Circuit Court for Washington County
Case No. 21-C-16-57499 CJ

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1541

September Term, 2016

GREGORY L. TAYLOR

v.

KENNETH E. RITTER

Woodward, C.J.,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 7, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Around August 26, 2013, Gregory Taylor, appellant, executed a promissory note ("the note") payable to Kenneth Ritter, appellee, wherein Taylor promised to pay Ritter a sum of $50,000, in addition to interest at the rate of 7.5% per annum until paid, in monthly installments of $593.51.[1] The note included a confession of judgment clause that permitted the entry of judgment of the unpaid principal, accrued interest, and attorney's fees equal to 15% of the unpaid amount upon default. On July 12, 2016, Ritter filed a complaint for a confession of judgment and included an affidavit claiming a judgment in the amount of $50,565.33.[2] On July 15th, the court entered an order directing the clerk to enter judgment and to notify Taylor as specified in Rule 2-611(c). Taylor responded with a motion to open or modify the confessed judgment, which the court denied without a hearing on September 2, 2016. Taylor noted this timely appeal and challenges the denial of his motion without a hearing. For the reasons stated below, we affirm.

When a court directs the clerk to enter an order for a confession of judgment, Rule 2-611(d) provides that the "defendant may move to open, modify, or vacate the judgment . . . . The motion shall state the legal and factual basis for the defense to the claim." Rule 2-611(e) then states: "If the court finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action, the court shall order the judgment by confession opened, modified, or vacated and permit the defendant to file a responsive

[1] The note indicates that Taylor had borrowed $50,000 from Ritter for a business or commercial loan.

[2] The affidavit indicated that $42,093.38 remained on the principal balance, plus interest of $1,876.47, and attorney's fees of $6,595.48.

pleading." This Court has observed that the burden is on the defendant to demonstrate that there is a meritorious defense to the execution of the note or the amount of the judgment. *See Nils, LLC v. Antezana*, 171 Md. App. 717, 726-27 (2006). More specifically, a "'defense to the claim' is a defense challenging 1) the execution of the promissory note itself or 2) the amount of the debt due on the note." *Id.* at 728.

In this case, Taylor contends that the attorney's fee provision of the note was unenforceable because he maintains that the determination of attorney's fees is a decision that must be made by a judge. He also argues that the attorney who prepared the note represented both Taylor and Ritter, and that attorney did not advise Taylor to seek the advice of independent counsel, which is a violation of the Maryland Rules of Professional Conduct ("RPC"). Additionally, Taylor contends that the court committed an error in denying his motion without a hearing.

Concerning the lack of a hearing in this matter, we do not perceive a problem with the court's action because Taylor failed to properly request a hearing. Rule 2-311(f) provides that a party requesting a hearing "shall request the hearing in the motion or response under the heading 'Request for Hearing.' The title of the motion or response shall state that a hearing is requested." The rule further states that the court "may not render a decision that is dispositive of a claim or defense without a hearing **if one was requested as provided in this section.**" *Id.* (emphasis added). The title of Taylor's motion did, indeed, state that a hearing was requested, and he requested a hearing in his prayer for relief. Taylor, however, failed to include a request for a hearing under the heading "Request for Hearing," as provided in Rule 2-311(f). This Court has previously held that

the "Maryland Rules of Procedure, which have the force of law, 'are not mere guides but are precise rubrics to be strictly followed.'" *Green v. State*, 231 Md. App. 53, 60 (2016) (quoting *Williams v. State*, 364 Md. 160, 171 (2001)), *cert. granted*, 452 Md. 4 (2017).

In any event, Taylor failed to raise a meritorious defense to the action. Whether the defenses raised by the party seeking to open or modify a confessed judgment are meritorious is a question of law, which we review *de novo*. *See Antezana*, 171 Md. App. at 727-28. As to the attorney's fee provision, the case Taylor cites in support of his argument is inapposite. In *Meyer v. Gyro Transport Systems, Inc.*, 263 Md. 518, 530-31 (1971), the Court of Appeals had to determine what was a reasonable attorney's fee in the collection of the amounts owed pursuant to a promissory note because the note in that case merely indicated that a "reasonable attorney's fee" could be collected upon default. Where a promissory note includes a specific percentage collectible as attorney's fees, as in this case, then the court should enforce that provision, so long as the percentage is reasonable. *See Atl. Contracting & Material Co., Inc. v. Ulico Cas. Co.*, 380 Md. 285, 315-16 (2004).

As to Taylor's argument concerning RPC 1.8, that rule is inapplicable in this action. Taylor correctly notes that, pursuant to Rule 1.8(a) of the RPC, attorneys should not enter into business transactions with clients unless the client is informed in writing of the advisability of seeking independent counsel. This rule is, however, inapplicable where there is no business transaction. Indeed, the attorney who drafted the note is not a party to this action, nor a signatory to the note. Moreover, the drafting of a promissory note is not a business deal for the attorney, in the context of RPC Rule 1.8. *See Attorney Grievance Comm'n of Md. v. Agbaje*, 438 Md. 695, 728-29 (2014) (discussing real estate investment

deal between attorney and client as business); *Attorney Grievance Comm'n of Md. v. Parker*, 389 Md. 142, 147-51 (2005) (concerning attorney who loaned money to client and managed farm for client).

As such, the defenses presented by Taylor in his motion were not meritorious, and the court correctly denied his motion.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.