



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009

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COUNTY OF FAIRFAX

CITY OF FAIRFAX

October 26, 2017

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RETIRED JUDGES

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Counsel for Judgment Creditor, Allen Corporation of America, Inc.

Kenneth M. Miskin, Esquire
Miles & Stockbridge P.C.
1751 Pinnacle Drive, Suite 1500
Tysons Corner, VA 22102
Counsel for Garnishee, Miles & Stockbridge P.C.

Re: *Allen Corporation of America, Inc. v. Reginald Zayas*
Miles & Stockbridge P.C., Garnishee
CL-2017-07300

Dear Counsel,

The question before the Court is whether a law firm, upon receiving a garnishment summons pertaining to a judgment against a client, is permitted to withdraw portions of the client's retainer fee from the law firm's trust account to compensate the law firm for accrued legal fees. The answer is "no". Accordingly, the Motion for Entry of Order for Payment is granted.

Background

The Court relies upon the facts set forth in the pleadings and in oral argument on October 6, 2017. As explained below, Allen Corporation of America,

OPINION LETTER

Inc. (“Allen Corporation”) is the judgment creditor, Reginald Zayas (“Mr. Zayas”) is the judgment debtor, and the law firm of Miles & Stockbridge P.C. is the garnishee in this action.

Miles & Stockbridge P.C. performed legal work for Mr. Zayas and received a retainer fee from him, which was held in the law firm’s trust account. The retainer fee represented advanced payment to the law firm for legal fees and expenses that had not yet been earned or incurred. As legal fees and expenses were incurred, Miles & Stockbridge P.C. periodically charged against the retainer fee held in trust to pay itself.

On October 11, 2016, Allen Corporation obtained a multi-million dollar judgment against Mr. Zayas in the United States District Court for the District of Maryland. In an effort to enforce the judgment, Allen Corporation initiated garnishment proceedings in this Court. On May 23, 2017, this Court issued a garnishment summons against Miles & Stockbridge P.C. for retainers and funds held in trust for Mr. Zayas. On this same date, a writ of fieri facias was delivered to the Sheriff. On May 25, 2017, Miles & Stockbridge P.C. was served with a garnishment summons.

Over the next several months, Miles & Stockbridge P.C. incrementally transferred portions of Mr. Zayas’ retainer fee from its trust account into a suspense account, rather than the law firm’s operating account. It did so in order to segregate the funds at issue in this dispute pending a ruling by this Court. The monetary transfers from the trust account were for compensation of legal services rendered prior to the date the writ of fieri facias was delivered to the Sheriff.

In its response to the garnishment summons, Miles & Stockbridge P.C. provided the following chronology of the transfers:

- (i) as of May 23, 2017, the date a garnishment summons was issued by this Court and the writ of fieri facias was delivered to the Sheriff, Miles & Stockbridge P.C. held \$3,460.48 in its trust account for fees and costs incurred by Mr. Zayas;
- (ii) on May 24, 2017, it withdrew \$350.00 from the trust account and placed it in a suspense account to be applied towards Mr. Zayas’ outstanding fees and costs;
- (iii) on May 30, 2017, it withdrew \$2,699.24 from the trust account and placed it in a suspense account to be applied towards Mr. Zayas’ outstanding fees and costs;

- (iv) on July 28, 2017, it withdrew \$250.00 from its trust account and placed it in a suspense account to be applied towards Mr. Zayas' outstanding fees and costs; and
- (v) as of August 15, 2017, it held a retainer in the amount of \$161.24 in its trust account on behalf of Mr. Zayas.

Allen Corporation subsequently filed the instant Motion for Entry of Order for Payment seeking the portion of Mr. Zayas' retainer fee held in the trust account as of May 25, 2017, which was the date that Miles & Stockbridge P.C. received a garnishment summons.

Analysis

Under Virginia law, a writ of fieri facias becomes a lien from the time it is delivered to a sheriff on all of the personal estate of a judgment debtor. Va. Code Ann. § 8.01-501. The personal estate of a judgment debtor includes money held in trust by a law firm. The reason is because a client retains an equitable and beneficial ownership interest in such funds. See *Virginia State Bar v. Goggin*, 260 Va. 31, 33 (2000). Prior case law establishes that "the lien of a writ of fieri facias under Code § 8.01-501 require[s] law firms to cease disbursing funds from their trust accounts in satisfaction of accrued legal fees and related costs and to pay those funds to a judgment creditor effective with the issuance of the writ of fieri facias." *Marcus, Santoro & Kozak, P.C. v. Wu*, 274 Va. 743, 746 (2007).

Miles & Stockbridge P.C. acknowledges the impermissibility of paying itself from the trust account for services rendered after the issuance of the writ of fieri facias. It argues, however, that courts should recognize a distinction between legal costs and fees accrued before the issuance of the writ and legal costs and fees accrued after the issuance of the writ.

In support of its position that it should be able to pay itself with the trust account funds, Miles & Stockbridge P.C. refers to the Maryland and Virginia Rules of Professional Conduct. It asserts that the Rules require law firms to deposit retainer fees into client trust accounts, and also that the Rules authorize law firms to withdraw funds as fees are earned or expenses incurred.

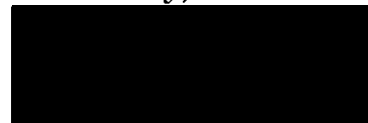
The Court does not believe that the Rules of Professional Conduct resolve this dispute for the following reason. Retainer agreements between clients and attorneys and/or law firms can take various forms. For example, a client may pay an attorney a retainer fee simply to secure the attorney's availability to represent the client. See *In re Equip. Servs.*, 290 F.3d 739, 746 (4th Cir. 2002). With this type of retainer, the attorney acquires title to the retainer fee immediately upon receipt, regardless of whether or not the attorney ever performs legal services for the client. *Id.*

In contrast, as is the case here, a client may pay an attorney a retainer fee that represents pre-payment for unearned legal fees. In this scenario, the attorney holds the retainer in a trust account as security for the payment of future fees, thereby creating a trust arrangement where the retainer funds are the corpus of the trust, the attorney is the trustee, and the client is the beneficiary. *See Marcus, Santoro & Kozak, P.C. v. Wu*, 274 Va. at 750; *In re Equip. Servs.*, 290 F.3d at 746-47. The attorney does not immediately acquire title to the retainer fee. Instead, a retainer fee held in trust, less any fees charged against it, constitutes the property of the client. *Id.* Stated differently, the retainer fee remains the property of the client until the attorney charges its fees against the retainer.

There is a difference between earning fees and charging fees. Although Miles & Stockbridge P.C. may have earned the fees prior to the writ of fieri facias and could have withdrawn funds from the trust account at that time, it waited until after the writ of fieri facias was delivered to the Sheriff to charge against the retainer fee. This delay was detrimental to the law firm, for the funds held in trust remained Mr. Zayas' property on the date the writ was issued. Under Virginia Code § 8.01-501, Allen Corporation had a right to these funds, and Miles & Stockbridge P.C. was not permitted to withdraw these funds to pay itself for legal services rendered.

Because Allen Corporation only seeks an order for payment for Mr. Zayas' funds held in the trust account as of the date Miles & Stockbridge P.C. was served with a garnishment summons, this Court grants the Motion for Entry of Order for Payment in the amount of \$3,110.48.

Sincerely,

A black rectangular redaction box covering the signature of Stephen C. Shannon.

Stephen C. Shannon
Circuit Court Judge

Enclosure

OPINION LETTER

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ALLEN CORPORATION)	
OF AMERICA, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. CL 2017-7300
)	Judgment No. 580616
REGINALD ZAYAS,)	
)	
Defendant.)	
_____)	
MILES & STOCKBRIDGE P.C.,)	
)	
Garnishee.)	

ORDER FOR PAYMENT

IT APPEARING TO THE COURT that the principal defendant herein is indebted to the plaintiff in the sum of Three Million One Hundred Fifty-Eight Thousand One Hundred Sixty and 65/100 Dollars (\$3,158,160.65);

AND IT FURTHER APPEARING TO THE COURT that the garnishee herein is indebted to the principal defendant in this action in the sum of Three Thousand One Hundred Ten and 48/100 Dollars (\$3,110.48), which amount has been withheld by the said Garnishee pursuant to this cause, and that the said Garnishee desires to be released from any further lien under this cause;

AND IT FURTHER APPEARING TO THE COURT that there has been due service herein on the principal Defendant, pursuant to § 8.01-511 of the 1950 Code of Virginia, as amended; it is therefore

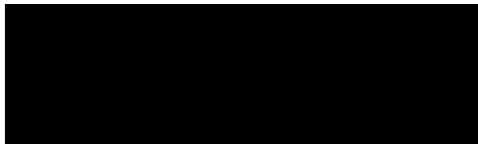
ADJUDGED and ORDERED that the garnishee pay to the Clerk, the sum of Three Thousand One Hundred Ten and 48/100 Dollars (\$3,110.48), and the said garnishee be and is hereby, discharged and released from any further claims under the cause upon clearance of said funds in the account of the Clerk of this Court; and it is further

ADJUDGED and ORDERED that upon receipt and clearance of said funds from the garnishee in the account of the Clerk of this Court, the Clerk of this Court shall pay to the order of Harris, St. Laurent & Chaudhry LLP, counsel for the plaintiff herein, the sum of Three Thousand One Hundred Ten and 48/100 Dollars (\$3,110.48), and upon said payment, this cause shall stand ENDED.

ENTERED this 26th day of October 2017.


JUDGE

I ASK FOR THIS:


Timothy B. Hyland (VSB No. 31163)
Elizabeth A. Dwyer (VSB No. 87486)
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Clerk is Holding \$ 0.00
As of 2CL-2017-7300
Acct # 10/5/17
By: 