Defendants cite *Bernstein & Grazian, P.C. v. Grazian & Volpe, P.C.*, 402 Ill. App. 3d 961 (2010), arguing that plaintiffs failed to present evidence to show that their work was valuable to defendants. In *Bernstein*, the trial court awarded a departed attorney 10% of all fees earned in open cases that a successor firm had inherited. *Id.* at 962. However, the attorney presented no evidence on the amount of time he worked on the cases at issue. *Id.* at 980. The attorney only testified to "extremely generalized statements" regarding the work he performed on the cases. *Id.* The attorney did not identify his hourly rate. *Id.* This court concluded that, while the attorney "may not have been required to provide a line-by-line detailing of all his efforts, he did need to, at the very least,

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introduce some evidence specific enough to prove the reasonable value of the benefit [the successor firm] allegedly received." *Id.* at 979.

¶ 51 We find *Bernstein* distinguishable from this case. Here, plaintiffs did file a detailed accounting of their time spent representing defendants. Plaintiffs also detailed their litigation strategy and how that strategy played out over the course of 19 months. Plaintiffs also presented evidence on how the negotiations progressed to Peggy presenting an offer of $16.25 million, a significant upgrade from defendants' initial position of receiving zero benefit from their combined 50% ownership in the O'Brien estate. Defendants' final settlement of $16.85 million was substantially like the offer that plaintiffs recommended defendants make immediately prior to their termination. In short, plaintiffs submitted enough specific evidence to establish that their efforts benefitted defendants in that, immediately after plaintiffs' termination, and without any apparent intervening circumstances, defendants were able to settle their claims with the estate. The trial court's finding in that regard was neither unreasonable nor arbitrary, and we are not convinced that the opposite conclusion is clearly evident. Thus, plaintiffs were entitled to an award of attorney fees in *quantum meruit*.

¶ 52 Accordingly, we reverse the trial court's decision that awarded plaintiffs $1,692,390.60 in attorney fees and remand this matter to the trial court to calculate the award consistent with the relevant factors courts consider in rendering a *quantum meruit* award. We remand the matter to the trial court for a determination of an appropriate fee based on the reasonable value of plaintiffs' services.

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¶ 53 C. Reasonable Value of Services

¶ 54 Finally, defendants argue that the trial court erred by finding that the reasonable value of plaintiffs' services was $1,692,390.60 because plaintiffs failed to prove the reasonable value of their services where nearly half the number of billable hours was billed by a volunteer helper. We do not reach the merits of this issue based on our decision above to remand this matter to the trial court to render a *quantum meruit* award based on the relevant factors involved in determining the reasonable value of plaintiffs' services rendered.

¶ 55 III. CONCLUSION

¶ 56 For the foregoing reasons, we reverse the trial court's decision that rendered a *quantum meruit* award based on the terms of the underlying unenforceable contingency fee agreement and affirm the trial court's determination that plaintiffs' services provided a benefit to defendants. We remand this matter to the trial court to render a *quantum meruit* award based on the relevant factors involved in determining the reasonable value of the services rendered.

¶ 57 Affirmed in part and reversed in part.

¶ 58 Cause remanded.

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***Andrew W. Levenfeld & Associates, Ltd. v. O'Brien*, 2023 IL App (1st) 211638**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 17-CH-15055; the Hon. Cecilia A. Horan, Judge, presiding.
Attorneys for Appellant:	John M. Fitzgerald, Amanda N. Catalano, and Nicole R. Marcotte, of Tabet DiVito & Rothstein LLC, of Chicago, for appellants.
Attorneys for Appellee:	Jeremy N. Boeder, of Tribler Orpett & Meyer, P.C., of Chicago, for appellees.

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Voir Dire Examination by Mr. O'Mara ....R 1017 – R 1034

Direct Examination by Mr. Boeder ....R 1035 – R 1061

Cross Examination by Mr. O'Mara ....R 1061 – R 1194

Redirect Examination by Mr. Boeder ....R 1195 – R 1196

Recross Examination by Mr. O'Mara ....R 1196 – R 1198

Witness: Andrew William Levenfeld ....R 1199 – R 1292

Direct Examination by Mr. Boeder ....R 1199 – R 1231

Cross Examination by Ms. Hayes .... R 1231 – R 1292

Report of Proceedings, May 20, 2021, 10:00 a.m. .... R 1339 – R 1482

Witness: Andrew W. Levenfeld [continued] .... R 1346 – R 1461

Cross Examination by Ms. Hayes [continued] .... R 1346 – R 1418

Redirect Examination by Mr. Boeder ....R 1418 – R 1449

Recross Examination by Ms. Hayes .... R 1449 – R 1461

Report of Proceedings, May 20, 2021, 1:23 p.m. ....R 1483 – R 1736

Witness: Daniel O'Brien, III ....R 1488 – R 1528

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Examination by Mr. Boeder ....R 1488 – R 1510

Examination by Mr. O'Mara ....R 1510 – R 1528

Witness: Maureen O'Brien ....R 1529 – R 1638

Examination by Mr. Boeder .... R 1529 – R 1547

Examination by Ms. Hayes ....R 1548

Direct Examination by Ms. Hayes ....R 1566 – R 1626

Cross Examination by Mr. Boeder ....R 1627 – R 1637

Redirect Examination by Ms. Hayes ....R 1637 – R 1638

Witness: Daniel O'Brien, III [continued] ....R 1639 – R 1702

Direct Examination by Mr. O'Mara ....R 1639 – R 1686

Cross Examination by Mr. Boeder ....R 1686 – R 1698

Redirect Examination by Mr. O'Mara ....R 1698 – R 1701

Recross Examination by Mr. Boeder ....R 1701 – R 1702

Report of Proceedings, June 11, 2021, 1:00 p.m. ....R 1737 – R 1987

Witness: David J. Feinberg ....R 1744 – R 1951

Direct Examination by Mr. O'Mara ....R 1745 – R 1841

Cross Examination by Mr. Boeder ....R 1842 – R 1937

Redirect Examination by Mr. O'Mara ....R 1937 – R 1944

Recross Examination by Mr. Boeder ....R 1944 – R 1951

Hearing Transcript, October 9, 2019, 10:45 a.m. ....R 1988 – R 2053

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NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois
First Judicial District

ANDREW W. LEVENFELD AND ASSOCIATES, LTD. and STEPHEN J. SCHLEGEL, LTD.,

Plaintiffs-Appellants,

v.

MAUREEN V. O'BRIEN and DANIEL P. O'BRIEN III,

Defendants-Appellees.

No. 129599

The undersigned, being first duly sworn, deposes and states that on November 1, 2023, there was electronically filed and served upon the Clerk of the above court the Brief and Appendix of Appellants. On November 1, 2023, service of the Brief will be accomplished electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

AMANDA N. CATALANO
NICOLE R. MARCOTTE
TABET DIVITO & ROTHSTEIN LLC
jfitzgerald@tdrlawfirm.com
acatalano@tdrlawfirm.com
nmarcotte@tdrlawfirm.com

Peter O'Mara
Margaret Hayes
O'MARA O'CALLAGHAN
peter.omara@O2lawyers.com
Margaret.hayes@O2lawyers.com

Terry Sullivan
THE SULLIVAN FIRM, LTD.
terry@thesullivanfirmltd.com

Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ Jeremy N. Boeder
Jeremy N. Boeder

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Jeremy N. Boeder
Jeremy N. Boeder

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